

**BEFORE THE STATE BOARD OF MEDIATION  
STATE OF MISSOURI**

INTERNATIONAL BROTHERHOOD OF	)	
ELECTRICAL WORKERS, LOCAL 2,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Public Case No. R 2009-015
CITY OF ST. ROBERT	)	
	)	
Respondent.	)	

**DECISION**

In this case, the International Brotherhood of Electrical Workers, Local 2 (Local 2) petitioned to represent a bargaining unit consisting of employees of the City of St. Robert (City). The parties have generally agreed on the definition of a bargaining unit, and dispute only whether or not five individuals are supervisors or managers who, for that reason, should be excluded from the unit. The Board finds that none of these five individuals are supervisors because they are primarily engaged in the work of their particular units and not in the supervision of employees. The Board also finds that these five individuals do not participate in the formulation, determination, or effectuation of the City's policies and programs, or in committing the City's resources, to a sufficient extent to be considered managerial employees. Therefore, the Board concludes that these individuals will be included in the bargaining unit.

**INTRODUCTION**

On October 20, 2008, Local 2 filed a petition with the Board to represent City employees. After reaching an agreement regarding the makeup of the bargaining unit, Local 2 and the City now only dispute whether or not individuals holding the positions of Electric Superintendent, Natural Gas Supervisor, Water Department Supervisor, Waste Water Collection Department Supervisor, and Waste Water Treatment Plant Supervisor are supervisory and managerial employees and, as such, excluded from the bargaining unit.

The question of whether particular employees are supervisors or managers who should thereby be excluded from a bargaining unit is one that arises within the general subject of the appropriateness of a bargaining unit. This Board is authorized to hear and decide issues related to the appropriateness of bargaining units. § 105.525, RSMo. The Board held a hearing in Jefferson City, Missouri, over the course of two nonconsecutive days (December 10, 2009, and August 20, 2010) to allow the parties to present testimony and other evidence regarding the supervisory and managerial status of the employees at issue. Employer Member Emily Martin personally attended both days of the hearing. Employee Member Lewis B. Moyer personally attended the second day of the hearing and also read the transcript and examined the exhibits presented during the hearing's first day. Board Chairman James G. Avery reviewed the entire transcript of the hearing and all exhibits. Representatives of the City and of Local 2 attended the hearing and had a full opportunity to present evidence and make arguments. Both parties also took advantage of the opportunity they were given to file post-hearing briefs, which have been reviewed by all three Board members.

Based on its review of the whole record, including the evidence presented, arguments made, and briefing filed, the Board issues these Findings of Fact, Conclusions of Law, and Order.

#### **FINDINGS OF FACT**

The City provides several public utilities to its residents. The units running these public utilities are all departments operated within the City's Public Works Department. The departments at issue in this case and their current heads (with titles) are:

Electric Department	Eddie Wilson (Electric Superintendent)
Natural Gas Department	Matt Wood (Natural Gas Supervisor)
Water Department	Jeremy Slawson (Water Supervisor)
Waste Water Collection Department	James Lofton (Sewer Supervisor)
Waste Water Treatment Plant	Larry Kelly (Water Treatment Plant Manager)

Each of these utility department heads reports to the Utilities Foreman, Steve Long. Mr. Long reports to the Director of the Public Works Department, Lyle Thomas. Director Thomas reports to the City Administrator, who in turn reports to the Mayor.

Mr. Long's office is at City Hall. The heads of all the utility departments except for the Waste Water Treatment Plant work out of the City's utility yard, which is about two miles from City Hall. The Waste Water Treatment Plant Manager works at the treatment plant, which is about four miles from City Hall. The utility department heads do not have private offices, but have desks of their own within areas devoted to their particular departments.

Mr. Long visits the utility yard for about 30 minutes to an hour every morning and goes to the waste water treatment plant for about 30 minutes on Mondays, but will go to each more often if he needs to. Mr. Long also often goes out to the sites where the utility department employees are working. Some days the department heads will see him off and on all day long.

Public Works Director Thomas has held regular staff meetings on Fridays since he became Director in about 2005. At first, these meetings included only officials senior to the utility department heads. But beginning in 2009 or 2010, he had the department heads attend these meetings too because "word either wasn't getting passed or coordination wasn't happening." At these staff meetings, Director Thomas reviews the status of ongoing and upcoming projects of each utility department.

The City also holds pre-development meetings as needed to review proposed commercial or residential development projects. Director Thomas, Mr. Long, the utility department heads, the developer, the engineer, the architect, and, sometimes, the contractor, attend these meetings and, among other matters, discuss the City's utility requirements and how the developer can meet them. There is also sometimes a need for the City officials and department heads to meet with developers and contractors after the start of a project to address new issues that have arisen during the course of construction. Director Thomas relies on the

department heads to use their expertise to recommend cost-efficient solutions to problems related to their areas.

