

fighters have been assigned to the switchboard on only the 8:00 a.m. - 4:00 p.m. and the 4:00 p.m. - 10:00 p.m. shifts, while only police personnel manned the switchboard and night watch duties on the 10:00 p.m. - 8:00 a.m. shift; that, further, for a number of years, the Fire Department has had in effect a rule (Rule 13, Section 20), which prohibits firefighter personnel from working during off duty hours for compensation, and that in the latter regard, during the period from 1957 to 1963 three firefighters were disciplined for holding off-duty employment in violation of said rule, but that, however, in recent months prior to the hearing herein, a Fire Lieutenant was granted permission to teach firefighting at the Madison Area Technical College; and that, according to the Respondent, the rule was adopted to avoid injury to firefighters while off duty, which could result in preventing their performance of duty as firefighters, and further, enforcement of said rule was achieved following citizen complaints and in taking consistent action against personnel performing such off-duty work.

4. That during 1972, Complainant and Respondent entered into negotiations for the 1973 collective bargaining agreement covering said firefighter personnel; that on February 8, 1973, the only item separating the parties from reaching an accord on their 1973 collective bargaining agreement concerned a dispute as to whether a premium rate of pay for switchboard assignments performed by firefighters was a mandatory subject of bargaining; and that on February 9, 1973, the Complainant filed a petition requesting a Declaratory Ruling from the Wisconsin Employment Relations Commission with regard to said disputed matter.

5. That on or about February 19, 1973, Respondent notified Complainant that it would not settle on a tentative agreement until the Complainant agreed to withdraw its petition for said Declaratory Ruling; that on February 22, 1973, Complainant notified Respondent, by letter, that unless the Respondent honored the tentative agreement reached on February 8, 1973, Complainant's only recourse was to petition for final and binding arbitration on the terms of the 1973 agreement; and that on March 5, 1973, Complainant's bargaining committee met with Village Attorney Meyer and executed the 1973 collective bargaining agreement.

6. That on March 12, 1973, a hearing was held on the petition for Declaratory Ruling; that on March 14, 1973, Schanz was called into Chief Maas' office whereupon he was handed an "Inter Office Memo" of the same date from Chief Maas to Complainant directing Complainant to cease conducting any union activity or business on the fire station premises, and ordering Complainant to remove all of its records and paraphernalia from the fire station; that in the aforesaid discussion with Schanz, Chief Maas explained that the said Memo was issued because he did not believe it was proper for Complainant to hold monthly meetings on duty time, notwithstanding a past practice of the Respondent of permitting the representatives of the police officers to hold meetings on Respondent's property during duty hours for the purpose of electing officers and discussing contract proposals made by the Respondent; and, that on March 26, 1973, the Commission issued its Declaratory Ruling wherein it determined the Respondent had a duty to bargain over premium rate of pay for firefighters who were assigned dispatcher duties. 1/

7. That on March 28, 1973, Chief Maas, allegedly to curb abuse of trade requests, issued an "Inter Office Memo" to Fire Department personnel stating that beginning April 1, 1973, and for the remainder of the year, firefighters would be permitted no more than three trade requests,

1/ Village of Shorewood, Decision No. 11716 (3/73).

and that starting January 1, 1974, firefighters would be permitted no more than four trade requests during any calendar year.

8. That on May 15, 1973, pursuant to Complainant's request, a meeting was held among representatives of Complainant and Chief Maas and Deputy Chief Traudt; that the purpose of said meeting was to discuss Chief Maas' Memo of March 14, 1973 pertaining to union activity; that during the course of said meeting Chief Maas authorized meetings of the Complainant on the premises on duty time only for the purposes of electing officers and reviewing Respondents' proposals made during negotiations, but Chief Maas refused to permit regular monthly meetings of the Complainant in the station on duty time; and that, also during said meeting, Chief Maas informed Complainant's representative that he and the Deputy Chief had given consideration to implementing a night watch; and that on May 18, 1973, Complainant's Secretary wrote a letter to the Respondent's Village Manager requesting a meeting of the concerned parties for the purpose of resolving the issues surrounding Chief Maas' aforesaid Memo of March 28, 1973.

9. That on May 31, 1973, without previous bargaining with the Complainant, Fire Fighters Local 808, IAFF, Chief Maas issued an order to Deputy Chief Traudt to implement a night watch for firefighters, effective June 1, 1973; that Deputy Chief Traudt displayed the aforesaid order to Schanz, as directed by Chief Maas; that after his conversation with Schanz, Deputy Chief Traudt contacted Village Attorney Meyer regarding the aforesaid order, and the latter recommended against the issuance thereof; that early in the morning of June 1, 1973, Village Attorney Meyer contacted Chief Maas and recommended that aforesaid order not be issued; and that subsequent to said conversation, Chief Maas contacted Deputy Chief Traudt and instructed Deputy Chief Traudt not to issue said order.

