

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

PROFESSIONAL FIRE FIGHTERS OF	)	
EASTERN MISSOURI, INTERNATIONAL	)	
ASSOCIATION OF FIRE FIGHTERS	)	
LOCAL 2665,	)	
	)	
Petitioner,	)	
	)	Public Case No. R 2013-007
v.	)	
	)	
CITY OF GLENDALE, MISSOURI,	)	
	)	
Respondents.	)	

**DECISION**

The Professional Fire Fighters of Eastern Missouri, International Association of Fire Fighters, Local 2665, petitions to represent a bargaining unit comprised of the three Captains employed by the Fire Department of the City of Glendale. The City asserts that the Captains are supervisors and that supervisors may not organize and collectively bargain under the Missouri Public Sector Labor Law, §§ 105.500-105.530, RSMo. Local 2665 responds that supervisors are entitled to organize and collectively bargain under article I, § 29 of the Missouri Constitution.

The Board concludes that the Captains in this case are not supervisors as that term is used in the context of public employee bargaining. The Board further concludes that a unit consisting of only Captains is not an appropriate bargaining unit here because of the community of interest they share with the Lieutenants and Firefighters they work alongside. The Lieutenants and Firefighters are represented by Local 2665 in an already existing bargaining unit. Because the Board concludes that the unit petitioned for is not appropriate, it dismisses the petition. Local 2665 may file a new petition to give the Captains the opportunity to join the existing unit if it chooses to do so.

## **JURISDICTIONAL AND PROCEDURAL BACKGROUND**

Questions regarding the appropriateness of bargaining units fall within the jurisdiction of this Board. § 105.525.

This case springs from an earlier case, Public Case No. R 2013-003, in which Local 2665 petitioned to represent a single unit of City Fire Department employees consisting of Firefighters, Lieutenants, and Captains. The City objected to inclusion of the Captains in the unit on the ground that they were supervisors. The Board held a hearing in that case in St. Louis, Missouri, on November 27, 2012. Acting Board Chairman Michael Pritchett, Employer Member Leonard Toenjes, and Employee Member Robert Miller were present in person to hear the case. The hearing was not completed and was adjourned with the intent that a second day be scheduled to finish.

Following adjournment, Local 2665 amended its petition to remove Captains from the proposed unit of Lieutenants and Firefighters and simultaneously filed the petition in this case to represent the Captains in a separate unit. The City did not object to the makeup of the unit of Lieutenants and Firefighters. The Board conducted an election in that unit on March 21, 2013, and, after unit members voted in favor of representation by Local 2665, certified Local 2665 as the bargaining representative for the unit.

At a conference in this case, the parties agreed to submit the questions at issue based upon written briefs, the evidence that had been presented in the hearing in Public Case No. R 2013-003, and a joint stipulation of facts. The Board also offered the parties the opportunity for a new hearing if, while preparing their briefs, they came to the conclusion that they needed to present any additional evidence beyond that presented at the previous hearing and through the stipulation of facts to allow them to fully make and support their positions.

Local 2665 and the City provided their stipulation of facts to the Board and filed briefs and reply briefs. Neither party asked to present additional evidence. Both parties have had a full opportunity to present evidence and make arguments. This case is ready for decision.

All Board members, including Employer Member Emily Martin and Employee Member Lewis B. Moye, in addition to the members that attended the November 27, 2012 hearing, have taken part in this decision. Based on its review of all the evidence and arguments made, the Board issues these Findings of Fact, Conclusions of Law, and Order.

### **FINDINGS OF FACT**

The Fire Department of the City of Glendale operates with three shifts out of one firehouse. When at full staff, the Department employs six Firefighters, three Lieutenants, three Captains, an Assistant Chief, and a Chief. At the time of the hearing, there were five firefighters. Each 48-hour-long shift is manned by a Captain, a Lieutenant, and one or two Firefighters. Testimony indicated that in practice, crews often consist of just three members.

All Fire Department employees are subject to the disciplinary provisions of the City's policy manual. Departmental Standard Operation Guidelines also govern the duties, schedule, discipline, benefits, and other conditions of employment of Department employees. Captains, Lieutenants, and Firefighters all engage in the Department's primary functions of fire fighting and emergency medical assistance. These positions also require similar qualifications, skills, and training (with the higher-ranked positions building on the qualifications, skills, and training of the lower-ranked positions).

The Chief is the commanding officer of the Fire Department. He reports to the City Administrator. Until July 1, 2012, he supervised the Assistant Chief directly and the entire department indirectly. On July 1, 2012, the Assistant Chief assumed new duties as the Training

Officer for the Fire Departments of the Cities of Glendale, Rock Hill, Brentwood, and Maplewood and he has been working out of Brentwood Fire Department. Since that date, the Assistant Chief's responsibilities with regard to the day-to-day management and operation of the Glendale Fire Department have been minimal. There is no plan for the Assistant Chief to return to his former duties in the chain of command at the Glendale Fire Department or to bring someone else in to fill that role. Although Department position descriptions did not change immediately upon the Assistant Chief becoming the Training Officer, the Chief now supervises the Department through the Captains. Captains supervise Lieutenants and Firefighters. Lieutenants supervise Firefighters.

