

BEFORE THE PUBLIC EMPLOYEE RELATIONS BOARD
OF THE STATE OF KANSAS

I.B.E.W. Local 53

Petitioner,

vs.

City of Kansas City, KS
Water Pollution Control De-
partment,

Respondent.

Case No. 75-UDC-1-1986

ORDER

Comes now on this 1st day of April, 1986, the above captioned matter for consideration by the Public Employee Relations Board. This comes before the Board as a petition for unit determination and certification and is filed in accordance with the provisions of K.S.A. 75-4321 et seq., the Kansas Public Employer Employee Relations Act.

APPEARANCES

Petitioner International Brotherhood of Electrical Workers Local 53 appears through Mr. James R. Waers, attorney at law.

Respondent City of Kansas City, Kansas Water Pollution Control Department appears through Mr. Michael P. Howe, Assistant City Attorney.

PROCEEDINGS BEFORE THE BOARD

- 1) Petition filed on August 26, 1985.
- 2) Petition submitted to Respondent for answer on August 26, 1985.
- 3) Request for extension of time in which to answer received from Respondent on August 30, 1985.
- 4) Extension of time in which to answer granted on September 6, 1985.
- 5) Request for extension of time and Board assistance received from Respondent on September 18, 1985.

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- 6) Pre-hearing meeting scheduled with parties to be conducted on October 3, 1985.
- 7) Pre-hearing meeting conducted on October 3, 1985.
- 8) Request for expedited hearing submitted by petitioner on November 1, 1985.
- 9) Second pre-hearing conducted on November 15, 1985.
- 10) Formal hearing scheduled for December 12, 1985. Notice sent to parties on:

Petitioner: November 27, 1985

Respondent: November 27, 1985

- 11) Formal hearing conducted on December 12, 1985 and December 19, 1985.
- 12) Petitioner's post hearing documents received on January 3, 1986.
- 13) Respondent's post hearing documents received on December 31, 1985.

FINDINGS OF FACT

- 1) That the Water Pollution Control Department is a division of the City of Kansas City.
- 2) That the City of Kansas City has elected coverage of K.S.A. 75-4321 et seq.
- 3) That the petition filed in this case is properly within the jurisdiction of the Kansas Public Employee Relations Board.
- 4) That the parties have entered into a stipulation relative to the majority of job classifications to be included or excluded. (T-6)
- 5) That the classifications to be reviewed by the Public Employee Relations Board in this order consist of:
 - A) Sewer and Maintenance Worker II
 - B) Construction Worker III
 - C) Wastewater Plant Operator II (Clarifer Complex)
 - D) Wastewater Plant Operator II (Final Solids Complex)

E) Vehicle Maintenance Supervisor

F) Office Assistants
(Plant Clerical)

6) That the job classification of Office Assistant (Plant Clericals) is a classification included by stipulation within the appropriate unit. (T-212)

7) That the order of the Board in this matter regarding Office Assistants (Plant Clericals) will deal solely with the issue of confidentiality of two individuals employed as Office Assistants (Plant Clericals). (T-212)

8) That Office Assistants (employed other than in the plants) are excluded from the appropriate unit by stipulation of the parties.

9) That Bruce M. Browne is the director of the Water Pollution Control Department of the City of Kansas City, KS. (T-20)

10) That approximately 150 individuals are employed by the Water Pollution Control Department. (T-22)

11) That the Water Pollution Control Department is divided into 5 major subdivisions including:

- 1) Plant Operations
- 2) Sewer Maintenance
- 3) Engineering
- 4) Industrial Wastewater
- 5) Administration.

