

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

TEAMSTERS, LOCAL NO. 682)	
)	
Petitioner,)	
)	
v.)	Public Case No. R 94-003
)	
ST. CHARLES COUNTY HIGHWAY)	
DEPARTMENT,)	
)	
Respondent.)	

JURISDICTIONAL STATEMENT

This case appears before the State Board of Mediation upon the filing by Teamsters, Local 682 of a petition for certification as the exclusive bargaining representative for certain employees of the St. Charles County Highway Department. A hearing in the matter was held on November 22, 1993 in St. Charles, Missouri, at which representatives of the Union and the County were present. This case was heard by State Board of Mediation Chairman Francis Brady, employer member Pamela S. Wright, and employee member Joel Rosenblit. At the hearing, the parties were given full opportunity to present evidence. They did not file briefs. After a careful review of the evidence, the Board sets forth the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

As part of its governmental functions, St. Charles County operates a highway department. That department is headed by County Engineer Joseph Nichols. His immediate subordinate is Rich Pieper, the Superintendent of Highways. The Department has established four highway sheds along geographic lines. They are known as the Eastern Shed, the New Melle Shed, the Western Shed and the Central Shed. Pieper is responsible for all four sheds. A foreman is responsible for the day to

day operations of each shed. In two of the sheds there is an assistant foreman. Each shed has mechanics which report to the assistant foreman or, where there is none, to the foreman. Alongside the mechanics in the Department's organizational structure are the leadsman operators. Underneath the leadsman operators are the truck driver laborers and operators.

At issue here is whether the six leadsman operators are supervisors.

Roger Jones is the leadsman operator at the Eastern shed where he oversees seven laborers and operators. The leadsman operator position at the New Melle Shed was vacant as of the time of the hearing. That position, when filled, oversees six laborers and operators. There are three leadsman operators at the Western Shed: S. Cary, J. Hoeckelman, and R. Snarr. Together, they oversee the 15 laborers and operators at that shed. R. Salabak is the leadsman operator at the Central Shed where he oversees nine laborers and operators.

The foremen determine what work projects are done. During the work day, they travel from job site to job site, usually visiting three to five per day. They are generally present at a given job site about 25% of the time. When present at the job site, they are in charge. Foremen oftentimes visit smaller job sites where a leadsman operator or an assistant foreman is not present.

The operators and laborers operate the heavy equipment used to construct and maintain county streets, roads and bridges. Specifically, they operate one or more of the following pieces of equipment: asphalt rollers, pavers, backhoes, graders, loaders, excavators, tractors, sweepers, mowers, post hole diggers and pick-up trucks. They spend all their time doing so. The leadsman operators operate the same equipment when additional operators are needed. There are times when a leadsman operator operates equipment most of the day.

The leadsman operators also have other job responsibilities in addition to operating equipment. First, at the beginning of each day they are given instructions by

the foreman or assistant foreman regarding the day's projects. At that time the leadsman operators and the foreman or assistant foreman determine the number of truck drivers and/or operators that are needed on each crew for the various projects. The leadsman operators then assign this work to the laborers and operators which they oversee. Second, after the work is assigned, the leadsman operators go to the work site and oversee the work performed by the laborers and operators to ensure it is performed correctly. They do this by staying at the job site until the job is finished. They check the work of the laborers and operators as it is performed. The leadsman operators are responsible for making sure the job is completed on time, per specifications, and done as safely as possible. The leadsman operators are oftentimes at the biggest job sites. If neither the foreman nor an assistant foreman is present at the job site, then the leadsman operator is in charge of the work site. Third, the leadsman operators at the Eastern and New Melle Sheds oversee the night crew during snow removal operations. Fourth, the leadsman operators monitor the performance of outside contractors to ensure that they perform work according to specifications. Fifth, the leadsman operators train new employees on the operation of heavy equipment. Finally, the leadsman operators order supplies and materials for job sites as needed.

In the event a laborer or operator wants time off from work or is going to be absent, they will notify their foreman first--not the leadsman operator. Such requests are then submitted to Nichols for approval.

The County does not formally evaluate employees. Consequently, the leadsman operators do not formally evaluate the performance of the laborers and operators they work with. Informally though, the laborers and operators have been evaluated by Nichols, Pieper and the foremen.

All promotions are handled by Nichols. As a result, the leadsman operators have not promoted anyone. With regard to layoffs, no one in the Department has ever been laid off.

