

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS BOARD

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In the Matter of the Petition of	:	
	:	
THE PROFESSIONAL POLICEMEN'S PRO-	:	
TECTIVE ASSOCIATION OF MILWAUKEE,	:	
WISCONSIN	:	Case XXII
	:	No. 9440 FF-28
To Initiate Fact Finding	:	Decision No. 7069
between said Petitioner and	:	
	:	
CITY OF MILWAUKEE (Members of	:	
the POLICE DEPARTMENT)	:	
- - - - -	:	

Appearances:

Kersten & McKinnon, Attorneys at Law, by Mr. Charles J. Kersten,
for the Petitioner.
Mr. Harry G. Slater, Deputy City Attorney, for the Municipal
Employer.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The Professional Policemen's Protective Association of Milwaukee, Wisconsin, having on November 1, 1963, filed a petition with the Wisconsin Employment Relations Board to initiate fact finding, pursuant to Section 111.70 of the Wisconsin Statutes, on behalf of the majority of the members employed in the Police Department of the City of Milwaukee, wherein it alleged that said Municipal Employer had failed and refused to meet and negotiate at reasonable times with said Petitioner in a bona fide effort to arrive at a settlement concerning said Petitioner's proposals concerning wages, hours and conditions of employment affecting members of said Police Department, and further, the Petitioner alleged that said Municipal Employer declined to recognize the Petitioner with respect to members of the Police Department having a rank of lieutenant and above; and the Board having conducted a hearing on said petition on February 4, 1964 at the City Hall, Milwaukee, Wisconsin, Commissioners Arvid Anderson and Zel S. Rice II being present; and the Board, having considered the evidence and arguments of Counsel and being fully advised in the premises, makes and files the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That The Professional Policemen's Protective Association of

Milwaukee, Wisconsin, hereinafter referred to as the Petitioner, is an organization having its offices at 231 West Wisconsin Avenue, Milwaukee, Wisconsin.

2. That the City of Milwaukee, hereinafter referred to as the Municipal Employer, is a city located in the State of Wisconsin, having its principle offices at the City Hall, Milwaukee, Wisconsin.

3. That the Petitioner, at all times material herein, has been, and is, the representative of a majority of the non-supervisory and supervisory members of the Police Department of said Municipal Employer.

4. That on November 1, 1963 the Petitioner filed the instant petition with the Wisconsin Employment Relations Board, hereinafter referred to as the Board, wherein it requested the Board to initiate a fact finding proceeding, pursuant to Section 111.70 of the Wisconsin Statutes, wherein it alleged that it had filed a petition, pursuant to Section 111.70(4)(j) of the Wisconsin Statutes, with the Municipal Employer requesting the Municipal Employer to recognize the Petitioner as the bargaining agent for all members of the Police Department without regard to the rank of said members; and that, however, the Municipal Employer denied the Petitioner such recognition, as such recognition pertained to members having the rank of lieutenant and above.

5. That on November 27, 1963, the Petitioner filed with the Board a subsequent petition for fact finding wherein it requested the Board to initiate fact finding concerning a dispute existing between it and the Municipal Employer on wages, hours and conditions of employment affecting non-supervisory members of the Police Department; and that following the hearing on said petition the Board, on December 12, 1963, in the case entitled City of Milwaukee, XXVI issued its Findings of Fact, Conclusions of Law, Certification of Results of Investigation and Order Appointing Fact Finding Panel, wherein the Board concluded that (1) the Petitioner was the recognized representative of members of the Police Department who occupied the position of sergeant or below, (2) a deadlock existed between the Petitioner and the Municipal Employer within the meaning of Section 111.70(4)(e) of the Wisconsin Statutes as affecting sergeants and below, (3) the conditions precedent to the initiation of fact finding had been met, and further (4) a Panel of Fact Finders was appointed.

6. That in City of Milwaukee, XXVI the Board did not determine the question as to whether supervisory members of the Police Department

were entitled to initiate fact finding procedures pursuant to the provisions of Section 111.70 of the Wisconsin Statutes; and that the following positions in the Police Department are supervisory positions:

Chief of Police	Police Identification Supt.
Inspector of Police	Administrative Asst. III
First Deputy Inspector	Assistant Supt. of Police Communications
Deputy Inspector of Police, Training & Special Services	Secretary, Police Department
Inspector of Detectives	Building Maintenance Supervisor II
Deputy Insp. of Traffic	Administrative Asst. II
Superintendent of Police Communications	Chief Operator of Police Alarm
Administrative Asst. IV	Lieutenant of Police
Deputy Insp. of Detectives	Lieutenant of Police (Garage)
Deputy Insp. of Police	Assistant Police Identification Superintendent
Captain of Police	Asst. Chief Operator of Police Alarm

