

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of	:	
	:	
INTERNATIONAL ASSOCIATION OF FIRE	:	Case VI
FIGHTERS, LOCAL 580	:	No. 17613 ME-1025
	:	Decision No. 12460-A
For Clarification of the Bargaining	:	
Unit of Certain Employes of	:	
	:	
CITY OF JANESVILLE (FIRE DEPARTMENT)	:	
	:	

Appearances:

Mr. Mark H. Hoskins, Assistant City Attorney, for the City.
Mr. Ed Durkin, Vice President, International Association of
 Fire Fighters, for the Petitioner.

ORDER CLARIFYING COLLECTIVE BARGAINING UNIT

International Association of Fire Fighters, Local 580, having requested the Wisconsin Employment Relations Commission to issue an Order determining whether the position of Captain is to be included in a present collective bargaining unit consisting of fire fighting personnel in the employ of the City of Janesville, Wisconsin; and hearing on said petition having been held at Janesville, Wisconsin, on February 14, 1974, Commissioner Howard S. Bellman being present; and the Commission having reviewed the evidence, arguments and post-hearing briefs, and being fully advised in the premises, makes and issues the following

ORDER

That the appropriate collective bargaining unit of fire fighting personnel in the employ of the City of Janesville includes the position of Captain.

Given under our hands and seal at the
 City of Madison, Wisconsin this 7th
 day of May, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
 Morris Slavney, Chairman

Zel S. Rice II
 Zel S. Rice II, Commissioner

Howard S. Bellman
 Howard S. Bellman, Commissioner

MEMORANDUM ACCOMPANYING
ORDER CLARIFYING COLLECTIVE BARGAINING UNIT

The Petitioner has been and continues to be the voluntarily recognized collective bargaining representative of certain fire fighting personnel in the employ of the City. In a collective bargaining agreement executed on September 14, 1972 and in effect at all times material herein said bargaining unit is described as "all uniformed Fire Department employees up to and including the highest ranking officer at each station (including Captains)."

Since its effective date of November 11, 1972, the Municipal Employment Relations Act, (MERA), in material part, has provided as follows:

(Section 111.70(1)(0)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 . . . No other firefighter shall be included under the term 'supervisor' for the purposes of this subchapter."

(Section 111.70(3)2.) "After January 1, 1974, said supervisors shall not remain members of such [labor or employe] organizations."

The City's Fire Department organizational chart discloses that it has three stations; that the two outlying stations are headed by Lieutenants; and that located at the main station are the Chief, three Battalion Chiefs, one on each of the three platoons or shifts, three Captains, one on each platoon, and one Lieutenant, one on each platoon.

The parties agree that the Chief and the Battalion Chiefs are properly excluded from the bargaining unit, 1/ and that no factual change has occurred respecting the duties or authority of the position of Captain since the above-described bargaining unit was described in their agreement.

The City contends, contrary to the Petitioner, that the Captains are supervisors within the meaning of Section 111.70(1)(0)2, above, and therefore, in order for the parties to be in compliance with the MERA the Captains must be excluded from the bargaining unit and from membership in the Petitioner organization.

The City reasons that "the only rational interpretation of the statute is to look at that rank which is the highest rank that exists at each single station. In Janesville, Lieutenants are in this rank, and all officers above this rank are supervisors." Thus, it is, in effect, argued by the City that, inasmuch Lieutenant is the highest rank to be found at every station, Captains, who are above that rank are supervisors.

This position interprets the statutory definition in question as though it stated "all officers above the rank of the highest ranking officer found at all stations." Indeed, this interpretation does not

1/ Apparently, the parties agree that the Chief and Battalion Chiefs are supervisors or "managerial" employes and properly excluded from the bargaining unit. (See City of Waukesha, Dec. No. 11342, 11/72.) It is not contended that the Captains in the instant matter are managerial.

conflict with other Commission interpretations. 2/ However, in the Commission's judgment, this interpretation, urged by the City, is excessively rigid and gives insufficient consideration to the facts of this case, or the cases cited. We believe it is the intent of the definition in question to include in the bargaining unit all employes who function at and below the level of a station commander. Thus, the issue is whether the instant Captains function, at the main station, as Lieutenants function at the outlying stations.

Regarding the responsibilities of the Captains in question, the record discloses that they move into the role of the Battalion Chiefs in the absence of the latter, but under normal circumstances respond to fires within the "jurisdiction" of the main station. Thus, it appears that although the Captains may have supervisory or managerial responsibilities on a substitute basis, their regular duties are somewhat analogous to those of the Lieutenants at the outlying stations.

The record also suggests that unlike the Lieutenants at the main station, the Captains have departmental responsibilities. However, these responsibilities are not specified, and the testimony of the Chief indicates that the Captains share the Lieutenants' shift command duties at the main station because of the greater manpower and activity of that location.

Finally, the ambiguity of the Captains' role is furthered by the fact that the Chief, who came to his position recently and subsequent to the formulation of the described personnel structure, admits to being unable to justify all aspects of said arrangements.


The Commission would make reference to the collective bargaining agreement in resolving this ambiguity. Not because, as the Petitioner suggests, the contract might be binding upon the parties, despite statutory prohibitions, but as an indicator of the parties' understanding of the Captains' role and responsibilities. It is as clear as can be from the above quoted terms, that upon entering this agreement both the City and the Petitioner were mindful of the above-quoted MERA definition of supervisory status and mutually agreed that the Captains were not within said definition.


On this basis, as well as the record as a whole, the Commission has determined to continue the inclusion of the Captains in the bargaining unit.

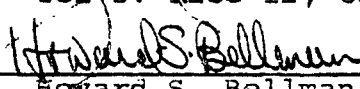
Dated at Madison, Wisconsin this 7th day of May, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner


Howard S. Bellman, Commissioner

2/ See City of Waukesha, supra; City of Wauwatosa, Dec. No. 10956-A; and City of Milwaukee, Dec. No. 10835-A.