

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

TEAMSTERS LOCAL 610, MISCELLANEOUS)	
DRIVERS, HELPERS & PUBLIC EMPLOYEES)	
UNION)	
)	
Petitioner,)	
)	
vs.)	Public Case No. 81-007
)	
AFFTON FIRE PROTECTION DISTRICT)	
AFFTON, MISSOURI)	
)	
Respondent.)	

JURISDICTIONAL STATEMENT

This case appears before the State Board of Mediation upon the Teamsters Local 610, Miscellaneous Drivers, Helpers and Public Employees Union filing a petition for certification as public employee representative of all firefighters (excluding the fire chief and assistant fire chief) employed by the Affton Fire Protection District of St. Louis County, Missouri (employer). The employer contends that those employees with the rank of captain are supervisors and therefore should be excluded from the appropriate bargaining unit. Local 610 asserts that the captains are not true supervisors and thus should be included in the unit. On July 7, 1981 a hearing was held in Clayton, Missouri at which representatives of Local 610 and the employer were present. The case was heard by State Board of Mediation Chairman Mary Gant, employer member Herbert Shaw and employee member Robert Missey. The State Board of Mediation is authorized to hear and decide issues concerning appropriate bargaining unit determinations by virtue of Section 105.525 RSMo 1979.

At the hearing the parties were given full opportunity to present evidence. The Board, after a careful review of the evidence, sets forth the following findings of fact and conclusions of law:

FINDINGS OF FACT

The Affton Fire Protection District serves roughly a six-square mile area located in St. Louis County, Missouri. The district employs approximately thirty-one persons, consisting of a fire chief, an assistant fire chief, six captains, and twenty-three firefighters. The district operates from two separate engine houses. Both engine houses are staffed 24 hours a day, there normally being six persons assigned to engine house number one (1 captain and 5 firefighters) and three persons assigned to engine house number two (1 captain and 2 firefighters). The captains and firefighters work rotating 24-hour shifts during which they reside at the engine house. The fire chief and assistant fire chief work 8-hour shifts, 40 hours per week, and are headquartered at engine house number two. At all times either the chief or the assistant chief is on call as duty officer. District regulations require that at least one captain be on duty at one of the engine houses during each shift.

The captains are responsible for seeing that the crew and equipment are ready to respond to a fire. Upon arriving at a fire scene the captain is in command of his crew. The captain determines what needs to be done to suppress the fire, instructing the men as to the equipment needed, materials to be used, and where to lay the fire hose. If the fire occurs during the day, the chief or assistant chief will respond to the call. Depending on the severity of the fire, the chief or assistant chief will usually respond to the fire scene even if at home. The chief or assistant chief will usually respond to the fire scene even if at home. The chief or assistant chief does not automatically relieve the captain of his command upon arrival, but does so if necessary.

The captains play no role in the hiring, promotion, or discharge of employees. The fire chief expressed a desire to establish a review board which would include

captains that would make recommendations as to the hiring and promotion of employees. However, no such review board presently exists. The captains are involved in the granting of firefighter's request for compensatory time off. The captain's role consists of maintaining records to ensure that staff levels are maintained. If the district is properly staffed on a given day the captain approves the firefighters request which is then submitted to the chief or assistant chief no later than five days prior to the date of the desired day off. If the crew is adequately staffed, the requests are routinely approved.

The captains exercise limited authority to discipline other employees. The district's published Rules and Regulations, first promulgated in 1965, but which fell into disuse for a period of time, have recently been distributed to all employees. The Rules and Regulations provide that a captain may suspend a firefighter for up to three days for a major rule infraction. Neither the testimony given nor the regulations themselves indicate whether a captain must receive approval of a superior officer before a suspension is imposed. Also absent from the record is any evidence that a captain has ever disciplined another employee. To the contrary, Captain Veninga, a captain since 1976, testified that he had never disciplined a subordinate employee. Although the captains are authorized to send home employees unfit for duty, there is no evidence of a captain ever exercising that authority.

The chief and assistant chief assign the captains and firefighters to their respective shifts. The three captains assigned to each engine house establish a schedule as to which persons are responsible for the day to day maintenance and cleaning duties. In the past year, a captain recommended that an employee be transferred to another shift due to a personality conflict and the recommendation was accepted by the chief. In another instance, a reassignment of personnel proposed by the chief was not implemented after the captains recommended against it. The record indicates that once a recommendation concerning a transfer is made, the chief or

assistant chief will make an independent evaluation of the problem before accepting the recommendation.

In January, 1981 each captain was assigned additional duties for which they are responsible. Captain Miller is responsible for the inspection of commercial buildings throughout the district to ensure compliance with the district's fire safety code. The district was divided into six sections by Captain Miller, with each captain being responsible for a certain section. Captain Miller is also responsible for the building maintenance of engine house number two. Captain Kirchhoffer is responsible for the maintenance of vehicles and equipment used in firefighting, establishing a periodic inspection schedule to ensure proper vehicle maintenance. Captain Kirchhofer has the authority to recommend the purchase or repair of equipment.

