

STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNIT DETERMINATION #22-78,)
AMERICAN FEDERATION OF STATE, COUNTY AND)
MUNICIPAL EMPLOYEES,)
Petitioner,)
- vs -)
CITY OF LIVINGSTON,)
Counter-Petitioner.)

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDED ORDER.

* * * * *

The American Federation of State, County and Municipal Employees filed a petition for Unit Determination and Election with the Board of Personnel Appeals on August 28, 1978. They proposed a unit of "all employees of the Police Department, including dispatchers."

The counter-petitioner, City of Livingston proposed to exclude the Chief of Police, Assistant Chief of Police, Captain and two Sergeants.

A hearing in this matter was held on October 23, 1978. At the hearing the two parties stipulated that the Chief and Assistant Chief of Police are supervisory personnel and should be excluded from the bargaining unit.

After a careful review of the testimony and evidence presented at the hearing, I make the following

FINDINGS OF FACT

1. Under the Metropolitan Police Law (11-1801 et seq. R.C.M. 1947), the Mayor of Livingston has the right to appoint and the power to suspend or remove all members and officers of the police force. He also has the power to make rules and regulations for the government, direction, management and discipline of the force. Restrictions on his power are created by the Act which gives certain duties to the Police Commission.



- 1 2. The Mayor or Chief of Police (subject to approval of the Mayor)
2 has the power to suspend an officer for not more than 10 days
3 in a month. This action is appealable to the Police Commission.
- 4 3. Currently, the Livingston Police Force consists of eleven
5 officers: a Chief, an Assistant Chief, a Captain, 2 Sergeants
6 and 6 Patrolmen.
- 7 4. The City and Union have agreed that the Chief and Assistant
8 Chief are supervisory personnel and should not be included in
9 the bargaining unit.
- 10 5. The Captain does not have the authority to hire, transfer, lay-
11 off, recall, promote or discharge. He does not make shift
12 assignments, reward employees or settle their grievances. He
13 does not possess the authority to effectively recommend these
14 things.
- 15 6. The Captain has never been given the authority (either verbally
16 or in writing) to do those things set forth in Finding of
17 Fact #5.
- 18 7. Once during his tenure as Captain (2 years, 2 months) the
19 Captain effectively recommended the suspension/discipline of
20 a member of the force. This was not a normal occurrence.
- 21 8. Apparently, the Captain and the two Sergeants have the right
22 to suspend for the balance of a shift. The Captain has
23 suspended a man (see Finding of Fact #7). One Sergeant testi-
24 fied that he was once told he had such authority. The newest
25 Sergeant has not been given such instruction.
- 26 9. When the Captain acts as senior officer on a shift, he directs
27 the men in their work. Due to the shift assignment and "days
28 off" schedule employed in the Police Department of the City of
29 Livingston, the Captain will be in charge of a shift less than
30 50% of his work time. It is unclear how much "direction" is
31 needed on a normal shift and how much that shift operates by
32 routine.

1 10. One of the two Sergeants is in charge of a shift and directs the
2 men when the Chief, Assistant Chief and Captain are not on duty.
3 The percentage of time one of the Sergeants is in charge of a
4 shift does not exceed the percentage of time the Captain is in
5 charge and probably is substantially less (see Finding of Fact #9
6 for amount of time the Captain is in charge of a shift). The Chief
7 of Police estimated that one-third of the shifts are "covered"
8 by a Sergeant.

9 11. The two Sergeants on the police force in Livingston have never
10 been given the authority (either verbally or in writing) to do
11 those supervisory tasks outlined in Section 59-1603 (3): hire,
12 transfer, lay-off, recall, promote, discharge, assign, reward,
13 discipline and adjust grievances. The most senior Sergeant
14 thinks he might possibly effectively recommend a few of these
15 actions but this is in the realm of speculation rather than of
16 assigned authority.

16 DISCUSSION

17 Under the Metropolitan Police Law, subject to certain restric-
18 tions, the Mayor of the City of Livingston is vested with the
19 authority to hire and fire and generally manage the police force.
20 Since by law the final decision must be the Mayor's, some employees
21 on the police force must possess the authority and use independent
22 judgment in effectively recommending the hiring, firing, suspension,
23 reward, etc. of other employees in the Department. The Union and
24 the City have stipulated that the Chief and the Assistant Chief have
25 such supervisory authority.

26 As a result of the testimony, of those things enumerated in
27 the Act as defining supervisor, the only two "authorities" which
28 are in question are suspension and direction. Do the Captains and
29 Sergeants have the right to suspend? Do they, acting as supervisors,
30 direct the other men on shift? It appears that these men do have
31 the authority to suspend for the balance of a shift. How much and
32 how often they direct men is unclear. When they are in charge of

1 a shift they direct the men; however, they are in charge of a shift
2 less than half their time (see Finding of Fact #8 and #9). The
3 direction they give men on shift appears to be more the type given
4 by a lead worker than that given by a supervisor. The amount of
5 time the Captain and Sergeants spend directing men on shift,
6 coupled with their authority to suspend, is not sufficient to cause
7 them to be excluded from the unit as supervisors.

8 The testimony on the record indicates that the Captain and the
9 Sergeants have never formally been given supervisory authority.
10 They do not exercise such authority nor do they effectively recommend
11 either formally or in any consistent informal manner. They are
12 included in the bargaining unit.

13
14 CONCLUSIONS OF LAW

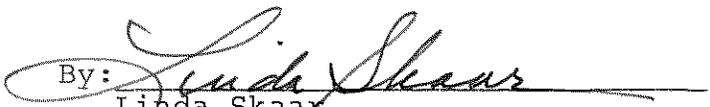
15 A unit consisting of all employees in the City of Livingston
16 Police Force with the exception of the Chief and Assistant Chief
17 is an appropriate unit for the purposes of collective bargaining
18 under Section 59-1606 (2) and 59-1602 (2) R.C.M. 1947.

19
20 RECOMMENDED ORDER

21 It is ordered that an election by secret ballot shall be
22 conducted as early as possible, in accordance with the rules and
23 regulations of the Board of Personnel Appeals, among the employees,
24 in the above described bargaining unit, employed by the City of
25 Livingston Police Department on August 28, 1978, to determine
26 whether or not they desire to be represented for purposes of
27 collective bargaining.

28 DATED this 20th day of December, 1978.

29 BOARD OF PERSONNEL APPEALS

30 By: 

31 Linda Skaar
32 Hearing Examiner

CERTIFICATE OF MAILING

I, Jennifer Jacobson, hereby certify and state that I did on the 20th day of December, mail a true and correct copy of the above FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDED ORDER to the following persons:

Harold Guthrie, Mayor
City of Livingston
414 East Callender
Livingston, MT 59047

George F. Hagerman
Montana State Council No. 9
AFSCME
600 North Cooke
Helena, MT 59601



Jennifer Jacobson