The Chief's regular work schedule is eight hours per day, Monday through Friday. When the Chief is not present, the senior officer responsible for managing Departmental operations is the Captain of the particular shift on duty. But when anything of significance occurs, the Captain on duty is to notify the Chief. In the absence of the Chief, Captains may still direct questions to, and seek advice from, the Assistant Chief when needed. The Assistant Chief is still senior to Captains, who are subject to the Assistant Chief's directions when he chooses to exercise that function.

On one occasion in 2011, when the Chief and Assistant Chief were going to be out of town at a conference for about four days, the Chief issued a directive placing one of the Captains in charge of the Department during his absence. In October 2012, before going out of town for four days, the Chief issued a directive placing the Assistant Chief in charge while he was away even though the Assistant Chief had already assumed his duties as Training Officer.

Captains and their crew work together as a team in all aspects of the job, including fire runs, emergency runs, and daily duties at the fire station. Given the small size of the crews –

three to four including the Captains – the Captains have to help to get everything done.

Captains go with their crews on all fire runs. When a particular crew is the first to arrive at a fire scene, the Captain assesses the situation and then must make determinations with regard to such matters as where to set up the equipment, whether the first focus should be on rescuing victims or extinguishing the fire, and whether and how to vent the burning structure before entering. Based on the decisions made, the Captain directs his crew members in what he wants them to do to carry out the plan of action he has formulated. The Captain will also personally work as part of the crew. For example, firefighters are not to enter burning buildings alone. Captains will often pair off with another firefighter in fulfillment of this requirement, especially considering that crews often consist of just three members with one needing to stay at the truck to oversee the pumping operation.

If a second truck is called to a fire, the Captain of the first truck may retain command over the incident or pass command to the senior officer of the second truck. Command may be passed to the senior officer of the second truck, even if that officer is from another fire department and even if that officer is not senior to the Captain that arrived first. There are occasions when command has passed to a senior Firefighter private from another department. If the Chief comes to the scene, he may assume command over the incident, but generally he will leave the officer already serving as incident commander in charge. When a Captain does pass command, the officer assuming command then assigns fire fighting or rescue duties to that Captain and his crew. If a Captain and his crew arrive at a fire after another truck or trucks and command is not passed to the arriving Captain, that Captain will be subject to duty assignments from the officer that retained command.

When a Captain is not acting as incident commander, he works with his crew to fulfill the

duties assigned by the officer that is in command. This may involve directly working a hose or other equipment with his crew or generally supervising the work performed by the other crew members and watching out for risks.

Captains also go with their crews on all medical emergency runs. On such runs, a Firefighter or Lieutenant that is a paramedic or emergency medical technician (EMT) is in charge of medical care at the scene. The Captain will provide assistance to the medically trained crew member as needed. The Captain cannot override the medically trained crew member with regard to medical treatment, but he is in overall charge of the scene with regard to non-medical matters.

The Fire Department also engages in non-emergency activities like school drills, building inspections, fire hydrant inspections, and building familiarization (i.e., learning the general layout and the location of sprinklers and other specific items important to fire fighting). Captains can schedule these activities even for times and dates that will require a different shift to do the work. Captains assign their crew members to the tasks that need to be done to complete these non-emergency activities. Captains will often join their crew members in this work.

Captains are responsible for seeing that the necessary and routine tasks that are required for the efficient operation and good order of the firehouse are done. There is a set schedule for performing these regular tasks (including cleaning, training, and inspections), but Captains have discretion to delay their completion as scheduled or to rearrange the timing of tasks when circumstances require it. The work must still be finished as soon as practical during the shift. If the daily cleaning and maintenance duties have been completed as scheduled by 1 p.m., the rest of the day at the firehouse may be used for unstructured activities, study, physical fitness, or personal time at the discretion of the Captain on duty or the Chief. But it is rare that the daily

duties are finished by 1 p.m.

Crew members know the regular tasks that need to be done each day or each week at the fire station and generally divide them up among themselves without need for their Captain to assign the work to particular individuals. Captains usually join their crew members in performing these regular duties, including checking the firefighting apparatus and cleaning the trucks, the floors, and the bathrooms. On one occasion, when line Firefighters expressed irritation that Captains and Lieutenants were not regularly helping with firehouse chores, the Chief issued a memorandum to “All Fire Personnel” recommending that “**EVERYONE** re-familiarize yourself with these duties” and directing that “[d]uties such as these should be completed as a shift and all personnel should contribute to their completion.” (Bold type and capital letters in original; double underline added by hand after printing.) On another occasion, after the Chief observed that Captains were not taking part in weekly fire truck apparatus checks, he issued a directive reminding everyone that “Friday apparatus checks are to be conducted by **ALL** members of the shift” and that it “is vital that **ALL** members remain familiar with equipment, and its location[.]” (Bold type and capital letters in original.) Both these directives were initialed by all crew members, including Captains, of each shift as an indication that they “read and understand” the directives.<sup>1</sup>

