

STATE OF KANSAS  
BEFORE THE PUBLIC EMPLOYEE RELATIONS BOARD

IN THE MATTER OF:

A Petition filed by City of Topeka for  
Unit Determination and Certification for  
Certain Employees of the City of Topeka  
Police Department

CASE NO: 75-UDC-11-1979

PROCEEDINGS BEFORE THE BOARD

1. Petition for unit determination filed by City on April 3, 1979.
2. Petition and request for answer sent to Fraternal Order of Police on April 5, 1979.
3. Request for (7 days) extension granted Fraternal Order of Police on April 11, 1979.
4. Request for extension until April 27th granted to Fraternal Order of Police Legal Counsel April 13th.
5. Answer to petition received from Fraternal Order of Police on April 27, 1979.
6. Answer forwarded to City on May 2, 1979.
7. Amended unit determination petition filed by City of Topeka on May 18, 1979.
8. Amended petition sent to Fraternal Order of Police for answer on May 23, 1979.
9. Answer to amended petition received June 1, 1979.
10. Parties notified of October 24th pre-hearing conference by memo on October 11, 1979.
11. Formal hearing scheduled for November 19 and 20, 1979.
12. Formal hearing postponed until December 3, 1979 at request of Fraternal Order of Police.
13. All parties being first properly notified, a hearing in this matter was conducted before Jerry Powell on December 3, 1979 at 610 West Tenth, Topeka, Kansas.

FINDINGS OF FACT

1. That the City of Topeka is an appropriate public employer within the meaning of K.S.A. 75-4321 et seq.
2. That through the amended petition filed by the city and the answer to that petition filed by the Fraternal Order of Police, certain job classifications are

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included within the scope of the appropriate unit by mutual agreement. Those classifications consist of:

- A. Explosive Ordinance Disposal Technician
- B. Detective Sergeant
- C. Sergeant
- D. Detective
- E. Chief Dispatcher
- F. Corporal
- G. Patrolman I
- H. Patrolman II
- I. Patrolman III
- J. Patrolman IV

3. That certain job classifications remain in question in regard to their inclusion or exclusion from an appropriate bargaining unit. Those classifications consist of:

- A. Major
- B. Captain
- C. Lieutenant

4. That the City of Topeka currently employs eighteen lieutenants in the Police Department. (T-14)

5. That the City of Topeka currently employs nine captains in the Police Department. (T-9)

6. That all captains have completed position descriptions which state that they supervise bargaining unit members as a part of their duties. (E-1)

7. That all lieutenants have completed position descriptions and with the exception of the School Safety Officer and the Reserve Police Coordinator they have stated that they supervise bargaining unit members as part of their duties. (E-1)

8. That one lieutenant (Safety Education Officer) does not currently possess supervisory authority. (T-12)

9. That on January 1, the lieutenant that does not currently possess supervisory authority will be transferred to a supervisory position. (T-13)

10. That after January 1 there will be no lieutenants in non-supervisory positions. (T-13)

11. That the supervisory authority possessed by the lieutenants and captains meets the definition of supervisory as set out at K.S.A. 75-4322 (b). (T-12)

DISCUSSION - CONCLUSIONS OF LAW

The questions to be answered in this case can be simply stated as, "At what point in the chain of command is the employee granted true supervisory authority and power?" The Topeka Police Department is not unlike any other para-military branch of government. There is an established chain of command in which recommendations and suggestions flow up and decisions and policy flow down. If one were to base unit scope questions on a narrow interpretation of the word supervision, the Chief of Police would be the only supervisor. If one were to broadly interpret the word supervision, all but the lowest man in the chain of command would be supervisors. In practicality, true supervisory authority is delegated to the appropriate command level to insure control of the agency. The difficult task is to identify the point in the chain where the use of independent judgement ends and the supervisions becomes a routine passage of directives from above. Stated another way that is, "where is the true line of supervision drawn?" The answer to the question is a most difficult one to ascertain. Often the perceptions of management regarding the authority they have granted and the employee's perception of his own authority are quite different. To compound matters, what actually takes place on the job may coincide with neither. Additionally, a job description may grant certain authority in print but not in fact.