With regard to discipline, all written warnings, suspensions and discharges are handled by Nichols. As a result, the leadsman operators are not authorized to issue same to laborers and operators and have not done so. Nichols testified that leadsman operators are empowered to prevent an intoxicated employee from working. However, insofar as the record shows, this has never occurred. The leadsman operators have given verbal warnings to laborers and operators. These verbal warnings usually consist of pointing out mistakes that have occurred and admonishments to correct certain behavior. If these verbal warnings are not successful in altering the conduct, the leadsman operators relay this information to their foreman who passes it to Pieper who in turn, passes it to Nichols. Nichols then independently reviews the situation and decides if discipline is warranted. If Nichols decides discipline is warranted, he imposes it; not the leadsman operator. The record indicates that leadsman operator Roger Jones once recommended to Pieper that disciplinary action be taken against a truck driver for driving too fast. The employee was subsequently discharged, but Jones did not make the decision to discharge--Nichols did.

Laborers and operators are hired through the following process. When a position becomes available, the County's personnel office publicizes the opening and screens the applicants who apply. It then sends a list of qualified candidates to Nichols. Nichols, Pieper and the foremen then interview the candidates. The assistant foremen and leadsman operators do not participate in the interviews. Nichols ultimately decides who to hire. As a result, leadsman operators have not hired employees on their own volition. Nichols testified that leadsman operators can recommend the hiring of a particular person. However, the instant record does not contain any specific instances where a leadsman operator recommended the hiring of a particular person.

With regard to wages and benefits, laborers are paid at pay grade 13 of the employer's salary schedule, operators are paid at pay grade 14, leadsman operators are paid at pay grade 17 and the assistant foremen are paid at pay grade 20. All these pay

grades contain a range. The range for grade 13 is not in the record. The range for grade 14 is between \$19,600 and \$26,400 a year. The range for grade 17 is between \$22,700 and \$30,600 a year. The range for pay grade 20 is not in the record, but is about 15% higher than range 17. The pay received by the leadsman operators is not tied to the number of people in their crew. In theory, leadsman operators are paid \$3,000 more than laborers and operators. In practice though, some operators at the upper end of grade 14 are paid more than leadsman operators at the lower end of grade 17. The leadsman operators do not receive fringe benefits that are different from or in addition to those received by the laborers and operators.

CONCLUSIONS OF LAW

Teamsters, Local 682 petitioned to be certified as the exclusive bargaining representative of a bargaining unit comprised of all employees of the St. Charles County Highway Department, excluding office clerical employees, professional employees, guards and supervisors. At a prehearing conference the parties agreed that the following positions would be included in the proposed bargaining unit: truck driver laborer, supply truck driver, sign technician, mechanic, operator, mechanic operator and summer laborer. Forty five employees currently fill these positions. They also agreed that the following positions would be excluded from the proposed bargaining unit: County Engineer, Superintendent of Highways, foreman, assistant foreman, chief mechanic, engineering inspector, bridge engineer, plan review engineer, chief sign technician, clerk I, secretary V, account clerk V, executive assistant II and engineering analyst. Twenty five employees currently fill these positions.

An appropriate bargaining unit is defined by Section 105.500 (1) RSMo 1986 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 this case there is no dispute per se concerning the appropriateness of the proposed bargaining unit. The only dispute raised by the Employer with the composition

of the proposed bargaining unit concerns the inclusion of the leadsman operators which it asserts are supervisors. As a practical matter though, the Employer's question concerning the appropriateness of including the leadsman operators in the bargaining unit is subsumed into their other question concerning their possible supervisory status. That being so, our determination herein concerning whether the leadsman operators are supervisors will be dispositive of whether they are included in the bargaining unit. With this caveat, we therefore hold that the above-referenced unit is an appropriate bargaining unit within the meaning of the Missouri Public Sector Labor Law.

As just noted, at issue here is whether the six leadsman operators are supervisors. The Employer contends they qualify as supervisors while the Union disputes this assertion.

Although supervisors are not specifically excluded from the coverage of the Missouri Public Sector Labor Law, case law from this Board and the courts have carved out such an exclusion. See Golden Valley Memorial Hospital v. Missouri State Board of Mediation, 559 S.W.2d (Mo.App. 1977) and St. Louis Fire Fighters Association, Local 73 v. City of St. Louis, Missouri, Case No. 76-013 (SBM 1976). This exclusion means that supervisors cannot be included in the same bargaining unit as the employees they supervise. Since a dispute exists here as to whether the leadsman operators supervise the laborers and operators, it is necessary for us to determine if such is, in fact, the case.

