STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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| In the Matter of the Petition of<br><br>WAUWATOSA CITY EMPLOYEES LOCAL NO. 305 affiliated with MILWAUKEE DISTRICT COUNCIL 48, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, and MILWAUKEE DISTRICT COUNCIL 48, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO<br><br>For a Declaratory Ruling Involving Certain Employes of<br><br>CITY OF WAUWATOSA | Case XXI<br>No. 15112 DR(M)-29<br>Decision No. 10670-A |

Appearances:
Mr. Harold D. Gehrke, City Attorney, for the City of Wauwatosa.
Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. John S. Williamson, Jr., for the Petitioners.

## DECLARATORY RULING

The above named labor organizations having petitioned the Wisconsin Employment Relations Commission, pursuant to Section 111.70(4)(b) of the Municipal Employment Relations Act, to issue a Declaratory Ruling with respect to a dispute arising between said Petitioners and the City of Wauwatosa, concerning the Municipal Employer's duty to bargain over the question as to whether two or more employes should be assigned to snow plowing and salting equipment, and whether the use of only one employe on such equipment constitutes a threat to the safety and well-being of the employes involved; and hearing in the matter having been held on December 9, 1971, at Milwaukee, Wisconsin, Chairman Morris Slavney being present; and the Commission having considered the evidence, briefs and argument of Counsel, and being fully advised in the premises, makes and issues the following Findings of Fact and Declaratory Ruling.

## FINDINGS OF FACT

1. That Wauwatosa City Employees Local No. 305 affiliated with Milwaukee District Council 48, American Federation of State, County and Municipal Employees, AFL-CIO, and Milwaukee District Council 48, American Federation of State, County and Municipal Employees, AFL-CIO, hereinafter referred to as the Petitioners, represents employes for the purpose of collective bargaining, and has their offices at 3427

3. That at all times material herein the Petitioners have been the certified collective bargaining representative of all regular full-time employes of the City of Wauwatosa employed in the Street Department, Mechanical and Maintenance Department, Electrical Department, Water Department, and Park and Recreation Department, excluding seasonal employes, craft employes occupying the Electrician and Sign Painter classifications, executives, and the following supervisors: General Street Foreman, Assistant Street Foremen, Equipment Foreman, City Electrician, Water Superintendent, Water Foreman, Park Superintendent, Forestry Foreman and Incinerator Plant Foreman; that in said relationship the Petitioners and the Municipal Employer, in February 1971, entered into a collective bargaining agreement covering the wages, hours and working conditions of the employes in the unit, for the period from January 1, 1971 through December 31, 1971; and that said agreement contains, among its provisions, a management rights clause, a provision providing for final and binding arbitration with respect to matters involving the interpretation, application or enforcement of the terms of said collective bargaining agreement, and further, a provision providing that either party, should they desire to reopen the agreement, submit proposals on or before July 1, 1971, for negotiations on wages, hours and conditions of employment covering the employes involved for the year 1972.

4. That at least prior to September 21, 1971, during the winter months, when the Municipal Employer found it necessary, because of snow fall and icing conditions, to operate snow plowing and salting equipment, two employes were assigned to each piece of equipment utilized, except the grader; that on September 21, 1971, the Common Council of the Municipal Employer adopted the following resolution which was approved by its Mayor on September 22, 1971:

> "WHEREAS, It is the responsibility of the Common Council of the City of Wauwatosa to the citizens and taxpayers of said City to not only provide municipal services, but also to do so in a manner deemed by the Common Council to be most efficient and economical,
>
> NOW, THEREFORE, BE IT RESOLVED, By the Common Council of the City of Wauwatosa, Wisconsin, That in the interests of sound management and good government, the Department of Public Works be and it is hereby authorized and directed to use one-man crews for snow plowing and ice control operations."

5. That said resolution was adopted by the City Council without meeting and conferring with the Petitioners with regard to the proposed resolution.