10. That Chief Maas' aforesaid order concerning night watch came into the possession of firefighter Captain Crawford, who read it to the firefighters at the 8:00 a.m. roll call on June 1, 1973, and also Crawford posted said order on the bulletin board, and, that Captain Crawford's action was taken without the knowledge of Chief Maas or Deputy Chief Traudt.

11. That on June 25, 1973, a meeting was held, pursuant to Complainant's aforesaid request of May 18, 1973, between Village Manager Duncan, Village Attorney Meyer, Chief Maas, Deputy Chief Traudt, Complainant's President Schanz and Complainant's Secretary Ernst; that Chief Maas' Memo concerning the ban on union business and activities at the fire station, the restriction placed on the number of trade requests permitted, and the Chief's order of a night watch were discussed; and, that during said meeting, Village Manager Duncan stated that the number of trade requests permitted were within the Chief's discretion and that the only choice remaining to the Complainant was to have the Village Attorney take said matters up with the Police and Fire Committee.

12. That on July 1, 1973, Chief Maas, after investigating possible violation of Fire Department Rule 13, Section 20, prohibiting work during off duty hours for compensation, questioned six firefighters individually as to whether they held outside employment during off duty hours; that four of the six admitted to being employed for compensation during off duty hours; that thereupon Chief Maas warned said four fire fighters to discontinue their off duty employment or face formal charges; and that on July 2, 1973, Chief Maas issued an "Inter Office Memo," wherein he indicated that it had come to his attention that firefighters had been working for compensation on their off duty time in violation of Rule 13, Section 20 and that in the future formal charges would be filed against anyone found in violation of said rule.

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

CONCLUSIONS OF LAW

1. That the Respondent, Village of Shorewood, is a municipal employer within the meaning of Section 111.70(1)(a) of the Municipal Employment Relations Act, hereinafter referred to as MERA; and that at all times material herein Robert Maas and John Traudt were agents of the Respondent, acting within the scope of their authority.
2. That trade requests between firefighters in the employ of the Respondent, Village of Shorewood, as well as tasks assigned to such firefighters while on duty, concern conditions of employment within the meaning of Section 111.70(1)(d) of MERA.
3. That the Respondent, Village of Shorewood, by Chief Maas, in directing the Complainant, Fire Fighters Local 808, IAFF, to cease conducting union activity on the station premise and in ordering the removal of all union records and paraphernalia from the station premise, while at the same time permitting representatives of police personnel to hold monthly meetings in the station premises, and in limiting trade requests of firefighter personnel, and in indicating the possibility of instituting a night watch for firefighter personnel interfered with, restrained and coerced, and is interfering with, restraining and coercing, its non-supervisory firefighter personnel in the exercise of their right to engage in concerted activity in and on behalf of Complainant, Fire Fighters Local 808, IAFF, within the meaning of Section 111.70(2) of MERA, and that in said regard, the Respondent, Village of Shorewood, has engaged in, and is engaging in, prohibited practices within the meaning of Section 111.70(3)(a)1 of MERA.
4. That the Respondent, Village of Shorewood, by Chief Maas, in limiting the number of trade requests permitted firefighters, without first affording the Complainant, Fire Fighters Local 808, IAFF, the opportunity to collectively bargain such change in such working conditions, failed to collectively bargain with Fire Fighters Local 808, IAFF, within the meaning of Section 111.70(1)(d) of MERA, and in said regard, the Respondent, Village of Shorewood, has engaged in, and continues to engage, in a prohibited practice within the meaning of Sections 111.70(3)(a)4 and 1 of MERA.
5. That, since the posting of the "Night Watch" order by Captain Crawford was done without authorization by either Chief Maas or Deputy Chief Traudt, the Respondent, Village of Shorewood, did not interfere with, restrain or coerce its non-supervisory firefighter personnel in the exercise of their right to engage in concerted activity in and on behalf of Complainant, Fire Fighters Local 808, IAFF, within the meaning of Section 111.70(2) of MERA, and in that regard, the Respondent, Village of Shorewood, has not committed any prohibited practices within the meaning of Section 111.70(3)(a)1 of MERA.
6. That the Respondent, Village of Shorewood, by Chief Maas, in initiating the Memo of July 2, 1973, to the effect that Rule 13, Section 20 would be enforced, did not interfere with, restrain or coerce any non-supervisory firefighter personnel in the exercise of their right to engage in concerted activity in and on behalf of Complainant, Fire Fighters Local 808, IAFF, within the meaning of Section 111.70(2) of MERA, and in that regard, has not committed any prohibited practices within the meaning of Section 111.70(3)(a)1 of MERA.

