

19 CIR _____ (2014)

NEBRASKA COMMISSION OF INDUSTRIAL RELATIONS

HAMILTON COUNTY EMS ASSOCIATION,) CASE NO. 1341
IAFF)

LOCAL 4956,) REP. DOCKET NO. 470
)

)
Petitioner,) FINDINGS AND ORDER

)
v.)
)

)
HAMILTON COUNTY, NEBRASKA,)
)

)
Respondent.)

APPEARANCES:

For Petitioner: John E. Corrigan

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1411 Harney Street, Ste 100

Omaha, Nebraska 68102

For Respondent: Rachel K. Boyle

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PILLEN, COMMISSIONER

Before Commissioners Pillen, Blake and Lindahl

NATURE OF THE CASE

On August 22, 2013, the Hamilton County EMS Association, IAFF Local 4956 (“Petitioner” or “Union”) filed a Petition seeking to represent all full-time employees of Hamilton County (“County” or “Respondent”) in the positions of Emergency Medical Technician-Basic or Intermediate, Paramedic, Captain-Special Operations, and Captain-Training Officer within the Hamilton County Ambulance Service (“The Ambulance Service”), excluding the Department Director, Assistant Director and part-time employees. On September 9, 2013, the Deputy Clerk reported to the Commission that Petitioner had filed a sufficient showing of interest to entitle it to an election.

Respondent filed its Answer on September 11, 2013, alleging that the proposed bargaining unit was inappropriate because it excluded part-time employees and potentially other employees and included employees that Respondent argued were supervisors. On September 19, 2013, the Petition was amended to include full-time and part-time employees in the same job classifications as listed in the original Petition, excluding the Department Director, Assistant Director, and any seasonal, casual or temporary employees. On September 27, 2013, the Deputy Clerk reported to the Commission that Petitioner had filed a sufficient showing of interest to entitle it to an election. In its Answer filed October 9, 2013, Respondent alleged that the proposed bargaining unit was inappropriate because it did not include all non-supervisory employees and did not exclude supervisory employees.

On December 10, 2013, a trial was held before the Honorable Sarah S. Pillen to receive evidence and testimony on the matter. Three issues were presented for the Commission’s consideration: 1) whether Hamilton County EMS Association, IAFF Local 4956 is a labor organization as defined by NEB. REV. STAT. § 48-801(7); 2) whether the positions of Captain-Training Officer and Captain-Special Operations are supervisors as defined by NEB. REV. STAT. § 48-801(14) and should therefore be excluded from the proposed bargaining unit; and 3) whether seasonal, casual, or as-needed employees should be included in the proposed bargaining unit.

FACTS

Exhibit 503 shows a list of 25 employees of Respondent, 17 of which hold job classifications which Petitioner contends are appropriate classifications for inclusion in the proposed bargaining unit. Respondent argues that the appropriate bargaining unit would include as-needed employees and exclude the Captain job classifications.

The Ambulance Service has two Captain positions- Captain-Training Officer and Captain-Special Operations. In the chain of command, the Captains rank below the Director and Assistant Director of the Ambulance Service. The Captains perform the same primary functions as the Paramedics and EMTs, such as completing a daily checklist, responding to emergency and transfer calls, and providing patient care if paramedic-level care is required. However, each Captain has additional duties which are specific to each position. The Captain-Training Officer coordinates and initiates emergency medical and related training for the Ambulance Service. The Captain-Special Operations handles department statistics, special situations such as Fire Appreciation Day, and the AED program, ensuring that all AED equipment across the county is functioning and updated. The Captains are also responsible for the daybook, or department log book. Captains may also participate in hiring interviews with the Director and Assistant Director.

Eight employees listed on Exhibit 503 are designated as “as needed” employees for the County. “As needed” refers to employees that are called in during times of mass casualty, catastrophe, and other special needs of the department. These employees hold the classification of Paramedic and EMT. Some of these as-needed employees hold full-time employment with other County departments as well as entities such as the City of Grand Island Fire Department.

DISCUSSION

Three issues are before the Commission for determination: 1) whether Hamilton County EMS Association, IAFF Local 4956 is a labor organization as defined by NEB. REV. STAT. § 48-801(7); 2) whether the positions of Captain/Training Officer and Captain/Special Operations are supervisors as defined by NEB. REV. STAT. § 48-801(14) and should therefore be excluded from the proposed bargaining unit; and 3) whether seasonal, casual, or as-needed employees should be included in the proposed bargaining unit. We shall make a determination on each issue in turn.

Labor Organization

To start, Respondent in its statement of issues questioned whether Hamilton County EMS Association, IAFF Local 4956 is a labor organization as defined by the Industrial Relations Act (“IRA” or “Act”). Petitioner argues that it is a labor organization as defined by statute.