The utility department heads occasionally recommend actions for consideration of City officials. For example, the Water Supervisor recommended that the City stop fluoridating its water supply. This was forwarded to the City Council, which then sought public comment. Due to the response, the Council decided to continue fluoridating the water. On another occasion, the Electric Superintendent recommended a protocol for determining when the City would test the function of electric meters at its own cost and when it would charge customers for doing so. The recommendation was “tweaked . . . a little bit” at a higher level, modified to apply to all the City’s utility departments that use meters, and taken before the City Council. The Council approved the protocol as modified. Further, on at least one occasion, a utility department head recommended a change to the City Code that was adopted.

The utility department heads are all involved in putting together the portions of the annual City budget related to their own departments. The City Administrator and various City Council committees put together a complete budget proposal for all City operations that is then voted on by the City Council. The department heads are not necessarily present when the City Council discusses and approves the budget. The budget, as approved, does not always include funds for items requested by the department heads.

The department heads are responsible for seeing that the work assigned to their departments is completed. They have some discretion in determining the order in which projects should be done. They must conduct their departmental operations within their budgets. They are also responsible for maintaining an inventory of the materials they need to complete their anticipated work and to cover emergencies. They may purchase items costing up to \$200.00 without pre-approval and, in an emergency, may purchase items costing up to at least \$500.00 without pre-approval. Some subordinate employees in the utility departments also

keep an eye on inventory and, with the approval of the department head, order material when they determine there is a need for it.

The department heads all also review proposed development projects to ensure compliance with the regulations related to their particular departments. Department heads deal with customers of their departments, but if they have a disagreement with a customer, they will have someone above them in the chain of command handle the issue.

Each of the department heads directs the work of one to three subordinates. They assign and oversee the daily work of their subordinates. The departments have experienced personnel who know what work needs to be done, that they are expected to get that work done, and need little or no oversight in doing so.

Department heads may grant time off work for employees on their staff. The Electric Superintendent has denied one request out of thousands for leave time in his nearly nine years in the job. Mr. Long (as noted above, the Utilities Foreman) reviews such requests, but sometimes the time off has already occurred before the paperwork for the time off gets to him.

The salaries of City employees are determined under the City's pay plan. This plan consists of 8 different grades, with 11 steps within each grade. If the City budget permits, City employees generally receive an automatic step increase within their particular grade every year. The utility department heads are all paid under Grade 5 of the City's pay plan. The pay increase for each step of a grade to the comparable step of the next grade is 10 %. The 10 % difference in pay between Grades 4 and 5 is intended as compensation to the department heads for their management of departmental operations and their provision of supervision to the other workers in their departments. No one is paid at Grade 6. Mr. Long is on Grade 7 and Director Thomas is on Grade 8.

When the City needs to hire someone in a utility department, the department heads will review applications and select applicants to interview. About half the time, Director Thomas and Mr. Long add other applicants to the list of those to be interviewed. Most of the time interviews

are conducted by Mr. Long and the head of the particular utility department that is hiring. Director Thomas also takes part in about half of the interviews. Once all interviews are done, the department head involved, Mr. Long, and Director Thomas, if he took part in the interviews, discuss the candidates and pick a candidate for recommendation. If Director Thomas did not take part in the interviews, the recommendation of Mr. Long and the department head is forwarded to him. Director Thomas and Mr. Long then discuss the candidates and choose a candidate to recommend. Director Thomas takes his recommendation to the City Administrator. If the City Administrator agrees with the recommendation, he takes it to the Mayor, and they make the final decision on whether or not to hire the recommended candidate.

The process for promotions is similar to that for new hires. There are also instances in which an employee qualifies for a raise because some standard, such as completion of training as a journeyman, has been met. There is a general expectation that the employee will receive a raise in these instances, but the department head must make a formal request that the raise be implemented.

The department heads conduct a performance review of newly hired personnel after the employee has about 90 days on the job and they recently began doing quarterly reviews of all personnel in their departments. There is a place on the performance review form that calls for the Department head to recommend whether or not the employee should receive the usual annual step increase in pay. The performance reviews are reviewed by Mr. Long. He has never altered a performance review prepared by a department head. Director Thomas oversees the performance evaluation process and needs to sign off on each one. Multiple bad reviews may result in the employee not receiving the annual step increase, but Mr. Long could not recall any instance in the last four years in which that had occurred.

