

BEFORE THE PUBLIC EMPLOYEE RELATIONS BOARD
OF THE STATE OF KANSAS

IN THE MATTER OF THE PETITION
FILED BY:

AFSCME-Kansas Council 64, for
Unit Determination and Certi-
fication for Certain Employees
of the City of Topeka, Public
Housing Authority, Topeka, KS.

CASE NO: 75-UDC-2-1984

Now on this 29th day of August, 1984, the above cap-
tioned case comes on for consideration by Jerry Powell, duly appointed
hearing examiner for the Kansas Public Employee Relations Board. This
petition comes on a motion of AFSCME, under the signature of William
Edgerly, asking that a unit determination be made of certain employees
of the Topeka Public Housing Authority. The petition further asked
that a certification election be conducted for members of the appropriate
unit as determined by the Public Employee Relations Board. It should
be noted that a previous petition was filed asking for a unit deter-
mination and certification of employees of the Topeka Housing Authority
and such a unit determination and certification election was conducted.
The previous case filed with the Public Employee Relations Board was
designated UDC-7-1974 and it was filed on June 17, 1974. The case
was filed by Alan Dollen on behalf of Laborers Local 1142, Laborers
International Union of North America, AFL-CIO. In that case a unit
was determined by the Public Employee Relations Board and an election
was conducted by representatives of the Board. On September 26, 1974,
a Certification of Representative and Order to Meet and Confer was
issued by the Public Employee Relations Board. That order to meet
and confer designated Laborers International Union of North America
Local 1142, AFL-CIO, as the exclusive representative for employees of
the Topeka Housing Authority with the following job classifications:
Maintenance Carpenter, Stationary Engineer, Maintenance Mechanic Aide
A and B, Lawnman, Painter, Custodian and Maintenance Secretary. The
exclusions from the appropriate unit were: Maintenance Supervisor,
Confidential Secretary and all other employees of Topeka Housing
Authority.

75-UDC-2-1984

Upon receipt of the petition from AFSCME on May 8, 1984, Public Employee Relations Board staff filed that petition not only upon the employer, Topeka Housing Authority, but also on representatives of Laborers International Union. In June a letter was received under the signature of Francis M. Jacobs, International Representative for Laborers International Union of North America, stating that the union no longer had any interest in representing the employees within the bargaining unit at Topeka Housing Authority. Further, Mr. Jacobs states in his letter that the Union would have no objection to their name appearing on an election ballot, if in fact, our rules required such an appearance. However, there were no plans by Laborers International to actively participate in any proceeding currently before the Board. Those proceedings would include a question regarding the makeup of the appropriate unit and/or any subsequent election procedure. Subsequent to the receipt of Mr. Jacobs' letter, Public Employee Relations Board staff contacted the remaining parties, that is, the City representatives for Topeka Housing Authority and AFSCME union to schedule a pre-hearing conference. A pre-hearing conference was conducted during which many of the classifications utilized at Topeka Housing Authority were included within the appropriate unit by agreement of the parties. There were, however, at least three classifications utilized at Topeka Housing Authority upon which no agreement could be reached. As a result a hearing was scheduled to ascertain the facts surrounding the actual work performed by these three classifications.

PROCEEDINGS BEFORE THE BOARD

1. Petition received May 8, 1984, for unit determination and certification under the signature of William Edgerly, President/Director, AFSCME-Kansas Council 64.
2. Petition filed on employer, Topeka Housing Authority, on May 9, 1984.
3. Answer received from Topeka Housing Authority under the signature of Jack Alexander on May 14, 1984.
4. Answer filed with AFSCME Council 64 on May 21, 1984.
5. Pre-hearing conference scheduled for June 18, 1984, at 1:30 PM in the Public Employee Relations offices.

6. Notification of the answer from the employer, City of Topeka and/or Topeka Housing Authority served on Mr. Alan Dollen, Manager, Laborers Union International, 1231 NW Eugene, Topeka, Kansas.

7. Answer of City of Topeka or Topeka Housing Authority filed with Mr. Francis Jacobs, Union Representative, Laborers International Union, 1408 Ridenbaugh, St. Joseph, Missouri, on June 19, 1984.

8. Letter received under the signature of Mr. Francis M. Jacobs, International Representative, Laborers International Union of North America, in which Mr. Jacobs notifies us that the Laborers International Union of North America has no intention of objecting to the petition filed by AFSCME Council 64. Additionally, Mr. Jacobs states that Laborers International does not intend to participate in the election procedure or any procedure currently before the Board relating to the bargaining unit of Topeka Housing Authority.

9. Mr. Francis Jacobs, Laborers International Union notified by Public Employee Relations Board staff that the pre-hearing would be conducted and further that we would advise he or his union representative of further procedures before the Public Employee Relations Board.

