BEFORE THE PUBLIC EMPLOYEES RELATIONS BOARD

OF THE STATE OF KANSAS

COMMUNICATIONS WORKERS OF AMERICA, LOCAL 6402, Complainant, vs. CITY OF HUTCHINSON, KANSAS, Respondent.	)	CASE NO: 75-UCA-4-1987

ORDER

Comes now on this 10th day of December, 1987, the above captioned case for consideration by the Public Employee Relations Board.

APPEARANCES

Petitioner, Jane I. Lyon, President, Local 6402 and Robert P. Sawyer II, Dispatcher.

Respondent, Philip H. Alexander, Attorney for the City, Joe J. Palacioz, Assistant City Manager, Dick Hietschmidt, Administrative Service Director.

PROCEEDINGS BEFORE THE BOARD

1) Unit clarification petition filed on May 6, 1987.

2) Petition submitted to Respondent for answer on May 7, 1987.

3) Answer received from Respondent on May 14, 1987.

4) Answer submitted to petitioner on May 14, 1987.

5) Pre-hearing conducted on August 18, 1987, all parties in attendance.

6) Formal hearing conducted on September 23, 1987.

7) Transcript received from court reporter on October 14, 1987.

FINDINGS OF FACT

1) That the City of Hutchinson is the public employer for purposes of K.S.A. 75-4321.

2) That the Communications Workers of America, Local 6402 is the recognized employee organization for purposes of K.S.A. 75-4321.

3) That the City of Hutchinson has elected coverage of K.S.A. 75-4321.

4) That this matter is properly before the Public Employee Relations Board for determination.

5) That the dispatch center operates twenty-four (24) hours each day in three (3) eight (8) hour shifts. (T-42)

6) That each shift is staffed by two (2) dispatchers and one (1) shift supervisor. (T-41)

7) That shift supervisors report to Mr. Heitschmidt who in turn reports to the Chief of Police and then to the City Manager. (T-43)

8) That shift supervisors serve on the Department Interview Board. (T-37)

9) That on occasion "regular" dispatchers have served on the Department Interview Board. (T-37)

10) That the job descriptions for dispatchers and shift supervisors are very similar in regard to some of the duties, knowledge, skills, and abilities required of the job. (Exhibit 1 and 2)

11) That shift supervisors have some authority over the dispatchers on their shift. (T-42)

12) That Mr. Heitschmidt's normal hours of employment are 8:00 AM to 5:00 PM. (T-44)

13) That in Mr. Heitschmidt's absence, a shift supervisor is in "command" of the dispatching function. (T-44, 85)

14) That during approximately two-thirds of the time the dispatch center is in operation, the decisions on the operation of that center are made by shift supervisors. (T-49, 84)

15) That shift supervisors make the assignments of particular dispatchers to operate particular dispatch consoles. (T-45)

16) That the work performed on certain consoles is more demanding than on others. (T-45, 46)

17) That the shift supervisor has the authority to relieve dispatchers from their duties at the dispatch consoles. (T-50)

18) That many of the duties performed by shift supervisors are similar or identical to those performed by dispatchers. (T-51)

19) That shift supervisors perform a number of duties that dispatchers do not routinely perform including the assignment of consoles, service on interview boards, evaluation of dispatchers, and review of dispatchers actions in unique situations. (T-52, 53, 54)

20) That shift supervisors are paid a wage differential which relates directly to their classifications as supervisors. (T-55)

21) That shift supervisors are ultimately responsible for the performance of the dispatchers on their shift. (T-59)

22) That shift supervisors have limited authority to approve overtime. (T-62)

23) That shift supervisors have considerable authority to recommend the approval or denial of leave requests. (T-63)

24) That shift supervisors have authority to make day-to-day recommendations to dispatchers for the improvement of the dispatchers performance. (T-65)

25) That shift supervisors have the authority to recommend serious forms of discipline including suspension and/or termination. (T-66)

26) That evaluations performed by shift supervisors are reviewed with Mr. Heitschmidt only after they are provided to and reviewed with the dispatchers. (T-68)

27) That shift supervisors have authority to recommend the approval or disapproval of merit wage increases. (T-69)

28) That the shift supervisors have been advised that they are responsible for the operation of the department on their shift. (T-85)

29) That the recommendations of the shift supervisors carry a great deal of weight with Mr. Heitschmidt. (T-87, 93, 94, 96)

30) That the recommendations of shift supervisors are effective. (T-88, 89, 90, 93, 94)

31) That shift supervisors have authority to issue letters of reprimand and/or commendation. (T-89, 92, 93)

32) That only the city manager has the ultimate authority to hire, fire, promote, or transfer employees, and the actions of shift supervisors, as well as those of Mr. Heitschmidt, are recommendations. (T-96, 97)