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<sup>1</sup> The Chief testified with regard to the directive concerning firehouse chores that he did not necessarily mean that Captains were to directly take part in such chores. Rather, he stated his intent was that they should make sure the chores were done. But he went on to remark that the Department is a small one and that when something needed to be done, he did not really care who did it. The Chief noted that he has even helped out with washing the fire truck. The Chief also testified that some Captains were more hands-on with regard to helping with regular chores than others and that there are occasions that Captains have not engaged in such work at all. But, while some Captains may not have helped with regular chores on occasion, this does not mean that any Captain has ever failed to take part in such work as a general practice. Besides, even though a particular Captain might spend less time than others joining his crew in their work, it is the general practice of the persons in the position that will control in the inquiry into supervisory

The Chief holds monthly officers' meetings with the Captains. The Assistant Chief also attended these meetings, but is not doing so now that he has become the Training Officer. Lieutenants have attended these meetings as well, but have not done so for many months. Among other topics, personnel issues, both general and specific, are discussed at these meetings.

Since the Assistant Chief became the Training Officer, Captains have been responsible for reviewing and approving the vacation requests of their crew members subject to the need to ensure that each shift has three members present. Captains also now have the authority to review and approve sick leave requests, but in practice they have simply filled out the forms required when a crew member calls in sick. They have not been assessing whether or not the crew member is actually ill and entitled to sick leave. When a Captain approves vacation or sick leave and this will leave the shift with fewer than three firefighters (Captains and Lieutenants included), it is the Captain's responsibility to call in another firefighter to cover the absent firefighter's missed time.

Captains may take a fire truck out of service on their own authority if, based on safety guidelines, this is determined to be necessary. Under departmental Standard Operation Guidelines, Captains are responsible for taking "appropriate actions to ensure that fuel, utilities, and station supplies are used conservatively." The senior officer on a shift, generally a Captain, is responsible for preparing reports describing each incident to which the crew was dispatched on that shift.

The Chief assigns the management of a number of "collateral" duties to specific officers.

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status. *See IBEW, Local 753 v. City of West Plains*, Case No. R 97-022, at 23 (SBM 1997). Given the terms of the Chief's directive regarding regular chores, the emphasis in the directive that all personnel were included within its terms, the small size of the crews, the Chief's position that the work be done regardless of who does it, and the testimony presented from a Captain regarding practices at the firehouse, the Board concludes that Captains at least understand that they are to join in with their crews to complete regular chores and that they generally do so.

These collateral assignments include such responsibilities as facility supply manager, small tool and equipment manager, building maintenance manager, apparatus maintenance manager, and records coordinator. Although Captains are involved in discussing these collateral assignments with the Chief when the assignments are reviewed each year at an officers' meeting, they do not decide who will be assigned to the special duties. The officers assigned these special duties range from the Chief to line Firefighters. As of September 2012 (the revision date of the duty list presented at the hearing), seven out of fifteen of these collateral assignments were held by line Firefighters, four by Lieutenants, three by Captains, and one by the Chief. Firefighters and Lieutenants assigned to collateral duties report to the Chief with regard to those assignments and not to their Captains.

Captains are responsible for training their crew members in the proper performance of their duties. The Chief and Captains annually choose training exercises that each crew must successfully complete within established performance and time standards. Captains are to see that their crews are capable of successfully meeting these established standards during annual crew evaluations. Captains regularly prepare performance appraisals of their subordinates, rating them in such areas as knowledge, reliability, quality of work, initiative, judgment, and interpersonal relationships. The appraisals are turned in to the Chief, who reviews each one individually with the Captain that conducted the evaluation. The evaluations are subject to the Chief's approval or disapproval.

In the hiring process, Captains are initially involved through their attendance at officers' meetings, where they take part in determining the qualifications needed in prospective candidates for job openings in the Fire Department. Advertisements are then posted and, after applications are received, the Captains look through them to help determine which applicants meet the

minimum qualifications to sit for the written examination to be given. Captains assist in the administration and grading of the written examinations. The Chief determines the minimum score necessary for an applicant to be called in for an interview. Captains (and, on at least one occasion, Lieutenants) sit on the review boards that interview the applicants, rate them based on their interview performance, and then submit their top candidates to the Chief. The number of candidates submitted, typically three, depends on the number the Chief instructs the review board to provide. The Chief and the City Administrator interview these candidates and then these two officials decide who to hire. During the current Chief's fourteen-year tenure as Chief, all hires have been made from among the top candidates submitted by the Captains.