10. Pre-hearing conference conducted by Mr. Paul K. Dickhoff, Jr., on the 16th day of August, 1984. A stipulation was entered at that time by the parties involving numerous classifications employed at Topeka Housing Authority. Stipulations signed by Mr. Sam Anderson, Personnel Director, City of Topeka, on behalf of the employer and by Mr. William M. Edgerly, President/Director, AFSCME Council 64, on behalf of the union.

11. Notice of Hearing mailed to parties on August 17, 1984.

12. Hearing conducted August 29, 1984, in the first floor conference room, 512 West Sixth, by Jerry Powell, hearing examiner for the Public Employee Relations Board.

13. Brief of City of Topeka and/or Topeka Housing Authority received November 1, 1984.

14. Notification by AFSCME representative that the union did not desire to file a brief in the matter.

APPEARANCES

For the Petitioner, AFSCME-Kansas Council 64, Mr. William M. Edgerly, Director of the American Federation of State, County and Municipal Employees.

For the Respondent, City of Topeka/Topeka Housing Authority, Ms. Elizabeth Schafer, Assistant City Attorney, City Attorney Office, Municipal Building, Topeka, KS; Mr. Sam Anderson, Personnel Director, City of Topeka, Municipal Building, Topeka, KS; Ms. Lana Balka, Director, Topeka Housing Authority, 1312 SW Polk, Topeka, KS; and Mr. Lawrence C. Wilson, Deputy Director, Topeka Housing Authority, 1312 SW Polk, Topeka, KS.

FINDINGS OF FACTS

1. That the City of Topeka, Kansas/Topeka Housing Authority, is the appropriate public employer for the purposes of this petition.
2. That Laborers International Union of North America, has no interest in representing employees of Topeka Housing Authority. Further, Laborers International Union has no interest in participating in any proceedings involving employees of Topeka Housing Authority that are currently under consideration by the Kansas Public Employee Relations Board.
3. That the petition filed by AFSCME-Kansas Council 64 is properly and timely before the Public Employee Relations Board.
4. That the parties to this matter have stipulated to certain inclusions and exclusions from the appropriate unit as follows:

<u>INCLUDE:</u>	Maintenance Worker I
	Maintenance Worker II
	Storeroom Clerk
	Clerk I
	Senior Clerk
	Custodial Worker
<u>EXCLUDE:</u>	Secretary
	Account Clerk I
	Administrative Assistant
	Topeka Housing Authority Director
	Topeka Housing Authority Deputy Director

It is further agreed that the following classifications are professional employees in accordance with the definition set out at K.S.A. 75-4322(d).

PROFESSIONAL: Intake and Referral Specialist
Housing Program Specialist
Housing Program Manager

These three positions are not considered supervisory and are therefore eligible to vote for inclusion or exclusion from the appropriate unit now under consideration. (See Stipulations of Parties and T - 178)

5. That the following classifications are in dispute in this proceeding:

IN DISPUTE: Housing Inventory Specialist
Maintenance Worker III
General Foreman

6. That a dispute exists regarding the professional status of the Maintenance Worker III.

7. That Petitioner, AFSCME Council 64, has stipulated that the Inventory Specialist and General Foreman are contested with regard to supervisory status and that the professional status of these two classifications must be determined by the Public Employee Relations Board.

8. That Mr. Dale Hoopes is now working within the classification of General Foreman.

9. That the General Foreman's work is performed under the supervision of the Deputy Director, Topeka Housing Authority.

10. That the General Foreman testified that his work was substantially different from other employees of Topeka Housing Authority.

11. That on occasion the General Foreman does perform routine maintenance type work.

12. That the General Foreman does perform many of the same jobs as employees under his direct supervision.

13. That the General Foreman testified that he believed he supervised other employees. (T - 14)

14. That the General Foreman many times works along side other employees in order to teach those employees how to perform a particular function. (T - 15)

15. That the General Foreman evaluates employees with the assistance of Mr. Wilson, Deputy Director. (T - 15)

16. That the General Foreman's function in evaluating employees consists of meeting with Mr. Wilson the Deputy Director to discuss the job performance of individuals being evaluated. (T - 15)

17. That the General Foreman does not set down with employees being evaluated to discuss their job performance. (T - 16)

18. That the General Foreman testified that he has the ability to set in on interviews and to make recommendations regarding hirings. (T - 16)

19. That the General Foreman has not had occasion to fire or recommend termination of any employee. (T - 16)

20. That the General Foreman testified that he had the authority to suspend or to discipline an employee via recommendation procedures through either Mr. Wilson or Ms. Balka. (T - 17)

21. That the Maintenance Worker III, a Mr. Carter, works under the supervision of the General Foreman. (T - 19)

22. That the General Foreman does not normally give Mr. Carter, the Maintenance Worker III, specific directions and instructions. (T - 19)

23. That the General Foreman believes he does not have access to personnel files of individuals working under his supervision. (T - 19)

