

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of	:	
	:	
LOCAL 583 OF THE INTERNATIONAL	:	
ASSOCIATION OF FIREFIGHTERS, AFL-CIO	:	
	:	
Requesting a Declaratory Ruling	:	Case XX
Pursuant to Section 111.70(4)(b)	:	No. 17782 DR(M)-54
Wisconsin Statutes, involving a	:	Decision No. 12606-B
Dispute Between Said Petitioner and	:	
	:	
CITY OF BELOIT	:	

Appearances:

Lawton & Gates, Attorneys at Law, by Richard V. Graylow, appearing on behalf of the Association.
Charles E. Carlson, Consultant to the City of Beloit, appearing on behalf of the City.

DECLARATORY RULING

The Petitioner named above, having on March 25, 1974, filed a petition with the Wisconsin Employment Relations Commission, requesting the Commission to issue a Declaratory Ruling, pursuant to Section 111.70(4)(b) of the Municipal Employment Relations Act, to determine whether the position of Deputy Chief - Fire Prevention and Inspection Bureau, in the City of Beloit Fire Department, is to be included in a collective bargaining unit consisting of all regular full-time employes in the Beloit Fire Department, excluding all officers above the rank of Captain and the Civilian Secretary, and to determine whether the City of Beloit has a duty to bargain over the establishment of the aforesaid position and the wages, hours and working conditions with respect thereto; and a hearing in the matter having been held at Beloit, Wisconsin, on June 6, 1974, Thomas L. Yaeger, Hearing Officer being present; and the Commission having considered the record and arguments of counsel 1/; and being fully advised in the premises, and makes and issues the following Findings of Fact, Conclusions of Law and Declaratory Ruling.

FINDINGS OF FACT

1. That Local 583, of the International Association of Firefighters AFL-CIO, hereinafter referred to as the Association, is a labor organization having its principal offices in Beloit, Wisconsin.
2. That the City of Beloit, hereinafter referred to as the City, is a Municipal Employer having its principal offices at the Beloit Municipal Center, Beloit, Wisconsin and operates a fire department in and about the City of Beloit, Wisconsin.
3. That at all times material herein the Association and the City were parties to a collective bargaining agreement, which contains, inter alia, a statement describing the bargaining unit and voluntarily recognizing the Association as the exclusive collective bargaining representative thereof:

1/ Final briefs were received on September 30, 1974.

"ARTICLE II

RECOGNITION

The City recognizes the Union as the exclusive bargaining agent for the regular full time employees of the Fire Department of the City of Beloit, excluding all officers above the rank of Captain and the civilian secretary."

4. That the Fire Department of the City has an authorized compliment of 63 men situated at the main station and three (3) outlying stations; that the table of organization discloses that the positions in the Department proceeds from the Chief, to Assistant Chief, to three Deputy Chief - Shift Supervisors in charge of three (3) twenty-four hour shifts stationed at the main and three outlying stations, to three (3) shift Captains located at the main station, to the Lieutenants in charge of the outlying stations; that each Captain functions as a supervisor in charge of a firefighting company or rescue unit located at the main station; and that each Lieutenant functions as a supervisor of a firefighting company or rescue unit located at the outlying stations.

5. That a dispute has arisen between the City and the Association as to whether the City has a duty to bargain with the Association concerning the position of Deputy Chief-Arson Investigation and Fire Prevention Bureau.

6. That in November, 1973, Chief Christiansen assigned Captain Donald Pittenger to be in charge of the Fire Department's Arson Investigation and Fire Prevention Bureau; that organizationally Captain Pittenger reported to Assistant Chief Garner, but not withstanding, in a good deal of the Bureau's non-routine matters, Captain Pittenger dealt directly with Chief Christiansen; that arson investigation is involved with the follow-up of suspicious and undetermined types of fires to designate the cause thereof; that fire prevention is concerned with the enforcement of certain municipal fire codes and regulations promulgated to diminish the threat of fire; that in this assignment Captain Pittenger was scheduled to work a straight forty hour work week Monday through Friday; that Captain Pittenger's office was located at the main station; and that said office was shared with Assistant Chief Garner.

7. That acting in the capacity of Captain in charge of the Arson Investigation and Fire Prevention Bureau, Pittenger was included in the aforesaid collective bargaining unit; that as the captain in charge Pittenger spent the majority of each forty (40) hour work week performing inspections of commercial and residential buildings and conducting arson investigations, but also gave safety demonstrations and had overall responsibility for the building inspection program; that Lieutenants Gilliam, Haase, and Lange were assigned to assist Captain Pittenger, upon his request, in conducting arson investigations; that when the aforesaid Lieutenants were not working for Captain Pittenger they were in charge of an outlying station; and that the aforesaid Lieutenants each spent approximately ten percent of their working hours assisting Captain Pittenger in arson investigations.