12) That the Director of the Water Pollution Control Department delegates many duties to the five division managers. (T-25)

13) That the City of Kansas City has in effect, job descriptions for the classifications of Construction Worker III, Wastewater Plant Operator, Sewer and Maintenance Worker II, and Vehicle Maintenance Supervisor. (Joint Exhibit- 1, 2, 3, 4)

14) That the job description for Construction Worker III characterizes the work as both "lead work" and as work involving the direction of subordinates. (T-28, Joint Exhibit-1)

15) That Construction Workers III participate in the same work as their subordinates. (T-29, 79)

16) That a Construction Worker III has the authority, subsequent to the completion of a job, to move the work crew to another location. (T-30, 79)

17) That the Wastewater Plant Operator performs his work, "independently in accordance with established routines and practices . . .". (T-33, Joint Exhibit-2)

18) That the Wastewater Plant Operator receives emergency calls on evenings, weekends, and holidays and transfers those calls to emergency crews. (T-34)

19) That the Sewer and Maintenance Worker II performs his work at geographical locations throughout the city. (T-37)

20) That the Sewer and Maintenance Worker II is required to make sure equipment is in proper operating condition, be able to read and interpret sewer maps, instruct other workers on the placement of traffic barricades and other equipment, set up and operate remote television equipment, and observe and record the condition of sewer lines. (T-37, 38)

21) That the Vehicle Maintenance Supervisor is required to plan and schedule vehicle maintenance, direct and evaluate the work of other employees, and participate in "hands-on" work on vehicles. (T-38, 39)

22) That the Vehicle Maintenance Supervisor spends the majority of his time performing work other than "hands-on" work on vehicles. (T-39)

23) That the Manager of Plant Operations has two plant managers directly under him in the chain of command. (T-42)

24) That one of the plant managers referenced in Findings of Fact #23 (Mr. Kupsch) has an individual, classified as a wastewater plant operations supervisor, directly under him in the chain of command. (T-43)

25) That the Manager of Plant Operations (Mr. Caliteux) spends approximately one half of his work time actually in the plants. (T-43)

26) That the wastewater plant operations supervisor works on a rotating daily basis at all of the various treatment plants and/or pump stations. (T-44)

27) That the Manager of the Sewer Maintenance division has two superintendents directly under him in the chain of command. (T-45)

28) That Mr. Ken Neeley is the superintendent of construction and Mr. Ray Anderson is the superintendent of sewer maintenance. (T-45)

29) That Mr. Bell and Mr. Scott are sewer maintenance supervisors under Mr. Anderson in the chain of command. (T-46)

30) That there are two individuals classified as Sewer and Maintenance Worker II employees and two sewer maintenance "T.V." crews. (T-46)

31) That the typical sewer maintenance "T.V." crew consists of a Sewer and Maintenance Worker II employer and two or three other employees. (T-46)

32) That there are three individuals classified as Construction Worker III employees. (T-51)

33) That the typical construction crew would consist of three or four employees. (T-53)

34) That there are two individuals classified as Sewer and Maintenance Workers II. (T-56)

35) That Construction Workers III and Sewer Maintenance Workers II may report inferior performance of other members of their crews to their superintendent. (T-55, 58)

36) That the reports referred to in Findings of Fact #35 have resulted in disciplinary actions. (T-55, 58)

37) That reports of inferior work as referenced in Findings of Fact #35 and 36 are subjected to independent investigation prior to the issuance of any disciplinary action. (T-66, 67)

38) That the Sewer Maintenance Worker II has the latitude to complete work in an order other than the order in which the jobs were given. (T-70)

39) That the Sewer Maintenance Worker II does not have the latitude to work on a job not on the list of jobs provided to him. (T-71)

40) That trucks operated by the Sewer Maintenance crews are all radio equipped thereby establishing a communications link with the supervisors Mr. Bell and Mr. Scott. (T-71)

41) That Mr. Bell or Mr. Scott would be contacted in the event a serious problem was encountered in the field. (T-71, 72)

42) That in the event a supervisor was not available, in the case of a serious problem, the Sewer Maintenance Worker II has the authority to return the crew to the shop. (T-72)

43) That Sewer Maintenance Workers II are compensated in money for any overtime worked. (T-74)

44) That Mr. Bell receives compensatory time rather than money for any overtime worked. (T-74)

45) That the Construction Superintendent is an individual named Mr. Neeley. (T-76)

46) That Mr. Neeley has the authority to assign work, grant time off, assign overtime, issue reprimands and to discipline employees. (T-81)

47) That only Mr. Bell, Mr. Scott, Mr. Anderson, Mr. Neeley, and/or Mr. Johnson are authorized to issue reprimands to Sewer Maintenance Workers or Construction Workers. (T-80, 81)

48) That Construction Workers III are compensated in money for any overtime worked. (T-81)