When a department head believes one of the department's employees has engaged in misconduct and needs to be disciplined, he consults with Mr. Long before issuing a "writeup letter" to the employee. Mr. Long independently reviews the disciplinary action, but has never

vetoed any disciplinary recommendation of a department head. Director Thomas also reviews disciplinary recommendations and then sends them on to the City Administrator. The City Administrator may discuss the incident in question with the department head involved and he has the opportunity to review the incident in question, including related documentation and any relevant past disciplinary issues. The City Administrator, in conjunction with the Mayor, has the final say with regard to the imposition of discipline. On three occasions, once in the Electric Department, once in the Water Department, and once in the Waste Water Collection Department, a recommendation by a department head for termination of an employee has been approved by City officials. Minor disciplinary issues not calling for anything more than counseling are handled without bringing them to the level of Public Works Director Thomas.

The Electric Superintendent manages the work of three other employees (four others until recently). The job description of the Electric Superintendent also sets out many operational tasks, from assisting with major city activities (bidding, budgeting, systems planning) to general management of Electric Department operations (inspections, maintaining inventory, oversight of the substation) to front line work (troubleshooting and repairing electrical problems, climbing poles, cleaning equipment and vehicles). All of the duties and responsibilities of a City Electrical Journeyman Lineman (as set out on the City performance evaluation form) are also included among the duties of the Electric Superintendent. These common duties and responsibilities amount to over 85 % of the duties and responsibilities noted in the Electrical Superintendent's job description. According to a former employee in the Electric Department (now employed in a different position by the City), the Electric Superintendent was a micromanager who liked to be involved in every little aspect of the Department's work and to give detailed instructions on the jobs performed in his presence, even jobs that those the other departmental employees had done before. This witness also testified that the Electric Superintendent would chastise him for not doing a job "exactly the way he thought it should be done, even though the end result was the same." This witness was an apprentice throughout his time in the Electric Department. He

would also work under the supervision of the other journeyman employees of the Department, but they were less critical.

The Natural Gas Supervisor manages the City's natural gas supply operations, completes paperwork for the billing office, assists with the budget process, and organizes a natural gas disaster plan. At the time of the hearing, one other person worked in the Natural Gas Department under the supervision of the Natural Gas Supervisor. (According to the Supervisor's job description, there are two subordinates in this department). The Supervisor also performs such front line tasks as repairing leaks, operating work-related equipment and vehicles, and locating and marking natural gas lines in areas in which digging will occur. Additionally, the Natural Gas Supervisor assists the Electric, Water, and Sewer Departments with taps, repair, and maintenance and assists the Street Department with snow and litter removal.

The Water Supervisor directs two subordinates. In addition to overseeing the work of these employees, the Water Supervisor's duties include assisting with budget preparation, managing Water Department operations within the budget provided, working with contractors on new systems, inspecting the work of contractors, and performing the same work as the other two Water Department employees.

The Sewer Supervisor supervises the two other employees in the Waste Water Collection Department. The Sewer Supervisor (referred to as the Wastewater Supervisor in the job description for the position) also generally administers the Department (including management of inventory, management of budgeted funds, preparation of reports, coordination of work with contractors, and design of new sewer lines and systems) while at the same time engaging directly in the day-to-day work of the Department (including troubleshooting and repairing equipment, cleaning out sewer mains, laying pipe, and operating equipment and vehicles). But for administrative duties, the Sewer Supervisor's duties are nearly identical to those of his subordinates (as noted on their City performance evaluation forms).

The Waste Water Treatment Plant Manager is charged generally with administering plant operations, maintaining plant facilities, recommending improvements, and preparing and working within an annual budget. Management of the plant includes overseeing the work of two other employees that work at the plant. The Plant Manager must also perform front line duties like taking and analyzing samples, monitoring gauges, adjusting flows, cleaning sludge lines, raking bar screens, operating the sludge truck, and mowing the grounds.

Besides these more specific tasks set out in their job descriptions, each of these department heads is also enjoined to “[w]ork as a team member with other employees.” Further, the Water and Sewer Supervisors must be able to “[m]anage many activities at one time.” Similarly, the Electric Superintendent, the Natural Gas Supervisor, and the Waste Water Treatment Plant Manager need to “[h]andle multiple tasks simultaneously.”