6. That thereafter, and during the first snow fall in November 1971, the Municipal Employer determined that weather conditions were such that snow plowing and salting operations were necessary; that the City called in employes after their regular work to operate the necessary equipment and when said employes reported for work they were advised that only one employe, rather than two, would be assigned to

"6. A dispute arose between Petitioners and said Municipal Employer over the right of Petitioners to bargain collectively over the question whether two or one employee should be assigned to equipment used for snow plowing and salting and over whether the use of one man constitutes a threat to the safety and well-being of the employees that Petitioners represent.

7. The parties are presently in negotiations for a new collective agreement. At such negotiations the Employer has refused to negotiate the question of the number of persons to be assigned to equipment used for snow plowing and salting.

8. Each party places great importance on this issue and therefore the dispute between them over its negotiability has created a serious barrier to their reaching an agreement to cover the period commencing January 1, 1972."

8. That on December 3, 1971, the Commission issued an Order setting hearing on said petition for Thursday, December 9, 1971; and that on December 7, 1971, without bargaining with the Petitioners, the Common Council of the Municipal Employer adopted the following resolution, which was approved by its Mayor on December 8, 1971:

"BE IT RESOLVED, By the Common Council of the City of Wauwatosa, Wisconsin, THAT the resolution adopted September 21, 1971, pertaining to one-man salting and snow-plowing operations be amended to read as follows:

NOW, THEREFORE, BE IT RESOLVED, By the Common Council of the City of Wauwatosa, Wisconsin, THAT in the interests of sound management and good government, the Department of Public Works be and it is hereby authorized and directed to use one-man crews for snow plowing and ice control operations when in the discretion of the Director of Public Works such operation is consistent with the efficient and expedient performance of the department in providing this municipal service."

9. That at least prior to the adoption of the latter resolution the Petitioners had requested the Municipal Employer to engage in collective bargaining with respect to the latter's decision to reduce the snow plowing and salting crews from a two-man operation to a one-man operation; and that the Municipal Employer has refused to engage in collective bargaining with the Petitioners on said subject matter, contending that such matter is not a subject of collective bargaining within the meaning of the Municipal Employment Relations Act.

10. That the action of the Municipal Employer in reducing the snow plowing and salting crews from a two-man to a one-man operation concerns a matter affecting conditions of employment of the employes in the bargaining unit represented by the Petitioners.

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

## DECLARATORY RULING

That the size of the snow plowing and salting crews is a condition of employment of employes in the bargaining unit represented by Wauwatosa City Employees Local No. 305 affiliated with Milwaukee District Council 48, American Federation of State, County and Municipal Employees, AFL-CIO, and Milwaukee District Council 48, American Federation of State County and Municipal Employees, AFL-CIO, and, therefore, the size of the snow plowing and salting crews is subject to collective bargaining within the meaning of Sections 111.70(1)(d) and 111.70(2) of the newly enacted Municipal Employment Relations Act as it affects the wages, hours and working conditions for said employes for the year 1972.

Given under our hands and seal at the City of Madison, Wisconsin, this 14th day of December, 1971.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Morris Slavney, Chairman

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Zel S. Rice II, Commissioner

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Jos. B. Kerkman, Commissioner

STATE OF WISCONSIN

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MEMORANDUM ACCOMPANYING DECLARATORY RULING

The Petitioners request a declaratory ruling with regard to a dispute as to whether the Municipal Employer has a duty to bargain collectively over the question as to whether two or one man crews should be assigned to snow plowing and salting operations and over the question as to whether the safety and well being of the employes involved are, and will be, affected by the Municipal Employer's unilateral determination to reduce the size of the crew. The Petitioners contend that the size of the crew is a condition of employment and therefore obligates the Municipal Employer to bargain with the Petitioners thereon, and, further, that the reduction to a one-man crew involves a matter of safety of the employes operating the equipment.

