

BEFORE THE PUBLIC EMPLOYEE RELATIONS BOARD  
OF THE STATE OF KANSAS

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| INTERNATIONAL ASSOCIATION OF FIREFIGHTERS,<br>LOCAL 83,<br>-----Petitioners, )<br>vs. )<br>THE CITY OF TOPEKA )<br>-----Respondent. ) | Case Nos.<br>75-UCA-1-1983<br>and<br>75-UCA-2-1983 |
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ORDER

Now on this 16th day of January, 1984, the above-captioned matters come on before the Board for determination.

International Association of Firefighters, Local 83, appears by its counsel, John C. Frieden, Attorney at Law, Topeka, Kansas.

The City of Topeka appears by its counsel, R. E. "Tuck" Duncan, Assistant City Attorney, Topeka, Kansas.

The information stated under PROCEEDINGS BEFORE THE BOARD in the proposed order of the examiner, Jerry Powell, is herewith made a part of this order.

The Findings of Fact numbered 1 through 73 of said examiner's proposed order are herewith made the Findings of Fact of this Board with the following changes:

- a. No. 48. Battalion Chiefs and District Chiefs have authority to grant emergency, funeral and special leaves guided by procedures. (T 116, 199 and 417)
- b. No. 56. Battalion and District Chiefs occasionally submit items that impact on the budget, but these are quite limited. (T 181)
- c. No. 63. In his district the District Chief responds and directs all fire scenes. The Battalion Chief could take over if he showed up at a fire scene, but the policy is that he does not. (T 306, 419, 445 and 446)
- d. 71. Normally, a Battalion Chief would not assume command at the scene of a fire if a District Chief was there and in charge. (T 419)

The Board makes the following additional Finding of Fact:

74. In January, 1980, Battalion Chiefs and District Chiefs were included in management meetings every week. The Mayor and his Administrative Assistants were in attendance. The Chiefs were put on several committees. In

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about six to eight months after the first meetings the Chiefs began to believe that the meetings were more to let them blow off steam than actually have input in the management decisions. In their opinions the meetings became more of briefings for them than input into management decisions. (T 47, 48 and 49)

The Board accepts the recommendations of the examiner relative to Conclusions of Law and discussion, and the same are hereby made a part of this order. The Board further accepts the recommendations of the examiner commencing on Page 8 and continuing to COMMUNICATIONS OFFICERS II.

The Board finds that COMMUNICATIONS OFFICERS II are obviously not supervisors within the meaning of the Act.

The Board accepts the Summary and Recommendations of the examiner commencing on Page 12 and ending on Page 13.

There was much in the evidence relative to the failure or refusal of the higher echelon of management to accept or allow input relative to management decisions by Battalion and District Chiefs. This evidence was conflicting. However, one fact rises high and clear from the evidence, which is that there were deep and strong personality conflicts. The reasons for these conflicts are not evident but it is obvious that they existed. Perhaps it was just the natures and personalities of the individuals involved. No matter, it surely had a tendency to affect the primary goal of the department--saving lives and fighting fires. The Battalion and District Chiefs are down in the "trenches" and any input from them should be seriously considered in policy decisions, primarily directed toward saving lives and fighting fires. Further, the fact that Battalion and District Chiefs live, eat, work and sleep with members of the bargaining unit should not affect their judgment in the realm of saving lives and fighting fires. A supervisor can handle a situation of this nature if he is a competent supervisor. If he becomes the "good ol' boy" to the members of the bargaining unit to the point where he loses the power to command, then he should be replaced. The words defining a supervisor employee as an individual "having authority" means that the authority is there for the using. A supervisor who fails to use his granted authority doesn't become any less a supervisor under the Act but merely becomes an incompetent

supervisor. There is no question but that Battalion Chiefs and District Chiefs have authority to responsibly direct other employees.

