

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

SERVICE EMPLOYEES INTERNATIONAL)		
UNION, LOCAL NO. 96))	
)	
Petitioner,))	
)	
vs.))	Public Case No. 84-102
)	
CITY OF RAYTOWN))	
)	
Respondent.))	

JURISDICTIONAL STATEMENT

The case appears before the State Board of Mediation upon the Service Employees International Union, Local No. 96 (hereinafter Petitioner) filing a petition for certification as public employee representative of certain employees of the City of Raytown (hereinafter Respondent).

A hearing was conducted by the State Board of Mediation in Kansas City, Missouri on November 30, 1983 at which representatives of the Petitioner and Respondent were present. This case was heard by the State Board of Mediation's Chairman Mary Gant, Employer Member Norman Litz, and Employee Member Charles Yaeger. The State Board of Mediation is authorized to hear and decide issues concerning appropriate bargaining unit determination by Section 105.525 RSMo 1978.

At the Hearing the parties were given full opportunity to present evidence. The Board, after careful review of the evidence, sets forth the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

The City of Raytown municipal government is composed of the Mayor's Office, Board of Aldermen, City Clerk's Office, City Collector's Office, Municipal Court, Legal Department, Health Department and Parks and Recreation Department.

The City's physical facilities consist of City Hall which houses: the Mayor's Office, Board of Aldermen, City Clerk's Office, City Collector's Office, Municipal Court, Legal Department Office, City Marshal's Department, some offices of the Public Works Department, and offices of the Health Department. In addition to City Hall, the City maintains separate facilities for the remainder of the Public Works Department and the Department of Parks and Recreation. Both of these separate facilities are within approximately three quarters of a mile of City Hall.

The City Clerk's Office is responsible for a wide variety of clerical functions. These functions include budgeting and accounting, maintaining personnel records, handling insurance claims, check writing services, data processing, acting as a general information facility and a number of related activities. The City Clerk's office employs workers in the positions of code enforcement officer, receptionist, collection clerk, accounting clerk, bookkeeper and executive assistant. All of these positions require general clerical skills. This department is supervised by the City Clerk and the Executive Assistant.

The City Collector's Office consists of the collection clerk, the accounting clerk and the administrative assistant. These individuals collect taxes, fees and fines; maintain files, billings and reports; and perform various clerical duties as assigned. All work is clerical in nature and performed in the City Hall facility under the supervision of the City Collector.

The Municipal Court Office consists of the Municipal Judge, the chief court clerk, the collection clerk, and a bailiff. The Municipal Judge hears all city ordinance violations. His clerical staff maintains appropriate records of the proceedings and performs other necessary clerical functions. The bailiff is employed on a part-time basis with regularly scheduled hours. This office is supervised by the Municipal Judge.

The Legal Department is charged with duties relating to city legal affairs. The Department maintains a staff of four attorneys and a clerk/typist. The clerk/typist performs general clerical work and is supervised by the city attorneys.

The City Marshal's Department provides law enforcement services for the City of Raytown. This Department is composed of armed, uniformed commissioned police officers and unarmed non-commissioned support personnel. Included in the latter classifications are the following positions: records and detention clerk, communications technician, school crossing guard, administrative assistant and secretary. The records detention clerk has duties which include typing, police report processing and filing, finger printing, and supervising prisoners. The position of communications technician involves duties such as telephone work, dispatch of emergency vehicles, computer operation and records maintenance. The records and detention clerk and the communications technician are supervised by the Chief of Police through the chain of command. The school crossing officer position is regularly scheduled part-time job during the school year. The officer is responsible for conducting children safely across the street. The school crossing officer reports to the support division commander. The Administrative Assistant and the secretary perform clerical duties and report directly to the Chief of Police.