24. That the General Foreman believes that he has input into the budget making process but that he does not develop a budget for the Maintenance Department. (T - 20)

25. That Mr. Wilson, the Deputy Director, does not routinely go out into the field to ascertain quality of the workers. (T - 22)

26. That Petitioners Exhibit #1, Job Description for the General Foreman, states desirable qualifications to consist of five years supervisory experience and two years boiler maintenance experience. (T - 23)

27. That the Job Description referenced in the previous finding contains a section entitled "Knowledge, Skills and Abilities" which lists the ability to supervise workers as one of the necessary skills. (T - 24)

28. That the General Foreman has four people that work directly under his supervision. (T - 25)

29. That the General Foreman testified that in the event an employee working under his direction had a problem the General Foreman

would attempt to solve the problem himself. In the event the General Foreman could not solve the problem it would then be passed up the ladder to Mr. Wilson. (T - 27)

30. That the General Foreman travels throughout the day to various job sites in order to review the work that is being performed. (T - 28)

31. That the General Foreman recommended that a Mr. Baldwin be hired by the Topeka Housing Authority. That recommendation was made to Mr. Lawrence Wilson the Deputy Director. (T - 28)

32. That the individual recommended for hiring by the General Foreman, as referenced in the previous finding, was in fact hired by the Topeka Housing Authority. (T - 29)

33. That the General Foreman sometimes sets in on the interview process for new employees. (T - 30)

34. That any employee working directly under the supervision of the General Foreman must first request to take vacation leave of the General Foreman. (T - 30)

35. That the General Foreman has the authority to initially approve leave and then passes such a request on up the chain of command to Mr. Lawrence Wilson, Deputy Director. (T - 30)

36. That the General Foreman testified that he would have the authority to relieve an employee of his duties and in fact remove him from the work site if, in the General Foreman's opinion, such worker was intoxicated. (T - 31)

37. That the General Foreman believes that he would be the first person in the chain of command directly under the Deputy Director to accept responsibility, in the event work was not finished in a timely fashion. (T - 32)

38. That the General Foreman signs off on evaluations of employees working under his supervision. (T - 34)

39. That the General Foreman testified that he does not so much coordinate work of numerous employees under him but that he does supervise them in the way that they perform that work. (T - 37)

40. That Oral E. Carter, Jr., is currently occupying the position of Maintenance Worker III, Topeka Housing Authority. (T - 43)

41. That Mr. Carter has employees that work under his direction. (T - 45)

42. That Mr. Carter participates in evaluation procedures for those individuals working under his direction. (T - 45)
43. That evaluation procedures for employees working under Mr. Carter's direction consist of a conversation between Mr. Wilson, Deputy Director and Mr. Carter involving employees work practices. (T - 45)
44. That Mr. Carter is evaluated by Mr. Dale Hoopes, the General Foreman. (T - 46)
45. That Mr. Carter, the Maintenance Worker III, has the authority to move the employees working directly under his supervision from job site to job site. (T - 47)
46. That the Maintenance Worker III, Mr. Carter, normally performs the same job as those individual employees working under his direction. (T - 48)
47. That Mr. Carter, Maintenance Worker III, performs plumbing, carpentry, tile, paint, electrical and glass work. (T - 49)
48. That Mr. Carter, Maintenance Worker III, approves vacation leave for individuals working under his direction initially and then sends this request for vacation leave, by an employee, up the chain of command to Mr. Wilson the Deputy Director. (T - 50)
49. That Mr. Carter, the Maintenance Worker III, believes that he does not have access to individual personnel files. (T - 50)
50. That Mr. Carter is responsible for the Housing Unit Readiness Team. (T - 52)
51. That Mr. Carter, Maintenance Worker II, has two full time people who work with him on the HURT Team. (T - 52)
52. That Mr. Carter, Maintenance Worker III, meets every Monday morning with Mr. Wilson the Deputy Director, Mr. Hoopes, General Foreman and Ms. Albright to discuss items such as work that needs to be done. (T - 53)
53. That Mr. Carter, Maintenance Worker III, meets each morning with the two gentlemen that work under his direction to decide what needs to be done for that particular day. Mr. Carter has the authority to tell these two gentlemen, Mr. Wood and Mr. Llamas, what they should do and how they should perform their work. (T - 53)

54. That if one of the two gentlemen working under Mr. Carter's direction became ill they would request a sick leave form from Mr. Carter. (T - 55)

55. That Mr. Carter believes he has the authority to send either of the two gentlemen working for him home in the event they should appear at the job site inebriated. (T - 56)

56. That Mr. Carter, Maintenance Worker III, testified that he had set in on interviews for hiring and that he believes he could have input via a recommendation into a decision involving the hiring of employees. (T - 57)

57. That Mr. Carter, Maintenance Worker III, sometimes utilizes independent judgment in determining what needs to be done in order to put a house in first class shape, therefore making it ready for occupancy. (T - 63)

