

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition for	:	
Declaratory Ruling of	:	
	:	
MILWAUKEE PROFESSIONAL FIREFIGHTERS	:	
LOCAL 215, I.A.F., AFL-CIO	:	Case CXIV
	:	No. 15361 DR(M)-32
Involving Certain Employes of	:	Decision No. 10835-A
	:	
CITY OF MILWAUKEE	:	
	:	

Appearances:

Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. John S. Williamson, Jr., appearing on behalf of the Petitioner.
Mr. Nicholas M. Sigel, Assistant City Attorney, appearing on behalf of the Municipal Employer.

DECLARATORY RULING

Milwaukee Professional Firefighters Local 215, I.A.F., AFL-CIO, having requested the Wisconsin Employment Relations Commission to issue a Declaratory Ruling to determine whether certain personnel employed in the Fire Department of the City of Milwaukee, Wisconsin, should be included or excluded from the appropriate bargaining unit of firefighter personnel under the Municipal Employment Relations Act; and a hearing having been held in the matter on April 12, 1972, Zel S. Rice II, Commissioner, being present; and the Commission having reviewed 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 Declaratory Ruling.

FINDINGS OF FACT

1. That Milwaukee Professional Firefighters Local 215, I.A.F., AFL-CIO, hereinafter referred to as the Union, is an organization of firefighting personnel employed in the Fire Department of the City of Milwaukee, and a labor organization within the meaning of Section 111.70(1)(j) of the Wisconsin Statutes.

2. The the City of Milwaukee, Wisconsin, hereinafter referred to as the Municipal Employer, is a Municipal Employer within the meaning of Section 111.70(1)(a) of the Wisconsin Statutes and, inter alia, operates a Fire Department.

3. That on August 30, 1963, the Commission directed an election among all regular employes employed in the various bureaus of the Fire Department of the City of Milwaukee, excluding craft employes, confidential employes, supervisors, executives, Fireboat Pilots and Marine Engineers for the purpose of determining whether a majority of said employes desired to be represented by the Petitioner; 1/ that during the course of the hearing preceding said Direction, the

1/ City of Milwaukee (6476) 8/63.

parties stipulated that certain groups of employes should be included or excluded from the bargaining unit and during the course of said hearing the Petitioner and the Municipal Employer were unable to agree on the inclusion or exclusion of certain other employes, including Fire Captains and clerical employes; that the Commission determined that Fire Captains should be excluded as supervisors but that clerical employes should be included in said unit; that before an election was conducted pursuant to said Direction the Common Council of the City of Milwaukee passed a Resolution extending voluntary recognition to the Petitioner in a bargaining unit consisting of "all regular employes employed in the various bureaus of the Fire Department of the City of Milwaukee, excluding craft employes, confidential employes, supervisors, [Fireboat Pilots, Marine Engineers and Fire Alarm Dispatchers] employed in the Bureau of Fire Communications" 2/; and that pursuant to said Resolution the Petitioner has been, since 1963, voluntarily recognized as the bargaining representative for the employes employed in said bargaining unit which included Firefighters, Motor Pump operators, Fire Lieutenants, Fire Investigative Lieutenants, Marine Firemen, shop personnel and clerical employes, but excluded Fire Captains.

4. That on November 11, 1971 Section 111.70 of the Wisconsin Statutes was substantially amended by the Municipal Employment Relations Act; that on February 23, 1972, the Petitioner filed the petition initiating the instant proceeding requesting the Commission to issue a Declaratory Ruling, pursuant to Section 111.70(1)(o)2 and Section 111.70(4)(d)2 of the Municipal Employment Relations Act to determine whether the appropriate bargaining unit of employes employed in the Municipal Employer's Fire Department should include employes holding the rank of Captain and exclude clerical employes.

5. That the City of Milwaukee has 34 fire stations, 13 of which are "single" fire stations and 21 of which are "multiple house" stations, in which the rank of the highest ranking officer at each station is that of Fire Captain; that the shop personnel and clerical employes in the employ of the Municipal Employer do not share a substantial community of interest with the firefighting personnel in the employ of the Municipal Employer in its Fire Department on matters concerning wages, hours and working conditions.