Typically, the department heads are the most experienced and the most skilled employees in their departments. Although it varies, each of the department heads works in the field performing the same work as his subordinates for up to 90 % of his work day. Overall, Mr. Long estimated that the Electric Superintendent and the Natural Gas Supervisor are engaged in the hands-on work of their departments for 50-70 % of their time. The Electric Superintendent himself estimates that he spends 80-90 % of his work time out in the field using the tools of his trade in the performance of the same work that the other Electric Department employees are doing.<sup>1</sup> Based on his observations, the Electric Superintendent thinks that the other utility department heads also spend about 80-90 % of their time working in the field at the same tasks as the others in their departments. In the remaining 10-20 % of his time, the Electric Superintendent does paperwork, reviews work orders, maintains inventory, and attends pre-

---

<sup>1</sup> A former apprentice in the Electric Department testified that the Electric Superintendent worked with his hands only about 40 % of his time in an average work week. The Board does not find that testimony as credible as that of Mr. Long and the Electric Superintendent. The former apprentice did not work in proximity to the Electric Superintendent all the time, he changed his opinion in subsequent testimony as to the time the Electric Superintendent engaged in hands on work to 20 or 30 % of the work day, and he displayed bias against the Electric Superintendent for being overly critical of his work.

construction meetings. Two of the other employees in the Electric Department share in taking care of some of the Department's paperwork.

Employees in the Electrical Department are on call for after-hours emergencies. If such an emergency occurs, the police department will call the employees on call directly and not go through the Electric Superintendent (unless he is on call himself). The employees on call try will take care of the emergency situation on their own if they are able and not bother the Electric Superintendent. If they see that there is also a problem with regard to another utility, they have the authority to call, or ask the police to call, the on call employee for that utility. That on call employee is not necessarily the supervisor for that utility.

### **CONCLUSIONS OF LAW**

The City here contends that the utility department heads should be excluded from the bargaining unit because they are supervisory and managerial employees. The Public Sector Labor Law (PSLL), §§ 105.500 to 105.530, RSMo, does not expressly exclude any class of employees from inclusion in any bargaining unit to be established by the Board. But it has long been held that there are some employees whose duties tie them so closely to the interests of their employer that they should be excluded from an otherwise appropriate unit "because their inclusion could create conflicts of interest in the performance of their duties or because they lack sufficient community of interest with other workers." *Missouri NEA v. Missouri State Bd. of Mediation*, 695 S.W. 2d 894, 897-98 (Mo. banc 1985). Among the classes of employees generally excluded from an otherwise appropriate unit are supervisory employees and managerial employees. *Id.* at 898 (managerial employees); *Germann v. City of Kansas City*, 577 S.W.2d 54, 56-57 (Mo. App. K.C. Dist. 1978) (supervisory employees).

There can be some confusion as to the distinction between supervisory employees and managerial employees, with the terms sometimes being used interchangeably. For example, in *Baer v. Civilian Personnel Div.*, 747 S.W.2d 159, 163-64 (Mo. App. W.D. 1988), the court states that "[s]upervisors, or managerial employees, formulate, determine or effectuate policies on

behalf of their employer” and then sets out the factors used by the Board to determine whether an employee is a supervisor and examines only the supervisory status of the employees at issue. *See also Lincoln County Mem. Hosp. v. Missouri State Bd. of Mediation*, 549 S.W.2d 665, 667 & 670 (Mo. App. K.C. Dist. 1977) (referring to employer’s position that certain employees were “supervisors or managerial personnel” on the ground that they rendered “supervisory services”). This confusion is easy to understand in that both classes are excluded from bargaining units because of their relationship to management interests. In the context of the determination of the proper makeup of bargaining units, however, the two classes of employees are distinct, but with potential overlap.

For purposes of defining bargaining units under the PSL, supervisors can generally be defined as employees who, as a primary job function, exercise significant independent judgment and discretion in the supervision of other employees and who possess the authority to effectively recommend personnel actions such as hiring, firing, and promotion. Thus, supervisory status is primarily defined by an employee’s authority in relation to other employees.

In contrast, a managerial employee is one who “participates in the formulation, determination, and implementation of management policy, or has the effective authority to commit the . . . employer’s resources.” *IBEW, Local 53 v. City of Harrisonville*, Case No. 95-034, at pp. 11-12 (SBM 1996). *See also Missouri NEA*, 695 S.W. 2d at 898. “The basis for excluding managerial employees from a bargaining unit is that their relationship to the employer is significantly at variance from those of other (bargaining unit) employees.” *IBEW, Local 53*, Case No. 95-034, at p. 11. The focus with regard to determining whether a person is a managerial employee is not on his or her authority over other employees, but rather, the degree of responsibility he or she exercises in regard to the employer’s policies, programs, and resource allocations. *Id.*, at pp. 11-12; *AFSCME, Local 410 v. City of St. Louis*, Case No. AC 94-001, at p. 7 (SBM 1994); *CWA v. Dep’t of Social Servs.*, Case No. 83-012, at p. 8 (SMB 1984).