49) That Mr. Neeley receives compensatory time rather than money for any overtime worked. (T-81, 82)

50) That Mr. Myron L. Cailteux is the manager of the treatment division. (T-86)

51) That the classifications of Wastewater Plant Operator and Vehicle Maintenance Supervisor are employed within the treatment division of the Water Pollution Control Department. (T-86)

52) That the general classification of Wastewater Plant Operator is included in the appropriate unit in this matter by stipulation of the parties. (T-6)

- 53) That Brain Donald is employed as a Wastewater Plant Operator with specific duties in the final solids complex. (T-87)
- 54) That the Wastewater Plant Operator (final solids complex) is supervised by Mr. Allan Kupsch. (T-88)
- 55) That the Wastewater Plant Operator (final solids complex) is employed at No. 20 Treatment Plant. (T-88)
- 56) That Mr. Kupsch is employed at No. 20 Treatment Plant. (T-88)
- 57) That Mr. Andy Loeb is employed as a Wastewater Plant Operator with specific duties in the clarifier complex. (T-90)
- 58) That the Wastewater Plant Operator (clarifier complex) is employed at No. 20 Treatment Plant. (T-89)
- 59) That the major difference between the work performed by the Wastewater Plant Operator in the final solids and the clarifier complex and other Wastewater Plant Operator's centers on the type of equipment operated, the specialization of the work involved, the value of the equipment operated, and the consequence of errors. (T-94, 95, 96)
- 60) That Mr. Donald and Mr. Loeb are "in charge" of the shift in the absence of Mr. Kupsch. (T-97)
- 61) That Mr. Steven Hill is employed as a Vehicle Maintenance Supervisor. (T-98)
- 62) That the Vehicle Maintenance Supervisor schedules the work of two Vehicle Maintenance Mechanics. (T-99)
- 63) That the Wastewater Plant Operator (clarifier complex) is expected to perform some supervisory functions in the absence of Mr. Kupsch. (T-112)
- 64) That the Construction Workers III consider themselves as the "boss" of their construction crew. (T-136, 140)
- 65) That the Construction Workers III make no "supervisory" decisions but rather rely on Mr. Neeley to fulfill that function. (T-134, 140)

66) That the Construction Workers III would contact Mr. Neeley if an employee was performing in a sub-standard manner. (T-137)

67) That all decisions in the final solids complex and the clarifier complex regarding overtime, alteration of work schedules, and/or discipline are made by Mr. Kupsch. (T-144, 145, 146, 157, 158, 159)

68) That the work performed in the final solids complex is routine and repetitious. (T-146, 147)

69) That the Wastewater Plant Operator (final solids complex) considers himself to be the "boss" of the final solids complex crew. (T-149, 150)

70) That the Wastewater Plant Operator (clarifier complex) considers himself to be the "boss" of the clarifier complex crew. (T-162)

71) That the Vehicle Maintenance Supervisor actually performs "hands-on" work on the vehicles at times. (T-168, 169)

72) That the Vehicle Maintenance Supervisor has the authority to approve vacation, sick-leave, overtime and time off. (T-171, 172, 178)

73) That the Vehicle Maintenance Supervisor has participated in the interview and hiring process. (T-172)

74) That the Vehicle Maintenance Supervisor determines the work to be done by vehicle mechanics. (T-178)

75) That the Sewer Maintenance Workers II depend on Mr. Bell to make all "supervisory decisions" regarding members of the sewer maintenance crews. (T-187, 188, 189, 198, 199)

76) That the Sewer Maintenance Workers II do not consider themselves to be the "boss" of their crews. (T-192, 200)

77) That the Sewer Maintenance Workers II consider themselves to be "lead men" on their crews. (T-192, 200)

78) That Mr. Bell visits every sewer maintenance job site at least once. (T-188, 201)

79) That the classification of Data Entry Operator/Plant Clerical is included in the appropriate bargaining unit by stip-

ulation of the parties. (T-3)

80) That the classification of Office Assistant/Plant Clerical is included in the appropriate bargaining unit by stipulation of the parties. (T-4)

81) That the Office Assistants alleged to be confidential employees are Mr. Charles Rahija and Mr. Belfour Templin. (T-5)

