

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of	:	
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LOCAL 407, INTERNATIONAL	:	
ASSOCIATION OF FIREFIGHTERS	:	
	:	
Involving Certain Employes of	:	Case XIV
	:	No. 15295 ME-749
CITY OF WAUKESHA (FIRE	:	Decision No. 11342-A
DEPARTMENT)	:	
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Appearances:

Michael, Best & Friedrich, S.C., Attorneys at Law, by Ms. Toni L. Bonney, 250 East Wisconsin Avenue, Milwaukee, Wisconsin 53202, appearing on behalf of the City.

Mr. LeRoy Waite, Vice-President, International Association of Firefighters, 1600 East Ridge Road, Beloit, Wisconsin 53511 and Lawton & Cates, Attorneys at Law, by Mr. Richard V. Graylow, 110 East Main Street, Madison, WI 53703, on the brief, appearing on behalf of the Union.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER CLARIFYING BARGAINING UNIT

On December 15, 1982, the City of Waukesha having filed a petition requesting the Wisconsin Employment Relations Commission to clarify the existing bargaining unit consisting of all firefighters, lieutenants, captains and inspection personnel in the employ of the City of Waukesha Fire Department by determining whether the positions with a rank of captain should be included or excluded from said unit; and hearing in the matter having been held in Waukesha, Wisconsin on March 10, 1983, before Examiner Dennis P. McGilligan; and post-hearing briefs having been received from the parties by June 3, 1983; and the Commission having considered the evidence and arguments of the parties and being fully advised in the premises, makes and issues the following Findings of Fact, Conclusion of Law and Order Clarifying Bargaining Unit.

FINDINGS OF FACT

1. That the City of Waukesha, hereinafter referred to as the City, is a municipal employer operating a fire department for the purpose of providing fire protection services to its inhabitants and has its offices located at 201 Delafield, Waukesha, Wisconsin.
2. That the Waukesha Firefighters Local 407, International Association of Firefighters, hereinafter referred to as the Union, is a labor organization and has its offices located at 130 West St. Paul Avenue, Waukesha, Wisconsin.
3. That on November 6, 1972, the Wisconsin Employment Relations Commission issued an Order Clarifying Bargaining Unit wherein employes with the rank of Captain were found not to be supervisors and wherein the Commission ordered that the appropriate collective bargaining unit of firefighting personnel in the employ of the Fire Department of the City of Waukesha consists of all Firefighters, Lieutenants, Captains and Inspection personnel, but excluding the Chief and Assistant Chiefs. 1/
4. That at the time of the unit clarification issued above, the City of Waukesha Fire Department operated two stations; that under the two station organizational structure, there were three (3) assistant chiefs who each worked a shift at Station 1, three (3) captains who each worked a shift at Station 2 and six lieutenants, two of whom worked each shift at Station 1; that under this

1/ City of Waukesha, (11342) 11/72.

structure the assistant chiefs were shift commanders with department-wide authority; that the lieutenants were the station commanders at Station 1 while the captains were the station commanders at Station 2; and that this was the organization and operation utilized through April, 1981.

5. That on April 1, 1981, the fire department officially opened three (3) new stations, closed old Station 2 and reorganized the resulting four-station operation; that at the time the new stations were opened, additional equipment was purchased, twelve (12) new firefighters were hired and six (6) additional lieutenants were added to the staff; that under the new system, there are still three (3) assistant chiefs and three captains, and that the captains were moved from the old Station 2 into the administrative offices in Station 1.

6. That as a result of the reorganization, the assistant chiefs' job responsibilities have changed; that under the old system, the assistant chiefs responded to all fires within the City, had general supervision of the fire department operating out of the administrative offices of Station 1, and had individual areas of departmental responsibility in personnel, motor vehicles and as training officer; and that under the new system, the assistant chiefs are not required to respond to fires on a city-wide basis, are absent from Station 1 for approximately five (5) hours during the shift while making rounds and taking lunch and supper breaks and have individual responsibilities for buildings and grounds, motor vehicles and personnel.

7. That as a result of the reorganization, the captains job responsibilities have changed; that under the old system, the captains were station commanders at Station 2 and had no department-wide responsibilities; that under the new system, the captains respond to and command the firefighting personnel at fires on a city-wide basis; that while the assistant chiefs are absent for approximately five (5) hours during the shift, the captain on duty is in command of the department; that the captains have individual department-wide responsibilities as coordinator of training, purchasing agent and water supply officer; and that the captains do not perform the same function of shift commander at Station 1 that the lieutenants perform at Stations 2, 3 and 4.

