

STATE OF KANSAS
PUBLIC EMPLOYEE RELATIONS BOARD

IN THE MATTER OF THE PETITION FOR UNIT *
DETERMINATION AND CERTIFICATION FILED *
BY INTERNATIONAL ASSOCIATION OF FIRE- *
FIGHTERS *
*
* Petitioner, *
*
and *
*
MCPHERSON, KANSAS, CITY MUNICIPALITY *
*
* Defendant, *
*

Case UDC 6-1976

FINDINGS OF FACT CONCLUSIONS OF LAW

The above-captioned case came on for hearing November 23, 1976, before the duly appointed hearing examiner for the Public Employee Relations Board, Mr. Jerry Powell. The hearing was conducted at the fire station at McPherson, Kansas. The case comes before the Board upon petition of the International Association of Firefighters, Local 2522, for unit determination of an appropriate unit for the firefighters of the City of McPherson, Kansas, under date of October 12, 1976.

Leave was granted all parties to offer evidence, testimony, and statements relative to other plans for unit determination which would be more "appropriate" than that proposed by the petitioner.

Appearances of parties were as follows:

- Mr. James Maize, Secretary, Local 2522, IAFF, on behalf of the employees
- Mr. Glen Hoover, President, Local 2522, IAFF, on behalf of the employees
- Mr. Philip C. Lacey, City Attorney for McPherson, Kansas, on behalf of the employer.

Statement of Case - Procedures Before the Board

1. Petition filed by IAFF, Local 2522, under date of October 12, 1976, praying for a unit determination of an appropriate unit alleged to consist of all full-time firefighters of the City of McPherson, Kansas, below the rank of assistant chief. The unit is to exclude fire chief, assistant fire chief, and volunteer firefighters.

2. City of McPherson, Kansas granted extension of time for filing answer to petition until September 9, 1976.

Answer to petition for unit determination and certification filed September 8, 1976 by Mr. Philip C. Lacey, on behalf of the City of McPherson. The respondent, the City of McPherson, proposes a more appropriate unit which includes volunteer firefighters and excludes captains as supervisory personnel as defined at K.S.A. 1975 Supp. 75-4322 (b).

4. Unit Determination hearing conducted September 23, 1976 at McPherson, Kansas. The parties were granted ten (10) days after receipt of transcript of hearing for filing briefs.

5. Respondent's brief received January 17, 1977.

FINDINGS OF FACT

1. The governing body of the City of McPherson, Kansas, has elected by passage of Ordinance No. 1835 on September 29, 1975, to bring such public employer under the provisions of K.S.A. 1975 Supp. 75-4321 et seq.

2. All parties agreed to limit the scope of the hearing to the following issues:

a. A determination of supervisory status of captains on the

McPherson Fire Department;

b. Inclusion of volunteer firefighters with full-time firefighters in one appropriate unit.

3. The fire chief and the assistant chief work from 8:00 a.m. to 5:00 p.m. five (5) days a week but remain on call 24 hours a day, seven (7) days a week. (TR 29).

4. Captains are in charge of the fire station sixteen (16) hours each day when the chief or assistant chief is not present at the station. (TR 29).

5. Captain on duty is responsible for getting truck(s) underway in the event of fire. (TR 27).

6. Captain on duty is responsible for notifying police dispatcher to activate call-back system. (TR 27).

7. Captain is in charge of men and equipment at fire scene until chief or assistant chief arrives at fire scene. At that time the captain is relieved of his supervisory role. (TR 23).

8. It is departmental policy to have chief or assistant chief respond to every emergency run. (TR 27).
9. It is the captain's responsibility to clean up the scene of the fire and to return the truck to the station. (TR 29).
10. Captains are responsible for carrying out the daily orders of the chief. (TR 30).
11. The fire chief has the sole authority to hire, fire, transfer, suspend, or lay off employees. (TR 44).
12. Captains have no authority to purchase supplies or to change work schedules. (TR 33).
13. Captains do have input with chief on what supplies are purchased and the changing of work schedules. (TR 33).
14. The existing departmental grievance procedure calls for all members to state grievances to their commanding officer. Thereafter, they may appeal to a ranking officer. (TR 38).
15. Chief does not and will not authorize captains to discipline employees except in emergency situations when the chief or assistant chief is not available. (TR 39).
16. Chief Burzda first testified that captain's supervisory authority is of a routine nature (TR 52). However, he later stated captains do exercise independent judgment on a day-to-day basis. (TR 58).
17. The vast majority of all decisions are made by the fire chief. (TR 61).
18. Under usual circumstances, captains perform the same work as firefighters. (TR 69), (TR 74), and (TR 76).
19. At least one of the three captains on the McPherson Fire Department desires to have captains included in the appropriate unit of firefighters. (TR 96).
20. There are presently twelve (12) volunteer firemen employed by the City of McPherson. (TR 105).
21. Volunteer firemen are paid two dollars (\$2.00) a call regardless of duration of the call. (TR 105).
22. Regular full-time firemen are paid on an hourly basis. (TR 90).
23. Volunteer firemen are compensated with any access budgeted money at the end of the year. (TR 105).
24. Volunteer firemen do not stand watch at fire station, rather they are called in emergencies only by a siren atop a downtown building. (TR 106).