A supervisory employee is defined at K.S.A. 75-4322 (b) as:

"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 judgement. A memorandum of agreement may provide for a definition of "supervisory employees" as a alternative to the definition herein. (Emphasis added)

The legislature certainly recognized the possibility that an alternative definition of a supervisor might be necessary in certain circumstances. Such a "negotiated" definition when coupled with a clearly stated and factual description of job responsibilities and authority could eliminate unit scope questions and serve to enhance a supervisors effectiveness by clearly outlining his parameters of control.

Lacking mutual agreement on the scope of the unit and lacking a negotiated definition of supervisory employees which would outline the scope of the unit, the Public Employee Relations Board will identify the level at which supervisory authority, in


accordance with the statutory definition above, is delegated. In most instances when a unit determination is conducted the employer and the representative of the public employees will subpoena witnesses from whom testimony is elicited through direct and cross examination. This testimony should serve to inform the Board in regard to the exact nature of the actual duties, performed by the individual. This evidence and testimony given under oath provides the Board with a foundation upon which their decisions can be based. In the instant case the City of Topeka called one witness and submitted one exhibit in support of their allegations. The Fraternal Order of Police Lodge Number 3 called no witnesses, chose not to cross examine the witness called by the City, and entered no exhibits into evidence. The evidence and testimony secured during the hearing clearly show the existence of supervisory authority as an element of the duties assigned to the lieutenants and the captains. The Public Employee Relations Board finds it very unusual to be in a position of issuing findings of fact and an order based on testimony and evidence supplied by only one party to the controversy. The hearing examiner nor the Board, however, may take the positions of an advocate in these matters and therefore must rely on the information supplied by the parties.

In light of the evidence and testimony presented in this case the examiner has no option but to recommend that the Public Employee Relations Board find the employees in the job classifications of lieutenant and above to be supervisory employees within the meaning of the law and therefore excluded from the appropriate bargaining unit within the City of Topeka Police Department. This recommendation adopted, the appropriate bargaining unit would be comprised as follows,

INCLUDE: Explosive Ordinance Disposal Technician  
Detective Sergeant  
Sergeant  
Detectives  
Chief Dispatcher, Police  
Corporal  
Patrolman I  
Patrolman II  
Patrolman III  
Patrolman IV

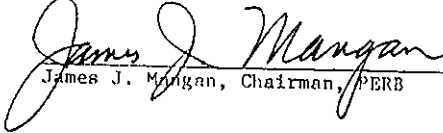
EXCLUDE: Police Chief  
Major  
Superintendent of Communications  
Captain  
Lieutenant

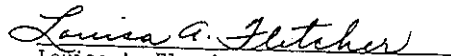
It is so recommended this 22 day of APRIL, 1980 by:

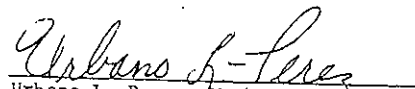
  
Jerry Powell, Hearing Examiner for the  
Public Employee Relations Board

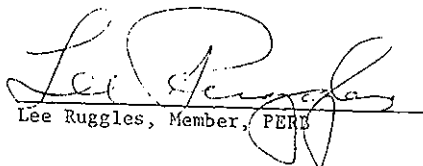
The hearing examiner's report and recommended findings are hereby approved and adopted as a final order of the Board.

IT IS SO ORDERED THIS 22 DAY OF April 1980, BY THE PUBLIC EMPLOYEE RELATIONS BOARD.

  
James J. Mangan, Chairman, PERB

  
Louisa A. Fletcher, Member, PERB

  
Urbano L. Perez, Member, PERB

  
Lee Ruggles, Member, PERB

  
Art Veach, Member, PERB

STATE OF KANSAS  
BEFORE THE PUBLIC EMPLOYEE RELATIONS BOARD

IN THE MATTER OF :

Petition filed jointly by the City of  
Topeka and International Association  
of Fire Fighters Local 83 for Unit  
Determination :

CASE NO: 75-UDC-10-1979

UNIT DETERMINATION ORDER

Comes now this 13th day of August, 1979, the matter of the determination of the appropriate unit of employees of the City of Topeka Fire Department for hearing.

A P P E A R A N C E S

The City of Topeka appears by and through Mr. Ron Todd, Personnel Director, 215 East Seventh Street, Topeka, Kansas.

The International Association of Fire Fighters Local 83 appears by and through Mr. Ray Shy.