82) That Mr. Rahija and Mr. Templin are supervised by Mr. Herbert F. Shultz, manager of Kaw Point Waste Water Treatment Plant (Plant 1). (T-9)

83) That both Mr. Rahija and Mr. Templin have access to confidential records on employees dealing with pay, classifications, promotions, vacations, accidents and/or discipline. (T-11, 14, 15, 21, 22, 53, 72)

84) That Mr. Rahija and Mr. Templin office in an open reception area directly adjacent to Mr. Shultz' office. (T-12, 13, 35, 36)

85) That Mr. Rahija and Mr. Templin have access to budget reports. (T-18, 21, 22)

86) That Mr. Rahija and Mr. Templin have unrestricted access to the records referred to in Findings of Fact #83. (T-23)

87) That Mr. Rahija and Mr. Templin review incoming written correspondence, including confidential papers, and determine proper distribution of those items. (T-55)

88) That Mr. Rahija monitors gasoline usage and reports appearances of misappropriations to Mr. Shultz. (T-57)

89) That Mr. Templin has never taken any information out of Mr. Shultz's desk drawers on his own. (T-82)

CONCLUSIONS OF LAW/DISCUSSION

The instant case comes before the Public Employee Relations Board on petition of the International Brotherhood of Electrical Workers Local 53. This petition seeks to establish an appropriate bargaining unit of employees within the Water Pollution Control

Department of the City of Kansas City. The petition is filed in accordance with the provisions of K.S.A. 75-4321 et seq., and particularly in accordance with K.S.A. 75-4327 (c) which states:

"A recognized employee organization shall represent not less than a majority of the employees of an appropriate unit. When a question concerning the designation of an appropriate unit is raised by a public agency, employee organization or by five or more employees, the public employee relations board, at the request of any of the parties, shall investigate such question and, after a hearing, rule on the definition of the appropriate unit in accordance with subsection (e) of this section."

As stated, the hearing called for by this section is convened only in those cases where the designation of an appropriate unit is in question. Traditionally, therefore, the parties are encouraged to meet prior to any formal hearing in an effort to identify areas of agreement and areas of dispute. Those areas of dispute then become the issues which are addressed at the formal hearing.

In this case, the parties met on several occasions with one another and on at least two occasions with staff members of the Public Employee Relations Board and arrived at the following list of unit inclusions, exclusions, and classifications in dispute. In addition, the lists of inclusions and exclusions were entered as stipulations on the record. The lists are as follows:

STIPULATED INCLUSIONS: Automobile equipment mechanic, caretaker construction worker I and II, general maintenance worker, lab sample collector, maintenance electrician, sewer and maintenance worker I, utility maintenance mechanic, wastewater plant operator I and II, vehicle maintenance mechanic, office assistants I, II, and III (plant clericals), data entry operator (plant clerical).

STIPULATED EXCLUSIONS: Lab Supervisor, sewer maintenance controller, sewer maintenance supervisor, program manager I, wastewater operations manager, fiscal assistants I and II, sewer maintenance manager, laboratory manager, wastewater plant manager I and II, construction supervisor, administrative assistant, chief wastewater plant operator, wastewater plant operator supervisor, utility maintenance supervisor, electrician maintenance

supervisor, construction inspector I and II, engineering technician I and II, laboratory technicians, office assistants (office clericals), data entry operators (office clericals), all other employees of the city of Kansas City Department of Water Pollution Control:

POSITIONS IN DISPUTE: Sewer and maintenance worker II, construction worker III, wastewater plant operator II (clarifier complex), wastewater plant operator II (final solids complex), vehicle maintenance supervisor, office assistant III (Rahija - confidential), office assistant III (Templin - confidential).

The examiner will first address the classification of Sewer and Maintenance Worker II. It was the position of the Respondent, City of Kansas City, that the Sewer and Maintenance Worker II should be excluded from the appropriate unit based upon their supervisory authority over other classifications within the unit. In order to determine if in fact that classification should be excluded, the examiner must review the definition of a supervisory employee as that term is defined 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 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."