The Health Department is responsible for animal control, emergency medical service, health sanitation inspections and transportation of handicapped and elderly citizens. The Health Department consists of the general health officer, the chauffeur, paramedics and a secretary. The general health officer's duties include animal control, weed and health inspection and other related duties. The chauffeur drives a 15 passenger car and a 44 passenger school bus. This job requires a Missouri Chauffeur License and the ability to perform simple vehicle maintenance. The secretary in the Health Department performs general clerical duties. All employees in the Department of Health are supervised by the Director of Health.

All employees in the City Clerk's Office, City Collector's Office, Municipal Court Office, Legal Department, City Marshal's Department, and the Health Department work in City Hall. There is a modest amount of interchange and frequent contact between these employees due to the fact that they work in the same building. In addition, all of these employees share the same personnel policies, grievance procedures, vacation benefits, retirement benefits, overtime rules, health and welfare benefits and merit pay system.

The Public Works Department performs services relating to the maintenance of streets, street lights, sidewalks, storm sewers, sanitary sewers and general janitorial work. The Department is divided into five (5) divisions, each having a supervisor who reports to the Director of Public Works. The Administrative Assistant's Division has an office in City Hall. The Administrative Assistant supervises the clerk/typist and the City Hall custodians. The clerk/typist performs general clerical duties. Custodians, two full-time and one regularly scheduled part-time, are assigned duties relating to maintenance of City Hall.

A second division of the Public Works Department is supervised by the project engineer. This division is charged with duties relating to the design of capital improvements within the City of Raytown. The project engineer is assisted in this task by the engineering aide, a position which involves engineering drafting and calculation, field inspections and other technical duties.

The third division is engineering. The assistant city engineer performs tasks of energy management, traffic engineering, bridge inspection and subdivision planning.

A fourth division is concerned with administration of building codes and is supervised by the Assistant Director. The division employs a full-time building inspector whose duties include enforcing compliance with building codes by reviewing building plans, issuing permits, investigating complaints and inspecting construction.

The fifth division of the Department of Public Works is supervised by the Public Works Superintendent. The superintendent is the supervisor for four crews of workmen. Two Crews are assigned to work on sanitary sewers and two crews have duties pertaining to street and storm sewer repairs. Each crew is composed of a foreman, a senior equipment operator, an equipment operator and one or more laborers.

Foremen and their crews are assigned work by the Superintendent. Once assigned, the foreman may direct individual tasks to crew members. The position of foreman consists of 95% labor and 5% supervision of activity.

The rest of the work crew consists of senior equipment operators, equipment operators, and laborers. These jobs require the performance of manual labor in the maintenance of streets, sidewalks, storm sewers, and sanitary sewers. The subdivisions of street and sanitary sewer crews operate out of different facilities but maintain a high degree of contact due to the fact that their buildings are in close proximity to one another. There is no work interchange between the two subdivisions because the labor is specialized. These two sub-divisions of laborers are funded from different sources of revenue, but share the same benefit program and operate under the same grievance procedures, overtime payment rules and merit pay scale. The Department of Public Works hires several regularly scheduled part-time laborers whose jobs are the same as the full-time workers. They do not receive the same benefits that full-time employees do.

The department is comprised of the Director of Parks and Recreation, the Superintendent of Parks, the Supervisor of Recreation Programs, the Horticulturist, Maintenance I, II, and III employees and two part-time clerical employees entitled administrative secretary and receptionist/secretary. The department also employs a significant number of seasonal workers. The Department of Parks and Recreation operates on an autonomous basis in contrast to the other city departments. This department is organized under the direction of a nine member Park Board whose

members are appointed by the Mayor. The Park Board's function is to set policy applicable to the seven city parks. The Department of Parks and Recreation does not receive funding from general city revenues but is financed by a portion of the sales tax. Operating autonomously, this Department has developed a separate and distinct system for handling matter relating to personnel and records, budget, pension, accounting, payroll and supplies. Unlike other city employees, regular Parks and Recreation Department employees were given a choice as to whether they would participate in the city pension program or elect to have their own.

