

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

SEE NUMBER 90-005

In the Matter of
International Association of Firefighters, Local 2867,
Employee Organization,
and
The Ohio State University,
Employer.

CASE NUMBER: 89-REP-02-0021

CORRECTED DIRECTIVE AND OPINION

Before Chairman Sheehan, Vice Chairman Davis, and Board Member Latané:
November 9, 1989.

Sheehan, Chairman:

On February 2, 1989, the International Association of Firefighters, Local 2867 (Employee Organization) filed a petition for amendment of certification seeking to add the position of Fire Safety Inspector Supervisor to the existing bargaining unit. The Ohio State University (Employer) asserted that the amendment was inappropriate. The case was directed to hearing.

The hearing officer found that the Fire Safety Inspector Supervisors (hereinafter shift supervisors) clearly have no authority to hire, transfer, suspend, lay off, recall, promote, or discharge other employees.

However, the hearing officer concluded that the shift supervisors can adjust grievances. He find that the record shows that the shift supervisors could only deny grievances. Under O.R.C. §4117.01(F), it is the authority to adjust grievances that conveys supervisory status. Adjusting a grievance involves inquiring into its validity, determining the merits, and taking corrective actions when necessary. For guidance purposes only, See City of

Davenport v. Public Employment Relations Board, 264 N.W. 2d 307, 98 LRRM 2502 (Ia Supreme Ct., 1978). The shift supervisors' power to perfunctorily deny grievances certainly does not evidence any independent evaluation of the validity of a grievance and as such the Board does not consider that the shift supervisors have the power to adjust grievances.

The hearing officer further recommended that the shift supervisors have the direct authority to issue oral and written reprimands. According to the record, the shift supervisors have the authority to verbally reprimand other employees but the authority to issue written reprimands is not so clear since discussions with "management team" members usually precede the issuance of a written reprimand. Testimony as to actual authority shift supervisors have in respect to written reprimands was in conflict. To be a supervisor based upon the authority to discipline, an employee must have more than the power to issue verbal reprimands. See City of Davenport, supra.

Additionally, the hearing officer suggested that shift supervisors have the authority to reward other employees, since they can issue written letters of commendation to officers which may play a role in future promotions. The role that these letters play in future promotions is at best tenuous, since they have never yet performed that function. While it may be an honor, a letter of commendation that carries no direct, tangible benefit to the employee who receives it is not a reward within the contemplation of O.R.C. §4117.01(F).

Moreover, the hearing officer found that the shift supervisors responsibly direct the activities of other employees. Based upon the

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record, the shift supervisors follow general routines in assigning tasks. The "officer-in-charge", who is in command on emergency runs, is chosen among the ranks by the officers of each shift. In the absence of the Assistant Chief and the Chief the shift supervisors are in charge of routine matters. If an unusual situation arises, the shift supervisors must contact them. Based on this evidence, the Board finds the shift supervisors do not responsibly direct other employees' activities.

Lastly, the hearing officer discussed secondary indicia of the shift supervisors which "while not controlling, certainly militate toward a finding in this case that the shift supervisors are 'supervisors'." These characteristics alone can not qualify as evidence of supervisory status pursuant to O.R.C. §4117.01(F).

To be deemed a supervisor, an individual must use independent judgment in carrying out more than one of the responsibilities enumerated in O.R.C. §4117.01(F).¹ In re Office of Collective Bargaining (State Highway Patrol), SERB 89-016 (7-13-89), the Board cautioned against finding that a person is a supervisor when there is inadequate evidence to support it. Once supervisory status is established, an individual does not have employee rights granted under R.C. Chapter 4117. In this case shift supervisors are not allowed to make independent judgments involving responsibilities required for supervisory status. Based on the above, the shift supervisors are not "supervisors" pursuant to O.R.C. §4117.01(F).

¹ In re Greater Cleveland Regional Transit Authority (State Highway Patrol), SERB 86-015 (4-17-86).

There still remains the question of whether these two shift supervisors can properly be accreted into the existing 12-plus member bargaining unit. Certainly, the group of two shift supervisors is substantially smaller than the number of employees in the current EHS/Fire Prevention Bargaining Unit.² Additionally, there is a "community of interest" among the shift supervisors and the officers as stipulated by the parties. Furthermore, In re Columbus Bd of Ed, SERB 86-051 (12-11-86), paragraph one of the syllabus establishes factors under which accretion into an existing bargaining unit without a vote is proper.³ Applying the factors to this case indicate that the accretion is proper and that the unit is appropriate. Based upon the above, we find that the two shift supervisors can properly be accreted into the existing bargaining unit.

The Board has reviewed the record, the hearing officer's recommended determination, exceptions and response. The Board adopts the hearing officer's Statement of the Case, Stipulations and Findings of Fact. The Board amends the hearing officer's Conclusions of Law No. 3 to read "The

² O.A.C. 4117-5-01(G), effective 11-9-87, provides that: "when a petition to amend certification seeks the addition of a group of employees to the existing unit, such addition may be permitted only if the number of employees to be added is substantially smaller than the number of employees in the existing unit."

³ Whether accretion of unrepresented employees into an existing bargaining unit without a vote, by means of a petition to clarify the bargaining units, is proper depends upon: (1) the amount of movement of employees between the unrepresented group and the present unit; (2) geographic proximity of the two groups; (3) integration of operations; (4) the degree of central administrative control over the groups; (5) the similarity of the groups' skills, work, and working conditions; (6) the degree of common control over labor relations; (7) the groups' collective bargaining histories; and (8) the number of employees in each group.

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Fire Safety Inspector Supervisors are not "supervisors" as defined by §4117.01(F)." and amends Recommendation No. 2 to read: "The Board grants the petition in Case No. 89-REP-02-0021 since the accretion of the two shift supervisors into the existing Board-certified unit is permitted."

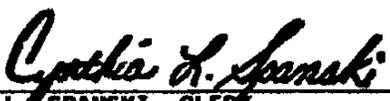
It is so directed.

SHEEHAN, Chairman, and DAVIS, Vice Chairman, concur. LATANE, Board Member, dissents.


WILLIAM P. SHEEHAN, CHAIRMAN

You are hereby notified that an appeal may be perfected, pursuant to Ohio Revised Code Section 119.12, by filing a notice of appeal with the Board at 65 East State Street, 12th Floor, Columbus, Ohio 43215-4213, and with the Franklin County Common Pleas within fifteen days after the mailing of the Board's directive.

I certify that this document was filed and a copy served upon each party on this 23rd day of February, 1990.


CYNTHIA L. SPANSKI, CLERK

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SEND OPINION 90-005

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DISSENTING OPINION

Board Member Latané, dissent:

I respectfully dissent from the majority determination in this case that Fire Safety Inspector Supervisors are not supervisors within the meaning of O.R.C. §4117.01(F). I agree with Conclusions of Law 1, 2, and 3 reached by the hearing officer in the recommended determination, and incorporate the Analysis and Discussion of said recommended determination in this dissent by reference.

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