As one reviews the scope of authority granted to employees particularly in the public sector, it is rare to find any individual with the unencumbered authority to hire, fire, promote, demote, or to perform any of the tasks earmarked by law as supervisory functions. Often the final authority to accomplish any of those actions is vested in the uppermost strata of elected or appointed officials. Certainly those officials may delegate their authority or they may retain their authority and take their actions based upon the reports and recommendations of their sub-

ordinates. The statute recognizes that the ability to provide such recommendations which require the exercise of independent judgement and which guide the employer in his decisions relative to job actions is also a supervisory functions.

Recognizing the boundaries established by the legislature in defining a supervisory employee it becomes clear that one need not carry the title of "supervisor" in order to qualify as a supervisory employee in accordance with the statute. Similarly, the mere presence of a supervisory title does not necessarily make one a supervisory employee in the eyes of the law. Supervision is determined by an in depth analysis of the exact duties performed by the incumbent in a particular classification and a comparison of those duties to the statutory definitional language.

As stated earlier, it is rare to find any individual empowered to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees. The Sewer and Maintenance Workers II similarly do not have that type of authority nor was such a condition alleged. The City rather attempted to demonstrate that Sewer and Maintenance Workers II function as the first line supervisors of their crews in the field and are the workers from which the effective supervisory recommendations flow.

The evidence and testimony presented certainly shows that the Sewer and Maintenance Workers II are the most knowledgeable employees on the sewer and maintenance crews. It also shows that the other employees look to the Sewer and Maintenance Workers II for advice and direction on any technical questions related to the job. The evidence and testimony further show, however, that the substance of the work performed by the crews is of a routine and repetitive nature, that the crew members are experienced, know their duties, and require very little if any direction "on the job". In addition, the crew is given virtually no latitude in determining work assignments. Work schedules are provided to the

crews rather than being established by any member of the crew.

There is also testimony on the record that the crews; (1) are in constantly available radio contact with their supervisors (Bell and Scott), (2) are visited by their supervisors on the job on a regular basis, (3) report their work location by radio upon arrival, (4) would contact their supervisors in case of any serious problems encountered on the job, (5) would return to the shop if unable to contact a supervisor, (6) and depend on their supervisor, Mr. Bell, to make all supervisory decisions regarding members of the crew. The perceptions of the individuals working on the crews do not serve as persuasive evidence of ones supervisory authority or lack thereof. It is interesting to note, however, that the Sewer and Maintenance Workers II characterized themselves as "lead men" rather than as supervisors or the "boss" on the job.

While the opinions expressed by the Sewer and Maintenance Workers II are not controlling, the examiner is inclined to agree with the employees analysis of their duties. The evidence indicates that the nature of the work performed by the Sewer and Maintenance crews requires very little independent decision making on the part of anyone. The work is repetitive and the crews are experienced. The few areas in which decision making authority is placed in the hands of the Sewer and Maintenance Workers II relate to the technical aspects of the work rather than to personnel matters. For example, the Sewer and Maintenance Worker II could determine that a sewer line should be subjected to a second television viewing but he could not approve any crew members request for vacation. The evidence is also clear that the Sewer Maintenance Worker II is the highest ranking member of the Sewer Maintenance crew normally on the job, but that fact must be contrasted with the radio availability of superiors, the supervisors periodic visits to the job sites, and the routine nature of the work. The testimony indicates that in the case of a serious problem a supervisor is called and that the Sewer Maintenance

Worker II's rely heavily, if not exclusively, on those supervisors to be the "decision makers" regarding members of the crew. A knowledgeable, experienced employee can be a valuable asset to any employer by his ability to impart that knowledge to others and his ability to lead by example. Such an employee, who is not empowered to take action, and who is dependent on others for all consequential decisions, cannot be found to be a supervisor but rather fits the traditional pattern of a "lead person" or perhaps a "working foreman". Based upon the foregoing, the examiner finds that the Sewer and Maintenance Workers II are not "supervisory employees" as defined by K.S.A. 75-4322 (b) and should, therefore, be included within the appropriate bargaining unit with other employees of the City of Kansas City Water Pollution Control Department.