**Department Heads Are Not Supervisors.** In determining whether or not an employee is a supervisor that should be excluded from a bargaining unit, the Board examines the employee's position with regard to the following matters:

- (1) The authority to effectively recommend the hiring, promotion, transfer, discipline, or discharge of employees;
- (2) The authority to direct and assign the work force, including a consideration of the amount of independent judgment and discretion exercised in such matters;
- (3) The number of employees supervised and the number of other persons exercising greater, similar, and lesser authority over the same employees;
- (4) The level of pay, including an evaluation of whether the person is paid for his or her skills or for his or her supervision of employees;
- (5) Whether the person is primarily supervising an activity or primarily supervising employees; and
- (6) Whether the person is a working supervisor or whether he or she spends a substantial majority of his or her time supervising employees.

*Int'l Ass'n of Fire Fighters, Local 2543 v. Poplar Bluff Fire Dept.*, Case No. UC 2000-019, at 13 & 19 (SMB 2000).<sup>2</sup> Not all of these factors need to point toward supervisory status for a position to be found to be supervisory and no one factor is determinative. *Id.* at 13. "Instead, the inquiry in each case is whether these factors are present in sufficient combination and degree to warrant the conclusion that the position is supervisory." *Id.*

*Authority to effectively recommend the hiring, promotion, transfer, discipline, or discharge of employees.* The utility department heads have input in selecting candidates to interview for open positions in their departments. They also take part in interviews and make recommendations. But Steve Long, the Utilities Foreman, and Lyle Thomas, the Director of the City's Public Works Department also often add candidates to the pool of applicants and take part in the interviews. And it is Director Thomas that reaches an independent recommendation as to the candidate to hire and takes the matter up with the City Administrator. The City

---

<sup>2</sup> The courts, and this Board on occasion, have set out seven factors for the assessment of supervisory status, but the six factors set out above are the same as seven factors sometimes given. In the seven-factor test, the second factor of the six-factor test is simply divided into two parts. See *Central County Emergency 911 v. Int'l Ass'n of Firefighters*, 967 S.W.2d 696, 700 (Mo. App. W.D. 1998).

Administrator then takes the matter up with the Mayor and those two decide who to hire. The department heads have similar input into the promotional process, but, as with new hires, several levels of higher management are involved, and the decision is made by the City Administrator and Mayor. The department heads also make the formal request that employees in their departments get pay raises when they have met some standard, such as reaching journeyman status, but there is a general expectation that the employee will get such a pay raise in these circumstances.

Although assessment of candidates for hire or promotion and participation in the interview process can be a significant factor in determining that a position is a supervisory one (*Professional Firefighters of St. Louis County, Local 2665 v. Rock Township Ambulance Dist.*, Case No. 89-015, at pp. 6-7 (SBM 1989)), that role in the hiring process must be influential in the hiring decision and not just a matter of providing useful information to the actual decision makers. For example, in *Teamsters, Local 41 v. City of Liberty*, Case No. 97-029, at pp. 25 & 28-29 (SBM 1997), the Board determined that crew chiefs were not supervisors even though they reviewed applications, chose applicants to interview, served on interview panels, and made hiring recommendations. Their supervisor, however, could add applicants to the list to be interviewed and took the recommendations of the crew chiefs to the City Administrator to make the hiring decision. *Id.* at 25. The City Administrator did not meet with the crew chiefs to personally discuss their views regarding the candidates. *Id.* See also *Int'l Ass'n of Fire Fighters v. City of Gladstone*, Case No. 98-004, at pp. 12-13 & 16 (SBM 1998) (role of sergeants in serving on interview panels and making recommendations was advisory only; sergeants determined not to be supervisors). The role of the utility department heads in this case is no more influential to the process than those of at issue in the *City of Liberty* and the *City of Gladstone* cases.

With regard to discipline, the department heads can issue "writeup letters" setting out a department employee's performance deficiency, but they consult with Mr. Long first.

Department heads may recommend disciplinary action for employee misconduct. Minor matters requiring counseling only can be dealt with by the department heads and Mr. Long only. But recommendations for disciplinary action (more than counseling) are reviewed separately and independently by Mr. Long, Director Thomas, and the City Administrator. The City Administrator may choose to discuss the matter with the department head involved and to review documentation with regard to both the matter at hand and any relevant past disciplinary issues. The final decision on disciplinary action is made by the City Administrator in conjunction with the Mayor. On three occasions a department head's recommendation of discharge has been approved by City officials.