7. That the following positions in the Police Department are confidential positions:

Police Patrolman
(one position in Personnel Bureau)

Clerk Stenographer III
(one position each in Administration Bureau,
Personnel Bureau, and Training School)

Police Aide
(one position in Personnel Bureau)

8. That the following members of the Police Department are craft employes within the meaning of Section 111.70 of the Wisconsin Statutes:

Physician, Police
Painter

9. That the Municipal Employer has refused to meet with the representatives of the Petitioner for the purpose of negotiating wages, hours or working conditions on behalf of the supervisory members of the Police Department

Upon the basis of the above and foregoing Findings of Fact, the Board makes the following

CONCLUSIONS OF LAW

1. That the supervisory members of the Police Department of the City of Milwaukee are agents of the Police Department of the City of

Milwaukee with respect to the relationship between the City of Milwaukee and the non-supervisory members of its Police Department.

2. That neither the supervisory members of the Police Department of the City of Milwaukee, nor their representatives, have the right to institute any fact finding proceeding pursuant to Section 111.70 of the Wisconsin Statutes.

3. That, therefore, the conditions for the initiation of fact finding for members of the Police Department of the City of Milwaukee, as set forth in Section 111.70(4)(j) of the Wisconsin Statutes, have not been met.

Upon the basis of the above and foregoing Findings of Fact and Conclusions of Law,

IT IS HEREBY

ORDERED

That the petition for fact finding filed in the instant proceeding, as it affects supervisory members employed in the Police Department of the City of Milwaukee be, and the same hereby is, dismissed.

Given under our hands and seal at the City of Madison, Wisconsin, this 19th day of March, 1965.

WISCONSIN EMPLOYMENT RELATIONS BOARD

By Morris Slavney /s/
Morris Slavney, Chairman

SEAL

Arvid Anderson /s/
Arvid Anderson, Commissioner

Zel S. Rice II /s/
Zel S. Rice II, Commissioner

STATE OF WISCONSIN

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-----		:

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

BACKGROUND

The Petitioner herein requested the Board to initiate fact finding concerning an alleged deadlock between it and the Municipal Employer concerning wages, hours and working conditions of all the members of the Police Department, the majority of whom are represented by the Petitioner. Prior to the taking of formal evidence with respect to the petition, the City acknowledged that it would recognize the Petitioner for the purposes of fact finding as the representative of non-supervisory members of the Police Department and the parties agreed that such supervisory positions do not cover those members having the rank of sergeant or below. There was an agreement that the officers holding the rank of lieutenant and above were supervisory; however there was an issue as to whether certain positions were supervisory. However, the primary issue required for determination by the Board is whether supervisory members of the Police Department are entitled to proceed to fact finding under Section 111.70 of the Wisconsin Statutes.

Section 111.70(4)(j) provides as follows:

"In any case in which a majority of the members of a police or sheriff or county traffic officer department shall petition the governing body for changes or improvements in the wages, hours or working conditions and designates a representative which may be one of the petitioners or otherwise, the procedures in pars. (e) to (g) shall apply. Such representative

may be required by the board to post a cash bond in an amount determined by the board to guarantee payment of one-half of the costs of fact finding."

Section 111.70(1)(b) defines a "municipal employe" as "any employe of a municipal employer except city and village policemen, sheriff's deputies, and county traffic officers."

The Board has consistently held that supervisory employes are not employes within the meaning of Section 111.70(1)(b).^{1/}

Section 111.70(e) through (g) establishes the conditions and procedures for fact finding.

PETITIONER'S POSITION

The Petitioner contends that the fact finding provisions of the Statute apply to all members in the employ of the Police Department, without distinction between supervisory and non-supervisory members. It contends that the employer-employe relationship involved is between the Police Department as a whole and the Municipal Employer and that such employer-employe relationship is not between the supervisory members and the non-supervisory members of the Police Department. It further contends that there is no statutory justification for the fragmenting of the Police Department in requiring its members to have dual representation in conferences and negotiations with the Municipal Employer on wages, hours and conditions of employment. In support of its position, the Petitioner directs the Board's attention to the fact that it has represented the members of the Police Department in bargaining with the Municipal Employer for many years and that historically, the Municipal Employer has made no distinction between supervisory and non-supervisory members, and further that the community of interest existing between supervisory and non-supervisory members is such that there should be no such distinction.