25. Volunteer firemen do not perform routine maintenance work at station or on equipment. (TR 108).

When fighting fires there are no differences in the duties of volunteer firemen and regular full-time firemen. (TR 108).

27. Full-time firemen are granted a uniform allowance of two percent (2%) of their annual salary. Volunteers must buy their own uniforms or depend on the Benefit Association to purchase uniforms. (TR 113).

28. When volunteer firemen are on duty they are subject to all departmental rules and regulations. (TR 115).

29. Full-time firemen have authority over volunteer firemen at scene of fire. (TR 119).

30. City of McPherson provides insurance for full-time firemen but does not provide insurance for volunteers. (TR 123).

31. Fireman's Relief Association provides insurance for volunteer firemen pursuant to Kansas Statutes. (TR 135).

32. Volunteer firemen do not receive sick leave or vacation leave in the same manner as full-time firemen. (TR 123).

33. Both full-time and volunteer firemen utilize the same duty manual. (TR 128).

34. Full-time firemen who are on standby call back are required to answer all alarms. (TR 130).

35. Volunteers are not required to answer any alarms. (TR 130).

CONCLUSIONS OF LAW - DISCUSSION - ORDER

The City of McPherson is a public employer within the meaning of K.S.A. 1975 Supp. 75-4321 et seq. The City has properly made the election to bring its employees under the provisions of the law and has thus bound itself to the provisions of this Act. The matter is properly before the Public Employee Relations Board.

The first issue to look to is that of the status of captains as supervisory employees. K.S.A. 1975 Supp. 75-4322 (b) states:

"(b) "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 judgment. A memorandum of agreement may provide for a definition of "supervisory employees" as an alternative to the definition herein."

Argument has been advanced by petitioner that captains do not normally perform different work from other firefighters. That captains have no authority to hire, fire, suspend, promote, transfer, layoff, recall, reward, or discipline other employees. That recommendations for such actions are few and most often ineffective. That any supervisory authority is of a merely routine nature.

Respondent concedes that final authority for most, if not all, actions does indeed rest with the chief. However, respondent has argued that captains do have a great deal of input in the captain's decisions.

Respondent argues that captains are supervisors for some sixteen (16) hours each day when the chief or assistant chief is not on duty and are, in fact, supervisors at the scene of a fire until relieved by a superior officer. Such supervisory authority, respondent argues, does require the use of independent judgment.

The question of where the line is to be drawn in separating supervisory personnel from non-supervisory personnel is never easy or dramatically clear. This is particularly true in the para-military structure of a fire department.

The military concept of "chain of command" is very much a part of the formal structure of the organization, an obvious necessity due to the department's mission. Decisions flow down through a defined rank structure and input to the decision making process flows upward until the proper level for decision making is reached. It is impossible to hold that this decision making level is the same in all departments, thus, the supervisory level may vary greatly from one department to another depending upon the size of the individual fire department.

While the board concedes that captains normally perform the same work as their subordinates, it is not persuaded that captains do not have

authority to effectively recommend. In fact, it would seem that the chief must rely heavily on his captains since he is physically on duty at the station house only eight (8) hours a day, five days a week. It is the opinion of the Board that captains must exercise independent judgment daily while the chief and assistant chief are away from the station house. Indeed, the captains must utilize independent judgment and assume command of other firemen upon reaching the scene of a fire until such time as they are relieved of this duty by the commanding officer. Therefore, it is the opinion of the board that captains do fall within the definition of supervisory employees as set out at K.S.A. 1975 Supp. 75-4322 (b).

The second issue in this case is that of including volunteer firemen with other full-time employees in an appropriate unit.

K.S.A. 1975 Supp. 75-4321 (b) states in part that...."(b) Subject to the provisions of subsection (c), it is the purpose of this act to obligate public agencies, public employees and their representatives to enter into discussions with affirmative willingness to resolve grievances and disputes relating to conditions of employment," (Emphasis added.)

K.S.A. 1975 Supp. 75-4322 (t) defines conditions of employment as follows:

"(t) "Conditions of employment" means salaries, wages, hours of work, vacation allowances, sick and injury leave, number of holidays, retirement benefits, insurance benefits, wearing apparel, premium pay for overtime, shift differential pay, jury duty and grievance procedures, but nothing in this act shall authorize the adjustment or change of such matters which have been fixed by statute or by the constitution of this state."