8. That Captain Pittenger continued in his aforesaid capacity until March 17, 1974, when he was promoted to Deputy Chief-Arson Investigation and Fire Prevention Bureau; and that this position and Pittenger's was authorized by the City Council in its 1974 budget appropriation.

9. That Chief Christiansen on March 3, 1974, assigned Lieutenant Gilliam to a forty hour work week in the Arson Investigation and Fire Prevention Bureau under the direct supervision of Pittenger; that both Lieutenant Gilliam and Deputy Chief Pittenger share their office with Assistant Chief Garner and said office is the same office referred to in paragraph 5 herein; and that Lieutenant Gilliam spends approximately sixty-five percent of his time performing building inspections, thirty percent of his time conducting arson investigations and five percent of his time recruiting minorities and engaging in public relations work for the Fire Department.

10. That in the capacity of Deputy Chief, Pittenger spends approximately fifteen percent of his time performing building inspections, fifteen percent of his time conducting

arson investigations, and seventy percent of his time maintaining bureau records, writing and rewriting municipal fire codes and regulations, corresponding with parties found to be in violation of said codes and regulations, performing public relations work, such as writing press releases, overseeing arson investigations being conducted by Lieutenants Gilliam, Haase, Lange and Wright, planning and developing more and improved fire prevention programs and demonstrations, planning and developing new inspection programs, training department members in how to conduct inspections and arson investigations, corresponding with other municipal fire departments on enforcement and inspection matters, overseeing inspections and arson investigations and issuing reports thereon, and making work assignments to Lieutenant Gilliam, as well as scheduling his vacations, overtime and reviewing his work with him; and that at the time of the hearing held herein Deputy Chief Pittenger was developing a sprinkler ordinance for the City.

11. That prior to his promotion to Deputy Chief, Pittenger, even though in charge of the Bureau had to clear certain matters pertaining to the conduct of arson investigations or inspections with the shift Deputy Chief, whereas, since his promotion his rank permits him to make those decisions respecting the conduct of arson investigations and inspections without prior clearance from the shift Deputy Chief, e.g., calling in off duty officers to assist with an arson investigation; that as Deputy Chief, Pittenger has the authority to effectively recommend discipline, but has not had occasion to do so; and that as Deputy Chief, Pittenger is authorized to represent the Fire Department when the Chief and Assistant Chief are unable to do so, notwithstanding that to date he has not been required to act in this capacity.

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

CONCLUSIONS OF LAW

1. That since the position of Deputy Chief - Arson Investigation and Fire Prevention Bureau in the employ of the Fire Department of the City of Beloit is a rank above the rank of Captain who is deemed to be the highest ranking commanding officer at the main station within the meaning of 111.70(1)(o)2, where the occupant thereof is stationed, said position is a supervisor within the meaning of Section 111.70(1)(o)2 of the Municipal Employment Relations Act and, therefore, not a "municipal employe" within the meaning of Section 111.70(1)(b) of the Act.

2. That the City of Beloit is not required to engage in collective bargaining, as defined in Section 111.70(1)(d) of the Municipal Employment Relations Act, with Local 583 of the International Association of Fire Fighters, AFL-CIO, regarding wages, hours, and conditions of employment affecting the Deputy Chief - Arson Investigation and Fire Prevention Bureau.

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

DECLARATORY RULING

That since the occupant of the position of Deputy Chief - Arson Investigation and Fire Prevention Bureau is not an employe within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act, Local 583, International Association of Fire Fighters, AFL-CIO, does not have the right to bargain, and the City of Beloit does not

have the duty to bargain, within the meaning of Sections 111.70(1)(d) and 111.70(2) of the Municipal Employment Relations Act, with respect to decisions of the City of Beloit pertaining to the wages, hours and conditions of employment affecting the Deputy Chief - Arson Investigation and Fire Prevention Bureau.

Given under our hands and seal at the City of Madison, Wisconsin, this 21st day of November, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Thomas Slavney
Morris Slavney, Chairman

Joseph S. Rice II
Joseph S. Rice II, Commissioner

MEMORANDUM ACCOMPANYING DECLARATORY RULING

The petition herein was filed pursuant to Section 111.07(4)(b) of the Municipal Employment Relations Act, concerning the City of Beloit's duty to bargain over decisions pertaining to the position of Deputy Chief - Arson Investigation and Fire Prevention Bureau. The scope of the City's duty to bargain with Petitioner is limited to the wages, hours and conditions of employment of those municipal employees for which Petitioner is the exclusive collective bargaining agent.