PROCEEDINGS BEFORE THE SECRETARY

1. A joint petition from the City of Topeka and the International Association of Fire Fighters Local 83 to determine the scope of the appropriate unit of fire fighters was submitted on April 3, 1979.

2. A description of the unit alleged to be appropriate was submitted by each of the parties.

(a) City of Topeka - April 3, 1979

(b) International Association of Fire Fighters Local 83 - April 10, 1979

FINDINGS OF FACT

1. That the City of Topeka is a "public employer" in accordance with K.S.A. 75-4322 (f).

2. That the International Association of Fire Fighters Local 83 is an "employee organization" in accordance with K.S.A. 75-4322 (i).

3. That the City of Topeka has elected by resolution to be covered by the provisions of K.S.A. 75-4321 et seq. (Petition - Item 8)

4. That several classifications have been determined to be appropriate unit inclusions through mutual agreement of the parties. (Petition)

5. That there are several classifications remaining in question by both

parties including: Assistant Fire Chief, Battalion Chief, District Chief, Battalion

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Chief-Fire (Mechanic), Training Officer-Fire, Fire Marshal, Superintendent of Buildings, Assistant Fire Marshal, and Superintendent of Communications. (Petition)

6. That the City of Topeka did stipulate to the inclusion of the Assistant Fire Marshal within the appropriate unit. (See T 72-73)

7. That the majority of the individuals testifying have been members of the International Association of Fire Fighters for a majority of their tenure. (See T 15, 27, 35, 47, 59, 74, 82, 91, 103, 111)

8. That the City of Topeka admits that the majority of individuals testifying do not have the absolute authority to hire, fire, transfer, suspend, lay-off, recall, promote, discharge, assign, reward, or discipline. (See T 19)

9. That there is a set of departmental rules and regulations. (See T 19)

10. That the Battalion Chiefs have the authority to recommend discipline. (See T 25-27)

11. That recommendations from the Battalion Chiefs to the Fire Chief are considered. (See T 22, 28)

12. That Battalion Chiefs with the help of District Chiefs have the authority to assign individuals on a daily basis on their shifts. (See T 18)

13. That Battalion Chiefs exercise independent judgment on the fire scene. (See T 19)

14. That a Battalion Chief has, when departmental rules are violated, the authority to send a man home and/or present a written statement of the incident to the Fire Chief. (See T 22-23)

15. That the Battalion Chiefs, on the scene of a fire, coordinate the fire fighting efforts and have the authority to direct the actions of individual fire fighters. (See T 24)

16. That there is a difference in the duties of Battalion Chiefs and District Chiefs. (See T 30)

17. That District Chiefs may recommend reprimands of their subordinates. (See T 42)

18. That District Chiefs may transfer or assign subordinates within their districts. (See T 42)

19. That District Chiefs are responsible to see that rules set down by the Fire Chief and other department heads are followed. (See T 44)

20. That the Administrative Assistant to the Fire Chief makes recommendations regarding the formal adjustment of grievances, (See T 49) and the writing of reprimands. (See T 52)

21. That the recommendations made by the Administrative Assistant have never been rejected. (See T 51)
22. That the Fire Marshal performs the same work as his subordinates. (See T 61)
23. That the City Fire Marshal has some responsibility to insure that the work assigned is properly performed. (See T 59)
24. That the City Fire Marshal has been instructed he has no authority over suppressant personnel. (See T 64)
25. That the City Fire Marshal has the authority to assign duties as a result of City Commission action. (See T 68)
26. That the Superintendent of Buildings has the authority to assign personnel. (See T 77)
27. That the Superintendent of Buildings normally performs duties similar to those of other maintenance employees. (See T 79-80)
28. That the Fire Department Mechanic normally performs duties similar to those of other mechanics within the department. (See T 85)
29. That the Fire Department Mechanic has the authority to assign personnel. (See T 86)
30. That the Fire Department Mechanic can initiate corrective actions regarding substandard performance. (See T 86)
31. That the Chief of Training has the authority to submit reports of disciplinary problems to his superiors. (See T 96)
32. That the disciplinary recommendations of the Chief of Training are effective. (See T 98)
33. That promotions within the Fire Department are dependent upon the satisfactory completion of training. (See T 100)
34. That the testing program of the training department involves subjective as well as objective grading procedures. (See T 100-101)
35. That the subjective grading of the practical training is performed by the Captains or the Training Officers. (See T 101)
36. That the evaluations performed by the Assistant Chiefs are for evaluation and promotion. (See T 104, 116)
37. That the Assistant Chiefs have the authority to temporarily transfer. (See T 104, 112)
38. That the Assistant Chiefs have the authority to recommend promotions. (See T 105)
39. That the Assistant Chiefs have the authority to temporarily assign. (See T 105, 112, 117)
40. That the Assistant Chiefs have the authority to recommend rewards. (See T 105, 112, 117)



41. That the Assistant Chiefs have the authority to recommend discipline.  
(See T 105, 113, 117)

42. That the Assistant Chiefs recommend actions to the Fire Chief.  
(See T 109, 115)

43. That the Assistant Chiefs view the recommendations of their subordinates as effective recommendations. (See T 109)

44. That the performance evaluations performed by the Assistant Chiefs are for the purpose of promotion. (See T 116)

45. That there exists a Promotion Board which compiles and submits a list of names of individuals eligible, in their judgment, for promotion.  
(See T 125)

46. That the Promotion Board has access to individual personnel files.  
(See T 125)

47. That the Fire Chief receives and relies upon the recommendations from his subordinates. (See T 136)

48. That District Chiefs and Battalion Chiefs possess the authority to decide which recommendations will be forwarded to the Fire Chief. (See T 138)

49. That the Fire Chief has delegated his authority downward to the level of Company Officer (Captains, - Lieutenants). (See T 139)

50. That an Assistant Chief is on duty at all times. (See T 143)

51. That at the majority of fires a District Chief or Battalion Chief would be present. (See T 151)

52. That the District Chief or Battalion Chief responding to the scene of a fire is the ultimate decision maker at that fire. (See T 152, 153)

53. That a reported rule infraction from a Battalion Chief or District Chief could contain a recommended punishment. (See T 157)

#### CONCLUSIONS OF LAW - DISCUSSION

The City of Topeka is a public employer within the meaning of K.S.A. 75-4321 et seq. The City of Topeka has properly made the election to bring its employees under the provisions of the law and has thus bound itself to the provisions of the Act in accordance with K.S.A. 75-4321 (5) (c). This matter of unit determination is properly before the Public Employee Relations Board.

There are several individuals employed by the Topeka Fire Department in the job titles of Assistant Fire Chief, Battalion Chief, District Chief, Fire Mechanic,

Fire Training Officer, Fire Marshal, Superintendent of Buildings, and Assistant Fire Marshal. The City of Topeka and the International Association of Fire Fighters Local 83 have jointly petitioned the Public Employee Relations Board to determine if those classifications and the respective nature of the duties assigned to those classifications would dictate their inclusion or exclusion from the appropriate bargaining unit within the Fire Department.

K.S.A. 75-4322 (a) defines "Public employee" as:

"Public employee" means any person employed by a public agency, except those persons classed as supervisory employees, professional employees of school districts, as defined by subsection (c) of K.S.A. 72-5413, elected and management officials, and confidential employees".

The question, as argued by the parties is whether or not the classifications at issue are supervisory. K.S.A. 75-4322 (b) defines "Supervisory employee" as:

"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 actual duties of each classification must then be compared to the definition of "Supervisory employee" from the Act to make the final determination.

Each time the Public Employee Relations Board is called upon to resolve a question regarding the scope of an appropriate bargaining unit there are several guidelines which must be considered. Furthermore, it is the duty of the Public Employee Relations Board to attempt to resolve rather than create problems. A unit which is too broad either denies management an adequate effective supervisory staff or could allow included supervisory employees to become an interference in employee organization business. A unit which is too narrow denies those excluded public employees a right to which they are entitled. For these reasons the Public Employee Relations Board gives careful consideration to each and every classification in question and attempts to arrive at the most appropriate, workable unit possible. It is never an easy job to draw the line between supervisory and non-supervisory personnel especially in view of the para-military nature of a fire department. The concept of "chain of command" dictates that decisions flow down through the ranks and that input to the decision making process flows upward until reaching the proper decision making level. Within the Topeka Fire Department an ultimate decision maker has been identified by the city code but that decision maker relies upon the recommendations of his subordinates in order to make those decisions and further

relies upon his subordinates to take directive action in his absence. The task of the hearing examiner is to determine the level at which supervisory decisions are made and thus define the line between "supervisory employees" and "public employees" for purposes of the Act.