8. That as a result of the reorganization, the lieutenants were put in command of the three (3) new stations (Stations 2, 3 and 4); that there is one lieutenant per shift in command at each of the four (4) stations; that the lieutenants at Station 1 perform the same functions and have the same job responsibilities as the lieutenants in Stations 2, 3 and 4; that the lieutenants only respond to fires within the jurisdictional basis of their station, while the captains respond to fires on a city-wide basis; and that the lieutenants are the station commanders of Station 1.

9. That the lieutenant's function as station commanders in the Waukesha Fire Department; and that the three (3) captains in the Department function above the level of the lieutenants.

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

#### CONCLUSION OF LAW

That the occupants of the position of captain in the Waukesha Fire Department are "supervisors" within the meaning of Sec. 111.70(1)(o)2 of the Municipal Employment Relations Act.

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

#### ORDER CLARIFYING BARGAINING UNIT

The appropriate collective bargaining unit of firefighting personnel in the employ of the Fire Department of the City of Waukesha consists of all firefighters, lieutenants and inspection personnel, but excluding the chief, assistant chiefs and captains. 2/

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2/ Pursuant to Sec. 227.11(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by (Continued on Page three)

Given under our hands and seal at the City of  
Madison, Wisconsin this 16th day of August, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Gary L. Covelli /s/  
Gary L. Covelli, Commissioner

Marshall L. Gratz /s/  
Marshall L. Gratz, Commissioner

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2/ Continued

following the procedures set forth in Sec. 227.12(1) and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.16(1)(a), Stats.

227.12 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

227.16 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.15 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.12, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.11. If a rehearing is requested under s. 227.12, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

MEMORANDUM ACCOMPANYING FINDINGS OF  
FACT, CONCLUSION OF LAW AND  
ORDER CLARIFYING BARGAINING UNIT

The standard to determine supervisory status for municipal firefighters is defined in Sec. 111.70(1)(o)2 of MERA as follows:

(o) "Supervisor" means:

. . .

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 view of the that highly specific statutory definition, the Commission is foreclosed from applying the broader and more flexible indicia of supervisory status set forth for other municipal employes under Sec. 111.70(1)(o)1, Stats. 3/

The Commission has interpreted the term "supervisor" under Sec. 111.70(1)(o)2 to include only those officers who function above the level of a "station commander." 4/ In determining the level at which an officer is functioning, the Commission has considered the scope and level of the duties and responsibilities of the officer and looked beyond the mere physical presence of an officer at a station. 5/

In 1972, the Commission issued an Order Clarifying Bargaining Unit 6/, including captains, among others, in the bargaining unit of firefighting personnel. The Commission's decision to include captains was based on the fact that captains, at that time, were the station commanders at Station 2 such that under Sec. 111.70(1)(o)(2), Assistant Chief was the rank above the rank of the highest ranking officer at each single station.

In 1981 the City changed from two to four fire stations and increased staff. As a result of this reorganization, the captains were moved from old Station 2 to Station 1, which is where the department's administrative offices are located.

The City takes the position that, as a result of this reorganization, the captains now function above the level of a station commander and thus should be excluded as supervisors. In addition, since the captains now have department-wide responsibilities and are required to respond to fires on a city-wide basis, this is further indication of their supervisory status.

The Union notes that the captains were found not to be supervisors in a previous proceeding and argues that the nature of their duties has not substantially changed. Therefore, the Union contends the captains should remain in the bargaining unit.

The record indicates that after the 1981 reorganization, the lieutenants became the highest ranking officer and station commanders at Stations 2, 3 and 4. The lieutenants at Station 1 perform the same functions and have the same job responsibilities as the lieutenants in Stations 2, 3 and 4. Furthermore, the captains do not perform the same functions in Station 1 that the lieutenants perform in Stations 2, 3 and 4. The captains have command authority beyond

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3/ City of Cudahy, (18502) 3/81.

4/ City of Janesville, (12460-A) 5/74; City of Waukesha, (11342) 11/72; City of Wauwatosa, (10956-A) 6/72.

5/ City of Eau Claire, (19666) 8/82.

6/ City of Waukesha, supra.

Station 1 because they respond to and command the personnel at fires on a city-wide basis; whereas the lieutenants ordinarily respond only to fires within the jurisdictional basis of their station. Furthermore, the captains have assumed department-wide responsibilities as coordinator of training, purchasing agent and water supply officer. There is no evidence in the record of any job responsibilities of the captains that pertain solely to Station 1. The record therefore supports the conclusion that the lieutenants and not the captains function as the shift commanders at Station 1.

Applying the statutory definition to these facts, we find that the captains function above the level of a station commander, and therefore, are supervisors within the meaning of Sec. 111.70(1)(o)2 of MERA.

Dated at Madison, Wisconsin this 16th day of August, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Gary L. Covelli /s/  
Gary L. Covelli, Commissioner

Marshall L. Gratz /s/  
Marshall L. Gratz, Commissioner