

11-18-74

BEFORE THE PUBLIC EMPLOYEES RELATION
OF THE STATE OF KANSAS

In the Matter of Unit
Determination of Certain
Employees in the Topeka
City Water Department.

Case #UDC 11-74
#UDC 12-74

FINDINGS OF FACT AND CONCLUSIONS OF LAW
ORDER

Now on the 6th day of November, 1974, the above captioned matter came on for hearing before Donald E. Hoffman, duly appointed hearing examiner for the Board. (K.S.A. Supp. 75-4323c)

The representatives for the parties are, Mr. Terry Watson, attorney at law, appearing on behalf of Local 1593 Kansas Public Employees Union Counsel, AFSCME, AFL-CIO. Also there is Dan Turner, attorney at law, city attorney for the City of Topeka.

The parties stipulate as to any defects in the notice provided. Cases UDC 11-74, Distribution and Production Division, and UDC 12-74, Office Division, have been consolidated for hearing. Both petitions for determination of units were filed September 19, 1974.

As to case UDC 11-74, the unit as petitioned has been recommended by both parties [75-4327(e)7] with the exception that the general foreman should be deleted from the unit. (see attachment "A" of petition)

As to case UDC 12-74, the unit as petitioned has been recommended by both parties [75-4327(e)7] with the exception that the billing supervisor should be deleted from the unit. (see attachment "A" of petition) The parties have failed to reach agreement on only one position in question, whether the "radio dispatcher" as proposed by local 1593 (see attachment "A")

75-UDC-11.12-1974
UDC-11-1974
UDC-12-1974

X

should be retained in the appropriate unit. (UDC 12-74)

Accordingly, to all positions recommended for inclusion or exclusion by the parties, the Board concurs. The record discloses nothing indicating that full consideration to the provisions of K.S.A. Supp. 75-4327(e) has not been given. Thus Case UCD-11-74 is disposed of.

The sole remaining question centers on the propriety of retaining the position of "Radio dispatcher" within the unit proposed by Local 1593 in case UDC-12-74-Office Div.

The question is whether the "Radio dispatcher" is a supervisor as defined at K.S.A. Supp. 75-4322(b) and thus excluded from the unit.

K.S.A. 75-4322(b) provides:

"(b) 'Supervisory employee' means any individual who normally performs different work from his subordinates, having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend a preponderance of such actions, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. A memorandum of agreement may provide for a definition of 'supervisory employees' as an alternative to the definition herein."

The testimony of Mr. Elmer E. McKinley the incumbent holder of the position is essentially undisputed, (See testimony pg. 6-13; 36-38 TN) and it in all material respects is adopted by the Board as its findings of fact.

Petitioners' exhibit #1 is a memorandum of the city's position relative to the "Radio dispatcher's" eligibility for overtime under federal standards. The memorandum, dated

June 14, 1974, indicates that the position was not considered exempt from overtime regulations at that time by the city. The Board takes notice of the rather wide-spread confusion created in the public sector by recent federal amendments regarding pay to public employees. The memorandum is thus not conclusive. Regulations of this nature are largely intended to remedy problems aside from those for which the Public Employer-Employee Relations Act was intended.

The Board finds that the position of "Radio dispatcher" is supervisory in nature and should be excluded from the unit (K.S.A. Supp. 75-4322(b)).

The units are ordered approved with the exceptions noted herein.

It is by the Board ORDERED

Date 11-18-74

[Signature]

Date 11-15-74

Walter J. Kelly

Date 11-17-74

[Signature]

Date _____

Date _____

11-6-74

IN AND BEFORE THE KANSAS PUBLIC EMPLOYEE RELATIONS BOARD

In the Interest of
Certain Public Employees
of the Distribution and Production
Division of the City of Topeka
Water Department

Case No. UDC11-1974

ORDER

Now on this 6th day of November, 1974, the above-captioned matter comes on for hearing before Examiner Donald R. Hoffman pursuant to waiver of notice and agreement of the parties.

Appearances are: Dan Turner, City Attorney for the City of Topeka Water Department; R. A. Caraway, International Representative, American Federation of State, County and Municipal Employees (AFSCME) AFL-CIO; Terry Watson, counsel for Local 1593, Kansas Public Employees Union, AFSCME, AFL-CIO.

Thereupon, the petitioner moved to amend its petition herein by deletion of the general foreman classification from the petitioner's alleged appropriate unit.

Thereupon, the employer amends its answer to include the job classifications of maintenance foreman and distribution service foreman in the appropriate unit herein.

Whereupon, PERB, by and through its Examiner, having reviewed the files herein, having heard statements of counsel, makes the following findings:

1. That the parties are in agreement as to the composition of the appropriate unit herein as follows:

X

Reservoir Operator I
Laboratory Technician
Maintenance Worker I
Meter Reader
Reservoir Operator II
Off-On Man
Maintenance Worker II
Maintenance Foreman
Sewage and Water Plant Operator I
Water Utility and Instrument Man
Sewage and Water Mechanic
Distribution Serviceman
Distribution Service Foreman
Sewage and Water Plant Operator II
Sewage and Water Chief Mechanic
Shift Supervisor

2. That said classifications constitute an appropriate unit of the Distribution and Production Divisions of the City of Topeka Water Department.

3. That a determination of the requisite thirty percent (30%) showing of interest should be made forthwith and the employer should, therefore, submit a list of all employees in said divisions to the PERB for said purpose and to determine voting eligibility for certification election purposes.

4. That should the PERB find said requisite showing of interest met by the petitioner, that a certification election should be set as soon as practicable and the petitioner should be placed on the ballot for said election.

IT IS, THEREFORE, SO RECOMMENDED BY THE EXAMINER.

DONALD R. HOFFMAN,
Examiner

RECOMMENDATIONS APPROVED:

Public Employee Relations Board

By: _____
Eldon V. Danenhauer, Chairman

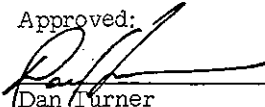
Submitted and approved:

McCullough, Wareheim & LaBunker

By: Terry D. Watson

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Approved:



(Dan Turner
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