As with hiring and promotion decisions, the role of the department heads in the disciplinary process is advisory only, with senior officials making the actual decisions based on their independent assessments. See *City of Gladstone*, Case No. 98-004, at pp. 13 & 16 (sergeants had no authority to suspend or discharge other employees; even though sergeants' recommendation of discharge was accepted on one occasion, it was department director's decision to make; sergeants determined not to be supervisors); *Int'l Ass'n of Fire Fighters, Local 2665 v. Central County Emergency 911*, Case No. R 95-015, at 11 & 14-15 (SBM 1995) (shift supervisors authorized to issue verbal and written warnings, but not to discharge others; even though shift supervisor' recommendation of discharge was accepted on one occasion, it was general manager's decision to make; shift supervisors determined not to be supervisory employees). *IBEW, Local 702 v. City of Sikeston*, Case No. 92-006 (SBM 1992), cited by the City in its brief, is not contrary to this line of cases. In *City of Sikeston*, a crew leader recommended the discharge of an employee for striking another employee. The city's Public Works Director limited his inquiry into the matter to determining whether the incident actually occurred. After concluding it did, he deferred to the crew leader's recommendation and fired the employee. *Id.* at 4-5. This deferral to the crew leader was a factor in the Board's determination that the crew leaders were supervisors. *Id.* at 9-10. Even though City officials in this case have

accepted recommendations of dismissal made by department heads, there is no indication that they waived their independent judgment in doing so.

The department heads do prepare regular written performance reviews of the employees in their departments. Mr. Long reviews these employee evaluations prepared by the department heads, but has never altered one. Director Thomas oversees the evaluation process and must sign off on each review. There is a place on the evaluation form for the department head to recommend whether or not the employee should receive the step increase in pay that is usually provided by the City each year. Senior City officials make the final call with regard to the annual step increases. There is no evidence in this case of a department head not recommending a step increase on an evaluation, much less of such an employee being denied the step increase based on a department head's evaluation.

Considering the lack of evidence concerning any actual impact on the pay or other terms and conditions of employment of those being evaluated, the role of the department heads in preparing performance evaluations of the employees in their departments does not indicate supervisory status. *Central County Emergency 911*, Case No. 95-015, at pp. 1 & 15. Even where performance evaluations have had an impact on pay, the evaluator is not a supervisor if senior officers have the ability, even though not actually exercised, to alter the evaluations. *Int'l Ass'n of Fire Fighters, Local 2945 v. Callaway County Ambulance Dist.*, Case No. 96-032, pp. 13 & 15 (SBM 1996).

*Authority to direct and assign the work force, including a consideration of the amount of independent judgment and discretion exercised in such matters.* The utility department heads manage the daily work of the other employees in their particular departments. They assign work tasks to these other employees and they oversee the performance and completion of these tasks by the employees. Although there was little evidence regarding the degree of supervision provided, one former apprentice in the Electric Department considered the Electric Superintendent to be a micromanager who gave detailed instructions on jobs being

performed in his presence and could be quite critical if the work was not done the way he thought it should be. In general, however, each department has experienced personnel who know what work needs to be done and need little or no oversight in getting that work done.

The department heads do have some discretion in deciding the order in which projects should be done and in deciding which employee to assign to which task. But all the work must be done and, with only one to three employees besides the department head in each utility department, there will often be little choice in who to assign to a task, especially when not all the employees have the same qualifications and expertise. Little independent judgment is exercised in the direction of the work force where work assignments depend on the tasks to be performed and the availability and various skill levels of the employees of the unit at issue. *IBEW, Local 753 v. City of West Plains*, Case No. 97-022, at p. 22 (SBM 1997).

The testimony that the Electric Superintendent is a micromanager does indicate that, at least with respect to that department head, there may be significant input into the work of the others in the department. But this input is focused on getting the tasks at hand done to the satisfaction of another professional, not on the general direction of a work force. As a task-focused characteristic of the job, it bears little weight in determining supervisory status.

The department heads may grant requests for time off work made by the employees in their departments. Mr. Long reviews these requests too, but sometimes the leave occurs before the paper work gets to him. The evidence reflects only one occasion, out of thousands, of a department head denying a leave request. The authority to grant time off is not enough to render the person exercising that authority a supervisor. *IBEW, Local 53 v. City of Higginsville*, Case No. 90-026, at pp 6-7 (SBM 1990).

Also relevant to this work direction/assignment factor is the City's after-hours emergency procedure. Employees in each department are on-call for after-hours emergency work. Utility department heads share in this on-call responsibility with the others in their departments. If the utility department head is not the one on-call, the other employee or employees that are on-call

take care of the problem on their own, if they can, including contacting the on-call personnel of the other departments if they determine that the emergency impacts another utility department. This independent authority for non-department heads to handle emergency situations without contacting the department heads is a significant gap in the authority of the department heads to direct and assign the work force.

