

10-16-75

State of Kansas  
Before The Public Employee Relations Board

IN THE MATTER OF THE UNIT DETERMINATION \*  
HEARING FOR KANSAS CITY, KANSAS, POLICE \*  
EMPLOYEES \*  
\*  
TESTIMONY BY FRATERNAL ORDER OF POLICE, \*  
LODGE #4, KANSAS CITY, KANSAS, AND CITY \*  
ATTORNEY FOR KANSAS CITY, KANSAS \*  
\*\*\*\*\*

Case No. UDC 6-1975

FINDINGS OF FACT  
AND  
CONCLUSIONS OF LAW

COMES NOW on this 10th day of October, 1975, the above-captioned case for hearing before the Public Employee Relations Board. The petitioner appears by its attorney, Mr. Charles W. Thompson, Attorney, Mr. Richard M. Sullivan, President, Kansas City, Kansas, Fraternal Order of Police, Lodge No. 4, and Mr. Dennis Shell, Vice-President, Kansas City, Kansas, Fraternal Order of Police, Lodge No. 4.

The respondent appears by its counsel, Mr. Daniel Denk, First Assistant City Attorney for Kansas City, Kansas, and Mr. Richard W. Nobles, Special Counsel, Kansas City, Kansas.

Mr. Ronald L. Sprowl, appeared also as Board of Directors, Kansas City, Kansas, Fraternal Order of Police, Lodge No. 4.

The case comes before the Public Employee Relations Board upon joint petition of the Fraternal Order of Police, Lodge No. 4 under date of October 8, 1975, by Mr. Richard M. Sullivan, and by the City of Kansas City, Kansas, under the signature of Mr. Daniel K. Denk, and an amended petition under the date of October 13, 1975.

Statement of procedures before the Board:

1. Petitions praying for unit determination were filed October 8, and October 13, 1975;
2. City of Kansas City, Kansas, and Fraternal Order of Police, Lodge No. 4 agreement to expedite hearing on October 10, 1975;
3. City of Kansas City, Kansas, and the Fraternal Order of Police Lodge No. 4 agreement that the Fraternal Order of Police, Lodge No. 4

X

would proceed as charging party;

4. Hearings to determine the most appropriate unit of police officers conducted October 10 and 11, 1975 in Kansas City, Kansas;

5. City of Kansas City, Kansas, and Fraternal Order of Police, Lodge No. 4 agreement that scope of hearing will be limited to a definition of supervisory employees (K.S.A. 75-4322. (b)) as the definition applied to the rank of sergeant-lieutenant and captain on the Kansas City, Kansas, Police Department.

Findings of Fact:

1. City of Kansas City, Kansas, is a public employer within the meaning of K.S.A. 75-4321 et seq. 1974 Supp;

2. City of Kansas City, Kansas, has elected to come under the provisions of the Public Employer-Employee Relations Act by City Resolution passed on October 2, 1975, pursuant to K.S.A. 75-4321 (c).

3. Petition for Unit Determination is properly before the Board under date of October 8, 1975 and an amended petition submitted October 13, 1975.

4. Kansas City, Kansas, Police Department consists of 442 employees.

Classification breakdowns are as follows:

One Chief

Two Inspectors

Four Majors

Ten Captains

Twenty-five Lieutenants

Forty-six Detectives

Forty-two Sergeants

185 Patrolmen

Twenty-five Cadets

102 Civil

Total of 442 Police Department Employees.

5. Sergeants employed by the Kansas City, Kansas, Police Department are charged with the following duties by direction of respondents

(see Exhibit #24 with transcript). The following are excerpts from

Exhibit #24:

"1. Keep the shift commander informed of the activities of the members assigned to his supervision, and shall note and properly

- correct and or report any misconduct or violation of the Rules and Regulations on the part of any subordinate.
2. Act as liaison between the patrolmen and the command personnel, to promote the general morale of the unit.
  3. Inasmuch as the efficiency of the unit depends largely upon the manner in which a sergeant performs his duties and enforces discipline, he shall be held jointly responsible with the commanding officer for the proper conduct and appearance of subordinates, and will be deemed guilty of neglect of duty and inefficiency when those under his command and supervision are habitually lax and indifferent in their appearance or in the performance of their duty.
  4. Work directly with the men under his supervision, assisting and advising subordinate officers on difficult cases.
  5. Conduct all roll calls and other forms of in-service training as directed by the watch commander."
  6. Sergeants do not participate in the hiring of personnel.
  7. Assignment to stations are not made by sergeants.
  8. Rating sheets or evaluations are prepared by sergeants on patrolmen directly within the span of their control. However, these evaluations are reviewed by lieutenants with the sergeant and the subject of the evaluation present. (See pages 111 and 121 of transcript.)
  9. Sergeants are authorized to issue oral reprimands to patrolmen directly under their span of control.
  10. Sergeants may not take disciplinary action against patrolmen. However, sergeants may recommend that such action be taken. This recommendation is forwarded through the chain of command to the mayor.
  11. In most instances, sergeants are responsible for making daily work assignments for field personnel. This work assignment is drawn utilizing a monthly schedule prepared by persons superior to the sergeant.
  12. Sergeants must "approve" or "varify" overtime of patrolmen.
  13. Sergeants report to work at an earlier hour than patrolmen in order to review daily bulletins and to make work assignments for patrolmen.
  14. Sergeants spend a majority of their on-duty time in the field