The second classification under consideration within this order is that of Construction Worker III. As the examiner compares the work performed by the construction crews and more specifically by the Construction Workers III, with the work performed by the Sewer and Maintenance crews many similarities emerge. Certainly the actual work is different but the conditions under which work is performed closely mirror one another. For example, both crews are in contact with their superiors via the two way radio, both crews perform substantially repetitive work, both crews depend upon a superior to establish their work schedules, both crews must receive approval from a superior in regard to overtime, vacations, etc., both crews would contact a supervisor in case a unique problem was encountered on any particular job, both crews are comprised of workers who know their jobs, both the Sewer Maintenance Worker II and the Construction Worker III may "report" sub-standard workers on the crew to a superior who then conducts an independent investigation of the incident and formulates an independent remedy, and both the Sewer Maintenance Worker II and the Construction Worker III are prevented from issuing reprimands on other crew members. Once again it appears to the examiner

that the City is quite fortunate in that these field crews are very proficient and require very little first hand supervision in order to perform their duties. It further appears that the only direction given by Construction Worker III's in the field is of a low consequential nature and pertains only to unique, technical aspects of the work to be performed. None of the direction given by the Construction Worker III's pertains to matters of a nature which may be characterized as personnel matters. For those reasons, the examiner must once again find that the Construction Workers III are performing "lead work". They may be the most experienced, most knowledgeable, most senior, and/or the highest ranking individual on the crew but they are not empowered with the authority of a supervisor. It is not enough to simply view one as a supervisor and thereby exclude them from a bargaining unit. Under K.S.A. 75-4321 et seq., one must also have the authority to act as a supervisor or have authority to effectively act through recommendations in order to be so categorized. The testimony in regard to Sewer Maintenance Worker II's did not indicate the existence of supervisory authority and nothing has changed relative to the Construction Worker III's. The Construction Worker III's are "lead workers" and not supervisors in accordance with the Act. Based upon that lack of supervisory status, the examiner recommends that Construction Workers III be included within the appropriate bargaining unit with other employees of the City of Kansas City Water Pollution Control Department.

The third classification to be considered is the Wastewater Plant Operator operating the clarifier complex. While the classification of Wastewater Plant Operator is included by stipulation within the appropriate bargaining unit, the City contends that the two operators employed in the clarifier complex and the final solids complex are supervisors within the meaning of the Act and as such should be excluded on an individual basis from the unit. The parties were advised that the Board is hesitant to split a classification (part included and part excluded from the

unit) but will do so if compelling arguments so dictate. In this case, the examiner is of the opinion that there exists a significant body of work performed by these two particular operators which differs from the work performed by the other operators and therefore dictates a separate review of these positions in order to determine if supervisory authority rests therein.

As the examiner reviews the duties of the Wastewater Plant Operator (clarifier complex) it becomes readily apparent that the individual employed in that position is quite knowledgeable regarding the operations in the clarifier complex. Testimony on the record indicates that the other employees working in the clarifier complex would look to that employee for technical guidance if a problem developed within the complex. The record also indicates, however, that the work performed consists of monitoring controls to insure that the system is functioning properly and is by its nature very routine and repetitive. It is also clear that the operator in question performs the same work as the other operators on his shift and that those duties are interchanged between operators. It is also interesting to note that the clarifier complex is operated on an around the clock basis and those operators on the shifts other than the day shift work free from any direct supervision. The examiner believes that fact further testifies to the premise that the operators employed by the city are conscientious employees and are capable of working without a supervisor directly "over their shoulder". It seems ludicrous to then say that those employees performing the identical work on the day shift require and receive supervision from two levels of supervisors both housed on the immediate site. By way of explanation, it must be noted that all of the parties offering testimony in this area identified Mr. Kupsch as the ultimate person "in charge" of the Wastewater Plant Operator's. Testimony further shows that Mr. Kupsch is employed at treatment plant 20, the same location where the Wastewater Plant Operator (clarifier