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

ORDER

IT IS ORDERED that the Respondent, Village of Shorewood, its officers and agents, shall immediately:

1. Cease and desist from:

- (a) Prohibiting Fire Fighters Local 808, IAFF, from conducting its business and maintaining its files in the fire station, or by unilaterally limiting trade requests to three and four in 1973 and 1974 respectively, or in any other manner interfering, restraining or coercing employes in their right to engage in lawful concerted activity in and on behalf of said labor organization or any other labor organization.
- (b) Refusing to bargain collectively with Fire Fighters Local 808, IAFF, with respect to wages, hours or other terms and conditions of employment affecting non-supervisory firefighter personnel represented by Fire Fighters Local 808, IAFF, including the number of trade requests permitted said personnel.

2. Take the following affirmative action which the Commission finds will effectuate the policies of the Municipal Employment Relations Act:

- (a) Immediately permit Fire Fighters Local 808, IAFF, to hold its meetings and maintain its records and paraphernalia in the fire station.
- (b) Immediately reinstate the trade request policy in effect on March 26, 1973, and continue same in effect until such time as such policy is changed through collective bargaining with Fire Fighters Local 808, IAFF.
- (c) Upon request, bargain collectively with Fire Fighters Local 808, IAFF, with respect to any contemplated change in wages, hours and working conditions, including trade requests, affecting employes represented by said labor organization.
- (d) Notify all employes, by posting in a conspicuous place on its premises, where notices to all employes are usually posted, a copy of notice attached hereto and marked "Appendix A". Such notice shall be signed by the Chief of the Fire Department and the Village Manager, and shall be posted immediately upon receipt of a copy of this Order. Such notice shall remain posted for sixty (60) days thereafter. Reasonable steps shall be taken to insure that said notice is not altered, defaced or covered by other material.

- (e) Notify the Wisconsin Employment Relations Commission, in writing, within twenty (20) calendar days following the date of this Order as to what steps have been taken to comply herewith.

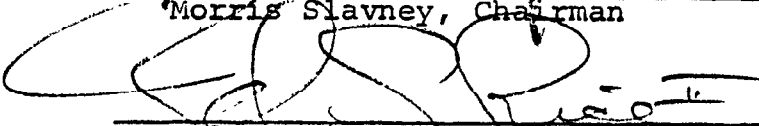
Given under our hands and seal at the
City of Madison, Wisconsin this 18th
day of September, 1974.

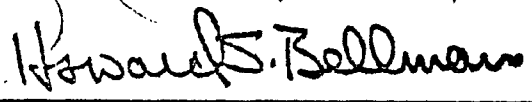
WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Morris Slavney, Chairman


Zel S. Rice II, Commissioner


Howard S. Bellman, Commissioner

"APPENDIX A"

NOTICE TO ALL EMPLOYEES

Pursuant to an Order of the Wisconsin Employment Relations Commission, and in order to effectuate the policies of the Municipal Employment Relations Act; we hereby notify our employes that:

1. WE WILL NOT prohibit Fire Fighters Local 808, IAFF, from conducting its business and maintaining its files in the fire station and we will not unilaterally limit trade requests, or in any other manner interfere, restrain or coerce any employe in the exercise of their right to engage in concerted activity in and on behalf of Fire Fighters Local 808, IAFF, or any other labor organization.
2. WE WILL reinstate the trade request policy in effect on March 26, 1973, and continue same in effect until such time as such conditions are changed through collective bargaining with Fire Fighters Local 808, IAFF.
3. WE WILL NOT unilaterally limit the number of trade requests or change wages, hours or other terms and conditions of employment of employes represented by Fire Fighters Local 808, IAFF without prior bargaining with Fire Fighters Local 808, IAFF or any other labor organization the employes may select as their exclusive collective bargaining representative.

By _____
Village Manager

Chief of the Fire Department

Dated this _____ day of _____, 19____.

THIS NOTICE MUST REMAIN POSTED FOR SIXTY (60) DAYS FROM THE DATE HEREOF AND MUST NOT BE ALTERED, DEFACED OR COVERED BY ANY MATERIAL.