Promotions at the Department are determined based upon evaluations of several independently weighted factors, generally including fire service experience (points given based on years of service), résumé (points given based on college hours completed or degrees obtained and on successful completion of training in identified fire fighting specialties), written exam, table top problem or practical exercise, an oral review board (consisting of Chiefs, and sometimes Captains, from outside fire departments), and an interview with the Chief, Assistant Chief, and City Administrator. Captains are involved in this process only through providing input at officers' meetings into whether the factors considered, and the weight of each factor, need to be modified from time to time. On one occasion, a civil service test was included as a promotional factor on the recommendation of one of the Captains. After it was used, however, the Captains concluded that it did not really add any value to the process and the civil service test was not used again. Once the Captains have provided this input into the structure of the promotional process, they do not have any further role. They take no part in evaluating or choosing the candidates to be promoted.

City policy provides that all disciplinary action “shall be by action of the City Administrator unless the City Administrator has authorized a Department Head to take such action.” The City Administrator has authorized the Fire Chief to impose discipline within the Fire Department. Documentation entered into the record in this case, consisting of four Disciplinary Report Forms covering a four-year period from 2006 to 2010 and a disciplinary memorandum from 1998, shows Captains issuing oral reprimands, written warnings, and two recommendations for one-day suspensions and one recommendation for loss of a day’s pay. The recommendations were accepted and the discipline imposed. But the Chief may also overrule written reprimands issued by Captains and may choose not to impose the discipline they recommend. Additionally, the Chief has the authority to direct Captains to issue disciplinary reports, including the sanction that is to be imposed. One of the one-day suspensions mentioned in the Disciplinary Report Forms presented was imposed by the Captain at the direction of the Chief, despite the Captain’s recommendation that only a written warning be given.

No one has been discharged from the Department during the current Chief’s 14-year tenure. There has been one officer, a Captain, demoted in that time. This matter was discussed at an officers’ meeting where the other Captains offered input generally in support of the propriety of the demotion. The Chief then made the decision.

The City pays its employees, including all members of its Fire Department, pursuant to a common pay plan. The top-scale salary of a Firefighter is approximately 4½ % less than that of a Lieutenant. The top-scale salary of a Lieutenant is approximately 14 % less than that of a Captain. The lowest pay level for a Captain is more than the highest pay level for a Lieutenant. The Chief testified that the pay of Captains is set at the level it is to compensate them “for their leadership.” The top-scale salary of a Captain is approximately 16 % less than that of the

Assistant Chief (now serving as the Training Officer) and approximately 28 % less than that of the Chief.

### CONCLUSIONS OF LAW

Local 2665 contends that the Captains employed by the City Fire Department are entitled to organize and bargain collectively regardless of whether or not they are supervisors. The City asserts that the Captains are supervisors and that, as supervisors, they are not “employees” who can organize and collectively bargain under the framework of the Public Sector Labor Law (PSLL). The Board will first address the question of whether or not the Captains are supervisors. If it concludes they are not, then it will have no need to reach the question of whether or not the PSLL authorizes it to certify bargaining units consisting solely of supervisors.

#### **I. Supervisory Status of Captains**

Although the Board has never addressed whether supervisor-only units are authorized under the PSLL, it has consistently held that supervisors cannot be included in the same bargaining unit as the employees they supervise. *Int’l Ass’n of Fire Fighters, Local 2543 v. Poplar Bluff Fire Dep’t*, Case No. UC 2000-019, at 12 (SMB 2000); *MNEA, Springfield Educ. Support Pers. v. Springfield R-12 Sch. Dist.*, Public Case No. UC 88-021, at 6 (SBM 1988); *see also Golden Valley Mem. Hosp. v. Mo. State Bd. of Mediation*, 559 S.W.2d 581, 583 (Mo. App. K.C. Dist. 1977).

Not all employees that exercise some supervisory authority over other employees are considered “supervisors” as that term is used in applying the PSLL. For public employment bargaining purposes, true supervisors (those that cannot be included in the same unit as subordinates) are those “whose duties involve acting directly or indirectly in the interest of the employer in relation to other employees” rather than those whose primary interest and authority

relate to working with their subordinates to get work done (those in this latter category, who may be included in the same unit as subordinates, have been referred to as working foremen, lead workers, or working supervisors). *See SEIU, Sw. Joint Council No. 29 v. Dep't of Labor and Indus. Rels.*, Case No. 84-111, at 9 (SBM 1984); *Prof'l Firefighters, Local 2665 v. Richmond Heights Fire Dep't*, Case No. 81-003, at 3-5 (SBM 1981). *See also Int'l Ass'n of Fire Fighters, Local 2665 v. Riverview Fire Prot. Dist.*, Case No. R 87-017, at 6 (SBM 1987). The Board examines the following factors to determine whether employees in a particular employment classification are true supervisors:

(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.

*Poplar Bluff Fire Dep't*, Case No. UC 2000-019, at 13 & 19.<sup>2</sup> Before examining each of these factors in turn, the Board notes that 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.

