

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

INSTITUTIONAL & PUBLIC EMPLOYEES)	
UNION, LOCAL 410, AMERICAN)	
FEDERATION OF STATE, COUNTY &)	
MUNICIPAL EMPLOYEES, AFL-CIO,)	
)	
Petitioner,)	
)	
vs.)	Public Case No. 77-021
)	
COUNTY COURT OF LINCOLN COUNTY)	
LINCOLN COUNTY COURTHOUSE TROY,)	
MISSOURI,)	
)	
Respondent.)	

**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND DECISION**

FINDINGS OF FACT

This case appears before the State Board of Mediation upon Institutional and Public Employees Union, Local 410, AFSCME, AFL-CIO, Petitioner herein, filing a Petition for Certification with the Board for exclusive bargaining rights for all regular and part-time employees of the Lincoln County Highway Department, Troy, Missouri, but excluding office clerical and supervisory personnel.

The State Board of Mediation has authority to hear and decide this matter pursuant to Section 105.525 RSMo. 1969, which states in pertinent part:

"Issues with respect to appropriateness of bargaining units and majority representative status shall be resolved by the state board of mediation."

On November, 29, 1977, a hearing was conducted by the Chairman of the Board in the County Court Chambers, Lincoln County Courthouse, Troy, Missouri. Both

Petitioner and Respondent were represented by counsel. The following evidence was adduced and made a part of the record:

The Highway Department of Lincoln County has the responsibility of maintaining approximately five hundred and eighty-five (585) miles of roadway and in pursuit of this task employs approximately twenty-four (24) individuals who occupy the positions of foreman, assistant foreman, mechanic, bulldozer operator, grader operator, stock pile operator, truck driver, and single hand.

Eight (8) of the twenty-four (24) employees are employed by the County under the Comprehensive Employee Training Act (CETA) and are excluded by agreement of the parties from an appropriate unit.

A description of the positions in dispute is set forth in separate paragraphs.

Foreman

The foreman is responsible for the day to day operation of the Highway Department and reports directly to the County Court. He directs the employees within the department and has the authority to hire and fire; however, most of the hiring is actually performed by the County Court.

Assistant Foreman

The assistant foreman reports directly to the foreman and is primarily responsible for directing the activities of five employees in the quarry. He also has the authority to recommend disciplinary action. When the assistant foreman is not working in the quarry, (less than fifty percent of the time) he works in the shop as a mechanic.

Mechanic

The mechanic is responsible for the maintenance of the equipment of the Highway Department. He establishes his own daily routine. He works alone, except during periods of inclement weather, when he is aided by the assistant foreman.

The Board was not presented any evidence concerning the duties of the positions of bulldozer operator, grader operator, stock pile operator, truck driver, and single hand. The job titles bespeak the duties involved and it is presumed that these classifications do not possess supervisory characteristics.

CONCLUSIONS OF LAW

"Appropriate unit" is defined in Section 105.500 (1) RSMo., 1969 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;"

It is the position of this Board that supervisors cannot be included in the same bargaining unit as the employees whom they supervise because of a lack of community of interest. Therefore, it is necessary to make a determination as to the positions which possess supervisory qualities. In the cases of Western Missouri Public Employees, Local 1812 and Missouri State Council 72 AFSCME vs. Jackson County, Missouri (Department of Corrections), Public Case No. 90, and St. Louis, Fire Fighters Association, Local 73, IAFF, AFL-CIO vs. City of St. Louis, Missouri, Public Case No. 76-013, this Board set forth the factors which are considered in determining whether an employee is a supervisor. They are as follows:

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.
3. The number of employees supervised and the number of other persons exercising greater, similar or lesser authority over the same employees.
4. The level of pay, including an evaluation of whether the supervisor is paid for his skill or for his supervision of employees.
5. Whether the supervisor is primarily supervising an activity or is primarily supervising employees.

6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees.
7. The amount of independent judgment and discretion exercised in the supervision of employees.

Foreman

It is not necessary to reiterate the responsibilities of the foreman in determining whether this position should be considered supervisory; the competent and substantial evidence upon the whole record clearly indicates that all of the aforementioned factors are applicable to the position of foreman. It is therefore the opinion of this Board that the position of foreman is supervisory and should consequently be excluded from an appropriate unit.

Assistant Foreman

The assistant foreman when working at the quarry possesses supervisory qualities in that he has the authority to effectively recommend discipline and to direct the work force. However, the evidence further shows the assistant foreman directs a small work force of 4 or 5 employees and this responsibility comprises only fifty (50) percent of his time; during inclement weather the assistant foreman works in the shop as a mechanic. Upon review of the entire record, it is the finding of this Board that the assistant foreman shares a clear and identifiable community of interest with the other employees concerned, and therefore should be included in an appropriate unit.

Mechanic

Upon review of the evidence it is the finding of the Board that the mechanic shares a clear and identifiable interest with the other employees and therefore should be included in an appropriate unit.

The positions of bulldozer operator, grader operator, stock pile operator, truck driver, and single hand share a clear and identifiable community of interest and are included in an appropriate unit.

DECISION

Upon a careful review of the entire record by a quorum of the Board it is the decision of the Board that the following unit be deemed appropriate:

All employees of the Lincoln County Highway Department including the positions of bulldozer operator, grader operator, stock pile operator, truck driver, single hand, mechanic and assistant foreman, but excluding the foreman, office clerical, and all CETA employees.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Chairman of the State Board of Mediation among the employees in the unit found appropriate, as early as possible, but not later than forty-five (45) days from the date 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. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during the period, because they were out ill or on vacation. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date. Those eligible shall vote whether (or not) they desire to be represented for the purpose of exclusive recognition by Institutional & Public Employees Union, Local 410, American Federation of State, County & Municipal Employees, AFL-CIO.

It is hereby ordered that the Respondent shall submit to the Chairman of the State Board of Mediation, as well as to the petitioner, within seven (7) days from the date of receipt of this decision, an alphabetical list of the employees in the unit

determined above to be appropriate who were employed during the designated payroll period.

Dated this 6th day of November, 1978.

MISSOURI STATE BOARD OF MEDIATION

(SEAL)

/s/ Michael Horn
Michael C. Horn, Chairman

/s/ Harry Scott
Harry Scott, Employer Member

/s/ Richard Mantia
Richard Mantia, Labor Member