58. That Mr. Carter, Maintenance Worker III, normally performs the same work as the other two individuals working under his direction. (T - 64)

59. That Mr. Carter, Maintenance Worker III, would attempt to resolve problems between the two gentlemen working under his direction prior to submitting that problem to Mr. Wilson the Deputy Director. (T - 66)

60. That Mr. Carter, Maintenance Worker III, had no input on the hiring of the two individuals that are currently working under his direction. (T - 69)

61. That Mr. Carter, Maintenance Worker III, had no input nor did he make the determination regarding how long temporary employees are going to be working. (T - 69)

62. That Mr. Carter, Maintenance Worker III, would make a recommendation to Mr. Hoopes or Mr. Wilson in the event he believed that additional people were necessary in order to complete given jobs. (T - 70)

63. That Berneice Albright is currently serving in the job classification of Inventory Specialist. (T - 72)

64. That Ms. Albright's, Inventory Specialist, primary responsibility is to check the market place to ascertain what prices are available and to keep a running account of materials and equipment that are on hand. (T - 74)

65. That Ms. Albright, Inventory Specialist, believes that she has no authority to make purchases. (T - 74)

66. That Ms. Albright, Inventory Specialist, has one employee who works under her direction. That employee, a Mr. Fountain, is a part time employee of the Housing Authority. (T - 76)

67. That Ms. Albright, Inventory Specialist, participated in framing Mr. Fountain's first evaluation along with Mr. Lawrence Wilson, the Deputy Director of Topeka Housing Authority. (T - 77)

68. That although Ms. Albright, Inventory Specialist, did not sit down and go over Mr. Fountain's evaluation with him she did discuss with Mr. Fountain the content of the evaluation and the fact that the basic conclusion of the evaluation, as she understood it, would be that he, Mr. Fountain, would get a raise. (T - 78)

69. That the part time employee, Mr. Fountain, a Storeroom Clerk, basically gathers supplies and handles incoming merchandise within the storeroom. (T - 79)

70. That Ms. Albright, Inventory Specialist, performs many of the same duties as Mr. Fountain particularly on those days or at the particular point in time when Mr. Fountain is not on the job. (T - 80)

71. That Ms. Albright, Inventory Specialist, did not participate in the hiring of Mr. Fountain, Storeroom Clerk. (T - 80)

72. That Ms. Albright, Inventory Specialist, does not really understand her authority regarding discipline of the employee working under her direction inasmuch as such authority has never been defined to her. (T - 81)

73. That Ms. Albright, Inventory Specialist, completed the necessary paper work for the employee working under her direction when that employee requested leave. (T - 82)

74. That Ms. Albright, Inventory Specialist, is now aware of the fact that she has access to personnel files. (T - 82)

75. That Ms. Albright, Inventory Specialist, was contacted by Mr. Wilson, Deputy Director, Topeka Housing Authority, with regard to finding a replacement for Mr. Fountain during his leave of absence. Ms. Albright recommended to Mr. Wilson that a temporary helper be hired to replace Mr. Fountain and that recommendation was approved. (T - 88)

76. That Ms. Albright, Inventory Specialist, directs the work of Mr. Fountain the storekeeper, in his day to day responsibilities.
(T - 90)

77. That Ms. Albright, Inventory Specialist, trained Mr. Fountain, storekeeper, in proper procedures for completing paper work necessary for performing his job function according to City policy and City requirements. (T - 90)

78. That Ms. Albright, Inventory Specialist, participated and in fact made a recommendation regarding Mr. Fountain's evaluation and in fact recommended that Mr. Fountain should receive a pay raise.
(T - 91)

79. That Mr. Fountain, Storeroom Clerk, is classified as a part time permanent employee one of only two such positions of that type within Topeka Housing Authority. (T - 93)

80. That the parties to this matter have stipulated that the General Public Assistant Workers employed by the Topeka Housing Authority are not included within the appropriate bargaining unit that is currently under consideration. (T - 93)

81. That the parties to this matter have stipulated that permanent part time employees would be included within the bargaining unit now under consideration. (T - 94)

82. That no leave may be taken by any employee without the Director's signature on the leave slip. This procedure has repeatedly been related to Ms. Albright, Inventory Specialist, during staff meetings. (T - 95)

83. That Ms. Albright, Inventory Specialist, views her signature on leave slips as a recommendation that the leave be approved. (T - 95)

84. That Sam L. Anderson is currently employed as Personnel Director for the City of Topeka. (T - 102)

85. That Mr. Anderson, Personnel Director, testified that there exists a City ordinance relating to evaluation. The ordinance states that the supervisor shall fill out the initial performance evaluation and then the evaluation is screened by the department head prior to going on to the Commissioner and then on into the Personnel Department.
(T - 104)