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<sup>2</sup> The courts have set out seven factors for the assessment of supervisory status (as this Board has on occasion), but the six factor analysis set out here is the same as the seven factor analysis in that the second factor noted here is sometimes simply divided into two parts to create the seventh factor. *See Cent. Cnty. Emergency 911 v. Int'l Ass'n of Firefighters*, 967 S.W.2d 696, 700 (Mo. App. W.D. 1998).

“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.* Captains are involved in the hiring process through input in determining qualifications for job openings, examining applications to help determine which candidates meet those qualifications, assisting in the administration and grading of written examinations, serving on review boards (generally consisting of only the Captains) that interview applicants meeting the minimum score (as determined by the Chief) on the written examination, and then submitting their joint rating of the top candidates (generally three) to the Chief. The Chief and the City Administrator then interview these top candidates, after which they decide who to hire. All hires during the current Chief’s fourteen-year tenure have come from the top candidates submitted by the Captains. An ability to make non-binding recommendations as to new hires, however, even when the recommendations are generally followed, is not a particular indicator of supervisory status. *See Int’l Ass’n of Fire Fighters v. City of Gladstone*, Case No. R 98-004, at 5, 12-13, & 16 (SBM 1998).

Captains take no part in interviewing, evaluating, or choosing promotional candidates. Captains do have the opportunity to provide input into whether the factors generally considered in evaluating promotional candidates, and the weight to be given to these factors, should be modified. But the factors that are considered are not ones through which Captains can exercise even an indirect influence. Although it would be possible for the opinions of the Captains about promotional candidates to be reflected in the weight given to the experience and résumé factors, that is not the case because these factors are scored based only on points given for years of service, college hours completed or degrees obtained, and successful completion of training in

certain fire fighting specialties. There is also no indication that the scores given by Captains in their regular performance appraisals of their crew members or their views derived from the annual training exercises they put their crews through have any influence on promotions. In any event, the duty of Captains to evaluate their crew members is not, in and of itself, sufficient to show they are supervisors. *See Riverview Fire Prot. Dist.*, Case No. R 87-017, at 6.

The Department has not discharged anyone during the current Chief's tenure. The one demotion, of a Captain, that occurred in that time period was discussed among the Chief and the other Captains. The Captains generally approved of the demotion, with the Chief making the actual decision to do so. With regard to other discipline, there is a record of Captains issuing oral reprimands and written warnings, as well as one occasion each of an independent recommendation for a one-day suspension and for a loss of one-day's pay. These recommendations were approved and the discipline imposed. (There is also a record of a second recommendation for a one-day suspension, but that was made at the Chief's direction after he overruled the Captain's recommendation that only a written warning be given.)

In summary, Captains do not choose new hires and have next to no role in the promotion process. While there is also no evidence showing that Captains have substantial disciplinary authority, they do have some ability to impose discipline that has some impact on pay. With some elements of this factor (hiring and promotion authority) pointing away from Captains having supervisory status, but another element (disciplinary authority) showing an indication of at least slight supervisory authority, the Board concludes this factor is evenly enough balanced that it must be considered neutral.

*Authority to direct and assign the work force, including a consideration of the amount of independent judgment and discretion exercised in such matters.* Captains necessarily exercise

some discretion in direction and assignment of their crews considering that the Chief typically works an eight-hour shift, Monday through Friday, which leaves the Captain as the senior officer on duty for roughly three-fourths of each week. Captains are, however, to notify the Chief when something of significance occurs.

Once, in 2011, when the Chief and Assistant Chief were going to be out of town for a few days, the Chief issued a directive placing one of the Captains in charge of the Department during his absence. But on another occasion when the Chief was going to be out of town for a short time, he placed the Assistant Chief in charge, even though this occasion occurred after the Assistant Chief became the Training Officer. Even if a Captain were to be put in charge whenever the Chief needed to leave town, such temporary authority is not sufficient to give supervisory status. *See Professional Fire Fighters, Local No. 2706 v. City of Marshall*, Case No. 79-036, at 6 (SBM 1980).

Captains have some discretion in assigning duties to their crew members and determining when the duties will be performed. For example, after routine fire station duties are done (absent fire or emergency runs or other intervening circumstances, they are scheduled to be completed between 7:45 a.m. and noon), Captains may direct their crew members to study, engage in physical fitness routines, or take part in unstructured activities. Additionally, Captains decide when and who will perform non-emergency activities (like school drills, building inspections, fire hydrant inspections, and building familiarization), even to the extent of scheduling them to be conducted by another shift.

Captains are involved in choosing the annual training exercises that each crew must successfully complete within established performance and time standards. They are also responsible for seeing that their crews are capable of successfully meeting these established

standards during these annual exercises.

Captains also direct their crews at fire scenes and are in overall charge at the scene of medical emergencies. But these roles at fire and medical emergencies do not themselves indicate supervisory status. Although of prime importance to the Department and the public it serves, the Captains' fulfillment of these duties rests on their skill and experience in fire fighting, not on their general ability to manage and motivate subordinates. *See St. Charles Fire Fighters, Local 1921 v. City of St. Charles*, Case No. 79-024, at 10 (SBM 1979). The direction of fire fighters is authority more analogous to that of a lead man rather than that of a true supervisor. *See Riverview Fire Prot. Dist.*, Case No. R 87-017, at 7.