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

CONCLUSIONS OF LAW

1. That the Fire Captains in the employ of the City of Milwaukee in its Fire Department are not supervisors within the meaning of Section 111.70(1)(o) of the Wisconsin Statutes, and therefore are included in the bargaining unit of firefighting personnel appropriate under Section 111.70(1)(e) and Section 111.70(4)(d)2 of the Municipal Employment Relations Act.

2. That the shop personnel and clerical employes in the employ of the Municipal Employer in its Fire Department are not included in any bargaining unit of firefighting personnel appropriate under Section 111.70(1)(e) and Section 111.70(4)(d)2 of the Municipal Employment Relations Act.

2/ File Number 63-2382.

DECLARATORY RULING

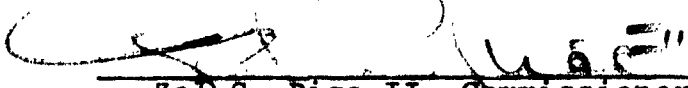
The appropriate bargaining unit of firefighting personnel employed in the Fire Department of the City of Milwaukee consists of all regular firefighting employes, including Firefighters, Motor Pump operators, Fire Lieutenants, Fire Investigative Lieutenants, Fire Captains and Marine Firemen, but excluding shop personnel, clerical employes, craft employes, Fireboat Pilots, Marine Engineers, confidential employes, supervisors, and managerial personnel.

Given under our hands and seal at the City of Madison, Wisconsin, this 1st day of December, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner


Jos. B. Kerkman, Commissioner

MEMORANDUM ACCOMPANYING DECLARATORY RULING

By its petition, the Union seeks a Declaratory Ruling regarding the inclusion or exclusion of certain employes in an appropriate bargaining unit of employes employed in the Municipal Employer's Fire Department. Currently Fire Captains are excluded as supervisors and clerical employes and shop personnel are included in the voluntarily recognized bargaining unit of employes in the Municipal Employer's Fire Department. Prior to the hearing the Municipal Employer sent a letter to the Commission objecting to the form of the petition and contending that the petition should have been filed pursuant to the Commission's rules set forth in Chapter ERB 11, rather than in the form of a petition for a Declaratory Ruling. The Municipal Employer was advised that its objection appeared to be lacking in merit ^{3/} but that it could be properly raised at the time of the hearing. At the hearing the Municipal Employer indicated that it desired to renew its objection to the form of the petition and to request that the petition be designated a petition for a unit clarification or amendment. Even though the Petitioner raised no objection to changing the designation of its petition to that of a petition for unit clarification or amendment, the Commission sees no useful purpose in this case by changing the designation of the petition at this time.

At the hearing the Municipal Employer also objected to the timeliness of the petition alleging that there is presently in existence a collective bargaining agreement of three years duration which ought to bar any consideration of the question of the appropriateness of the collective bargaining unit at this time. The Petitioner contends that there is no problem of timeliness in view of the fact that it does not presently seek an election but merely seeks a determination of the appropriateness of the bargaining unit in view of the changes enacted by the Legislature in the Municipal Employment Relations Act.

The Commission has previously held that a petition is not barred as untimely by the existence of a collective bargaining agreement where the petition does not seek to raise a question concerning representation but merely seeks to clarify an existing bargaining unit. ^{4/}

Inclusion of the Fire Captains

On the evidence presented there would appear to be no question that the Fire Captains should be included in the appropriate bargaining unit of firefighting personnel employed in the Municipal Employer's Fire Department. Their prior exclusion, which was the result of a determination by the Commission that they were supervisors under Section 111.70 as it then read, ^{5/} is no longer appropriate in view of the explicit provision of Section 111.70 (1) (o) 2 of MERA, which

^{3/} Although petitions for unit clarifications and amendments filed pursuant to Chapter ERB 11 of the Commission's rules are to be preferred as simpler therefore and more desirable, the Commission has in the past entertained a number of petitions for Declaratory Ruling filed pursuant to Section 227.06 of the Wisconsin Statutes for the purpose of clarifying bargaining units, e.g., Wausau School District (10371-A) 4/72; Whitefish Bay Public Schools (10799) 2/72; Village of West Milwaukee (9576) 4/70; City of Milwaukee (6960-F) 1/70; City of Cudahy (9381) 12/69.