There is some indication that no one senior to the department heads has significant operational knowledge of the work done by any of the departments other than the waste water treatment plant. Lyle Thomas, the Public Works Director, is a retired Marine, a trained construction surveyor, and a planner. He has no technical expertise with regard to any of the City's utility departments. Steve Long, the Utilities Foreman, worked at the City's waste water treatment plant and served for a time as the plant's supervisor. In the absence of technical expertise, Director Thomas and Mr. Long must necessarily rely heavily on the department heads to manage their respective departments and to allow them considerable independence in doing so. But this is a task-focused consideration, not one that reflects supervisory functions. It is the authority over other workers with regard to their relations as employees of the employer that is significant to the inquiry, not the authority to direct and oversee professional work being done. That an individual uses professional training and experience (even when not shared by anyone senior) to accomplish work tasks with the assistance of subordinate professionals does not, in and of itself, make that individual a supervisor in the labor relations context.

*Number of employees supervised and number of other persons exercising greater, similar, and lesser authority over the same employees.* The utility department heads direct the work of from one to three other employees in their respective departments (the Electric Superintendent managed four other employees until recently). Although this Board has on one occasion concluded that an employee supervising only one other employee was a supervisor, as a general matter supervision of units of four to six do not even begin to suggest supervisory status. *Compare City of Sikeston, Case No. 92-006, at pp. 8 & 10 with City of West Plains,*

Case No. 97-022, at p. 22, and *Teamsters, Local 245 v. Lawrence County Nursing Home Dist.*, Case No. 94-017, at p. 15 (SBM 1994).

There are four levels of supervision above the department heads – (1) Utilities Foreman Steve Long, (2) Director of Public Works Lyle Thomas, (3) the City Administrator, and (4) the Mayor. When there are multiple levels of supervisors over a position, that position is generally not a supervisory one. See *IBEW, Local 53*, Case No. 95-034, at pp. 10-11; *Teamsters, Local 682 v. St. Charles County Hwy. Dep't*, Case No. 94-003, at p. 8 (SBM 1994); *Int'l Union of Oper. Engs., Local 2 v. St. Louis Housing Auth.*, Case No. 92-011 (SBM 1992).

*The level of pay, including an evaluation of whether the person is paid for his or her skills or for his or her supervision of employees.* The utility department heads are all paid at Grade 5 of the City's pay plan. The increase in pay between comparable steps from one Grade to the next is 10 %. The 10 % increase between Grades 4 and 5 is intended to compensate the department heads for both their management of departmental operations and their provision of supervision to the other employees in their departments. A 10 % difference in pay, especially when a portion of that increase is attributable to tasks other than employee supervision, is not sufficient to establish supervisory status. See *MNEA, Springfield Educational Support Personnel v. Springfield R-12 School Dist.*, Case No. 88-021, at pp. 5 & 8 (SBM 1988).

*Whether the person is primarily supervising an activity or primarily supervising employees.* The tenor of the testimony offered at the hearing is that the primary task of the department heads is to keep their respective utility services flowing smoothly for the benefit of City residents and businesses. The department heads are assisted in the fulfillment of this task by subordinate employees. But these subordinates are experienced workers who know what work needs to be done, that they are expected to get that work done, and need little or no oversight from the department heads in doing so. In their job descriptions, each of the department heads is directed to “[w]ork as a team member with other employees.” The Water and Sewer Supervisors must be able to “[m]anage many activities at one time.” Similarly, the

Electric Superintendent, the Natural Gas Supervisor, and the Waste Water Treatment Plant Manager need to “[h]andle multiple tasks simultaneously.” The department heads are more concerned with completing the work of their departments than with supervision of employees.

*Whether the person is a working supervisor or whether he or she spends a substantial majority of his or her time supervising employees.* The department heads work alongside the other employees of their departments doing the same type of hands-on jobs as the others. In fact, the department heads are the most experienced and the most skilled employees in their departments. They spend considerably more than half of their work time engaged in front line work. This is more than adequate to demonstrate that the department heads are working supervisors. See *City of Liberty*, Case No. 97-029, at p. 28 (crew chiefs spending 30 %, 40 %, and 50 % of their time in hands-on duties were working supervisors).

*Summary.* Based on our analysis of all the supervisory factors, we conclude that none of the City’s utility department heads is a supervisor. They will not be excluded from the bargaining unit on that basis.

**Department Heads Are Not Managerial Employees.** As noted above, the question of whether an employee is a manager that should be excluded from a bargaining unit turns on the degree of responsibility that employee has over the formulation, determination, and implementation of the programs and policies of the employer and in the commitment of the employer’s resources.

The City urges that its department heads are managerial employees based on (1) their responsibility for running their respective utility departments; (2) their attendance at weekly staff meetings at which ongoing and upcoming projects are reviewed; (3) their attendance at pre-development meetings called as needed to review large development projects; (4) their review of project plans to insure compliance with City regulations; (5) their management of their department’s inventory; (6) their input into their department’s annual budget; (7) their responsibility for operating their departments within that budget; (8) their authority to make

purchases up to two hundred dollars (five hundred dollars in emergencies) without prior approval; and (9) their occasional recommendations that the City adopt certain policies.