Captains are also responsible for reviewing and approving vacation requests of their crew members and, in doing so, must be careful to ensure that each shift will have three members on duty. Captains also fill out the forms required when a crew member calls in sick. But the authority to grant time off is not enough to render the person exercising that authority a supervisor. *See IBEW, Local 53 v. City of Higginsville*, Case No. R 90-026, at 6-7 (SBM 1990).

Further, although Captains are involved in discussing the various "collateral" duties (such as managing supplies, tools and equipment, building maintenance, and records) that are assigned to specific officers, it is the Chief that makes these assignments. The designated officers report to the Chief with regard to these duties, not to their Captains.

Based on its consideration of these elements, the Board concludes that this factor points at least in a limited way towards Captains being supervisors. *See City of Gladstone*, Case No. R 98-004, at 14-15.

*Number of employees supervised and number of other persons exercising greater, similar, and lesser authority over the same employees.* Each Captain supervises only two or

three subordinates (a lieutenant and one or two firefighters). Until recently, the Assistant Chief served in a level of management between the Captains and the Chief. But now the Assistant Chief serves as the Training Officer for four area fire departments, including his own. Although the Assistant Chief retains authority over the Captains and the Captains may occasionally seek advice from him, the Assistant Chief rarely exercises any day-to-day control over the Captains. Instead, Captains are now directly supervised by the Chief. The Chief reports to the City Administrator.

The number of persons supervised by Captains (two or three) suggests they are not supervisors. *See City of Gladstone*, Case No. R 98-004, at 17 (one person overseeing four to six subordinates does not indicate supervisory status). Captains supervise two levels of subordinates (lieutenants and firefighters) and are supervised by two levels of superiors (Chief and City Administrator), not counting the Assistant Chief and the City's elected officials. The three Captains supervise nine subordinates at most and are supervised by two superiors. If Captains are considered supervisors, that would result in five supervisors overseeing nine subordinates, or a ratio of less than one to two. This would be an "inordinately high" ratio. *Teamsters, Local 245 v. Lawrence Cnty. Nursing Home Dist.*, Case No. R 94-017, at 15 (SBM 1994). But, if Captains are not considered supervisors, that would result in two supervisors overseeing twelve subordinates, or a ratio of one to six. A ratio of one supervisor to six subordinates is a much more appropriate organizational structure, even when that leaves only a department director and a city administrator within the class of supervisors. *See Int'l Ass'n of Firefighters, Local 3133 v. City of Harrisonville*, Case No. R 2002-011, at 28-29 (SBM 2002); *IBEW, Local 53 v. City of Harrisonville*, Case No. R 95-034, at 10 (SBM 1996). This factor indicates that the Captains are not supervisors.

*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.* A line Firefighter's maximum salary is approximately 4½ % less than that of a Lieutenant. A Lieutenant's maximum salary is approximately 14 % less than that of a Captain. The lowest paid Captain earns more than the highest paid Lieutenant. The Chief testified that Captains are paid "for their leadership." The top-scale salary of a Captain is approximately 16 % less than that of the Assistant Chief (now serving as the Training Officer) and approximately 28 % less than that of the Chief. This salary structure, especially when combined with the Chief's testimony, suggests that that the Captains are supervisors.

*Whether the person is primarily supervising an activity or primarily supervising employees.* Captains go with their crews on all fire and emergency runs. When a Captain is in command at a fire scene, he will supervise the fire control work. When not in command, or after passing command to another, the Captain is subject to fire fighting duty assignments from the officer in command. When not in command, and at times when in command (especially when only one crew is on a scene), Captains work as part of the crew in firefighting activities and in providing emergency services. On all medical emergency runs, the Captain is in overall charge of the scene with regard to non-medical matters.

At the fire station, Captains are responsible for ensuring the completion of the routine tasks, such as cleaning and equipment maintenance, necessary to the station's efficient operation and good order. Captains schedule service for the fire trucks when necessary. They are responsible for ensuring that fuel, utilities, and supplies are used conservatively. They prepare reports describing the incidents to which their shifts responded. Captains schedule non-emergency activities like school drills, building inspections, fire hydrant inspections, and

building familiarization, and assign crew members to the tasks that need to be done to complete these activities. Each Captain also has his own particular “collateral” duty to fulfill.

The Captains also take part in the discussion of personnel matters at the monthly officers’ meetings. But such matters make up only a small portion of these meetings and a very small portion of the Captains’ overall work activities.