complex) employee is employed. The record reflects that the operator in question and Mr. Kupsch work virtually the same hours and that Mr. Kupsch makes all decisions in the clarifier complex regarding overtime, work schedules, and/or discipline. Certainly the other operators turn to the operator in question if a problem develops who in turn either fixes the problem or calls for Mr. Kupsch. As the most knowledgeable operator, such a practice might well be expected. That reporting function and/or that operating function is not supervision as contemplated by the Act. At certain times, however, the Wastewater Plant Operator (clarifier complex) performs functions which clearly appear to be "supervision". For example, at times he may grant overtime, alter work schedules, and even truly direct the work of other employees. Those functions, however, are only performed in the absence of Mr. Kupsch who according to the record is normally present at treatment plant #20 the vast majority of the time. A complete review of the evidence clearly shows the importance of retaining highly skilled and knowledgeable Wastewater Plant Operator's but the duties assigned to the Wastewater Plant Operator in the (clarifier complex) constitute "lead work" and not supervision. The examiner believes and recommends, therefore, based on all the foregoing that the Wastewater Plant Operator (clarifier complex) should be included within the appropriate bargaining unit of other employees of the City of Kansas City Water Pollution Control Department.

The fourth classification to be addressed is that of Wastewater Plant Operator (final solids complex). While Wastewater Plant Operator classifications of (clarifier complex) and (final solids complex) are herein addressed separately, the record reflects that the basic nature of the duties assigned to each are virtually identical. Both classifications perform routine tasks which are interchanged with other operators, both answer questions and offer expertise, both report problems without recommendations

up the chain of command, both perform some supervisory duties in their particular areas but only in the absence of Mr. Kupsch, and both serve as experienced "leaders" rather than as statutory supervisors. Based upon these similarities, the examiner adopts the same discussion and reasoning regarding the Wastewater Plant Operator (final solids complex) as was outlined above regarding the Wastewater Plant Operator (clarifier complex). Logically, therefore, the examiner also recommends that the Wastewater Plant Operator (final solids complex) should be included within the appropriate bargaining unit of other employees of the City of Kansas City Water Pollution Control Department.

The fifth classification to be addressed in this order is that of Vehicle Maintenance Supervisor. In this case, not only does the classification contain the title supervisor but the incumbent in the job actually performs supervisory functions. Testimony indicates that the Vehicle Maintenance Supervisor performs some "hands-on" work but performs "other" work approximately 80% of his time. A portion of that work is also non-supervisory but a significant amount of that work is clearly of a supervisory nature. For example, the Vehicle Maintenance Supervisor has the authority to assign overtime, to approve time off, and has participated in an interview resulting in employment for a job applicant in the vehicle maintenance department. In addition, the Vehicle Maintenance Supervisor schedules the work of his subordinates and has the authority to approve or disapprove their use of vacation and/or sick leave. Testimony further indicates that the above described actions are truly within the authority of the Vehicle Maintenance Supervisor and not taken or exercised as recommendations to a higher authority. In this case it appears to the examiner that the responsibility for the actions of others has been coupled with a real authority to direct the actions of those others. The examiner is convinced, based upon the evidence and testimony in the record, that the Vehicle Maintenance Super-

visor is a supervisor both in name and in fact and as such should be excluded from the appropriate bargaining unit of other employees of the City of Kansas City Water Pollution Control Department.

The sixth classification to be addressed in this order is that of Office Assistants (plant clerical). While it has been previously mentioned in this order, it is important, for clarity sake, to note that the petitioner in this matter seeks only to represent those clerical job classifications which are employed within the "plants". By mutual agreement, therefore, those clerical classes which are employed within the Wastewater Plant Control Department at some location other than in the "plants" are excluded from the bargaining unit.

In this case the city agrees to include the Office Assistants (plant clericals) as a general class but seeks to exclude two particular individuals so employed based upon their alleged confidential status. By name those individuals are Mr. Charles Rahija and Mr. Belfour Templin. As the examiner begins his review of this issue he is first directed to the statutory definition of a "confidential employee" as outlined at K.S.A. 75-4322 (c) which states:

"'Confidential employee' means any employee whose unrestricted access to confidential personnel files or other information concerning the administrative operations of a public agency, or whose functional responsibilities or knowledge in connection with the issues involved in the meet and confer process would make his or her membership in the same employee organization as other employees incompatible with his official duties."