The Public Employee Relations Board does not normally exclude particular individuals based upon the supervisory or confidential nature of their duties but rather seeks to include or exclude particular ranks or classifications. In this case, however, several of the Battalion Chiefs and District Chiefs perform specialized duties and possess titles in addition to Battalion or District Chief. Therefore, the Public Employee Relations Board will view those titles as they would classifications and speak to each one separately.

The order in which the classifications will be addressed does not conform to the Fire Department hierarchy but rather follows the chronological order in which the classifications were addressed during the hearing.

The International Association of Fire Fighters has alleged that none of the actual District Chiefs or Battalion Chiefs in question have the authority to hire, fire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees. The record reflects that these employees may perform some of these activities on a temporary, day to day basis or in other cases to recommend these actions. The city has agreed that the individuals in question do not have the absolute right to hire, fire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, but the city contends that the Fire Chief relies upon the recommendations of his subordinates in order to make those employment decisions. While the record is sparse regarding specific instances where a recommendation has been followed or ignored, the individuals do, by and large, recognize the fact that they have the right to report infractions or violations of departmental rules. These individuals would have the Public Employees Relations Board believe that in every instance where a report is forwarded up through the "chain of command", the report is merely a factual accounting of the incident, a routine and clerical function. The nature of the infractions which would be reported, i.e., drunkenness, poorly maintained uniform, and so forth, require an independent judgment to ascertain their existence. Take for example maintenance of uniform. An individual making an inspection of uniforms might judge a fire fighter's uniform to be unacceptable because of its state of repair and therefore a violation of departmental rules. Another inspector might view the condition of the uniform to be a mere oversight and yet another might completely disregard the condition. If one of the individuals in question reports such an incident to his

superiors as an infraction, he has, in fact, made an independent judgment regarding the nature of the offense. While the individual making the report is not normally recommending a particular punishment, he is recommending that some action be taken to rectify a problem he is experiencing with another fire fighter.

The District Chiefs and Battalion Chiefs have also testified that they coordinate the fire fighting efforts at the fire scene. This coordination is explained as an insurance that all personnel are working together to extinguish the fire and not against one another. It was further testified that each fire is different and that independent judgment is required on the fire scene from time to time. In the exercise of this independent judgment, the District Chief or Battalion Chief in charge of the fire has the authority to direct individual fire fighters to accomplish certain tasks and, in fact, if the task were not performed, the Chief in charge would recommend some sort of discipline. In addition, the District Chiefs and Battalion Chiefs have some discretion in deciding if an action by a fire fighter would constitute a reportable offense. The City of Topeka and the International Association of Fire Fighters agree that there is an accepted set of departmental rules to follow, but this discretionary authority serves as a supplement to those established guidelines. The coordination function, if not defined as supervisory responsibility, would at very least constitute work which is different than that done by his subordinates.

It is, therefore, the opinion of the Board that the District Chiefs (class 324) and the Battalion Chiefs (Class 335), in light of their ability to determine the existence of rule infractions, direct the work of fire fighters at the fire scene, exercise independent judgment in the application of rules, perform work different than their subordinates, and in some cases to recommend discipline, do fall within the definition of supervisory employees as set out at K.S.A. 75-4322 (b) and are, therefore, excluded from the unit.

The third classification at issue is that of Administrative Assistant to the Chief. This position was not identified as an individual specialized position to be addressed in the hearing. The nature of the duties assigned to this particular Battalion Chief, however, as spelled out during the hearing, dictate that he be spoken to individually. The Administrative Assistant has testified that he would be consulted if recommendations were to be made, he would at times make recommendations which have never been rejected, he exercises independent judgment in directing other employees, and he attends staff meetings and participates in disciplinary decisions.

It is, therefore, the opinion of the Board that the Administrative Assistant

to the Chief does fall within the definition of a supervisory employee as set out at K.S.A. 75-4322 (b) and is, therefore, excluded from the unit.