The Board concludes that, with respect to fires and other emergencies, the primary supervisory role of the Captains is to oversee fire suppression activities and the provision of emergency assistance. The Board also credits the testimony of one of the Captains as a fair summary of the general role of that position as it relates to their routine duties: “I feel myself as the middle man from assistant chief to chief to the men. I’m just – they give me an assignment or task or what’s on the calendar for the day that needs to be done, and I’m the one that needs to facilitate how that gets done.” Although Captains do have crews subject to their direction, this is incidental to completing the particular task at hand. This factor points away from a conclusion that Captains are supervisors. *See City of Gladstone*, Case No. R 98-004, at 15.

*Whether the person is a working supervisor or whether he or she spends a substantial majority of his or her time supervising employees.* Captains work alongside their crew members at both fire and emergency scenes. Captains often enter burning buildings and operate hoses with other crew members. At medical emergencies, Captains help the paramedic or EMT crew member that is providing care for the victim as needed. As one Captain testified: “[W]e’re not sitting, supervising. We’re taking part in all that. We help out. The captains work just like the firefighters, and so we are not just sitting back watching the firemen do their job. We are also helping, working alongside them, side by side.”

Captains also share in the routine duties at the fire station and often join their crew

members in non-emergency activities like school drills, building inspections, fire hydrant inspections, and building familiarization. Given the small crew size, the Captains have to help to get everything done.

Because Captains do the same work as their crews at emergency scenes, at non-emergency functions, and at the firehouse, the Board concludes they are lead workers primarily engaged in getting work done rather than in overseeing others. *See City of Gladstone*, Case No. 98-004, at 15. Moreover, although there is no evidence regarding the proportionate amount of time that Captains spend working alongside their crew members at the same tasks they are performing, the evidence is sufficient to support the Board in concluding that the Captains spend a majority of their time in fulfilling hands-on duties. This factor also points away from Captains being supervisors. *See Teamsters, Local 41 v. City of Liberty*, Case No. R 97-029, at 28 (SBM 1997) (crew chiefs spending 30 %, 40 %, and 50 % of their time in hands-on duties were not true supervisors).

*Summary view of factors.* Three of the factors indicate the Captains here are not true supervisors, two indicate that they are, and one is evenly balanced and thereby neutral. But the decision is not one of merely toting up a score. Rather, as noted above, the inquiry requires an evaluation of the strength of each factor and the combination of factors as a whole.

The Captains' authority with regard to hiring, promotion, transfer, discipline, or discharge is the evenly balanced factor. As such, it will have no affect on the decision.

The factors pointing towards supervisory status are the independent authority to direct the work force and the level of pay. The first of these, as discussed above, points in only a limited way toward supervisory status. The second of these factors is the strongest indicator of supervisory status in that the pay gap between Captains and Lieutenants (14 %) is about three

times the pay gap between Lieutenants and Fire Fighters (4½ %), which indicates that Captains' pay may be compensation for more than just their greater experience.

On the other side of the balance, the Captains supervise only two to three other employees. This factor pointing toward non-supervisory status is lessened somewhat, but not nearly overcome, by there being only two individuals with supervisory authority over the Captains. The remaining two factors, whether the Captains primarily supervise an activity or employees and whether they are working supervisors or instead spend a substantial majority of their time engaged in supervising employees, strongly indicate that the Captains are not true supervisors. Their focus is on getting tasks done – fire suppression, medical emergency assistance, non-emergency fire prevention and fire fighting activities, and efficient operation of the fire station and fire fighting apparatus. They generally work side-by-side with their crews to complete these tasks. The Captains do have supervisory responsibilities, but these duties are incidental to getting the job done.

In the circumstances of this case, the Board finds that the non-supervisory functions of the Captains predominate to a significant degree over their supervisory functions. The Board therefore concludes that the Captains employed by the City of Glendale's Fire Department are not supervisors in the context of public employee bargaining.

Given this conclusion, the Board need not reach the question of whether or not the PSLL authorizes it to establish bargaining units consisting solely of supervisors. But the Captains' petition for certification of representation must still be ruled on and that requires the Board to assess whether or not a bargaining unit consisting only of non-supervisory Captains is an appropriate unit.

## **II. Appropriate Bargaining Unit for Captains**

It is the Board's responsibility to decide whether a bargaining unit is appropriate. § 105.525. "Appropriate unit" is defined as "a unit of employees at any plant or installation or in a craft or in a function of a public body which establishes a clear and identifiable community of interest among the employees concerned[.]" § 105.500(1), RSMo. In deciding whether employees have a sufficient community of interest to be included in a single unit, the Board traditionally examines a series of factors:

- (1) Similarity in scale or manner of determining earnings;
- (2) Similarity in employment benefits, hours of work, and other terms and conditions of employment;
- (3) Similarity in the kind of work performed;
- (4) Similarity in the qualifications, skills, and training of the employees;
- (5) Frequency of contact or interchange among the employees;
- (6) Geographic proximity;
- (7) Continuity or integration of production processes;
- (8) Common supervision and determination of labor-relations policy;
- (9) Relationship to the administrative organization of the employer;
- (10) History of collective bargaining;
- (11) Extent of union organization.

