85-052

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of

Fraternal Order of Police, Capital City Lodge #9,

Employee Organization,

and

City of Gahanna,

Employer.

CASE NUMBERS: 84-VR-06-1397
84-RC-06-1514

CERTIFICATION PURSUANT TO REQUEST FOR VOLUNTARY RECOGNITION
(Opinion Attached)

Before Chairman Day, Vice Chairman Sheehan, and Board Member Fix, September 26, 1985.

The Fraternal Order of Police, Capital City Lodge # 9 (Employee Organization) filed a Request For Voluntary Recognition as the exclusive representative of a unit of full time regular policeman and policewomen in the rank of sergeant and above employed by the City of Gahanna (Employer). The proposed unit excluded rank and file officers, captains, and the chief of police. The Employer filed a responsive Petition For Representation Election and objected to the Request For Voluntary Recognition, contending that lieutenants are "supervisors" and "management level employees" pursuant to Ohio Revised Code Section 4117.01 and thus should be excluded from the bargaining unit. The matter was referred to hearing.

The Board has reviewed the record, the hearing officer's recommendation, the exceptions, and responses. The Employer has filed a Request For Oral Argument on the exceptions. The record and the documents filed by the parties in the action provide the Board with ample basis upon which to consider the issue presented. Therefore, the Request For Oral Argument is denied.

For the reasons stated in the attached opinion, incorporated by reference, the hearing officer's recommendation is adopted. The Employee Organization is certified as exclusive representative of the proposed unit and the Employer's responsive Petition For Representation Election is dismissed.

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It is so directed.

DAY, Chairman, SHEEHAN, Vice Chairman and FIX, Board Member concur.

JACK G. DAY, CHAIRMAN

I certify that this document was filed and a copy served upon each party on this 30th day of September, 1985.

KENNETH W. BARNETT, EXECUTIVE DIRECTOR

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OPINION

Day, Chairman:

In pertinent part this case involves a search for that elusive entity - legislative intent. More precisely, the issue is whether a police lieutenant, clearly not a supervisor under the specific sections of Chapter 4117 applicable to police supervisors,[1] is nevertheless, a management

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[1]Section 4117.01(F):

"(2) With respect to members of a police or fire department, no person shall be deemed a supervisor except the chief of the department or those individuals who, in the absence of the chief, are authorized to exercise the authority and perform the duties of the chief of the department. Where prior to June 1, 1982, a public employer pursuant to a judicial decision rendered in litigation to which the public employer was a party, has declined to engage in collective bargaining with members of a police or fire department on the basis that such members are supervisors, those members of a police or fire department do not have the rights specified in Chapter 4117. of the Revised Code for the purposes of future collective bargaining. The state employment relations board shall decide all disputes concerning the application of this division.

level employee[2] excepted from the definition of public employee in Section 4117.01(C).

I

It is axiomatic that legislation with a plain meaning requires no interpretation cf. Knox v. Courett (1949) 85 Ohio App. 524, 4 Ohio op. 437, 439. Despite the axiom, statutes are not always crystal clear and on occasion a legislative pronouncement may be, or seem to be, qualified (even contradicted) by another section of the same statute.[3]

In the matter of police supervisors "plain meaning" is quite clear to a point. Section 4117.01(F) defines "supervisors" and then provides in subsection (2):

> "With respect to members of a police or fire department, no person shall be deemed a supervisor except the chief of the department or those individuals who, in the absence of the chief, are authorized to exercise the authority and perform the duties of the chief of the department..."

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[2]Section 4117.01:

"(C)'public employee' means any person holding a position by appointment or employment in the service of a public employer, including any person working pursuant to a contract between a public employer and a private employer and over whom the national labor relations board has declined jurisdiction on the basis that the involved employees are employees of a public employer except:

(7) management level employees,..."

"(X) 'management level employee' means an individual who formulates policy on behalf of the public employer, who responsibly directs the implementation of policy, or who may reasonably be required on behalf of the public employer to assist in the preparation for the conduct of collective negotiations, administer collectively negotiated agreements, or have a major role in personnel administration, assistant superintendents, principals, and assistant principals whose employment is governed by section 3319.02 of the Revised Code, are management level employees. With respect to members of a faculty of a state institution of higher education, no person is a management level employee because of his involvement in the formulation or implementation of academic or institution policy."

[3]To say nothing of conflicts between separate statutes.

"Plain meaning" requires the conclusion that only chiefs and those authorized to act for them in their absence are to be considered "supervisors" and thus not within the definition of public employee in Section 4117.01(C). The conclusion from this seems ineluctable. The legislature intended that police and fire department supervisors, save only a chief and his alter ego, should have collective bargaining rights.[4] However, there is another section of 4117.01 which must be included in the reckoning.

II

Section 4117.01(C)(7) excludes "management level employees" from the "public employee" definition. Section 4117.01(K) defines "management level employee." In relevant part (K) provides:

> "'management level employee' means an individual who formulates policy on behalf of the public employer, <u>who responsibly directs the implementation of policy,</u> or who may reasonably be required on behalf of the public employer to assist in the preparation for the conduct of collective negotiations, administer collectively negotiated agreements, or have a major role in personnel administration..." (Emphasis added.)

On its face this portion of the statute seems to be directed at high level management and its assistants. And, in the absence of Section 4117.01(F)(2), will bear an interpretation supporting the exclusion of police and fire supervision below the level of chief. This is particularly true of the coverage of the phrase "who responsibly directs the implementation of policy."

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[4]This broad inclusion may reflect a legislative effort to take account of bargaining history and practice in police and fire departments.

However, the meaning of a statute must be drawn from the whole of it. And if police and fire supervision were precluded from collective bargaining by Section 4117.01(K), the specific intent epitomized in Section 4117.01 (F)(2) would be nullified.

Logic will not allow the conclusion that the legislature intended to nullify in (K) what it gave in (F)(2).

Accordingly, Section 4117.01(K) has no application to the police department supervision in the instant case.

SHEEHAN, Vice Chairman, and FIX, Board Member, concur.

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