The Director of Parks and Recreation, the Superintendent of Parks an Supervisor of Recreation Programs perform supervisory duties. The Horticulturist is charged with technical duties relating to the cultivation of park plant life. The Maintenance I, II, and III employees perform skilled, semi-skilled and unskilled labor in connection with maintenance, construction, and development of park facilities. These employees have a separate work facility and do not interchange or have contact with other city employees. The administrative secretary and the receptionist/secretary perform general clerical work on a regularly scheduled part-time basis. Seasonal employees are utilized in specific recreational activities for positions which involve duties such as scorekeeping and skill instruction. Seasonal employees are employed for twelve (12) week periods during the year and often return on an annual basis. Seasonal employees are paid on an hourly wage and receive no benefits.

CONCLUSIONS OF LAW

Service Employees International Union, Local No. 96, has petitioned for certification as the public employee representative of certain employees of the City of Raytown, Missouri. The petitioner proposes a bargaining unit consisting of all full-time service and maintenance employees within the Department of Health, Public Works, and Parks and Recreation; excluding all clerical, professional, technical, confidential and supervisory employees. The respondent contends that the bargaining unit should

include all full-time, all regularly scheduled part-time, and all returning seasonal employees of the Departments of City Clerk, City Collector, Municipal Court, Legal, City Marshal, Public Works, Health, and Parks and Recreation. The respondent would exclude all professional, technical, confidential and supervisory employees, and all commissioned police officers. Both parties are in agreement that paramedics employed within the City Health Department should be excluded from the bargaining unit.

Section 105.525, RSMo 1978, states in part that "issues with respect to the appropriateness of bargaining units and majority representative status shall be resolved by the State Board of Mediation." The term "appropriate unit" is defined in Section 105.500(1), RSMo 1978, 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.

In Service Employees Local No. 96 v. City of Blue Springs, Public Case No. 79-031 (SBM 1980), the Board stated the following with regard to this definition: Although Missouri's statutory law does not provide further guidelines for determining what constitutes a "clear and identifiable community of interest," the Board has consistently looked to a number of factors in determining whether employees have such a community of interest. Such factors . . . include the amount of contact and interchange among the employees concerned, similarities in pay, fringe benefits and type of work, and whether or not there is common supervision.

CLERICAL EMPLOYEES

The Board consistently held that clerical employees do not share a community of interest with service and maintenance employees because of the differences in the type of work performed. Service Employees International Union, Local 96, supra. From the evidence presented in this case, it is obvious that the city clerical employees possess skills and duties different from those possessed by service and maintenance employees. Also, these two groups of employees lack any common supervision, possess different salary and fringe benefit schedules, and have no significant

interchange or contact relative to their respective job duties. Therefore, the clerical employees in the City Clerk's Office, the City Collector's Office, the Municipal Court Office, Legal Department, City Marshal's Department, Public Works Department, Health Department, and the Department of Parks and Recreation, are excluded from the bargaining unit.

PARKS AND RECREATION EMPLOYEES

It is the conclusion of the Board that seasonal employees of the Department of Parks and Recreation should be excluded from the bargaining unit due to their lack of clear and identifiable community of interest with other employees of the City. Evidence presented before the Board relative to these positions showed that seasonal employees of the Parks and Recreation Department do not possess similarity in wages, fringe benefits or other conditions of their employment with other employees of the Department. Also, they lack common supervision, they do not have frequent interchange or significant contact with other city employees in the course of their job duties, and in fact they perform their job duties at a separate facility. Additionally, the activities of these employees are financed through a separate budget, and their job skills and duties differ substantially from those of the other service-maintenance employees of the City.

The Board also concludes that the Maintenance I, II and III employees of the Parks and Recreation Department should also be excluded from the bargaining unit. Although the work performed by these employees is similar in nature to work performed by service-maintenance employees of the Public Works Department, the dissimilarity in supervision and personnel policy, and the lack of significant contact and interchange between these employees and employees of the Public Works Department warrants their exclusion from the bargaining unit.