K.S.A. 1975 Supp. 75-4327 (e) states:

"(e) Any group of public employees considering the formation of an employee organization for formal recognition, any public employer considering the recognition of an employee organization on its own volition and the board, in investigating questions at the request of the parties as specified in this section, shall take into consideration, along with other relevant factors: (1) The principle of efficient

administration of government; (2) the existence of a community of interest among employees; (3) the history and extent of employee organization; (4) geographical location; (5) the effects of over-fragmentation and the splintering of a work organization; (6) the provision of K.S.A. 1972 Supp. 75-4325; and (7) the recommendations of the parties involved."

The question of including volunteer firemen in an appropriate unit with full-time firemen is raised for the first time in this case. Petitioner has argued that volunteer firemen should not be included in an appropriate unit with full-time firemen. The respondent has urged the board to include the twelve (12) volunteer firemen in the unit with all other non-supervisory firemen employed by the City of McPherson, Kansas. The facts seem to support the petitioners contention that the community of interest is sufficiently different between volunteer firemen and full-time firemen. The board recognizes that rules and regulations are uniformly applied to volunteer and full-time firemen. However, salaries, wages, hours of work, vacation allowances, sick and injury leave, insurance benefits, and wearing apparel are earned in different manners by volunteer and regular full-time firemen. The petitioner has shown that volunteer firemen are excluded from membership in the organization. Thus, the history and extent of employee organization tends to lean in favor of petitioner's position. The board cannot deny that all employees, both volunteer and full-time, are employed in one geographical location. However, it is of the opinion that the exclusion of volunteer firemen from the appropriate unit would not over fragmentize the work force. The remaining criterion to consider is that of the principle of efficient administration of government. While it was agreed by both parties that volunteer firemen and full-time firemen live by the same duty manual, it was shown that most conditions of employment differ. It would seem a most difficult task for the City of McPherson, Kansas to meet and confer to discuss terms and conditions of employment of volunteer firemen and full-time firemen at the same time. The board's position, heretofore, has been to exclude part-time employees from an appropriate unit of full-time employees simply because of the difficulty encountered in discussing such divergent terms and conditions of employment.

IT IS, THEREFORE, ORDERED BY THE PUBLIC EMPLOYEE RELATIONS BOARD THAT
THE APPROPRIATE UNIT OF FIREFIGHTERS EMPLOYED BY THE CITY OF MCPHERSON,
KANSAS IS AS FOLLOWS:

Include: All full-time uniformed employees below the
rank of Captain;

Exclude: Chief, Assistant Chief, Captains and all volunteer
Firemen.

IT IS SO ORDERED THIS 27th DAY OF JANUARY, 1977.

Garold A. Been
Garold A. Been, Member, PERB

Phyllis Burgess
Phyllis Burgess, Member, PERB

E. Jay Rennick
E. Jay Rennick, Member, PERB

Absent - th
Richard Rock, Member, PERB

Absent - th
Nathan W. Thatcher, Member, PERB

IN THE MATTER OF THE PETITION FOR UNIT
DETERMINATION & CERTIFICATION OF EMPLOYEES
PHILLIPS COUNTY COURTHOUSE
and
SERVICE EMPLOYEES UNION, LOCAL 513, AFL-CIO

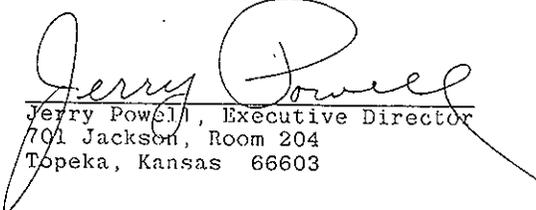
Case UDC 5-1976
(Appropriate Unit)

ORDER

Pursuant to the agreement between the Phillips County Commission
and Mr. Art J. Veach, acting on behalf of Service Employees Union,
Local 513, entered into November 15, 1976, the Public Employee
Relations Board finds the appropriate unit of the Phillips County
Courthouse workers to be as follows:

- Include: All clerks, secretaries, bookkeepers, and computer operators.
- Exclude: Deputies of elected officials, county assessor, appraiser, judicial court personnel custodians and dispatching personnel of sheriff's office.

IT IS SO ORDERED BY THE PUBLIC EMPLOYEE RELATIONS BOARD DECEMBER 13, 1976.

By: 
Jerry Powell, Executive Director
701 Jackson, Room 204
Topeka, Kansas 66603

JP:tb

John White
Art Veach
Paul Archer