"Municipal employe" is defined by the Municipal Employment Relations Act at Section 111.70(1)(b) as follows:

"(b) 'Municipal employe' means an individual employed by a municipal employer other than an independent contractor, supervisor, or confidential, managerial or executive employe"

For purposes of Section 111.70(1)(b) a "supervisor" is defined by Section 111.70(1)(o)2 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 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."

In support of its argument that the contested position is not supervisory and, therefore, belongs in the unit, the Association cites a prior Commission decision in City of Waukesha, (11342)11/72. That decision dealt with the positions of Lieutenant and Fire Inspector in the Bureau of Fire Inspection, however, it is not applicable herein inasmuch as we determined said positions not to be supervisory because they were lower in rank than "the highest ranking officer at each single station."

The Association also contends that the criteria to be applied in determining supervisory status as enunciated by this Commission in Wausau Board of Education, (6219-D) 6/67 and Racine County, (8330)12/67, are controlling herein. The aforesaid decisions, however, did not deal with firefighter personnel and, furthermore, the legislature has adopted a definition of a firefighter "supervisor" which precludes application of the aforesaid criteria. The subject petition involves a municipality with more than one fire station and, thus, by virtue of the definition of "supervisor" set forth in Section 111.70(1)(o)2 of the Municipal Employment Relations Act, we need only determine the rank of "the highest ranking officer at each single station to determine whether the Deputy Chief - Arson Investigation and Fire Prevention Bureau is a supervisor. Indeed, if this Commission were permitted to apply the aforesaid criteria in determining supervisory status of firefighter personnel, as suggested by the Association, conceivably Captains and Lieutenants in charge of a station might be found to be supervisors. However, application of the aforesaid criteria in determining the supervisory status of firefighting personnel is precluded by Section 111.70(1)(o)2 of the Municipal Employment Relations Act.

The Association's claim that because Pittinger is not actively engaged in firefighting and, therefore, cannot be a "supervisor", is founded on a misreading of Wisconsin Administrative Code section ERB 17.01. Said provision only has application in determining which supervisors are eligible for inclusion in a unit of firefighter supervisors as provided for in Section 111.70(3)(d) of the Municipal Employment Relations Act. A dispute as to whether certain firefighter personnel are supervisors is controlled by Section 111.70(1)(o)2 of the Municipal Employment Relations Act and, not the Wisconsin Administrative Code Section ERB 17.01.

The City's Fire Department table of organization discloses that there are three outlying fire stations, and that a Lieutenant is in charge of each outlying station, while a Captain is in charge of the main station. Thus, in reviewing this organizational structure in light of Section 111.70(1)(b) of the Municipal Employment Relations Act, as interpreted by this Commission in City of Janesville, (17613) 5/74, the highest ranking commanding officer at each single station of the City herein is Captain. This is so inasmuch as the Captain at the main station is in the same position as a Lieutenant at the outlying stations - supervisor of a firefighting company or rescue unit. Thus, all officers above the rank of Captain in the Beloit Fire Department are per se supervisors within the meaning of 111.70(1)(o)2 of the Municipal Employment Relations Act. Therefore, inasmuch the rank of Deputy Chief-Arson Investigation and Fire Prevention Bureau is higher than that of Captain it is per se supervisory.

Although not material to the disposition of this case the Association has raised the issue of the Municipal Employer's obligation to bargain as to the creation of the aforesaid Deputy Chief position. It cites our decision in City of Beaver Dam, (12152-A,B) 9/74, as holding that a Municipal Employer has a duty to bargain over the creation of a position which is placed within the bargaining unit. The Association has misread our holding therein, where no issue was raised with respect to the Municipal Employer's duty to bargain as whether to establish the position in dispute and, in fact, the Petitioner therein conceded that decision to be a prerogative of management with which we agree.

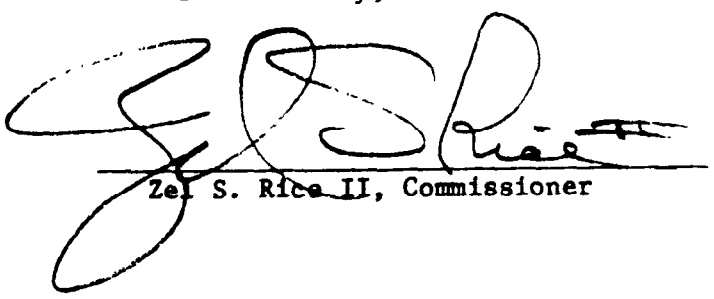
On this basis, as well as the record as a whole, the Commission has determined, pursuant to Sections 111.70(1)(b), (d) and (o) that in as much as the Deputy Chief-Arson Investigation and Fire Prevention Bureau is a supervisor per se the City has no duty to bargain with Association concerning wages, hours and conditions of employment for the aforesaid position.

Dated at Madison, Wisconsin, this 21st day of November, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner