

CITY OF JANESVILLE,

143-010

Petitioner,

v.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION,

Respondent.

Decision No. 12460-A

Before: Hon. W. L. Jackman, Judge

Motion to Dismiss: July 25, 1974

Appearances: Petitioner by Nicholas P. Jones, City Attorney

Respondent by Charles D. Hoornstra, Assistant Attorney General.

The matter comes to this court on respondent's motion to dismiss the petition for judicial review on the ground that the respondent's order is not reviewable. The order in question, entered after a hearing on the subject, ordered "That the appropriate collective bargaining unit x x x includes the position of Captain." At that hearing the City contended that Captains were supervisors. The memorandum accompanying the order includes the Commission's determination of facts as well as its interpretation of the applicable law.

Here then was the issue of the status of Captains litigated by a hearing and a decision made. While there are no formal findings and conclusions, the "memorandum" accompanying the order contain the requisite findings and conclusions, although the form may not be that recommended by the courts. The Supreme Court has accepted statements of fact and conclusions of law as in opinions of trial courts in lieu of formal findings and conclusions. *Dambrowski v. Tomasino*, 27 Wis 2d 689; *In re Vogel's Estate*, 259 Wis 73; *In re Britt's Will*, 174 Wis 145. If the Supreme Court can accept such informal findings and conclusions from trial courts, we think that this court can accept them from administrative agencies. The Supreme Court has said: "No particular form of findings is required, x x x". *Folding Furniture Works v. Wis. L.R.Board*, 232 Wis 170, 180.

The order in this case is a determination that Captains are properly included in the collective bargaining unit. Collective bargaining unit is the unit determined by the Commission to be appropriate for collective bargaining. Sec. 111.70(1)(e). It would seem that it is a proper function of the Commission to determine which employees are included in a bargaining unit in order that the Commission may determine what the unit for collective bargaining is.

We believe that the proceedings before the Commission have all of the characteristics of a proceeding under Sec. 227.06. It was begun by petition and called for a ruling of the applicability of Sec. 111.70. We find nothing in the statutes that forbid the application of Sec. 227.06 to questions such as were here raised. It would seem sensible to determine who are members of the bargaining unit before bargaining or elections in the unit are had. Otherwise it might later be found that the union elections or the vote on the bargains reached would be illegal. We see no reason for waiting for a prohibited practice proceeding as the Attorney General suggests.

The Attorney General takes the position that we must find the right to judicial review in Chapter 111. This is based on *A F of L v. NLRB*, 308 U.S. 401, decided on the basis of the provisions of the Wagner Act. We do not feel limited by Chapter 111, as to relief before state agencies, but believe that all state agencies are governed by Chap. 227, and that the proceeding here in question is a proper one under Sec. 227.06, from the decision in which judicial review may be had under Sec. 227.16.

It is therefore ORDERED: That respondent's motion to dismiss is denied.

Dated August 8, 1974

BY THE COURT

W. L. Jackman /s/

Judge