The responsibility of running a utility department on a day-to-day basis, however, is not itself a managerial function. See *IBEW, Local 53*, Case No. 95-034, at p. 12. All of the individual items noted by the City are simply specific aspects of the daily operation of a municipal utility department. For example, reviewing projects that a department's own staff is responsible for performing, managing inventory, and operating within a budget are well within the range of activities necessary to the operation of a utility department.

It is particularly telling that the department heads did not begin attending the weekly staff meetings until the last year or two after Public Works Director Thomas determined that "word either wasn't getting passed or coordination wasn't happening." Thus, the need for department heads to attend these meetings was not to obtain any managerial judgment, but to ensure closer supervision by Director Thomas.

The department heads' authority to order supplies involves a ministerial act, not a policy decision. See *id.* Their input into the proposed budget of their departments does not amount to managerial authority either, especially where higher level authorities are not obligated to include the items proposed and final approval of the budget is reserved for the top officials of the government body. See *id.*

The department heads' responsibility to review project plans of private developers to ensure compliance with applicable regulations is an application of existing policy requirements, not the formulation or determination of policy. While in a sense this compliance review could be considered "implementation" of policy, that is not the sort of "implementation" meant by the Board in its definition of managerial employee. What is meant by this term is implementation of a general policy established by the employer in a context in which the employee must assess the purpose of the policy and exercise discretion in applying it to actual specific situations in a manner that the employee determines is true to the policy. In contrast, the review of project

plans to see if they comply with the City's regulations is a straightforward measuring of developers' proposals against the specific provisions of the City's Code that requires little discretion and little need to determine how to fit general policies to new situations.

The policy recommendations that have been made by the utility department heads in this case also do not rise to the level of a managerial activity. In one case, the recommendation was not adopted. In another, higher-level officers first "tweaked" the suggestion before taking it to the City Council for its review and adoption. Further, the adoption by a government body of a solution to a specific problem offered by a department head having to deal with that problem does not constitute a policy decision. See *id.* (decision to adopt solution to a high manganese level in the water that a chief plant operator helped to devise was not a policy decision).

The utility department heads do not have significant responsibility over the formulation, determination, and implementation of the City's programs and policies or in the commitment the City's resources. Therefore they are not managerial employees and they will not be excluded from the bargaining unit on that ground.

#### **ORDER**

The Board hereby designates an appropriate bargaining unit in connection with the representation petition filed by Local 2 to consist of the following employees of the City: All full-time and regular part-time employees in the Public Works Department, including those in the Building and Grounds Department, the Parks and Recreation Department, the Planning Department, the Building Department, the Wastewater Treatment Department, the Wastewater Collection Department, the Electric Department, the Water Department, the Natural Gas Department, the Vehicle and Equipment Maintenance Department, and the Street Department, excluding professional employees, guards, supervisors, the Police Department, the Fire Department, the City Clerk's Department and the Transfer Station Department. The Board specifically rules that the positions of Electric Superintendent, Natural Gas Supervisor, Water

Department Supervisor, Waste Water Collection Department Supervisor, and Waste Water Treatment Plant Supervisor are included within this designated bargaining unit.

#### **DIRECTION OF ELECTION**

The Chairman of the State Board of Mediation, or other representative designated by the Board or by the Chairman, shall conduct a secret ballot election among the employees in the bargaining unit described in the Order to determine whether unit members want Local 2 to be their exclusive bargaining representative. This election shall take place as soon as possible, but not later than 45 days from the date set out below. The exact time and place will be set forth in the notice of election to be issued subsequently, subject to the Board's rules and regulations. The employees eligible to vote are those who were employed during the payroll period immediately preceding the date below, including employees who did not work during the period because of vacation or illness. Ineligible to vote are those employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election.

The Chairman directs the City to prepare an alphabetical list of names and home addresses of employees in the unit described above who were employed during the payroll period immediately preceding the date of this decision. The Chairman further directs the City to provide this list to the Board and to Local 2 within 14 calendar days from the date of this decision.

Signed this 23<sup>rd</sup> day of May, 2011.

STATE BOARD OF MEDIATION

A handwritten signature in black ink, appearing to read 'J. Avery', with a long horizontal stroke extending to the right.

James G. Avery, Chairman

A handwritten signature in black ink, appearing to read 'Emily Martin', written in a cursive style.

Emily Martin, Employer Member

A handwritten signature in black ink, appearing to read 'Lewis B. Moye Jr.', written in a cursive style.

Lewis Moye, Employee Member

(SEAL)