NEB. REV. STAT. § 48-801(7) defines a labor organization as “any organization of any kind or any agency or employee representation committee or plan, in which public employees participate and which exists for the purpose, in whole or in part, of dealing with public employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.”

Testimony was received from Mr. Dave Engler, who currently serves as the Direct Field Services Representative for the International Association of Firefighters (“IAFF”). Mr. Engler testified to the IAFF’s status as a labor organization based in Washington, DC, and that the IAFF currently has approximately 15 locals in Nebraska. Mr. Engler also testified to the organization campaign with the employees in the Hamilton County EMS Service in establishing Local 4956, and his intention to engage Respondent in collective bargaining for wages, benefits, and working conditions for the employees of Local 4956.

It is clear that the IAFF is a labor organization as defined under § 48-801(7). The IAFF engages employers concerning labor disputes, grievances, wages, benefits, and working conditions for the employees that it represents. Petitioner’s arguments regarding the status of IAFF and Local 4956 were not disputed by Respondent. Therefore, we find that Hamilton County EMS Association Local 4956 is a labor organization as defined by NEB. REV. STAT. § 48-801(7).

Captain/Training Officer and Captain/Special Operations

Respondent argues that both captain positions are supervisors and should be excluded from the proposed bargaining unit. NEB. REV. STAT. § 48-816(3)(a) provides that a supervisor shall not be included in a single bargaining unit with any employee who is not a supervisor. Section 48-801(14) defines a supervisor as:

“any public employee having authority, in the interest of the public employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other public employees, or responsibility to direct them, to

adjust their grievances, or effectively to recommend such action, if in connection with such action the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment.”

An employee need only possess one of the enumerated supervisory powers but must use independent judgment when exercising the enumerated supervisory power. See *General Drivers & Helpers Union, Local No. 554 v. County of Saline and County Board of Saline*, 13 CIR 418 (2001); *Hall County Pub. Defenders Org. v. County of Hall and the Hall County Bd. Of Supervisors*, 12 CIR 227, 240 (1996), *rev'd on other grounds*, 253 Neb. 763, 571 N.W.2d 789 (1998). In defining supervisors, the Commission has distinguished between true supervisors, those with “genuine management prerogatives,” and those employees such as “straw bosses, leadmen, and set-up men, and other minor supervisory employees” who are entitled to join a bargaining unit despite performing minor supervisory duties. See *IAFF Local 647 v. City of Grand Island*, 19 CIR ____ (2013)(CIR Case No. 1334); *International Union of Operating Engineers Local 571, AFL-CIO v. Cass County*, 14 CIR 118 (2002); *Neligh Ass'n Group v. City of Neligh*, 13 CIR 305 (2000). The statutory definitions must be read narrowly to ensure that “exemptions from [the Act’s] coverage are not so expansively interpreted as to deny protection to workers the Act was designed to reach.” *Neligh Assoc. Group v. City of Neligh*, 13 CIR 305 (2000) (citing *Holly Farms Corp. v. NLRB*, 517 U.S. 392, 399 (1996)).

In the present case, Cathy Sigler, Director of the Ambulance Service, testified that she gives the Captains the freedom to run their shift as they see fit. But, if the Captains have a problem, they consult with Ms. Sigler. However, as corroborated by the testimony of the Captains, EMTs, and Paramedics, the Captains’ actual actions in running their shift are routine and ministerial. Neither the Captain-Training Officer nor Captain-Special Operations possess the authority to hire, transfer, suspend, lay-off, recall, promote, discharge, assign, reward or discipline other employees or adjust their grievances. Captains do not create work schedules, direct which employees are “first call” and which are “back up,” or have authority to transfer employees from shift to shift. Although they can fill out performance reviews, this function is routine in nature. The Captains may take part in hiring interviews with the Director and Assistant Director, but the final authority to hire or fire lies with the County Commissioners based on the Director’s recommendation. These actions do not rise to the level of exercising independent judgment. We therefore find that the positions of Captain-Training Officer and Captain-Special Operations are not statutory supervisors.

Once it has been determined that an employee is not a supervisor, the remaining

question is whether a community of interest exists among the employees, which is sufficiently strong enough to warrant their inclusion in a single unit. *American Association of University Professors v. Board of Regents*, 198 Neb. 243 (1977). The Nebraska Supreme Court has noted the following factors in determining whether a community of interest exists:

1. Mutuality of wages, hours and working conditions;
2. Duties and skills of the employees;
3. Extent of union organization among employees;
4. Desire of employees;
5. Public policy against fragmentation of units;
6. Established policies of the employer;
7. Extent of interchange of employees in the proposed bargaining unit; and
8. Statutory mandate to ensure proper functioning and operation of governmental service.

