

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Joint Petition of the
CITY OF CUDAHY
AND
INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS,
AFL-CIO, LOCAL 1801
For a Declaratory Ruling
Involving Certain Employees of
CITY OF CUDAHY
Cudahy, Wisconsin

Case III
No. 12980 ME-465
Decision No. 9381

Appearances:

Mr. Vincent Slivinski, Mr. John Kukor, Mr. Robert Sklander,
President, Secretary, and Vice President, respectively,
appearing on behalf of the Union; brief submitted by
Lawton & Cates, Attorneys at Law.
Mr. Charles C. Mulcahy, Attorney, appearing on behalf of the
Municipal Employer.

DECLARATORY RULING

The City of Cudahy and International Association of Fire Fighters, AFL-CIO, Local 1801, having, on June 24, 1969, jointly petitioned the Wisconsin Employment Relations Commission for a declaratory ruling, requesting the Commission to determine whether Captains and Lieutenants in the employ of the Fire Department of the City of Cudahy are or are not supervisors, and whether supervisory personnel are entitled to maintain their Union membership; and a hearing on such petition having been held in Milwaukee, Wisconsin, on July 22, 1969, before Robert B. Moberly, Examiner; and the Commission having considered the evidence and briefs of the parties and being fully advised in the premises, makes and issues the following

DECLARATORY RULING

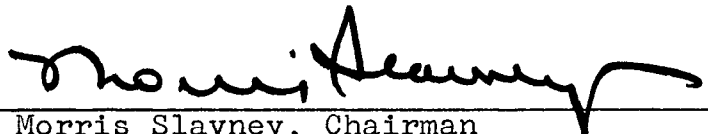
1. That the position of Captain in the employ of the Fire Department of the City of Cudahy, Cudahy, Wisconsin, is a supervisory position and is therefore excluded from the bargaining unit consisting of fire fighting personnel in the employ of said Municipal Employer.
2. That the position of Lieutenant in the employ of the Fire Department of the City of Cudahy, Cudahy, Wisconsin, is not a

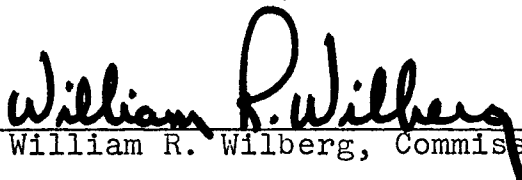
supervisory position and therefore said position is to be included in the bargaining unit consisting of fire fighting personnel in the employ of said Municipal Employer.

3. That the right of Captains, in the employ of the Fire Department of the Municipal Employer, to affiliate with a labor organization is not specifically protected by any provision of Section 111.70, Wisconsin Statutes, because they are supervisory personnel.

Given under our hands and seal at the City of Madison, Wisconsin, this 15th day of December, 1969.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Slavney, Chairman


William R. Wilberg, Commissioner

In the Matter of the Joint Petition of the
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No. 9381

The Fire Department of the Municipal Employer is located at one Fire Station and maintains two companies, each consisting of one Captain, one Lieutenant and six Motor Pump Operators. The Captains, Lieutenants and Motor Pump Operators work twenty-four hour shifts, with one shift on, one shift off, and three shifts off in succession after every fourth shift. The Chief works five days a week, eight hours a day.

The Chief directs the Fire Department and issues orders if he is at the scene of a fire. In the absence of the Chief, the Captain carries out the function of the Chief in directing the operations and issuing orders. The Lieutenant takes charge only in the absence of both the Chief and the Captain. If a Captain and Lieutenant are both on duty, both officers generally go to the scene of the fire. The Chief testified that on five of the seven weekly twenty-four hour shifts, both a Captain and a Lieutenant are on duty along with six Motor Pump Operators. On these shifts the Captain is in command. On two of the shifts either a Captain or Lieutenant, but not both, is on duty and in command. Thus it appears that a Lieutenant is in command at most for only one of the seven weekly shifts.

The Chief testified that of approximately two hundred alarms in the two months prior to the hearing, the Chief was in command at approximately forty-five alarms, the Captains for about one hundred and ten, and the Lieutenants for about forty-five. It appears that on most major alarms, either the Chief or a Captain is on the scene and in command. Lieutenants appear to be in command primarily for minor alarms and service calls.