PUBLIC WORKS DEPARTMENT EMPLOYEES

At issue in the Public Works Department of the City is the supervisory status of the foremen of the four work crews in the division of the Department reporting to the Public Works Superintendent.

It is well settled that supervisory employees cannot be included in the same bargaining unit with those employees whom they supervise. Golden Valley Memorial Hospital v. Missouri State Board of Mediation, 559 S.W.2d 581 (Mo. App., K.C.D. 1977). In determining the supervisory status of employees within bargaining units, the Board has consistently examined the following seven factors. They are:

- (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 employee is primarily supervising an activity or is supervising employees;
- (6) Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees; and
- (7) The amount of independent discretion and judgment exercised in the supervision of employees.

St. Louis Firefighters Association, Local 72, IAFF v. City of St. Louis, Public Case No. 76-013 (SBM 1976); Teamsters, Local 610 v. Affton Fire Protection District, Public Case No. 81-007 (SBM 1981).

In this case, the four foremen at issue report to the Public Works Superintendent, who in turn reports to the Director of the Public Works Department. Each of the foremen works with a crew between four and six employees. While the evidence

indicated that these foremen are paid a higher hourly wage rate than the other personnel in their crew, the fringe benefits of the foremen are in all other respects the same as the other members of the work crew. The evidence shows that these foremen have little significant authority to effectively recommend hiring, promotion, transfer, discipline or discharge of any of the employees of their work crews. The foremen also in fact have exercised little independent judgment and discretion in the performance of their daily duties, and spend a very limited amount of time involved in the supervision of the other personnel in their crews. Foremen perform the same work as the other members of the crew and are engaged to the extent they are performing supervisory duties, primarily in the supervision of the particular work activity. The function of these foremen is analogous to that of lead-men, or working supervisors. Under these facts, the Board concludes that the foremen of the work crews should be included within the bargaining unit.

The Board also concludes that the regularly scheduled part-time employees in the Department of Public Works should also be included in the proposed bargaining unit. Regularly scheduled part-time and full-time employees both perform similar job functions and share common terms and conditions of employment. The degree of contact and interchange between these employees is very high, and the wage rates and fringe benefits of the positions are similar. Under these facts, inclusion of these employees within the unit is proper.

OTHER EMPLOYEES

The City of Raytown employs several other workers in the positions of chauffeur, bailiff, records and detention clerk, communications technician, school crossing guard, general health officer, engineering aide, building inspector and city hall custodian.

The position of city hall custodian is supervised by the Administrative Assistant of the Department of Public Works. The custodians' duties concern the maintenance of the city hall. The custodians perform manual labor and share a common personnel policy and wage and benefits package with other employees in the Department of Public Works. From this evidence, the Board concludes that the city hall custodians should be included within the bargaining unit.

The remainder of the city employees, i.e. the bailiff, the records and detention clerk, the communications technician, the school crossing guard, the general health officer, the engineering aide and the building inspector, have no community of interest with service/maintenance employees. The communications technician and the engineering aide have jobs requiring a certain amount of technical expertise and do not involve manual labor. The positions of records and detention clerk, school crossing guard, chauffeur, general health officer and bailiff do not share common supervision, engage in similar work, or possess similar qualifications, skills or training with the service/maintenance employees in the unit. The Board therefore concludes that these employees should be excluded from the bargaining unit.

DECISION

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

"All full-time and regularly scheduled part-time service/maintenance employees of the City of Raytown in the Department of Public Works including foreman; excluding all clericals, professionals, technicals, confidential employees, and supervisors."

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 thirty (30) 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 or not they desire to be represented for the purpose of exclusive recognition by Petitioner, Service Employees International Union, Local No. 96.

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 the names and addresses of employees in the unit determined above to be appropriate who were employed during the payroll period immediately preceding the date of this decision.

Signed this 26th day of April, 1984

STATE BOARD OF MEDIATION

(SEAL)

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

/s/ Norman Litz
Norman Litz, Employer Member

/s/ C. J. Yaeger 4-18-84
Charles Yaeger, Employee Member