The duties that one performs must then be compared with this definition to resolve the confidentiality question. The task, however, is not an easy one nor is it as clinical as portrayed above. The question of confidentiality is always delicate, is normally difficult, and generally illusive. The definition leaves a great deal of latitude in the hands of the examiner. Unlike the definition of a "supervisory employee", the definition of a

"confidential employee" does not require a certain set of activities or even a preponderance of those activities. An individual may perform one critical activity and be found to be confidential. In fact, one need not perform any particular activity to be determined a confidential employee if, in fact, they have access to confidential information or records. The line between confidentiality and the lack thereof is therefore not razor sharp. It is illusive at best. In this case the employees in question work in close proximity to Mr. Herbert Shultz, the plant manager at the Kaw Point plant. They review incoming correspondence, type outgoing correspondence, reduce handwritten disciplinary reports to typewritten form, maintain files and records dealing with other employees pay, promotions, vacations, sick leave, and accidents, prepare and maintain various records regarding department expenditures, and have access to department budget reports. The incoming correspondence which they review and distribute as well as the outgoing correspondence they type and send can at times be of a confidential nature. In addition, many of their other duties outlined above include, or dictate contact with, records and files of a confidential nature. Based upon that contact and/or that access to confidential information the examiner is strongly inclined to rule that those individuals are confidential. In addition, the examiner has previously stated that the question of confidentiality carries with it a great degree of delicacy. To explain that statement the examiner directs the parties attention to the testimony of these individuals regarding the degree of responsibility they have demonstrated that they feel regarding the activities of the plant managers office. It is evident that these two Office Assistants assume considerable responsibility and take great pride in the daily operations of their office. Certainly the statute says nothing about any degree of pride in performance being determinative of confidentiality. The exercise, however, serves to emphasis the interdependence which

normally develops in the standards office setting. Any group of people working toward a common goal are more productive if a team spirit can be developed. It certainly appears to the examiner that Mr. Shultz has adopted the team concept and instilled that spirit in Mr. Templin and Mr. Rahija. The testimony offered by those two individuals indicates their dedication to their work and something even deeper. The examiner identifies an attitude present in those individuals that they are an absolutely essential part of the successful management of that plant. As stated much earlier in this order, the employees' opinion stands for very little weight in a unit determination. The examiner believes however that the employees' overall opinion is the product of Mr. Shultz' theory of management. He has given Mr. Rahija and Mr. Templin his trust, confidence, and the latitude to access confidential information nearly at will. The fact that they ask before they remove information from the desk of Mr. Shultz does not indicate restricted access but rather indicates courtesy. In short, Mr. Shultz has made Mr. Rahija and Mr. Templin an extension of his management team and they have repaid him with loyalty and performance. The true key to their confidentiality, however, lies in the access to confidential information directed and/or allowed by Mr. Shultz. For the above stated reasons, it is the recommendation of the examiner that the Office Assistants (plant clerical) Charles Rahija and Belfour Templin be excluded from the appropriate bargaining unit of other employees within the City of Kansas City Water Pollution Control Department.

In summary, the examiner recommends that the Sewer and Maintenance Workers II be included as non-supervisory, that the Construction Workers III be included as non-supervisory, that the Wastewater Plant Operator II (clarifier complex) be included as non-supervisory, that the Wastewater Plant Operator II (final solids complex) be included as non-supervisory, that the Vehicle Maintenance Supervisor be excluded as supervisory, that the Office

Assistants (plant clericals) Rahija and Templin be excluded as confidential.

It is so recommended this 4th day of March,
1986.

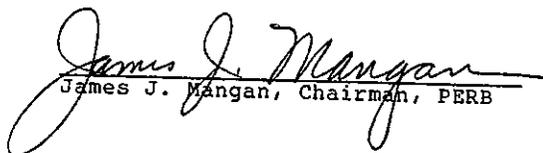
KANSAS DEPARTMENT OF HUMAN RESOURCES

BY


Paul K. Dickhoff, Jr.
Hearing Officer
512 West Sixth Street
Topeka, Kansas 66603-3150

The Hearing Examiner's report and recommended findings are here-
by approved and adopted as a final order of the Board.

IT IS SO ORDERED THIS 1st DAY OF April, 1986, BY THE
PUBLIC EMPLOYEE RELATIONS BOARD.


James J. Mangan, Chairman, PERB


Mayverdis R. Jamison, Member, PERB

ABSENT
Lee Ruggles, Member, PERB


Art J. Veach, Member, PERB


Robert L. Kennedy, Member, PERB