The Chief testified that the approximate monthly wages of Fire Department personnel are as follows:

Chief	\$980
Captains	831
Lieutenants	764
Motor Pump Operators . .	719

Both Captains and Lieutenants participate in evaluation of personnel, but discipline is determined primarily by the Chief working through the Fire and Police Commission. With respect to hiring new employes, the Chief does not consult with either the Captains or the Lieutenants. However, Captains are held responsible for the condition of apparatus and equipment.

In past years we have made numerous determinations with respect to the supervisory status of Captains and Lieutenants of municipal fire departments. For example, in City of Milwaukee (Fire Department), (6476), 8/63, and City of Sheboygan (Fire Department), (6619), 1/64, we held that the classification of Captain was supervisory and the classification of Lieutenant was not.

However, job classifications alone are not controlling. The Commission will look beyond job titles and examine the actual duties and functions of employees in determining their supervisory status. Thus, in Village of Shorewood (Fire Department), (6552), 11/63, a case involving a department only slightly larger than that here, the Commission found that neither Captains nor Lieutenants were supervisors. However, in that case, unlike the instant case, an Assistant Chief and a Senior Fire Captain were also performing supervisory functions, and we found that the exclusion of Captains and Lieutenants as supervisors would have created an unreasonable ratio of supervisors to nonsupervisory positions.

In City of Antigo, (7560), 4/66, we found that one of two Captains, as well as the only Lieutenant, were nonsupervisory. It is interesting to note that City of Antigo also involved a seventeen-man department, and the Commission's determination resulted in a ratio of three supervisors to fourteen nonsupervisors.

We conclude herein that the two Captains are supervisory because of their substantial responsibilities for commanding the number of men (including the Lieutenants) under their command, the level of their supervision, and their pay differential. With respect to the Lieutenants, however, we reach a contrary result because on most occasions they do not have significant supervisory responsibilities. Their responsibilities generally are of a routine nature and analogous to those of a working foreman. Additionally, the exclusion of Lieutenants from the unit would result in an unreasonable ratio of supervisory positions to nonsupervisory positions. There would be five supervisors supervising only twelve employees. On the other hand, the inclusion of Captains with the Chief as supervisors creates the more realistic ratio of three supervisors to fourteen employees.

There was some testimony regarding plans to hire ten additional Motor Pump Operators upon completion of a new fire station being built at the time of the hearing. The Chief testified that the two

Lieutenants would then be given additional responsibilities. He testified that persons now acting as Lieutenants might be promoted to Captain, with the title of Lieutenant being eliminated. However, he also testified that "whether it is going to be an actuality or not, I can't say." We regard the record to be too inconclusive to make a determination of what positions will be supervisory when the new station is completed. If new positions are added, or if new duties or responsibilities are assigned, neither party is precluded from obtaining further supervisory determinations at that time.

UNION MEMBERSHIP

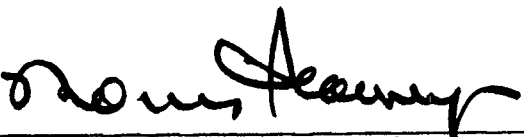
Since the two Lieutenants are not supervisors, they are expressly permitted by Section 111.70 to affiliate with a labor organization and it would be a prohibited practice for the Municipal Employer to interfere with this right. However, the rights granted by Section 111.70 are inapplicable to supervisors, Milwaukee County, (8219-D), 3/68, and thus the right of supervisors to affiliate with a labor organization is not specifically protected by statute in this State.

The Union argues that supervisory employes are free to belong to a union under their constitutionally protected right to freely associate. However, this action is in the nature of a declaratory ruling, and Section 227.06, Stats., entitled "Declaratory Rulings," provides that an agency may issue a declaratory ruling only with respect to the applicability to persons or a state of facts of "any rule or statute" enforced by the agency. We find no authority therein to issue a declaratory ruling with respect to the applicability of constitutional provisions.

Moreover, there are judicial forums available which are better suited to determine such constitutional questions. We therefore believe it appropriate to exercise administrative restraint and to decline to make a determination of this issue.

Dated at Madison, Wisconsin, this 15th day of December, 1969.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Slavney, Chairman


William R. Wilberg, Commissioner