The fourth classification at issue is the City Fire Marshal. While the Fire Marshal has been instructed by a superior that he has no authority over suppressant personnel, he does have the authority to assign and direct his subordinates in the areas of prevention of fires, investigation of fires, and storage of flammable liquids, etc. In addition to this authority to assign, the Fire Marshal testified that he has the authority to issue a verbal type of discipline/reprimand and to perform other functions including evaluations in order to insure that the work done by his subordinates is properly performed. The Fire Marshal does perform some work of the same type as other employees in the Fire Prevention Bureau but he also performs other duties not assigned to subordinates. The Fire Marshal would be notified if an inspector's judgments were questioned, and would, in fact perform a repeat inspection. If an error were detected, additional training would be recommended.

When one views the duties assigned to the Fire Marshal and the responsibilities assigned to him through the City Ordinance by action of the City Commission to which he testified, the Fire Marshal must certainly be viewed as a supervisor.

It is, therefore, the opinion of the Board that the City Fire Marshal does fall within the definition of supervisory employee as set out at K.S.A. 75-4322 (b) and is, therefore, excluded from the unit.

The fifth classification at issue is the Superintendent of Buildings. It has been testified that the Superintendent of Buildings normally performs the same tasks as the other employees of the building maintenance department. The record also reflects that the Superintendent of Buildings has the authority to assign certain people to certain jobs but these assignments are normally made according to the particular qualifications of the individual and the dictates of the task to be completed. This function of pairing requirements with qualifications is viewed by the examiner as a routine operation. There was no other evidence elicited during the hearing which would tend to support the contention that this classification is supervisory.

It is, therefore, the opinion of the Board that the Superintendent of Buildings does not fall within the definition of a supervisory employee as set out at K.S.A. 75-4322 (b) and is, therefore, included within the unit.

The sixth classification at issue is the Fire Department Mechanic. The Mechanic testified that he normally performs the same tasks as the other mechanics. The record also reflects the ability of the Fire Department Mechanic to assign certain people to certain jobs. It was stated that all mechanics are capable of performing all mechanics tasks. Those tasks are assigned at times on the basis of special skills

and at other times on the basis of availability of manpower. Priorities regarding the order of repair of fire equipment are predetermined and, therefore, not dependent on independent judgment. The assignment of individuals to predetermined tasks on the basis of skills and availability is viewed by the examiner as a routine operation much the same as the assignments made by the Superintendent of Buildings. The Fire Department Mechanic stated at one point during the hearing that he did not have the authority to issue punishment. Later in the hearing the Mechanic stated that he might become involved in a suspension hearing if he submitted the report. This would indicate to the examiner that although the Mechanic could not issue punishment he might be able to recommend punishment. In this testimony as in the testimony supplied by several other witnesses, it has become apparent that there are relatively few disciplinary problems within the Fire Department and thus there is a great deal of "gray area" regarding the degree of supervisory authority granted to the various classifications, and the ability to exercise the authority. While the Fire Chief is of the opinion that he has delegated authority to the level of Lieutenant, the authority is not, in fact, always practiced or recognized at that level. In the case of the Mechanic, insufficient evidence has been supplied which would convince the examiner that the duties of this classification are supervisory in nature, either in theory or in practice.

It is, therefore, the opinion of the Board that the Fire Department Mechanic does not fall within the definition of a supervisory employee as set out at K.S.A. 75-4322 (b) and is, therefore, included within the unit.

The seventh classification at issue is the Chief of Training. Testimony has shown that the Chief of Training may exercise independent judgment in determining the type of information to be included on training department testing. This testing, which may include oral as well as written and practical examinations, is prepared by the training division, and therefore requires independent judgment in its grading. In order for an individual to be promoted within at least the lower ranks of the department he must satisfactorily complete the prescribed training. The submission of a report on training progress, when the successful completion of that training is determined through the grading of objective criteria, must certainly be viewed as a recommendation. This recommendation directly affects a fire fighters potential for promotion.

It was further shown through testimony that the Chief of Training has the authority to submit a report up through the "chain of command" regarding his independent evaluation of an instructors quality of instruction. The Chief of Training may also submit a report regarding a disciplinary problem involving a fire fighter

in training and these reports are effective. When the duties performed within any classification so directly effect the individuals in subordinate positions in the areas of promotion and discipline that classification must be defined as supervisory.

It is, therefore, the opinion of the Board that the Chief of Training does fall within the definition of supervisory employee as set out at K.S.A. 75-4322 (b) and is, therefore, excluded from the unit.