POSITION OF THE MUNICIPAL EMPLOYER

The Municipal Employer contends that Section 111.70(4) does not impose any duty upon it to confer and negotiate on hours or working conditions affecting supervisory employes and that the Board has so recognized that fact in excluding supervisory employes from

^{1/} Outagamie County Hospital, Dec. No. 6076, 8/62; City of Wausau, Dec. No. 6276, 3/63.

bargaining units established by the Board in cases processed under Section 111.70. It directs the Board's attention to the fact that in a decision involving the Fire Department of the Municipal Employer the Board excluded the rank of captain and above from the bargaining unit of Fire Department employees.^{2/} The Municipal Employer argues that it would be inconsistent for the Board to confer the right to proceed to fact finding to supervisory members of the Police Department when it has in fact, by excluding supervisory employes from collective bargaining units, denied such rights to supervisory employes employed in the departments other than law enforcement departments.

DISCUSSION

Issues exist as to which members of the Police Department exercise supervisory authority and duties within the Police Department. The Board had previously determined, in its Certification for Fact Finding in City of Milwaukee XXVI that the members of the Police Department holding the rank of sergeant and below were non-supervisory and therefore entitled to initiate fact finding within the meaning of Section 111.70(4)(j). However there are positions which were not covered in the determination in that proceeding. We have therefore, in this proceeding, specifically determined those positions which are supervisory, confidential or craft. Such determinations are reflected in the Findings of Fact and were made by the Board after a thorough examination of the job descriptions furnished by the Municipal Employer and an examination of the rules of the Police Department and the Organizational Chart of the department. We wish to re-emphasize that the term "craft" as determined by the Board is not to be limited to only craft employes performing building trade type duties, but are also to cover employes engaged in professional type endeavors.

The Board recognizes that Section 111.70 (4)(j) does not specifically exclude supervisory employes from the term "members" of the Police Department. However, said Section must be read in conjunction with the entire Statute and particularly Sections (4)(e) through (g), relating to the procedures for the initiation of fact finding. The Statute recognizes the employer-employee relationship in municipal employment and provides for the peaceful resolution of labor disputes arising in that relationship. It provides a procedure

^{2/} City of Milwaukee, XXV, Dec. No. 6476, 8/63.

for the determination of bargaining representatives. The Board conducts elections and certifies the results thereof as to the collective bargaining representative chosen by the employes who are employed by municipal employers in departments other than police, sheriff, or traffic departments. It also provides rights for non-police employes and their employers, as well as protecting such rights in the form of prohibited practices. While members of law enforcement departments of a municipal employer have no right to request the Board to conduct an election to determine their bargaining representative, they nevertheless have the right to proceed to fact finding when a majority of their members petition the Municipal Employer on matters of wages, hours and conditions of employment.

The fact that members of a police department are excluded from the definition of the term "employee", does not necessarily erase the employer-employee relationship between the Municipal Employer and the members of that department. A municipal employer is a corporate entity and persons representing it carry out the managerial and supervisory duties of the municipal corporation, regardless of the nature of the department. The supervisory members of the Police Department are the agents of the Municipal Employer in its relationship with the non-supervisory members of the Police Department. The non-supervisory members of the Police Department are responsible to the supervisory members thereof and in that respect, the supervisory members perform supervisory duties and responsibilities for and on behalf of the Municipal Employer. The community of interest which exists between supervisory and non-supervisory members of the Police Department cannot be said to be greater than the community of interest which exists in any other department of the Municipal Employer. Because of the nature of the duties performed in the department, we are convinced that the supervisory members thereof exercise a greater degree of supervision over non-supervisory members than exists in other departments of the Municipal Employer.

We conclude that it would be most incongruous to afford supervisors in a police department the right to proceed to fact finding and at the same time to deny a similar right to supervisory employes employed in other departments of a municipal employer.

The primary reason for the Board's conclusion that supervisory employes are not to be considered as employes having rights under

Section 111.70 is the conflict of interest which would exist if the Board were to include supervisors in the same bargaining unit with rank and file employes. To permit the labor organization which represents rank and file employes to also represent supervisory employes, with full rights under the Statute, would create a climate where the supervisors could exercise undue influence, and thus interfere with the rights of non-supervisory employes.

Our conclusion should not be understood as barring a municipal employer from voluntarily recognizing and bargaining with organizations representing supervisory employes. What we have said is that supervisory employes and organizations representing them do not have the right to proceed to fact finding under the Statute. While the Board might wish that the Legislature had been more explicit with respect to the rights of law enforcement departments to utilize fact finding procedures, it is our responsibility to interpret the existing Statute in a manner consistent with what we believe was the legislative intent to encourage collective bargaining in public employment. This statutory intent would not be served by permitting the Petitioner herein to utilize fact finding procedures on behalf of supervisory employes. We have therefore dismissed the instant petition filed in this proceeding.

Dated at Madison, Wisconsin, this 19th day of March, 1965.

WISCONSIN EMPLOYMENT RELATIONS BOARD

By Morris Slavney /s/
Morris Slavney, Chairman

Arvid Anderson /s/
Arvid Anderson, Commissioner

Zel S. Rice II /s/
Zel S. Rice II, Commissioner