STATE OF KANSAS

BEFORE THE PUBLIC EMPLOYEE RELATIONS BOARD

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| IN THE MATTER OF<br><br>The Petition filed by International Association of Fire Fighters Local 2612 for unit determination for certain employees of Sedgwick County-District #1 | CASE NO: 75-UD-1-1979 |

## ORDER

Comes now on this 6th day of December, 1979 the above captioned matter for consideration by the Public Employee Relations Board.

Petitioner appears by and through its counsel Mr. James R. Roth, Attorney for the International Association of Fire Fighters Local 2612.

Respondent appears by and through its counsel James Pattinson, Attorney for Sedgwick County - District #1.

### PROCEEDINGS BEFORE THE BOARD

1. A petition for unit determination and certification was filed by Mr. Bob Kennard in behalf of Local 2612 of the International Association of Fire Fighters on March 1, 1979.

2. Petition sent to employer for answer on March 1, 1979.

3. Answer received from employer on March 15, 1979 in which they deny the appropriateness of the proposed unit and identify technical deficiencies within the petition.

4. Public Employee Relations Board notifies parties of intent to proceed with unit determination and certification upon receipt of amended petition correcting deficiencies.

5. Amended petition of employee organization received by Public Employee Relations Board on March 26, 1979.

6. Petition for unit determination and certification filed by five employees on March 26, 1979.

7. Amended petition of employee organization and orginial petition of five employees sent to employer for answer on March 30, 1979.

8. Employer answer to amended petition of employee organization and original petition of five employees received by the Public Employee Relations Board on April 4, 1979.

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9. All parties being first properly notified, a hearing in this matter was conducted before Jerry Powell on May 22, 23, and July 9, 1979 in Room 320 of 520 North Main, Wichita, Kansas.

10. Transcripts of the hearing were forwarded to the parties and a deadline for briefs in the matter was set for Friday, October 5, 1979.

11. Respondents brief received by the Public Employee Relations Board on October 4, 1979.

12. Petitioners brief received by the Public Employee Relations Board on October 4, 1979.

## FINDINGS OF FACT

1. That the Sedgwick County Fire District is an appropriate public employer within the meaning of K.S.A. 75-4321 et seq.

2. That the Public Employee Relations Board case number 75-UD-1-1979 is properly before the Public Employee Relations Board.

3. That petitioner International Association of Fire Fighters and respondent Sedgwick County Fire District stipulate to the following inclusion and exclusions from the appropriate unit:

Include: Fire Fighters 1-2-3-4-5 class

Exclude: 1. All ranks above Captains with the Sedgwick County Fire District

2. Fire Fighters mechanics

3. All other employees (T volume I pg. 4-5)

4. That the ranks of Lieutenants and Captains are in dispute concerning their supervisory status. (T volume I pg. 4-5)

5. That an interview board has been established by county resolution #23. The board is comprised of (1) Assistant Fire Chief, (1) Fire Captain, (1) Fire Lieutenant, County Personnel Officer, County Affirmative Action Officer. Such board is to rate candidates and certify the top three candidates to the Fire Chief for interview. (Respondent #2)

6. That a Captain is in charge of each fire station at all times except during emergencies or in case of illness or vacations. (Respondent #1 and T 86)

7. That there are 21 Captains and 9 Lieutenants on the Sedgwick County Fire Department. (T volume II pg. 87)

8. That a Lieutenant or Captain can recommend action on a request for transfer. The Assistant Chief of operation then rules on transfers. (T volume II pg. 97)

9. That the Lieutenants and Captains cannot suspend anyone under new department regulations. (T volume II pg. 98)

10. That lay off policy is developed by the Chief and the personnel director. (T volume III pg. 5)

11. That evaluations of employees are made by the station officer. (T volume III pg. 8)

12. That Lieutenants and Captains do not have the authority to discharge employees. (T volume III pg. 9)

13. That Captains can write letters of reprimand to be placed in an employees file. (T volume III pg. 16)

14. That the company officer is the first step in the county grievance procedure. (T volume III pg. 17)

15. That the Chief and the Assistant Chief develop policies and rules and regulations for the fire department. (T volume III pg. 20)

16. That the Captain in each station is responsible to see that the men follow department policy and rules and regulations. (T volume III pg. 20)