In making this decision, this Board has historically considered the following factors:

- (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 actual 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 a skill or for supervision of employees.
- (5) Whether the supervisor is primarily supervising an activity or primarily supervising employees.
- (6) Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees.¹

We will apply them here as well. Not all of these criteria need to be present for a position to be found supervisory. Rather, in each case the inquiry is whether these criteria are present in sufficient combination and degree to warrant the conclusion that the position is supervisory.²

Applying these criteria to the leadsman operators at issue here, we conclude that on balance they do not meet this supervisory test. Our analysis follows.

To begin with, we find that the leadsman operators have no role whatsoever in most of the factors listed in factor (1) above. Specifically, they have not hired, fired, promoted, evaluated or transferred anyone; those responsibilities are all handled by Nichols. With regard to discipline, the record indicates that the only discipline leadsman operators have given are verbal warnings; anything more than that is handled by Nichols. This shows that leadsman operators play a very minor role in the disciplining of employees.

¹ See, for example, City of Sikeston, Case No. R 87-012 (SBM 1987).

² See, for example, Monroe County Nursing Home District, d/b/a Monroe Manor, Case No. R 91-016 (SBM 1991).

Attention is now turned to factor (2) above. There is no dispute that the leadsman operators assign work to the laborers and operators on a daily basis. In and of itself though, this factor is not sufficient to make them supervisors. In our view, the assignment of work here is a routine task that involves limited independent judgment. The leadsman operators do not determine what work is performed; the foreman does that. Thus, they are not empowered to change the jobs that have been selected by others.

Next, with regard to factor (3), the record indicates that the number of laborers and operators "supervised" on each crew varies depending on the size of the shed. The crews range in size from six to nine at the Eastern, New Melle and Central Sheds. While there are 15 employees on the crew at the Western Shed, there are three leadsman operators working out of that shed. In our view, none of these crew sizes are large enough to raise any "red-flags" concerning the number of employees overseen.

The evidence presented on the second part of the third factor, (i.e. the number of other persons exercising greater, similar or lesser authority with respect to the same employees) demonstrated that there are a number of layers of authority at the Highway Department that exercise greater authority over the laborers and operators than the leadsman operators do, namely the foremen and assistant foremen, Pieper, and Nichols. As a practical matter, the leadsman operators are at the bottom of the Employer's managerial hierarchy in terms of exercising authority over the laborers and operators.

With regard to the level of pay (factor 4), the evidence showed that while in theory leadsman operators are paid \$3,000 more than the laborers and operators, that is not always the case. Due to the way the pay grades are structured, some operators are paid more than leadsman operators.

Finally, with regard to factors (5) and (6), there is no question that the leadsman operators are in charge of their crew at the work site. They assign them work and check

it as it is being performed to ensure that they do it correctly. However, they also spend part of their time performing equipment operator work identical to that performed by the laborers and operators they work with. Thus, on occasion the leadsman operators work side by side with the laborers and operators doing the same hands-on work they perform, namely operating heavy equipment. We therefore hold that while the leadsman operators oversee the laborers and operators on their crew on a day-to-day basis, they are essentially leadworkers who do not possess sufficient supervisory authority in such combination and degree to make them supervisors.

DECISION

It is the decision of the State Board of Mediation that the leadsman operators at issue here are not supervisory employees. They are therefore included in the bargaining unit found appropriate. The appropriate unit language reads as follows:

For an appropriate unit consisting of all truck driver laborers, supply truck drivers, sign technicians, mechanics, operators, mechanic operator, summer laborers, and leadsman operators; excluding the County Engineer, Superintendent of Highways, foreman, assistant foreman, chief mechanic, engineering inspector, bridge engineer, plan review engineer, chief sign technician, clerk I, secretary V, account clerk V, executive assistant II and engineering analyst.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Chairman of the State Board of Mediation, or its designated representative, among the employees in the aforementioned bargaining unit, as early as possible, but not later than thirty 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 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. Those eligible to vote shall vote whether or not they desire to have Teamsters, Local 682 as their exclusive bargaining representative.

The Employer shall submit to the Chairman of the State Board of Mediation, as well as to the Union, within fourteen days from the date of receipt of this decision an alphabetical list of names and addresses of employees in the aforementioned bargaining unit who were employed during the payroll period immediately preceding the date of this decision.

Signed this 31st day of January, 1994.

STATE BOARD OF MEDIATION

(SEAL)

/s/ Francis Brady
Francis Brady, Chairman

/s/ Pamela S. Wright
Pamela S. Wright, Employer Member

/s/ Joel Rosenblit
Joel Rosenblit, Employee Member