*E.g., Int'l Union of Oper. Eng'rs, Local 2 v. City of St. Louis*, Case No. R 2003-12, at 8-9 (SBM 2003).

It is important to the Board that bargaining units not become overly fragmented because that can hinder effective bargaining for both workers and their employers. The Board recognizes "that there is strength in size and that a unit may be too small to be effective, so that employees

should be excluded from bargaining units only for substantial reasons.” *City of St. Louis*, Case No. R 2003-12, at 9 (quoting *Parkway Sch. Dist. v. Parkway Ass’n of Educ.*, 807 S.W.2d 63, 68 (Mo. banc 1991)).

The question here is whether the Captains constitute an appropriate unit in and of themselves, or whether they share such a community of interest with other employees of the City’s Fire Department that the Captains should be included in a unit with them.

The City urges that, if it is proper for the Captains to be in a bargaining unit at all, then the appropriate unit would be one including the Captains along with the Chief and the Assistant Chief. This argument was based on a premise that the Captains are supervisors. Because the Captains are not supervisors, they may not be included in a bargaining unit with the Chief and the Assistant Chief, who are supervisors. See *Golden Valley Mem. Hosp.*, 559 S.W.2d at 583; *Poplar Bluff Fire Dep’t*, Case No. UC 2000-019, at 12; *Springfield R-12 Sch. Dist.*, Public Case No. UC 88-021, at 6. “[S]upervisors do not have a community of interest with, and therefore, are not appropriately included in a bargaining unit comprised of, the employees they supervise.” *Int’l Ass’n of Fire Fighters, Local 2665 v. Maplewood Fire Dep’t*, Case No. R 2003-013, at 11 (SBM 2003).

The Captains here, however, do have a community of interest with the Lieutenants and Firefighters employed by the City.<sup>3</sup> The Captains, Lieutenants, and Firefighters are paid under a common pay plan (Community of Interest Factor 1). They are subject to common work rules

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<sup>3</sup> The City contends that Local 2665 has conceded that there is no community of interest between the Captains and their crew members by amending its original petition to remove Captains from the coverage of that petition and filing its new petition to represent a separate Captains-only unit. That Local 2665 changed its representation strategy after learning that the City would contest inclusion of the Captains in a unit with the other firefighters does not amount to a concession of an absence of a community of interest between these groups. Besides, it is the Board’s responsibility to determine whether a community of interest exists, regardless of any conclusions the parties may have reached.

and regulations, all work 48-hour shifts (with Captains working the same hours as their crews), and all work out of one fire station (Factors 2, 5, and 6). The Captains, Lieutenants, and Firefighters do the same kind of work and have similar qualifications, skills, and training (Factors 3 and 4). They all work together to provide fire protection and emergency medical services (Factor 7). They work within the same chain of command (all working subject to the Chief and City Administrator) and work under a common disciplinary policy (Factors 8 and 9). The same union that is seeking to represent the Captains is already the certified bargaining representative of a unit consisting of the Lieutenants and Firefighters (Factor 11). Other than the initial and subsequent petitions in this case, there is no record regarding any history of collective bargaining (Factor 10).

The balance of these factors plainly points toward the conclusion that there is a strong community of interest among the Captains, Lieutenants, and Firefighters that justifies their inclusion in a single unit. In fact, this community of interest is so strong that the Board declines to establish a Captains-only unit. Establishing a separate unit of Captains would result in unnecessary fragmentation of employees into multiple units. *See SEIU, Sw. Joint Council No. 29, v. Dep't of Labor and Indus. Rels.*, Case No. 84-111, at 8 (SBM 1984) (Board established larger unit than petitioned for because of strong connection between petitioned for employees and others employed by same agency); *Teamsters, Local Union No. 574 v. Southeast Mo. State Univ.*, Case No. 78-020, at 3 (SBM 1979) (union petitioned for unit of 19 "academic custodians" only, but Board established unit including all 59 custodians).

Because the Lieutenants and Firefighters with whom the Captains share a strong community of interest are already in an existing unit, the Board is unable to simply establish the broader appropriate unit and direct an election in that unit. Instead, the Board will dismiss the

petition in this case for a Captains-only unit and leave it to Local 2665 to decide whether or not to file a file a new petition requesting an opportunity for the Captains to vote to join in the existing unit of Lieutenants and Firefighters.

**ORDER**

The petition filed in this case is dismissed because the petitioning Captains do not, in and of themselves, constitute an appropriate bargaining unit.

Signed this 21<sup>st</sup> day of November 2013.

STATE BOARD OF MEDIATION

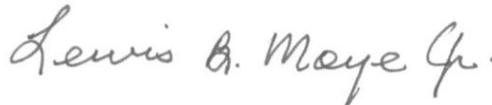
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Emily Martin, Employer Member



Leonard Toenjes, Employer Member



Lewis Moyer, Employee Member



Robert Miller, Employee Member