17. That Lieutenants are in charge of stations and personnel in the absence of the Captain. (T volume III pg. 24-63)

18. That in the instance of a still alarm the Lieutenant is in charge of men and equipment. (T volume I pg. 57)

19. That the commanding officer in each station is responsible for record keeping. (T volume II pg. 71)

20. That Captains and Lieutenants serve in unclassified positions.

21. That Captains have the ultimate responsibiltity for the men and equipment in a station. (T volume I pg. 174)

22. That Lieutenants normally have a set routine to follow in working still alarms. (T volume I pg. 125)

23. That a Captain can assign extra duty as a disciplinary measure. (T volume I pg. 26)

24. That Lieutenants normally perform the same work as other fire fighters. (T volume I pg. 30-31)

25. That a Captain and a Chief Officer goes out on first alarm fires. (T volume I pg. 34)

26. That a Captain is in charge at the Fire scene on all first alarm fires until a Chief Officer arrives. (T volume I pg. 35)

27. That Captains normally supervise the cleaning of the station as opposed to the Lieutenant's duty to supervise and assist. (T volume I pg. 100)

28. Chief Officers are paid for a 40 hour week. (T volume III pg. 31)

## CONCLUSIONS OF LAW - DISCUSSION

The instant case raises what seems at first blush a relative simple question. Are Lieutenants and Captains on the Sedgwick County Fire Department supervisors within the meaning of K.S.A. 75-4322 (b). This simple task becomes quite difficult when one considers both parties perception of an employees specific authority. The employers perception of the authority granted the employee usually does not coincide with the employees view of reality. The task of determining supervisory status is further complicated when such questions are raised in a police or fire department. The para-military structure tends to spread the decision making authority over a much broader base than in other public employment. Suggestions and recommendations flow upward from every level through the chain of command to the decision making authority. Those decisions then flow back downward through the chain of command until all are informed. The simple passage of information from one level down to the next is not viewed by the examiner as a supervisory function. One must rather determine if the acutal duties assigned to the position meet the supervisory criteria as set out in the law. Perhaps the importance of supervisory determinations can more easily be understood when one considers why such determination are necessary. When the supervisory line is drawn too high and those who actually supervise are placed in units with those they supervise problems are created for the employer and the employee organization. The supervisors either fail to effectively supervise or such supervisors will dominate the employee organization. When the supervisory line is drawn too low, those employees that should have the right to organize are denied that right. Therefore, it is essential to both labor and management that true "supervisors" be excluded from the approrpiate unit, and true "public employees" be included. K.S.A. 75-4322 (b) defines supervisors as;

> "Supervisory employee" means any individual who normally performs different work from his subordinates, have 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 most public agencies the ultimate authority to perform a preponderence of the listed supervisory functions is vested in the governing body. Logic dictates,

however, that such functions are actually performed within the agency itself. Obviously in this case the Chief of the department must rely on some of his subordinates to provide the necessary feed back or recommenations in order to effectively perform his duties. The legislature must have recognized the possibility of certain individuals filling the roles of "crew leaders". That is, the legislature stated that a true supervisor usually performs different work than his subordinates and further, that a true supervisor must exercise independent judgement in performing a preponderence of the twelve listed functions. This requirement differs from the National Labor Relations Board's requirement that an individual must be deemed a supervisor if, in fact, he performs <u>any</u> of the listed functions. Most labor boards have held that an indivdual may be included within a unit if he substitutes for a supervisor but must be exempted if he completely assumes the supervisory duties of another.

Testimony and evidence has shown that Captains are considered the commanding officers on each shift at each station. The exception is when a Captain is not present for reasons of illness or vacations. The Captain then has the ultimate authority to determine what information goes up the chain of command from each station. While Captains may choose to delegate a portion or all of their authority to a Lieutenant or possibly to a fireman in the absence of a Lieutenant, he (the Captain) must still answer to his superiors for all personnel and equipment. Captains, with the exception of the one on the interview board have no recommendations in the hiring of any fireman. It is preliminarily the responsibility of the Captain to approve a transfer. His recommendations are, of course, reviewed by his superiors utilizing independent judgement. Evidence shows that Captains have no written authority to suspend. However, the Chief testified that he, at least, expected commanding officers to suspend if an infraction was of a serious nature. Surely the Captain must investigate <u>any</u> infraction in his station to determine whether such infraction is serious enough to justify reporting it to his superior. The Captain must, in these cases, exercise independent judgement.

Lay off and recall are not, it seems, within the authortiy of a Captain. However, it follows that the station Captain must analyze a situation and request a recall of employees from a Chief. Even though the final determination does not rest with the Captain, he as commanding officer in a station must initiate or approve such actions. Testimony has shown that an elaborate system for promotion is in existance. The Captains, nonetheless, play a role in this process via the evaluation procedure. While Captains may delegate such authority, they are the commanding officers at each station and as such must have the right to overturn a lieutentant's

evaluation. The Chiefs must rely on the Captain's judgements even though they may independently investigate any action or "recommendation" by a Captain.