The eighth classification at issue is Assistant Chief. The record reflects that an Assistant Chief may temporarily transfer, recommend promotion, temporarily assign, recommend reward, and recommend discipline. The Assistant Chiefs also complete performance evaluations on their subordinates and these evaluations are used for the purpose of promotion. It was further testified that the recommendations provided to the Fire Chief are effective. While the recommendations submitted to the Fire Chief are often initiated at a lower level, the Assistant Chief makes his own recommendations which he submits to the Fire Chief. The Assistant Chiefs perform duties which are different than those of their subordinates and they exercise decision making authority. The Assistant Chiefs may determine which recommendations received from subordinates will be forwarded to the Fire Chief and may, in fact, correct problem situations on a temporary basis.

It is, therefore, the opinion of the Board that the Assistant Chiefs do fall within the definition of supervisory employees as set out at K.S.A. 75-4322 (b) and are, therefore, excluded from the unit.

The ninth classification at issue is Superintendent of Communications, Police and Fire. This is a rather unique position created by city ordinance which requires special attention beyond the determination of supervisory authority. The individual occupying this position testified that he could recommend, transfer, suspension, lay-offs, recall, promotion, assignment, and reward. The Chief then testified that eight fire dispatchers would be assigned to the communication department. It must be assumed that this position will make the above listed recommendations for the eight fire dispatchers assigned to the communication division. Supervisory authority aside, the examiner is reluctant to recommend inclusion of this position in the appropriate unit. We are not in any manner suggesting that the individual in this position give up his fire fighter benefits yet we do find it difficult to direct anyone to bargain with someone (Fire Chief) who does not have the authority to set his terms and conditions of employment. It is, however, the boards opinion that this position is supervisory, and therefore, should be excluded from the appropriate unit of fire fighters.

An interesting question comes to mind with regard to the placement of the eight

fire dispatchers within the appropriate unit of fire fighters. It is assumed that the same terms and condition of employment will be afforded these eight as all other firemen of like classifications. However, the Police Chief is placed in a unique position if, in fact, his police dispatchers have different terms and conditions of employment. The eight fire dispatchers face the same grievance dilemma as does the communications supervisor. The board is, however, not in the business of creating problems. Rather to point out possible trouble areas and recommending solutions. Therefore, the board recommends that the appropriate governing body and International Association of Fire Fighters officials meet in an attempt to resolve this problem.

Some obvious solutions to the problem are:

- 1) Removal of non-supervisory firemen from the communication division;
- 2) Transfer of all non-supervisory dispatchers to police status;
- 3) Creation of a special appropriate unit of both police dispatchers and fire dispatchers naming the Police Chief and Fire Chief as joint employers. This solution would allow both police and fire dispatchers to retain their respective identities.

The appropriate unit of fire fighters shall consist of:

INCLUDE: Arson Investigator (Battalion Chief)  
Mechanic, Fire (Battalion Chief)  
Assistant Mechanic (District Chief)  
Assistant Training Officer (District Chief)  
Assistant Fire Marshal (District Chief)  
Superintendent of Buildings (Battalion Chief)  
Assistant Superintendent of Buildings (District Chief)  
Inspector (Captain, Fire)  
Captain (Fire Suppression, Mechanics, Training, Maintenance)  
Lieutenant, Fire  
Dispatcher, Fire (Lieutenant, Fire)  
Fire Apparatus Operator  
Advanced Firefighter  
Firefighter, First Class  
Firefighter, Second Class  
Firefighter, Third Class

EXCLUDE: Fire Chief  
Assistant Fire Chief  
Battalion Chief  
District Chief  
Training Officer, Fire (Battalion Chief)  
Fire Marshal (Battalion Chief)  
Administrative Assistant to the Fire Chief



THE HEARING EXAMINERS REPORT AND RECOMMENDED FINDINGS HEREBY APPROVED AND ADOPTED AS A FINAL ORDER OF THE BOARD.

IT IS SO ORDERED THIS 22 DAY OF OCT 1979, BY THE PUBLIC EMPLOYEE RELATIONS BOARD.

*James J. Mangan*  
James J. Mangan, Chairman, PERB

*Louisa A. Fletcher*  
Louisa A. Fletcher, Member, PERB

*Urbano L. Perez*  
Urbano L. Perez, Member, PERB

*Lee Ruggles*  
Lee Ruggles, Member, PERB

*Art Veach*  
Art Veach, Member, PERB