IT IS THEREFORE AND ON THIS 17 DAY OF FEBRUARY, 1984, the order of this Board that the above Findings of the Board be and they are hereby made the order of this Board. IT IS ORDERED that Battalion Chiefs and District Chiefs be excluded from the appropriate bargaining unit of firefighters in the City of Topeka and that Captains and Communications Officers II be included therein. *This order to be come effective ON MARCH 1, 1984.*

*Jim Mangan*  
\_\_\_\_\_  
Jim Mangan

*Louisa Fletcher*  
\_\_\_\_\_

*Lee Ruggles*  
\_\_\_\_\_

*Robert L. Kennedy, no vote  
dissent to be filed.*

*Art Weckach, no vote  
Dissent to be filed.*

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RECEIVED

FEB 29 1984

KANSAS DEPARTMENT  
OF HUMAN RESOURCES

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS,  
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DISSENT OF ROBERT L. KENNEDY

I respectfully dissent.

The order adopted by a bare majority in this case voices the concern which forms the basis for my dissent. The majority of this board, while voting to sustain the position of the city of Topeka, acknowledges that the city's position is a weak one at best.

The decision on the issue posed by this case hinged upon whether the duties of battalion and district chiefs within the Topeka Fire Department in September of 1982 were of such a nature that the incumbents of those positions could be considered supervisory employees as defined by K.S.A. 75-4322(b) and thus be effectively excluded from active participation in the affairs of International Association of Firefighters, Local 83, insofar as its dealings with the city of Topeka.

The Petition for Amendment of Appropriate Unit filed by the International Association of Firefighters, Local 83, seeking the inclusion of the six district chiefs and three battalion chiefs into the Public Employees Bargaining Unit was apparently supported by all of the individuals then serving as district or battalion chiefs.

The position of Local 83 and of those district and battalion chiefs testifying at the hearing conducted by the Public Employee Relations Board's hearing examiner, commencing on January 19, 1983, was that the city of Topeka had either failed to vest in the battalion or district chiefs supervisory responsibilities or authority or had refused to permit these chiefs to exercise such responsibilities and authority and, therefore, these chiefs

should not be considered supervisory employees. For this reason Local 83 requested that the bargaining unit composition be amended to include the district and battalion chiefs.

The position of the city of Topeka was that the redefinition of the appropriate bargaining unit was premature and that pursuant to PERB determination in Case No. 79-UDC-10 (1979) the battalion and district chiefs had been assigned supervisory duties and that these chiefs had acknowledged their role as supervisory personnel. I agree that what little evidence there is in the record pertaining to the job descriptions of the battalion and district chiefs appears to support the inference that the incumbents of these position are vested with certain supervisory powers and obligations. The majority of the board apparently was content to accept the assertions of the officials of the city of Topeka to the effect that these incumbents did, in fact, possess such powers and obligations.

My reading of the record does not support such a conclusion. At best, the record supports a conclusion that after the 1979 decision of this board, the city of Topeka consciously and deliberately created a separate class of employees within the fire department and this class, composed of the battalion and district chiefs, could accurately be described (in the words attributed to the fire chief) as orphans.

It is ludicrous to maintain that an individual possesses powers to discipline subordinates if that individual is required to consult the fire chief or an assistant chief before issuing a reprimand and that any such reprimand must be recorded on a form provided by the chief or his assistants and in most instances dictated by the chief or an assistant.

It is ludicrous to maintain that these battalion and district chiefs have the power to transfer or assign other employees when that power is limited to 24 hours for the sole purpose of achieving adequate manning for the 24 hour period.

It is ludicrous to maintain that these battalion or district chiefs have any powers to hire, suspend, lay off, recall,

promote, discharge, or reward other employees when this record clearly reflects that these powers were either vested in the officials operating the civil service system or in the fire chief himself.

Yet, the majority of this board says:

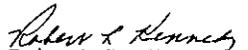
"The words defining a supervisory employee as an individual 'having authority' means that the authority is there for the using. A supervisor who fails to use his granted authority doesn't become any less a supervisor under the Act but merely becomes an incompetent supervisor."

I am not prepared to so indict the men who hold the positions of battalion and district chiefs within the Topeka Fire Department. Instead, I would read the record and see deliberate acts on the part of the top leadership of the fire department and related city officials to exclude these chiefs from the bargaining unit on the pretext that they are supervisory personnel, while at the same time denying these chiefs the exercise of authority and discretion that must accompany such supervisory roles. By succeeding in this effort the city of Topeka has effectively excluded these individuals from the bargaining process and the bargaining unit is considerably weakened by the loss of the influence and prestige that these experienced long time employees would assert within the bargaining unit.