The discharge, reward, or discipline of fire fighters would also usually be initiated or approved by the station commanding officers. Here again the Captains do not have total authority but simply by reason of his physical presence at each station as commanding officer his judgement must be utilized to a great degree by the Chiefs.

Captains certainly have the authority and responsibility to direct the firemen serving under them. This responsibility is constant during the hours in the station house. A Captain is responsible for directing the force at a structure fire until he is relieved by a superior officer.

Preponderance is defined by Websters New Collegiate Dictionary as:

"2a: A superiority or excess in number or quantity b: a majority. The examiner believes the Captains do, in fact, exercise independent judgement in performing a superior number of majority of the twelve functions listed at K.S.A. 75-4322 (b). Additionally, testimony shows that Captains usually perform different work than Lieutenants and firemen both in the station house and until relieved at the fire scene.

The examiner now contrasts the job descriptions and duties of the lieutenants with those of the Captains. While Lieutenants are considered by the Chiefs to be commanding officers they are not given the responsibility for directing the fire fighters in the station. Rather they may assist or act in a Captain's absence. Any recommendation a Lieutenant might make to a Chief will certainly reflect upon the "commanding officer" or Captain on each shift in each station. The Captain then must very carefully consider any delegation of his authority and should independently investigate any action by a Lieutenant. Testimony has shown that approximately 75% of the fire alarms are still alarms. Therefore, only the Lieutenant respond with those fire fighters working under him. The toal amount of time in this capacity was not indicated in the record. There is little doubt in the examiner's mind that during these periods the Lieutenant serves as a supervisor of the crew working under him in that he has the responsiblity to direct them. However, one must keep in mind that a preponderance of the statutory functions provides the supervisory test. Only one Lieutenant serves on the interview board, therefore Lieutenants, as a class, play little if any role in hiring fire fighters. Lieutenants participate in the transfer, suspension, or lay off, of firemen only to the extent allowed by the Captain. That is, the Captain may delegate authority to a Lieutenant but the Captain, as commanding officer at each station is ultimately responsible to the Chiefs. Supervision of station house clean up and training seem to be of a routine nature in that policies

and procedures for the most part dictate how these duties are performed. Testimony has shown that Lieutenants perform the same work as firemen a majority of the time. It appears to the examiner that during those times when a lieutenant might be exercising independent judgement he is also being closely scrutinized by his commanding officer, the Captain. The Lieutenants then seem to fall within the class of employee previously referred to as a "crew leader". The position of Lieutenant and the duties of that position would certainly train the individual to become a supervisor but the actual scope of his duties and his ability to exercise independent judgement, or lack thereof, would not qualify him as a true supervisor in accordance with the act. The line of authority for supervisory responsibility is, therefore, drawn between Captains who are in charge of each shift in each station house and the Lieutenants who "assist" the Captains. The position of Lieutenant rather than supervisory, appears to be but another step above fire fighter first class as the fire fighter first class is above fire fighter second class. The position also provides a "training ground" for those individuals who will eventually be promoted to positions of supervision.

The examiner does not profess to be an "expert" in the area of fire prevention and control. He is also aware that often times certain classes of employees find their job duties changing as a result of a formal labor-mangement relationship. He, therefore, directs the attention of the parties to that section of K.S.A. 75-4322 (b) which states:

> "A memorandum of agreement may provide for a definition of "supervisory employees" as an alternative to the definition herein."

However, the facts in this case lead the examiner to the following recommended action.

It is the recommendation of the examiner that the Public Employee Relations Board find the rank of Captain on the Sedgwick County Fire Department to fall within the statutory definition of a supervisory employee. The position of Lieutenant should be included within the appropriate unit of fire fighters due to the lack of true supervisory status.

The appropriate unit would then include:

1. Fire Fighers (all ranks)
2. Lieutenants

The appropriate unit would exclude:

1. Chief
2. Assistant Chiefs
3. Fire Marshal
4. Fire Fighter Mechanics
5. Captains
6. All other employees not specifically included.

Jerry Powell, Hearing Examiner
Public Employee Relations Board

The hearing examiner's report and recommended findings are hereby approved and adopted as a final order of the Board.

IR IS SO ORDERED THIS 12th DAY OF December 1979, BY THE PUBLIC EMPLOYEE RELATIONS BOARD.

James J. Mangan, Chairman, PERB

ABSENT
Louisa A. Fletcher, Member, PERB

Urbano L. Perez, Member, PERB

Lee Ruggles, Member, PERB

Art Veach, Member PERB