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

On February 9, 1973, the Union, in a proceeding separate and apart from the instant complaint proceeding, filed a petition with the Commission requesting a Declaratory Ruling as to whether premium pay for switchboard duties assigned to firefighter personnel represented by the Union was a mandatory subject of bargaining. Hearing on said petition was conducted by the Commission on March 12, 1973. The Commission issued its Declaratory Ruling on March 26, 1973, wherein it concluded that said matter was subject to mandatory bargaining. On July 10, 1973, the Union filed a complaint of prohibited practices, which initiated the instant proceeding, wherein the Union alleged that the Municipal Employer had engaged in certain prohibited practices on or about the dates noted as follows:

- (1) 3/14/73 - Ordered the Union office out of the fire station with no reason.
- (2) 3/28/73 - Ordered a restriction on trades without reason and without negotiations.
- (3) 5/31/73 - Ordered a night watch effective 6/1/73 without negotiations.
- (4) 7/1/73 - Started a crackdown on a previously unenforced rule in regard to off-duty jobs.
- (5) Continually harassed the Union as a result of its filing of the petition for Declaratory Ruling.

Union Business In Station

Shortly after the hearing on the petition for Declaratory Ruling was held, Chief Maas, notified Union President, Kurt Schanz, that the Union was to ". . . forthwith remove all union records and paraphernalia from the fire station and conduct no more union activities or meetings at the fire station." The Chief testified that he did not become aware that the Union had been holding monthly meetings on duty time until the fall of 1972. However, in the past, notices of such monthly meetings had been posted approximately a week in advance of the meeting both on a bulletin board outside the Fire Department Office and a plaque in the station kitchen. In view of this, and the fact that the practice of monthly meetings had been going on for several years, the Commission is satisfied that Chief Maas was aware of such meetings prior to the fall of 1972.

The Chief's action of March 14, 1973, followed shortly after the Municipal Employer, on February 19, 1973, had attempted to gain the Union's withdrawal of its petition for Declaratory Ruling by refusing to sign the collective bargaining agreement which had been negotiated. The Commission is satisfied that the Chief's action of March 14, 1973, which came shortly after being unsuccessful in persuading the Union to withdraw said petition, was in retaliation against the Union for processing its petition for Declaratory Ruling. To conclude otherwise would ignore the obvious relationship between the Municipal Employer's prior attempt at obtaining withdrawal of the petition, the date of hearing on the petition for Declaratory Ruling and the Chief's order. The inescapable conclusion is that the order was timed to discourage the employees from exercising their lawful rights and was not, as argued by the Municipal Employer, delayed until March 14, 1973 in order to avoid disrupting contract negotiations, which began in 1972 and culminated in an agreement on March 5, 1973.

Trade Requests

On March 26, 1973, the Commission issued its Declaratory Ruling. Two days later, on March 28, 1973, Chief Maas issued an "Inter Office Memo" wherein he announced a new policy respecting trade requests, which limited the number of trade requests permitted to three per employe in 1973 and four in any subsequent calendar year.

Prior to the issuance of the Memo, the Department's practice, pursuant to its rules, permitted employes to trade their "on duty or off duty" time, with the Chief's approval, without restriction on the number of such trades. The Municipal Employer argued that the basis for the limitation imposed on such requests by the Chief was that such practice had been abused by employes under the previous policy. However, the testimony of the Deputy Chief, who was delegated the responsibility for approving the requests, established that there had not been an abuse concerning trade requests during the first three months of 1973.

Viewed in light of the foregoing, the Commission does not believe that the issuance of Chief Maas' Memo of March 28, 1973, two days after the Commission issued its Declaratory Ruling, was mere coincidence. Rather, we conclude that it was part of a continuing pattern of prohibited activity in retaliation for, and to discourage employes from, engaging in protected concerted activity.

MERA, at Section 111.70(3)(a)4, provides that it is a prohibited practice for a municipal employer to refuse to bargain "with a representative of a majority of its employees" with respect to "conditions of employment." This duty continues during the term of a collective bargaining agreement with respect to those subjects which were never discussed or otherwise provided for in the collective bargaining agreement.^{2/} As such, an employer is thereby precluded from unilaterally changing working conditions without prior notification and bargaining with the union.

In the instant case, the Chief, on March 26, 1973, unilaterally implemented a change in the trade policy. Clearly, the number of times during any calendar year employes are permitted to trade "regular on duty or off duty" is a "condition of employment" within the meaning of Section 111.70(1)(d) of MERA, and as such, a mandatory subject for bargaining. The Municipal Employer did not argue, and there was no evidence of an unmistakable waiver of its duty to bargain concerning trade requests and, therefore, the Municipal Employer's actions in said regard constitute a refusal to bargain and, therefore, a violation of Sections 111.70(3)(a)4 and 1 of MERA.