86. That Mr. Sam Anderson, Personnel Director for the City, testified that an ordinance exists relating to approval of leave. That ordinance specifies that an individual must request leave of their immediate supervisor, the final authority to approve leave, however, rests with the department head. (T - 106)

87. That Sam Anderson, Director of Personnel, testified that a City ordinance exists pertaining to termination of employees. That ordinance specifies that the department head or a particular commissioner has the final authority regarding terminations. (T - 106)

88. That Lana Balka is the current Director of Topeka Housing Authority. (T - 109)

89. That the Topeka Housing Authority is organized under the municipal laws of the state, whereby the City can establish a entity to operate and administer assistance housing for that municipality. Topeka organized its Housing Authority in 1961 and at the present time the Housing Authority is responsible for the operation and maintenance of 734 units of public housing and 505 units of Section 8 housing. (T - 110)

90. That Ms. Balka is not only classified as the Director of the Topeka Housing Authority but also is considered to be a department head. (T - 111)

91. That the Topeka Housing Authority as a department is organized into two sections, an executive section and a operations section. (T - 111)

92. That Mr. Lawrence Wilson, Deputy Director, Topeka Housing Authority, is responsible for the operations section of the department and Ms. Balka, Director of Topeka Housing Authority, is responsible for the executive section of the department. (T - 112)

93. That the job classifications within the Topeka Housing Authority have undergone changes in titles and operational functions in the past ten years. (T - 113)

94. That some of the job classifications title changes and duties referenced in the previous finding were made in order to conform with job titles within the City of Topeka. (T - 114)

95. That applicants for positions within the Maintenance Department would be referred to Mr. Wilson, Deputy Director of Topeka Housing Authority. It would then be Mr. Wilson's determination as to whether

or not another supervisor would also look at the applicant's in order to review their qualifications and perhaps interview the individual applicants. (T - 115)

96. That under the current form of City government the Mayor of the City is the Commissioner over the Topeka Housing Authority and, therefore, would be the person to sign employment forms for the hiring of new individuals. (T - 116)

97. That any purchase of \$6,000 or more, by City ordinance, must be made via a formal bidding procedure as specified by the City Commission. (T - 116)

98. That the Topeka Housing Authority units are located throughout the City. There are units in East Topeka, Highland Park, North Topeka and South Topeka. (T - 121)

99. That merit increases are given as a result of evaluations. Such increases result from recommendations from a supervisor to Mr. Wilson, Deputy Director, to Ms. Balka the Director. (T - 125)

100. That there are three Housing Program Managers. Two of these Program Managers oversee the duties of Custodians and Maintenance Workers. These Housing Program Managers evaluate Custodians and Maintenance Workers directly under their supervision. Further these Housing Program Managers have input in the hiring and firing of employees working under their direct supervision. These Housing Program Managers have the authority to recommend approval of leaves in a manner similar to the three classifications in question in these proceedings. The City and the Union agreed to include the Housing Program Managers in the appropriate unit. (T - 127, 128)

101. That Ms. Balka, Director of Topeka Housing Authority, believes the General Foreman position to be professional in nature in light of the requirement for that position that the person occupying that position be familiar with sophisticated equipment operation. In the area of boiler maintenance, for example, Ms. Balka believes the required knowledge of chemicals and safety, taking into consideration the potential for accidents requires that this position be classified as professional. (T - 138)

102. That Ms. Balka, Director of Topeka Housing Authority, believes that the Inventory Specialist position should be classed as a professional employee because of the purchasing responsibility of that position. Further, that the Topeka Housing Authority relies heavily on the recommendation of the Inventory Specialist and allows a great deal of independent judgment on the part of the person occupying that position. (T - 139)

103. That Mr. Hoopes, Mr. Carter and Ms. Albright report directly to Lawrence Wilson, Deputy Director, Topeka Housing Authority. That Mr. Carter reports to Mr. Wilson through Mr. Hoopes, the General Foreman. (T - 144)

104. That the Monday morning meetings conducted by Mr. Lawrence Wilson, Deputy Director, Topeka Housing Authority, cover policy decisions, budgetary decisions, personnel decisions, problems in the nature of priorities that need to be established for work to be done. (T - 148)

105. That work orders come in four classifications: emergency, general, special and housing unit readiness. (T - 151)

106. That Mr. Carter is directly responsible for the housing unit readiness work orders. (T - 151)

107. That Mr. Hoopes, the General Foreman, is responsible for the other three types of work orders referenced in the above findings. (T - 151)

108. That Mr. Hoopes, the General Foreman, made a recommendation to the Deputy Director that a Mr. Baldwin be continued in his employment. Mr. Baldwin was subsequently hired. (T - 155)

109. That Mr. Wilson, Deputy Director, Topeka Housing Authority, believes that the inclusion of Mr. Hoopes, Mr. Carter and Ms. Albright within the bargaining unit under consideration would severely jeopardize the function of the Topeka Housing Authority. (T - 158)

