

NATIONAL ASSOCIATION OF)
GOVERNMENT EMPLOYEES,) Vermont Labor Relations Board
NATIONAL ASSOCIATION OF)
FIREFIGHTERS (NAGE)) Docket #77-44R
)
and)
)
CITY OF BURLINGTON)

FINDINGS OF FACT, OPINION AND ORDER

The above captioned cause came on for hearing before the Vermont Labor Relations Board on June 24, 1977, and the Board having considered the same, renders the following Findings of Fact, Opinion and Order.

FINDINGS OF FACT

1. The matter came on for hearing pursuant to NAGE's Petition seeking to be designated the exclusive representative of a bargaining unit consisting of all Lieutenants, Captains and Deputy Chiefs of the Burlington Fire Department, but excluding the Chief, all other firefighters and all other employees of the City of Burlington. There would be twenty-six employees in the proposed bargaining unit.
2. There is currently certified a bargaining unit comprised of all firefighting employees of the Burlington Fire Department below the rank of Lieutenant.
3. There are eighty-three employees of the Burlington Fire Department of which thirteen have the rank of Lieutenant, ten have the rank of Captain and three have the rank of Deputy Chief.
4. There are five fire stations within the City of Burlington. Station No. 1 or Central Station, so-called,

contains the largest number of vehicles including a snorkel truck, a ladder truck, a 1250 gallon pumper truck, two ambulances and a pick-up truck which is designated as Car 12 or the Deputy Chief's car. Each of the outside stations (Stations 2, 3, 4 and 5) have one pumper truck.

5. Each of the outside stations is under the immediate jurisdiction of a Captain. The duties of such Captains are spelled out in the Rules and Regulations of the Fire Department (Petitioner Exhibit 1) and the job classification description of Captains (City Exhibit E).

6. The outside station Captains as well as the Operational Captain at Central Station and all Lieutenants and firefighters in the Burlington Fire Department work a schedule which involves twenty-four hours of duty followed by forty-eight hours off. The work week for such employees is fifty-six hours if computed on a yearly average.

7. Subject to the overall responsibility of the Fire Department Chief Engineer and the Fire Commission, a Captain is specifically in charge of each fire station. The Captain prepares and posts the work schedule for his station and it is the responsibility of the firefighters working under him to perform the work as scheduled. The Captain is in charge of making sure that the vehicle assigned to his station is completely operational.

8. The Captain is responsible for making sure that all housekeeping for the station is properly accomplished. He is responsible for the training of the firefighters working under him, so as to be assured that they can adequately and efficiently

perform their duties. He is responsible to make sure that the company he commands engages in adequate training. At the scene of a fire he has complete charge of his company with respect to the means and methods of fighting a fire, subject only to the overall jurisdiction of the Deputy Chiefs and Chief.

9. The Captain of a fire company which is first to arrive at the scene of a fire must exercise significant duties which require the use of independent judgment. It is such individual who determines whether a second alarm is called. A second alarm brings to the scene all other on-duty fire department personnel. The Captain also has authority to decide whether to call a third alarm in which case all off-duty firefighters as well as the auxiliary fire department is called to the scene. The Captain also determines whether an ambulance should be called to the scene.

Fire Captains are responsible to evaluate the performance of the employees assigned under them. They prepare a written evaluation of the performance of such employees semi-annually (City Exhibit J). They have authority to issue verbal reprimands to employees in performing to the standards expected. They also have authority to issue written reprimands on established warning record forms (City Exhibit K). They have authority to relieve employees of duty and to "send them home".

10. The Operational Captains have authority to effectively recommend the transfer, suspension, reward, promotion or discharge of employees serving under them.

11. The Operational Captain at Central Station has direct authority, in addition to all other operational responsibilities,

to transfer employees from one station to another based upon needs on a particular day.

12. Fire Captains serve on an oral review board which makes effective recommendations to the Chief and Fire Commission as to which individuals should be hired as firefighters.