- performing essentially the same function as patrolmen.
15. Sergeants perform inspections of men and their equipment.
  16. Patrolmen sometimes serve as acting sergeants.
  17. Lieutenants serve as watch commanders in the three divisions of The Bureau of Operations.
  18. Lieutenants are directly responsible for reviewing evaluation reports with the officer being evaluated.
  19. Lieutenants perform substantially different work than either sergeants or patrolmen.
  20. Lieutenants spend a majority of their on-duty hours in the station.
  21. Lieutenants must exercise independent judgment over such matters as disciplinary action while serving as watch commanders.
  22. Captains on the Kansas City, Kansas, Police Department have all authority delegated to lieutenants. In addition, they are the immediate superior of lieutenants.
  23. The Bureau of Internal Affairs unit, reporting directly to the Chief of Police of Kansas City, Kansas, conducts investigations concerning confidential information and personnel files of all sworn police officers.  
(See page 324 of transcript.)

Conclusions of Law:

K.S.A. Supp. 75-4322 (a) provides:

"K.S.A. 75-4322. Definitions. As used in this act:

(a) "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."

K.S.A. Supp. 75-4322 (b) provides:

"(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."

K.S.A. 75-4322 (c) "Confidential employee" means any employee whose unrestricted access to confidential personal 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 membership in the same employee organization as other employees incompatible with his official duties."

K.S.A. 75-4322 (d) "Professional employee" includes any employee:

(1) Whose work is predominately intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; involves the consistent exercise of discretion and judgment; requires knowledge of an advanced type in a field of science or learning customarily acquired by prolonged study in an institution of higher learning; or (2) who has completed courses of prolonged study as described in paragraph (1) of this subsection, and is performing related work under the supervision of a professional person in order to qualify as a professional employee as defined in paragraph (1) of this subsection; or (3) attorneys-at-law or any other person who is registered as a qualified professional by a board or registration or other public body established for such purposes under the laws of this state."

The question of where the line is to be drawn separating supervisory from non-supervisory personnel is never easy or dramatically clear. This is particularly true in the para-military structure of a large police department. Different decisions require different rank levels for determination. The same holds true for the "effectiveness" of recommendations for various

actions. The Public Employee Relations Board is persuaded that substantive supervisory decision-making is sufficiently removed from sergeants in the Kansas City, Kansas, Police Department to authorize this rank as a part of the appropriate unit along with other appropriate personnel of the Kansas City, Kansas, Police Department.

Personnel holding the rank of Lieutenant are excluded for the reasons that their general span of control, and their substantive supervisory decision-making is materially greater than that of sergeants, thus fulfilling the requirements of a supervisory employee as set out in K.S.A. 75-4322 (b).

The Public Employee Relations Board is further persuaded that all employees of the Board of Internal Affairs have access to confidential information and files which could be utilized to the detriment of the parties during the meet and confer process.

The question of classification of professional employees (K.S.A. 75-4322 (d)) was raised during the course of the unit determination hearings. However, insufficient evidence was presented to support the allegation that any job classification in the Kansas City, Kansas, Police Department meets the requirements of K.S.A. Supp. 75-4322 (d).

The Public Employee Relations Board is aware that the determination announced herein does not coincide with the units sought by the parties to this proceeding. The question as to whether the Public Employee Relations Board may define a unit, which it deems more appropriate than the units proposed by the parties, has never been directly resolved in any of our Orders to date. The Public Employee Relations Board has concluded that the statutory grant of authority (K.S.A. Supp. 75-4327 (c)) to resolve disputes concerning representation status does not limit such exercise to the approval or disapproval of a unit sought by either of the parties. If the Public Employee Relations Board's authority is so limited, a representation dispute could be interminable in that it would continue until a party petitioned for a unit which the Public Employee Relations Board could find to be appropriate.

I T I S T H E R E F O R E O R D E R E D that the unit is defined as all sworn personnel of the Kansas City, Kansas, Police Department below

the rank of lieutenant.

The personnel included and excluded in the unit are as follows:

Includes: Patrolmen I, II, III

Sergeants

Detectives

Excludes: Civilian employees

Cadets

Lieutenants

Captains

Majors

Inspectors

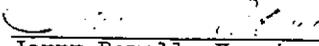
Deputy Chief

Chief

All employees of the Bureau of Internal  
Affairs as confidential employees.

BY THE PUBLIC EMPLOYEE RELATIONS BOARD IT IS SO ORDERED.

DATE: *October 16, 1975*

  
Jerry Powell, Hearing Examiner  
Public Employee Relations Board

  
Nathan W. Thatcher, Acting Chairman  
Public Employee Relations Board

  
Phyllis Burgess, Member, Public  
Employee Relations Board

  
William B. McCormick, Member, Public  
Employee Relations Board

  
E. Jay Rennick, Member, Public Employee  
Relations Board

  
Richard Rock, Member, Public Employee  
Relations Board