Captain Petrovic is responsible for the overall maintenance of engine house number one. Petrovic serves as a liaison between the personnel assigned to engine house number one the chief concerning the acquisition of non-routine items. That is, should a non-routine item be needed, a crew member or another captain assigned to engine house number one will channel the request through Captain Petrovic. Captain Petrovic also aids Captain Hackett in maintaining a response card system and maps of the district which aid in responding to alarms. Captains Buehne and Veninga along with the assistant chief, establish training schedules for other employees and instruct other employees as needed.

The annual base salary of the department personnel is as follows: fire chief - \$24,000; assistant fire chief - \$22,500; captain - \$20,320; lieutenant medical officer - \$19,500; firefighter-paramedic - \$19,300; firefighter - \$18,300.

CONCLUSIONS OF LAW

Local 610 has petitioned to be certified as public employee representative of a bargaining unit comprised of captains and firefighters employed by the Affton Fire Protection District. Local 610 argues that the captains and firefighters share a

community of interest and should be included in the appropriate bargaining unit. The employer contends the captains are supervisory employees acting directly or indirectly in the interest of the employer.

The State Board of Mediation recognizes that certain employees possess sufficient supervisory status to warrant their exclusion from a bargaining unit of other employees. In St. Charles Professional Firefighters Local 1921 v. City of St. Charles, Public Case No. 79-024; and IBEW Local 1439 AFL-CIO v. City of Piedmont, Public Case No. 79-044; among other cases, this Board has articulated factors to consider in determining the supervisory status of employees. The effort is to determine whether a particular employee is a true "supervisor", whose duties involve acting directly or indirectly in the interest of the employer in relation to other employees or whether the employee is merely a working foreman whose responsibilities would not justify exclusion from an appropriate bargaining unit. The factors to be considered in reaching this determination include (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 or discretion involved in such decisions; (3) the number of employees supervised and the number of other persons exercising greater, similar or lesser authority with respect to the same employees; (4) the level of pay, including an evaluation of whether a person is paid for their skill or for their supervision of other employees; (5) whether a person primarily supervises an activity or primarily supervises other employees; (6) whether a person is a working supervisor or whether he or she spends a substantial majority of work time overseeing others.

An application of the factors set out above to the facts of this case indicates that the captains are not true supervisors. The captains play no role in the hiring, promotion, or discharge of other district employees. Although the fire chief indicated that the captains may in the future be included in a review board which would make

recommendations concerning hiring and promotion, such speculative authority is insufficient to ascribe supervisory status to the captains. As for the captain's authority to transfer other employees, the record shows that on one occasion a captain successfully recommended that a firefighter be transferred to another shift due to a personality conflict. On another occasion the captains effectively recommended against a proposed transfer of district personnel. However, due to the infrequency of such occurrences, the Board must conclude that captains do not have the authority to effectively recommend the transfer of employees to the extent necessary to be considered true supervisors.

The district's published Rules and Regulations authorizes a captain to suspend a firefighter for major rule infractions. However, the record indicates that this authority has never been exercised. Further, there is no evidence that captains have ever disciplined another employee in any manner. Accordingly, the captains cannot be considered supervisors in this respect.

District personnel are assigned to shifts by the chief or assistant chief. Although the assignment of specific chores to be performed at the engine house are made by the captains, such assignments must be considered routine in nature. The captains do have authority to direct and assign the work force while fighting fires. The decisions made by the captains in directing the firefighters are tactical in nature and are not managerial decisions made in behalf of the employer. Therefore, the Board must conclude that the captain's authority to direct other employees at the fire scene does not require sufficient use of independent judgment in the interest of the employer to ascribe supervisory status to the captains.

It is clear that any supervisory authority possessed by the captains involves more the supervision of activity (e.g. fire fighting, house maintenance, training, etc.) rather than the supervision of other employees on behalf of the employer. Further, the Board is not convinced the higher rate of pay received by the captains is a result of an alleged

supervisory status. Instead, the higher salary appears more to be compensation for extra administrative duties assigned the captains.

In view of the above considerations, the Board concludes that the authority possessed by the captains of the Affton Fire Protection District is closer akin to that of a leadsmen rather than that of a true supervisor. Accordingly, the captains shall be included in the appropriate bargaining unit.

DECISION

It is the decision of the State Board of Mediation that an appropriate unit of employees is as follows:

All employees of the Affton Fire Protection District, excluding the fire chief, assistant fire chief and clerk-typist.

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 sixty (60) 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 that 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 date. Those eligible to vote shall vote whether they desire to be represented for the purpose of exclusive recognition by Petitioner, Local 610.

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 fourteen (14) days from the date of receipt of this decision, an alphabetical list of names and addresses of

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

Signed this 28th day of October, 1981.

MISSOURI STATE BOARD OF MEDIATION

(SEAL)

/s/ Mary L. Gant
Mary L. Gant, Chairman

/s/ Herbert Shaw
Herbert Shaw, Employer Member

/s/ Joseph Cointin
Joseph Cointin, Employee Member