13. There are six Captains assigned to Central Station, three of which are Operational Captains and three hold staff positions. The work hours are such that there are three distinct work shifts, each of which is headed by a Captain. The three staff positions are Drill Master/Training Officer, City Fire Marshall and Master Mechanic. The Training Officer is in charge of developing overall training programs for the entire firefighting force. The City Fire Marshall is in charge of fire investigations and the enforcement of the City fire codes. The Master Mechanic is in charge of vehicle maintenance for the entire vehicle fleet. Each of such staff positions necessarily involves a large degree of independent judgment.

14. When the Operational Captains are on their off-shift, their responsibilities at each of the outside stations are carried out by fire Lieutenants. There are two Lieutenants assigned to each of the outside stations and together with the Captain all three shifts are thus covered. When on duty, the Lieutenants have all of the same responsibility and authority as that held by Captains including the right to assign work both at the station and at the scene of a fire, to demand competent performance and to evaluate the performance of the firefighters working under them, to issue oral and written reprimands to employees, to relieve employees of duty and to "send

them home" for infractions of the Rules and Regulations and to effectively make recommendations with respect to the hiring, promoting, transfer, suspension, reward and discharge of employees.

15. The fire Lieutenants also have authority to adjust the grievances of those employees working under them. Under the existing collective bargaining Agreement between the City and those firefighters under the rank of Lieutenant, the first mandatory stage of the grievance procedure is to the Lieutenant (City Exhibit D).

16. Until recently, both the Captains and Lieutenants had immediate authority to suspend employees and determine the length of such suspension. This procedure was altered and it is now the practice for the Captains and Lieutenants to relieve an individual of duty and send him home with either the Chief or Deputy Chiefs determining the length of suspension.

17. There are three Operational Lieutenants and two staff Lieutenants assigned to Central Station. The Operational Lieutenants assist the Captains in carrying out the supervisory responsibilities. The staff positions are as the City Fire Prevention Officer and the Assistant to the Superintendent of the fire alarm system. The Fire Prevention Officer assists the City Fire Marshall in fire code enforcement and in the investigation of fires which occur under suspicious circumstances. The Assistant to the Fire Alarm Superintendent assists in the maintenance, replacement and repair of the private and public fire alarm system throughout the City. Both staff positions require significant exercise of independent judgment.

18. There are three Deputy Chiefs, one assigned to each

shift, who assist the Chief Engineer in the overall management and supervision of the Burlington Fire Department. In the absence of the Chief Engineer, the Deputy Fire Chief on duty exercises the complete responsibility of Chief Engineer.

19. On January 6, 1970, the State of Vermont State Labor Relations Board made Findings and Order in a matter entitled In Re: Petition of Burlington Fire Prevention Association, Inc. and City of Burlington Fire Department Petitionee. Such Petition involved a request by the Lieutenants and Captains of the Burlington Fire Department to become certified as an appropriate unit for collective bargaining under the Vermont Municipal Employees Relations Act. In such Findings and Order such Board, which by action of the legislature has been merged into this Board, found that the duties and authorities of the Captains and Lieutenants were such that they were supervisors under the act and thus not "municipal employees" subject to certification as an appropriate bargaining unit.

20. Based upon the evidence and testimony presented at the hearing on the Petition now before this Board, it is apparent that the supervisory responsibilities of the Fire Department Lieutenants and Captains continue in effect and that there has been no material diminishment of such supervisory responsibilities from and after January 6, 1970.

21. All evidence introduced with respect to the status of the Deputy Chiefs established that they also are supervisory employees.

OPINION AND ORDER

The Board thus finds that the Lieutenants, Captains and Deputy Chiefs of the Burlington Fire Department are employed as supervisors pursuant to 21 V.S.A. 1722(12)(b) and 21 V.S.A. 1502(13) and are thus not "municipal employees" who may legally be certified as an appropriate unit for collective bargaining under the Vermont Municipal Employee Relations Act. It, therefore, Orders that the petition of NAGE in the above docket is dismissed.

Dated at *Bennington* Vermont this *8th* day of
December, 1978.

John S. Burgess

John S. Burgess, Chairman

William Kemsley Jr

William Kemsley, Commissioner

H. James Wallace

H. James Wallace, Commissioner