110. That Mr. Wilson, Deputy Director of Topeka Housing Authority considers Mr. Carter to be a "working foreman". Mr. Wilson's definition of a working foreman is a person who is responsible for supervising the people who are delegated to him and actually performing the work along side of them. (T - 171)

111. That Mr. Wilson the Deputy Director, Topeka Housing Authority, does not consider Mr. Hoopes the General Foreman to be a "working foreman or working supervisor". (T - 171)

112. That Mr. Wilson, Deputy Director, Topeka Housing Authority testified that Mr. Hoopes, General Foreman, has direct supervision of four people; the Maintenance Worker I who is responsible for PM emergencies, Maintenance Worker II - Grounds, Maintenance Worker III - HURT, and Maintenance Worker II - Public Housing Emergencies. Further, Mr. Hoopes has responsibility for everyone in the Topeka Housing Authority so for as the technical aspect of the workers concerned. (T - 176)

113. That Petitioner's Exhibit #1 a Job Description or Position Description for General Foreman Housing indicates that the position is supervisory in nature. The eleventh example of work performed reads as follows: "Supervises employees and part time workers as assigned". Further, the definition of work contained on this exhibit states that the incumbent is responsible for planning implementation and coordination of nonroutine maintenance. Under the topical heading of "Knowledges, Skills and Abilities" on this exhibit the incumbent must possess the ability to supervise workers, to achieve quality and efficient performance. (See Petitioner's Exhibit #1)

114. That Petitioner's Exhibit #2 is a Job Description or Position Description for the Maintenance Worker III position, now occupied by Mr. Carter. This job description states that the position performs work of routine to moderate difficulty. There appears to be no mention on this position description of any requirement for supervisory skills and/or experience. There is, however, an attached sheet entitled Job Description Modification Sheet upon which the following printing appears; "Check work to see that it is done right by men under my supervision." (See Petitioner's Exhibit #2)

115. That Petitioner's Exhibit #3 is a Position Description or Job Description for a Housing Inventory Specialist. This description defines the work of this position as follows; "Incumbent is responsible for the procurement, security, allocation, and the inventory of maintenance materials used by the Topeka Housing Authority." There appears to be no mention of any supervisory skills or experience necessary for the incumbent in this position. (See Petitioner's Exhibit #3)

CONCLUSIONS OF LAW/DISCUSSION/ORDER

This case comes before the examiner on petition of AFSCME requesting a determination of the appropriate unit of certain employees of the Topeka Housing Authority. The parties were able to stipulate on the inclusion and exclusion of a majority of the worker classifications utilized at the Authority. There were, however, three classifications upon which no agreement could be reached. Those classifications are:

- 1) General Foreman
- 2) Maintenance Worker III
- 3) Housing Inventory Specialists

K.S.A. 75-4321 et seq., provides for the Public Employee Relations Board to make written findings and conclusions in order to resolve such disputed matters.

The examiner shall discuss the duties and authority of each classification and shall make a recommendation to the Public Employee Relations Board regarding the supervisory and professional status of each classification in question. K.S.A. 75-4322(b) defines "supervisory employee" as;

"(b) 'Supervisory employee' means any individual who normally performs different work from his or her subordinates, having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend a preponderance of such actions, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. A memorandum of agreement may provide for a definition of 'supervisory employees' as an alternative to the definition herein."

Testimony was given regarding actual duties performed and perceived authority by the incumbent in each of the disputed positions. The examiner must therefore look at this testimony and the job descriptions in light of the above listed criteria.

General Foreman

The City and the Union have stipulated that the General Foreman falls within the definition of professional employee as found at K.S.A. 75-4322(d). Mr. Dale Hoopes, General Foreman, was present at the hearing and offered testimony regarding his duties. Mr. Hoopes

testified that he believed that he supervised other employees. Further Mr. Hoopes testified that he believed he had authority to recommend hirings, firings and disciplinary action and that he has adjusted grievances. It is clear on the record that Mr. Hoopes can transfer workers from job site to job site in order to complete projects. The record reflects that Mr. Hoopes normally performs different work than his subordinates except for those times he may be showing employees "how to" perform a specific job. He travels from job to job throughout the day in order to give this instruction and to insure that the work is being done. Mr. Hoopes superior, Mr. Wilson, does not normally travel from job to job but rather relies on Mr. Hoopes judgment in most cases. It must be remembered that numerous job sites exist and crews may be working in these various areas at any time.

It would be difficult, at best, for Mr. Wilson to make independent inspections of all these job sites and to accomplish his other job responsibilities at the same time. Similarly, Mr. Wilson could not be aware of employees job performance for evaluation purposes since he is not normally "in the field". Additionally, the nature of Mr. Wilson's position is not normally associated with the necessary abilities to determine the skill level of persons performing skilled trades. It is quite evident from the record that Mr. Wilson relies heavily on the General Foreman for input on evaluations.