Sheldon Station Employees Association v. NPPD, 202 Neb. 391 (1979). These factors are not the only factors to be considered, and equal weight need not be given to each factor. *Id.*

The evidence shows that both the job responsibilities of the Captain-Training Officer and Captain-Special Operations are more in line with the Paramedics and EMTs than the Director or Assistant Director. Captains work the same work schedules, are paid hourly, and receive the same fringe benefits as full-time Paramedics and EMTs. Captains, Paramedics and EMTs are also eligible for overtime pay, while the Director and Assistant Director are only eligible for compensatory time. The Captains, Paramedics, and EMTs testified that Captains respond to emergency medical calls alongside Paramedics and EMTs. During emergency response calls, the senior Paramedic on scene first takes charge of the scene, even if that Paramedic is not a Captain. Captains participate in all daily tasks identified on the daily checklist during a shift alongside the other employees. Although the Captain may be responsible for completing of the daybook entries, the Paramedics and EMTs may also complete entries in the daybook. If a Captain is absent, the Paramedics and EMTs assume the Captain's duties. Finally, the Captains testified that it is their desire

to be represented by Petitioner as part of the proposed bargaining unit.

Under our analysis, neither the Captain-Training Officer nor the Captain-Special Operations are statutory supervisors, and both share a strong community of interest with the other employees of the proposed bargaining unit. We therefore find that the Captain-Training Officer and Captain-Special Operations should be included in the bargaining unit.

As-Needed Employees

The final issue for determination is whether as-needed employees should be included in the bargaining unit. Petitioner contends that these employees do not share a community of interest with the proposed bargaining unit and should be excluded. Respondent contends that these as-needed employees should be included in the proposed bargaining unit, as they have enough in common with full and part-time employees to create a community of interest with the bargaining unit.

As with the two Captain positions, the Commission must determine whether a community of interest exists between the as-needed employees and the rest of the proposed bargaining unit using the same *Sheldon Station* community of interest factors. Such employees have been excluded in the past for lack of community of interest. In *Nebraska State Council of Local Unions No. 32, American Federation of State, County and Municipal Employees v. City of Blair*, 4 CIR 210 (1980), the Commission considered the question as to whether any part-time, seasonal and casual employees should be included in the proposed bargaining unit. The Commission held that two librarians should be included in the unit because of their mutuality of interest in benefits and wages with the bargaining unit despite their working less than 40 hours a week. All other part-time, seasonal, and casual employees that worked very limited hours and did not receive fringe benefits were excluded from the bargaining unit due to their lack of mutuality of interest in wages, continuous contact, working conditions, duties and interchange with full-time employees. *Id.*

In the present case, the as-needed employees do receive a similar pay rate as other employees and would be able to interchange with the other employees, as they would have the same skills and the ability to perform the same duties. However, testimony during trial showed that these employees very rarely work or have not worked at all for Respondent since being designated as an as-needed employee. These employees do not receive benefits unless they work a certain threshold of hours, do not have continuous

contact with other employees, and do not share mutuality of interest in hours and working conditions due to the rarity of their schedule. Moreover, if they are called to work there is no expectation that they must work. Based on this evidence, the Commission finds that as-needed employees do not share a community of interest with the proposed bargaining unit and shall not be included.

ELECTION

Petitioner requests an election to be held to allow eligible employees to determine whether the Hamilton County EMS Association, IAFF Local 4956 should be certified as the sole and exclusive collective bargaining agent for members of the proposed bargaining unit. In the Second Deputy Clerk's Report to the Commission dated September 27, 2013, it was reported that the required showing of interest was met. An election shall be ordered in the below designated unit as soon as practical.

Designation of Bargaining Unit

The bargaining unit shall be designated as follows:

All currently employed full-time and part-time employees of Hamilton County engaged in emergency medical response to include the positions of Emergency Medical Technician-Basic, Emergency Medical Technician-Intermediate, Emergency Medical Technician-Paramedic, Captain-Special Operations, and Captain-Training Officer, and excluding the Department Director, Assistant Director of said division of Hamilton County government, and any seasonal, casual or temporary employees of said department.

IT IS THEREFORE ORDERED that

1. The appropriate bargaining unit shall be all currently employed full-time and part-time employees of Hamilton County engaged in emergency medical response to include the positions of Emergency Medical Technician-Basic, Emergency Medical Technician-Intermediate, Emergency Medical Technician-Paramedic, Captain-Special Operations, and Captain-Training Officer, and excluding the Department Director, Assistant Director of said division of Hamilton County government, and any seasonal, casual or temporary employees of said department.

2. This representation case shall proceed in accordance with Commission Rules regarding the election and certification of a labor organization. The Commission Clerk shall coordinate all appropriate procedures with the parties as soon as practical.

All Panel Commissioners join in the entry of this Order.

Entered February 27, 2014.