33) That Mr. Heitschmidt relies on shift supervisors to insure the operation of the dispatch center in his absence. (T-101)

34) That shift supervisors fulfill a liaison function between the dispatch department and the agencies which it serves in order to make recommendations in the areas of policy and procedures improvements in the dispatch department. (T-104, 105, 106)

CONCLUSIONS OF LAW/DISCUSSION

This case comes before the Public Employee Relations Board on the petition of the Communication Workers of Amercia, Local 6402 seeking the amendment of an appropriate unit of employees within the Emergency Communications Department of the City of Hutchinson, Kansas. Specifically, the petition seeks to amend the appropriate bargaining unit to include the classification of shift supervisor into the previously established Emergency Communications unit of dispatchers within the City of Hutchinson.

It is of importance to note that the previously established unit was so established through the mutual agreement of the parties and the Public Employee Relations Board has not heretofore received any information regarding the conditions necessary to determine the inclusion or exclusion of that classification from the unit.

In every case where the scope of a bargaining unit is in question the board must turn to the statutes for guidance. As a point of departure, the act at K.S.A. 75-4324 gives public employees certain rights wherein it states;

> "Public employees shall have the right to form, join and participate in the activities of employee organizations of their own choosing, for the purpose of meeting and conferring with public employers or their designated representatives with respect to grievances and conditions of employment. Public employees also shall have the right to refuse to join or participate in the activities of employee organizations."

A "public employee" is then defined at K.S.A. 75-4322 (a) which states:

> "'Public employee' means any person employed by any public agency, except those persons classed as supervisory employees, professional employees of school districts, as defined by subsection (c) of K.S.A. 72-5413, elected and management officials, and confidential employees."

In this case it is the contention of the Respondent City of Hutchinson that the shift supervisors are more than supervisors in name only and do, in fact, qualify as supervisory employees as contemplated by the act at K.S.A. 75-4322 (b) which states:

> "'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 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 clercial nature, but requires the use of independent judgment."

Considerable evidence and testimony was received at the formal hearing to be considered by the examiner in arriving at his recommendation in this matter. That information must, and has been

contrasted with the statutory language and has led to the following conclusions. There can be little doubt that the shift supervisors in question fail to possess the necessary authority to perform the lengthy list of supervisory functions outlined in K.S.A. 75-4322 (b) without review by some higher authority. Testimony on the record indicates that the ultimate authority for those actions rests with the City Manager. Even the actions taken by department heads must be approved by the City Manager in order to be effective. One must, therefore, look beyond an individuals personal unfettered authority to determine that person's supervisory capacity. The act recognizes that necessity wherein it defines a supervisor as one who has the means "effectively to recommend a preponderance of such actions".

Throughout the record it was shown that while shift supervisors do dispatch work, they perform a multitude of other functions which qualify as supervisory in nature. It was futher shown that the supervisory work performed was not simply assumed by the shift supervisors but was, in fact, a part of their assigned duties, and was expected by the department head. In the words of the department head Mr. Heitschmidt, during his absence the shift supervisor is in "command" of the dispatch function. That statement is supported by the fact that the shift supervisors have been advised they are responsible for the operation of the department during their shift, and substantiated by the lack of any reversing actions taken by the department head or the city manager counter to shift supervisor's recommendations.

In the sworn testimony of the department head he states that he expects the shift supervisors to run the department in his absence and places a great deal of weight on the recommendations they make. In the opinion of the examiner, the city has clearly identified the shift supervisors as statutory supervisors and empowered them to act in that capacity.

Certainly management has the right to structure its departments in such a way as to insure their orderly operation. The Emergency Communications Department provides the emergency services dispatch function to various agencies of city and county government charged with the public safety and protection on a twenty-four (24) hour per day, three hundred sixty-five (365) day per year basis. It would be unthinkable to expect those services to flow without some form of on-site supervision. In the opinion of the examiner, that supervision of the dispatch function is performed by the shift supervisors. It is the further opinion of the examiner that the shift supervisors perform that function through the use of effective recommendations to their supervisors, and that those recommendations are the product of the shift supervisor's independant judgment rather than being routine or clerical in nature.

For the above stated reasons it is the opinion of the hearing examiner that the shift supervisors in the Emergency Communications Department of the City of Hutchinson are true supervisory employees in accordance with K.S.A. 75-4322 (b) and as such should not be included within the appropriate bargaining unit.

It is so recommended this 10th day of December, 1987.

Paul K. Dickhoff, Jr., Senior Labor Conciliator
1430 SW Topeka
Topeka, Kansas 66612-1853

IT IS SO ORDERED THIS 20th DAY OF January, 1988.

Paul K. Dickhoff, Jr., Executive Director
For the Public Employee Relations Board