The Housing Authority's desire to delegate supervisory authority to the General Foreman position is evidenced by the requirement for supervisory skills in the job description. Testimony from Mr. Wilson and Ms. Balka then substantiates this desire. Mr. Hoopes testimony indicates that he does engage in such a supervisory role. While some of the actions specified by statute, i.e., firing - recall..., have not been necessary in the past, Mr. Hoopes perceives that he could make an effective recommendation in these areas should the situation arise.

The examiner therefore finds that the General Foreman does exercise independent judgment, in the interest of his employer, to effectively recommend a preponderance of the supervisory functions listed at K.S.A. 75-4322 (b).

Maintenance Worker III

The professional status as well as the supervisory status of this position is in dispute. The examiner will first address the question of supervisory status since a ruling that the classification is supervisory will negate a need to rule on the professional question.

Mr. Carter, the incumbent in the Maintenance Worker III position was present at the hearing and offered testimony relating to his duties and responsibilities.

The Maintenance Worker III employee is directly responsible to the General Foreman. Specific job responsibilities are assigned to Mr. Carter, therefore, few instructions are given to him by the General Foreman. Mr. Carter is responsible for the Housing Unit Readiness Team (HURT). His assignments concerning which units need to be readied for occupancy come directly from Mr. Wilson. It is then Mr. Carter's responsibility to see that all necessary repairs are made. Mr. Carter is the initial step through which employees must go in requesting leave. The leave requests then go to Mr. Wilson for his approval. While Mr. Carter had no input on the hiring of the two individuals working under his direction he testified that he has sat in on a hiring. Further, Mr. Carter believes he is responsible for directing the work of his two subordinates. Mr. Carter attends a Monday morning meeting with Mr. Wilson and Mr. Hoopes during which a plan is perfected for accomplishing the Authority's goals. Mr. Carter then meets with his two subordinates each morning to plan a work schedule for the day. Mr. Carter normally performs the same work as his subordinates. The subordinate workers are evaluated by Mr. Wilson in conference with Mr. Carter. The job description for a Maintenance Worker III states that the position performs work of routine to moderate difficulty. Further there is no requirement for supervisory experience nor direction to supervise, on the job description.

It appears to the examiner that as a matter of expediency and as a credit to Mr. Carter's abilities, Mr. Wilson and Mr. Hoopes have delegated a great deal of responsibility to Mr. Carter. Mr. Carter is performing some supervisory functions over and above those functions

which might be delegated to a working foreman. It appears that his role in the leave policy as well as his role in directing other employees is merely a routine or clerical function. That is Mr. Carter holds the responsibility for seeing that the work is done correctly but at the same time works along side the other employees. The chain of command as specified in the job description and substantiated by testimony shows that the General Foreman is responsible for the Maintenance Worker III and ultimately for the other HURT members .

The evaluation system for HURT members is a good example of the short cut being taken by Mr. Hoopes and Mr. Wilson. Logic dictates that the General Foreman would have input into the evaluations of all HURT members as well as the Maintenance Worker III since he is responsible, at least on paper, for the actions of the crew.

The examiner is persuaded that a preponderance of the supervisory functions are not being granted to or performed by the Maintenance Worker III. At least those functions are not being performed in a circumstance in which independent judgment is required. Rather, Mr. Carter is functioning in the role of "lead man" or "working foreman" for the purposes of a preponderance of the supervisory functions listed at K.S.A. 75-4322(b). His role as a lead man or the person responsible for seeing that the "readiness" work is completed properly, seems to have evolved as a result of his abilities as a skilled craftsman. The record indicates that Mr. Carter has no authority to hire other than to make a recommendation much like a recommendation made by any other employee. He might play a role in terminations based upon his input into evaluations. He has no authority to transfer except as a particular job order might dictate. Such a rush job order would be dependent upon a decision of Mr. Wilson. Mr. Carter believes he might have the authority to send a man home but the record is void of any corroborating testimony to that effect. The record indicates that Mr. Carter has no authority to lay off or recall. Rather, these actions are dictated by the work load based upon Mr. Wilson's decision.

A great deal of testimony was taken relating to the Monday morning meeting with Mr. Wilson. Mr. Wilson testified that during these meetings subjects of a confidential nature were discussed. He believes that the presence of Mr. Carter in these meetings is incompatible with a

finding that Mr. Carter be placed within the appropriate unit. The examiner does not believe that to be true. While some personnel matters are discussed, the record indicates that a majority of the discussions center around work orders and completion dates. It is understandable that Mr. Carter be present at these meetings since he is directly responsible to Mr. Wilson for completion of HURT work. This direct responsibility does not, however, alter the fact that Mr. Carter is supervised by the General Foreman. Here again it appears that Mr. Carter has, over the years, demonstrated his ability to work without direct field supervision.