The Municipal Employer contends that under the recently amended Municipal Employment Relations Act (Section 111.70, Wisconsin Statutes) "an assignment of workers and the number of workers assigned to a job is a right reserved to management and excluded as a condition of employment." The Municipal Employer further argues that the issue is moot since the present collective bargaining agreement existing between the parties contains a "management rights" clause which covers the issue, and also, in effect, that the matter of safety is not involved.

The bulk of the evidence presented by the Petitioners during the course of the hearing was related to its argument that a two-man crew was necessary on snow plowing and salting equipment for the safety of not only the employes but to the equipment involved as well as to the physical property of the Municipal Employer and its residents. Likewise, the bulk of the evidence produced by the Municipal Employer was an attempt to establish that two-man crews were not necessary for the safety of either the employes, equipment or property of the Municipal Employer and its taxpayers.

There is presently pending an arbitration between the Petitioners and the Municipal Employer as to whether the Municipal Employer violated the existing collective bargaining agreement by during the first snow fall in November 1971, attempting to assign equipment to a one-man crew rather than to a two-man crew. The employes who reported for work, upon learning that two men were not assigned to the equipment involved

refused to operate the equipment and, as a result, a grievance arose and the matter will be arbitrated, the Commission having on December 13, 1971, at the mutual request of the parties, furnished them with a panel of arbitrators from which they may select an arbitrator to issue a final and binding award.

The unilateral determination by the Municipal Employer, made during the term of the existing agreement, to reduce the crew from a two-man to a one-man operation, and the refusal of the employes to operate the equipment, after they had been called in, upon being advised that no helpers would be assigned to the equipment, are issues which, no doubt, will be raised in the arbitration proceeding, and in that proceeding the "management rights" clause contained in the existing agreement, as well as whether the safety of the employes was affected by the action of the employer in reducing the size of the crew, will also, no doubt, be matters presented to the arbitrator to determine the issues before him.

Since the Petitioners and the Municipal Employer are presently engaged in negotiations, which will hopefully result in a collective bargaining agreement for the year 1972, the issue is not moot. After the action by the Municipal Employer in assigning one-man crews to the equipment and in unilaterally adopting its resolutions with respect to the matter, the Petitioners requested the Municipal Employer to bargain collectively in their negotiations on their 1972 agreement with respect to the size of the crew to operate the snow plowing and salting equipment. The Municipal Employer has refused such request contending that such matter is not a mandatory subject of bargaining and is within the sole prerogative of management to determine.

In determining whether the Municipal Employer has the duty to bargain collectively with the Petitioners on the size of the crew in their negotiations on wages, hours and working conditions to be included in their 1972 collective bargaining agreement, the Commission must determine whether the size of the snow plowing and salting crews is a "working condition." The evidence adduced at the hearing disclosed that the two-man crew consisted of a driver and a helper and that the helper operated various levers and buttons which controlled the snow plowing equipment and the various mechanical operations on trucks engaged in the salting operations. In addition, the helper acted as a "look-out man" in backing up operations and where the weather conditions were such as to require a greater degree of effort with respect to visibility. On occasions the helper relieved in driving the vehicles for short periods of time. The reduction to a one-man crew will require that the driver perform the tasks previously performed by the helper, thus constituting a change in the driver's working conditions, and resulting in a direct and intimate affect upon such working conditions, and, therefore, the Municipal Employer's determination as to the size of the crew is subject to the duty to bargain collectively with the Petitioners in their negotiations involving their 1972 agreement. 1/ We do not deem it necessary in this declaratory ruling proceeding to determine whether a one-man crew is or is not a matter involving safety.

Dated at Madison, Wisconsin, this 29th day of December, 1971.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Morris Slavney, Chairman

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Zel S. Rice II, Commissioner

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Jos. B. Kerkman, Commissioner

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1/ Madison Jt. School Dist. No. 8, 37 Wis 2d 483 (1967).