

86-015

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of
Fraternal Order of Police, Ohio Labor Council, Inc.
Employee Organization,
and
Amalgamated Transit Union, Local 268,
Employee Organization,
and
Greater Cleveland Regional Transit Authority
Employer.

CASE NUMBERS: 85-RD-04-3385
85-RD-04-3386
85-RC-04-3531
85-RC-04-3532

ORDER
(Opinion Attached)

Before Chairman Day, Vice Chairman Sheehan, and Board Member Fix; April 10, 1986.

On April 25, 1985, the Fraternal Order of Police, Ohio Labor Council, Inc. (FOP) filed four (4) petitions with SERB pursuant to Ohio Revised Code Section 4117.07. The petitions were for a unit of transit police sergeants, a unit of transit police officers, a unit of security officers Grade 1, and unit of security monitors grade 2. The matter was heard by a Board Hearing Officer.

The Board has reviewed the record, the hearing officer's recommendation, exceptions to the recommendation, and responses. For reasons set forth in the attached opinion, incorporated by reference, the Board approves the Hearing Officer's findings of fact, approves the conclusions of law and directs that a representation election be conducted.

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Case Numbers: 85-RD-04-3385
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85-RC-04-3531
84-RD-04-3532

As required by Ohio Administrative Code Rule 4117-5-07(A), no later than April 26, 1986, the Greater Cleveland Regional Transit Authority shall serve on the Fraternal Order of Police, Ohio Labor Council, Inc. and the Amalgamated Transit Union, Local 268 and file with the Board an alphabetized election eligibility list containing the names and home addresses of all employees eligible to vote as of April 10, 1986. The election shall be held on a date determined by the Representation Department in consultation with the parties.

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 17 day of April, 1986.



JACQUELIN E. DAVIS, GENERAL COUNSEL

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OPINION

Fix, Board Member:

I

While the instant case involves three issues, the Board opinion is confined to a single issue: whether the Transit Police Sergeants, Grade 5, are supervisors pursuant to R.C. 4117.01(F) and should be excluded from the petitioned - for unit of guards.

The Board has determined that the Transit Police Sergeants, Grade 5, are not supervisors for reasons outlined below.

II

Since the Transit Police Sergeants, Grade 5, are not "members of a police department" within the meaning of R.C. Section 4117.01(M), the

determination of their supervisory status is controlled by R.C. Section 4117.01(F).¹

An examination of this definition, along with reading of the testimony in the instant case, reveals the following:

1. One sergeant and two transit officers, Grade 3, serving in the capacity of officers in charge (O.I.C.) are in charge of shifts. (The other sergeant is assigned to plain clothes duty.) Every person on a shift has served at one time or another as O.I.C. Sergeants, regular O.I.C. and transit officers in charge for the day, have the same duties and responsibilities and authority.
2. The sergeants do not have authority to hire, transfer, suspend, lay off, recall, promote, discharge or reward other public employees.
3. Sergeants and O.I.C.s make assignments of a routine nature, i.e., whether a transit officer will be assigned to a car or foot patrol.²
4. Sergeant D'Amico testified that he had recommended discipline a number of times since 1981 but could not recall a single instance where his specific recommendation was followed.³ Other testimony reveals sergeants do not effectively recommend discipline.

¹R.C. 4117.01:

"(F) 'supervisor' means any individual who has authority, in the interest of the public employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other public employees; to responsibly direct them; to adjust their grievances; or to effectively recommend such action, if the exercise of that authority is not of a merely routine or clerical nature but requires the use of independent judgment..."

²Pg. 35, Vol. 2, T.

³Pg. 11, Vol. 2, T.

5. In addition there was no evidence that sergeants adjusted grievances.⁴

6. Finally, testimony revealed that authority exercised by the transit police sergeants and O.I.C. is routine and clerical in nature and does not require the use of independent judgment. Instances where advice of the sergeant was followed did not involve policy but such matters as office layout and placement of office furniture.⁵

III

In a previous opinion, Lucas County Recorder's Office,⁶ the Board ruled that job descriptions and job titles are not determinative of supervisory status.

At that time the Board was not prepared to say how many of the responsibilities enumerated in R.C. 4117.01(F) must be exercised by an individual to qualify him/her as a supervisor.

In this opinion, the Board rules that to qualify as a supervisor an individual must possess more than one of the responsibilities contained in R.C. 4117.01(F). While R.C. 4117.01(F) is similar to the National Labor Relations Act (NLRA), it applies to the public rather than private sector. Herein lies the difference. The public sector is governed by many more

⁴Pg. 47, Vol. 2, T.

⁵Pg. 16, Vol. 2, T.

⁶Case 84-RC-05-1178, Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO, Lucas County Recorder's Office and District 2A, Transportation, Technical, Warehouse and Industrial Service Employees Union.

constraints in relation to promotions and supervisory status than is the private sector. Thus R.C. 4117.01(F) requires a more narrow interpretation. And key to that supervisory status is the use of independent judgment in the exercise of authority.

The Board will continue to determine supervisory status in the context of individual cases.

IV

In the instant case, Transit Police Sergeants are not supervisors and are eligible to be included in the unit.

Day, Chairman, and Sheehan, Vice Chairman, concur.