Unfortunately, the board by its order in this case appears to acquiese in and approve this type of conduct. It is to be hoped that the city of Topeka will now re-evaluate its policies toward the assignment of supervisory powers within the fire department. If the city does not make a good faith effort to vest a reasonable amount of authority and discretion in these battalion and district chiefs, this issue will not go away but will continue to be a source of conflict between the bargaining unit and the city.

For these reasons, I would not have accepted the proposed order of the board's examiner because I do not believe that the record supports his ultimate findings.

Respectfully submitted,

  
Robert L. Kennedy

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MAY 17 1984  
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DISSENT OF ART J. VEACH

I respectfully dissent.

The order adopted by a three (3) to two (2) vote is the basis for my dissent.

In the Board's order of October 22, 1979, case number 75-UCA-10-1979, the nine (9) Battalion and District Chiefs were excluded from the bargaining unit.

The City of Topeka argued that the Chiefs in question were in fact supervisors within the meaning of the Act. K.S.A. 75-4322 (b) defines "supervisory employees" as:

"Supervisory employee" means any individual who normally performs different work from his 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 responsibly 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 judgement. A memorandum of agreement may provide for a definition of "supervisory employees" as an alternative to the definition herein."

In the 1979 Board order, the Board agreed that even though the Chiefs do not have the absolute authority to carry out the duties as defined in the Act, they can effectively recommend a preponderance of such actions.

The argument used by the International Association of Firefighters Local 83 in the 1979 unit determination hearing, was used again in the hearing conducted in 1983, except that three (3) years of operations had elapsed and the record will reflect by

the Chiefs testimony that the definition the City used in 1979 for supervisor was never applied.

It is the opinion of this Board Member that a supervisor cannot be a supervisor in name only, but must be given an opportunity to perform such duties by higher management.

It is also apparent and the opinion of this Board Member, after reading the transcript, that the City did not treat the nine (9) Chiefs in question as supervisors within the meaning of the Act.

On this basis, I take exception to one part of the Boards order which states: "A supervisor can handle a situation of this nature if he is a competent supervisor. If he becomes th "good ol' boy" to the members of the bargaining unit to the point where he loses the power to command, then he should be replaced. The words defining a supervisor employee as an individual "having authority" means that the authority is there for the using. A supervisor who fails to use his granted authority doesn't become any less a supervisor under the Act, but merely becomes an incompetent supervisor."

Again, a supervisor can only be as competent in performing his duties as higher management would allow.

It is evident throughout the transcript, this authority was never granted and thus the authority to perform their duties as a competent supervisor was denied.

Since all Battalion and District Chiefs joined in a petition seeking the assistance of IA of FF Local 83 to represent them before the PERB, in an attempt to become a part of the bargaining unit, and since they were not accepted by management, leads me to believe that the deliberate acts of the City to exclude the Chiefs from the bargaining unit, and also to exclude them from their responsibilities as a supervisor created a third class coined as "orphans" in T-PPS-75, 76, and 77.

Through the transcript, based on testimony of the Chiefs Scheer, Bradshaw, and Douglas, their supervisor duties were more clerical in nature rather than that of independant judgement.

Ms. Deborah Schons testimony would also reinforce what authority the Chiefs actually had and in her opinion what a

supervisor should be - TR-2-PPS-72, 75, 76, 77, 336, and 406.

Chiefs Seal and Day further indicated in their testimonies they did not have supervisory authority as defined in K.S.A. 75-4322 (b).

In the Boards order of January 16, 1984, it would appear that they are condoning this type of conduct by a Public Employer.

It is hoped that the City will now re-evaluate its policies toward the nine (9) Chiefs in question and either;

1. Treat these Chiefs as supervisors within the meaning of the Act.,
  2. Write a definition for supervisors, "A memorandum of agreement may provide for a definition of "supervisory employees" as an alternative to the definition herein."
- OR
3. Put these Chiefs in the bargaining unit.

If the City of Topeka does not make a good faith effort to correct these issues, these issues will not go away, but will continue to be a problem for the City, the Chiefs, and the Union.

For these reasons, I could not accept the proposed order of the hearing examiner or vote for the final Boards order.

Respectfully submitted,



Art J. Veach  
Board Member