^{4/} Wausau School Board (10371-A) 4/72; City of Waukesha (11342) 11/72.

^{5/} City of Milwaukee (6476) 8/63.

indicates that "the term 'supervisor' shall include all officers above the rank of the highest ranking officer at each single station" in those municipalities with more than one fire station. 6/ The highest officer at the 34 fire stations in Milwaukee is a Fire Captain, and therefore said employes can no longer be excluded as supervisors as that term is now employed in the Municipal Employment Relations Act. 7/

Clerical Employes and Shop Personnel

Even though the Petitioner did not seek to represent the clerical employes employed in the Municipal Employer's Fire Department and said organization historically has never sought to represent clerical employes, the Commission found that the appropriate bargaining unit under Section 111.70 of the Wisconsin Statutes, as it then read, included clerical employes. In addition, the shop personnel were included along with the firefighting personnel since they worked in the same department or division. The new Municipal Employment Relations Act authorizes the Commission to determine whether a particular bargaining unit is appropriate rather than providing statutorily defined bargaining units. 8/ Because of the community of interest shared by firefighting

6/ 111.70(1)(o)2: "As to firefighters employed by municipalities with more than one fire station, the term 'supervisor' shall include all officers above the rank of the highest ranking officer at each single station. In municipalities where there is but one fire station, the term 'supervisor' shall include only the chief and the officer in rank immediately below the chief. No other firefighter shall be included under the term 'supervisor' for the purposes of this subchapter.

7/ Cf. City of Waukesha (11342) 11/72; City of Wauwatosa (10956-A) 6/72.

8/ 111.70(1)(e): "'Collective bargaining unit' means the unit determined by the commission to be appropriate for the purpose of collective bargaining.

111.70(4)(d)2: "2.a. The commission shall determine the appropriate bargaining unit for the purpose of collective bargaining and shall whenever possible avoid fragmentation by maintaining as few units as practicable in keeping with the size of the total municipal work force. In making such a determination, the commission may decide whether, in a particular case, the employes in the same or several departments, divisions, institutions, crafts, professions or other occupational groupings constitute a unit. Before making its determination, the commission may provide an opportunity for the employes concerned to determine, by secret ballot, whether or not they desire to be established as a separate collective bargaining unit. The commission shall not decide, however, that any unit is appropriate if the unit includes both professional employes and nonprofessional employes, unless a majority of the professional employes vote for inclusion in the unit. The commission shall not decide that any unit is appropriate if the unit includes both craft and noncraft employes unless a majority of the craft employes vote for inclusion in the unit. Any vote taken under this subsection shall be by secret ballot.

2.b. Any election held under subd. 2.a. shall be conducted by secret ballot taken in such a manner as to show separately the wishes of the employes voting as to the unit they prefer.

c. A collective bargaining unit shall be subject to termination or modification as provided in this subchapter.

d. Nothing in this section shall be construed as prohibiting 2 or more collective bargaining units from bargaining collectively through the same representative."

personnel and their mutual concern over wages, hours and working conditions and their lack of any substantial community of interest in said subjects with shop or clerical employes, the Commission has determined that it would be inappropriate to include such employes along with firefighting personnel in the same bargaining unit. 9/

Since the Fire Captains are employes under MERA the Municipal Employer has the duty to bargain over their wages, hours and working conditions. Such duty does not require the Municipal Employer to enter into a separate bargaining agreement covering the Captains. Any agreement reached in negotiations concerning the wages, hours and working conditions of the captains can be incorporated in the existing agreement covering firefighter personnel.

Our determination to exclude clerical employes and shop personnel from the unit does not extinguish their coverage and rights under the existing collective bargaining agreement.

Dated at Madison, Wisconsin, this 12th day of December, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney

Morris Slavney, Chairman

Zel S. Rice II
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9/ Dane County (10492-A) 3/72. It should be noted that Section 111.77 of the Wisconsin Statutes provides for binding arbitration of unresolved disputes involving firefighting personnel. Since those provisions do not apply to other personnel such as shop or clerical employes it would be particularly inappropriate to include them in the same unit with firefighting personnel.