Night Watch

October 1, 1973, was the first occasion that firefighters were ever assigned to the switchboard night watch duty. Prior to that time and dating back to 1943, the switchboard had been manned by Police Department personnel on a 24 hour basis. ^{3/} Then, in 1968, firefighters were assigned to the switchboard from 8:00 a.m. to 10:00 p.m., whereas from 10:00 p.m. to 8:00 a.m., the switchboard continued to be manned by the Police Department.

^{2/} City of Brookfield, (11406-A) 7/73.

^{3/} The Police Department is housed in the same station.

On May 31, 1973, Chief Maas ordered Deputy Chief Traudt to implement a night watch effective June 1, 1973, wherein firefighters would be manning the switchboard from 10:00 p.m. to 7:00 a.m., thus, taking over that portion of the watch previously manned by the Police Department. However, before the watch went into effect, it was rescinded by the Chief after consultation with the Village Attorney, but not before it had been communicated to the men at the 8:00 a.m. roll call on June 1, 1973 by the unauthorized posting of the order by Captain Crawford.

On May 15, 1973, a meeting was called in response to a demand for same by the Union's agents to discuss the Chief's order of March 14, 1973, relating to union activities previously discussed herein. During the course of this meeting, Chief Maas told the Union that he was considering the implementation of a night watch that had heretofore been covered by the Police Department. There was no resolution of the dispute and on May 18, 1974, Union representative Ernst pursued the matter with the Village Manager in the form of a request for another meeting of all concerned parties. Less than two weeks later, Chief Maas issued his order to the Deputy Chief concerning the establishment of a night watch.

The Commission is satisfied that the threat to implement a night watch was the culmination of the Chief's efforts to discourage Complainants from pursuing any further their objections to his action of March 14, 1973. His statement at the May 15, 1973 meeting when viewed in the totality of the conduct can be construed as a threat of future action if Complainant continued to pursue its objections to the Chief's prior conduct and a threat that the Chief carried out as evidenced by his action on May 31, 1973. The fact that the May 31, 1973 order was subsequently rescinded before going into effect did not eliminate the threat made by the Chief, which we conclude to be violative of Section 111.70(3)(a)1 of MERA. Since Captain Crawford was not authorized to post said order, and since the Deputy Chief, on the same date, had been advised not to issue same, we find the posting thereof not to be violative of the Act.

Off Duty Work

On or about July 1, 1973, Chief Maas discussed with six department employes their holding outside employment during off duty hours in violation of departmental rules. This confrontation was the culmination of an investigation conducted by the Chief into rumors he had heard concerning such off-duty work.

He spoke with the firefighters individually and four of them admitted to such employment. The Chief warned said employes that any future violations would result in formal charges being filed against them. This was followed on July 2, 1973 by an "Inter Office Memo" to all Department personnel warning them that anyone who in the future violated the rule against off-duty employment for compensation would be formally charged.

The manner in which this matter was handled by the Chief did not differ significantly from the way such matters had been dealt with previously. In the past, the Department had only initiated investigations in such matters when presented with complaints from citizens or other persistent rumors that employes were violating the rule. Then, with that knowledge, an investigation was undertaken.

The fact that no employe had been disciplined for violation of the rule since 1963 does not mean that the rule had been abandoned and, therefore, is now unenforceable. On the basis of the foregoing, the

Commission is satisfied that the Chief's investigation and "Inter Office Memo" of July 2, 1973 had no connection with and was not in reprisal for employees engaging in protected concerted activity. 4/

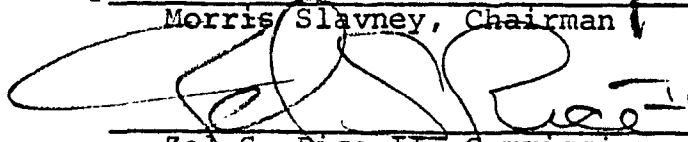
Dated at Madison, Wisconsin this 18th day of September, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION.

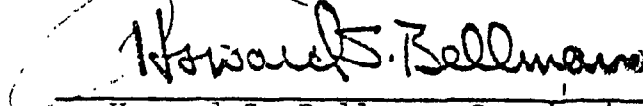
By



Morris Slavney, Chairman



Zel S. Rice II, Commissioner



Howard S. Bellman, Commissioner

4/ It is to be noted that our conclusions herein to the effect that the Respondent engaged in certain acts of interference, restraint and coercion as a result of the Complainant's action in seeking the Declaratory Ruling is not to be construed as requiring a finding of anti-union animus or motivation to establish a violation of Section 111.70(3)(a)1 (Dane County (11622-A) 10/73). Such a conclusion has been made herein since the facts clearly established the motivation for the acts committed by the Respondent.