The examiner further notes that roles similar to Mr. Carter's are played by other individuals within the Topeka Housing Authority. Specifically, the Housing Program Managers oversee the duties of other Topeka Housing Authority employees but by agreement have not been excluded from the bargaining unit.

The examiner finds that the position of Maintenance Worker III does not meet the test for supervisory status as contemplated at K.S.A. 75-4322(b). Rather the position is that of a lead man or working foreman and should be included within the appropriate unit.

K.S.A. 75-4322(d) defines a "professional employee" as;

"(d) 'Professional employee' includes any employee:
(1) whose work is predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; involves the consistent exercise of discretion and judgment; requires knowledge of an advanced type in a field of science or learning customarily acquired by prolonged study in an institution of higher learning; or (2) who has completed courses of prolonged study as described in paragraph (1) of this subsection, and is performing related work under the supervision of a professional person in order to qualify as a professional employee as defined in paragraph (1) of this subsection; or (3) attorneys-at-law or any other person who is registered as a qualified professional by a board of registration or other public body established for such purposes under the laws of this state."

The work being performed by Mr. Carter is not of an intellectual nature but rather of a routine manual or mechanical nature. Certainly, the work requires Mr. Carter to utilize his independent judgment relative to the quality of work being done. However, the examiner is not persuaded that the nature of the duties ascribed to the Maintenance Worker III position are of the type contemplated by the statutory definition of a professional employee.

The examiner therefore finds that the Maintenance Worker III position cannot be classified as professional.

Housing Inventory Specialist

Ms. Albright is the incumbent in the Inventory Specialist position. She was present for the hearing and offered testimony relative to her duties and authority. The parties have not agreed on the professional status of this position.

The Inventory Specialist is responsible for insuring that adequate inventory is on hand at all times. The person in that position checks the marketplace to see what prices are available on goods and makes recommendations relating to purchasing. Ms. Albright testified that she has no authority to independently purchase goods.

Ms. Albright has one part time employee working under her direction. Ms. Albright testified that she had no input into the hiring of the Storeroom Clerk nor does she understand her role in supervising the clerk. It appears that Ms. Albright performs duties similar to those of the clerk except that when the clerk is on the job, a majority of the lifting is done by the clerk. Ms. Albright discussed the Storeroom Clerk's evaluation with Mr. Wilson. There is no doubt that Ms. Albright had input into that evaluation since Mr. Wilson would not usually be available to view the clerk's work habits. Although Ms. Albright recommended that a temporary replacement be hired in the Storeroom Clerk's absence, it appears that such a recommendation was of the nature any unit member might make.

The job description for the Inventory Specialist does not require supervisory experience nor does it direct the position to supervise anyone. Ms. Albright has never been told of any authority she might have to supervise anyone. The record is void of any evidence or testimony that Ms. Albright performs supervisory functions except for her input into the evaluation of the Storeroom Clerk. Her role in the leave process appears to consist of providing the proper forms and assisting with completion of the form.

Ms. Albright's position is compatible with the position of Housing Program Manager insofar as overseeing the work of another employee is concerned.

Ms. Albright does attend the Monday morning meetings with Mr. Wilson, Mr. Hoopes and Mr. Carter. The hearing examiner has previously addressed the nature of these meetings and ruled that attendance at the meetings does not dictate a finding of supervisory status.

The examiner finds that the Housing Inventory Specialist does not meet the supervisory test as set forth in K.S.A. 75-4322(b).

The duties performed by Ms. Albright, while requiring some use of independent judgment, are more routine or clerical in nature. That is, of a type of, "We need nails, who makes the best nails, and who has the best price on nails of this quality?" The examiner is not persuaded that the duties ascribed to the Housing Inventory Specialist are of the nature contemplated by the statutory definition of a professional employee.

In summary the examiner has reached the following conclusions concerning the three classifications in question:

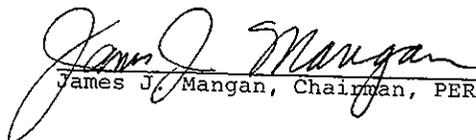
- 1) General Foreman - Supervisory
- 2) Maintenance Worker III - Nonsupervisory
Nonprofessional
- 3) Housing Inventory Specialist - Nonsupervisory
Nonprofessional

It is therefore the recommendation of the hearing examiner to the Public Employee Relations Board that the Maintenance Worker III and the Housing Inventory Specialist be included within the appropriate unit of employees of the Topeka Housing Authority and that the position of General Foreman be excluded.

It is so recommended this 11th day of January, 1985.


Jerry Powell, Hearing Examiner
Public Employee Relations Board

It is ordered that the recommendations of the hearing examiner
be adopted as a formal order of the Public Employee Relations Board
this 25th day of February, 1985.


James J. Mangan, Chairman, PERB


Louisa A. Fletcher, Member, PERB


Lee Ruggles, Member, PERB


Art J. Veach, Member, PERB


Robert L. Kennedy, Member, PERB