

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

GREENFIELD FIRE FIGHTERS UNION
LOCAL 1963, IAFF, AFL-CIO 1/

For Clarification of Bargaining
Unit Involving Certain Employees of

CITY OF GREENFIELD

Case XXIX
No. 18521 ME-1132
Decision No. 13590

Appearances:

Mr. Ed Durkin, Vice President, International Association of
Fire Fighters, for the Petitioner.
Mulcahy & Wherry, S.C., Attorneys at Law, by Mr. Ronald J.
Rutlin, for the Municipal Employer.

ORDER CLARIFYING BARGAINING UNIT

Greenfield Fire Fighters Union Local 1963, IAFF, AFL-CIO, having petitioned the Wisconsin Employment Relations Commission to clarify the existing unit of certain employees of the City of Greenfield employed as Fire Fighters and Dispatchers, excluding the Fire Department Chief, Assistant Chief, and Captains or any other Fire Department personnel now or hereafter employed by, or within the Fire Department, to include the Captains therein; and a hearing on the matter having been conducted on February 13, 1975, Stanley H. Michelstetter II, Hearing Officer, having been present; and the Commission having considered the evidence and the arguments of the parties and being fully advised in the premises makes and issues the following

ORDER

That the appropriate collective bargaining unit of firefighting personnel in the employ of the City of Greenfield includes Captains and excludes Dispatchers.

Given under our hands and seal at the
City of Madison, Wisconsin this 29th
day of April, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney, Chairman

Herman Torosian, Commissioner

1/ The named Petitioner's renewed request, that its name be substituted for that of the original Petitioner, Captain Floyd A. Webb, was granted without objection at hearing.

No. 13590

MEMORANDUM ACCOMPANYING ORDER CLARIFYING BARGAINING UNIT

Following an election conducted by it, the Commission certified the Petitioner as the representative of "... all fire fighting personnel in the employ of the Fire Department of the City of Greenfield, excluding supervisors . . ." 2/ The recognition clause of the parties' present collective bargaining agreement states that the Municipal Employer recognizes Petitioner as the representative of "... employees employed as Fire Fighters and Dispatchers, excluding the Fire Department Chief, Assistant Chief, and Captains or any other Department personnel now or hereafter employed by or within the Fire Department." 3/

Petitioner herein takes the position that by virtue of amendments to Section 111.70, occurring after its certification, the Captains are no longer supervisory, and therefore should be accreted to the unit. If the Commission determines that an election is necessary, the Petitioner is willing to participate. The Municipal Employer on the other hand takes the position that we should direct an election in which the Captains are given an opportunity to determine if they desire to accrete to the instant unit because the Petitioner previously voluntarily excluded them from the unit. In the alternative, it takes the position that an election should be conducted in the overall unit, including Captains.

DISCUSSION

CAPTAINS

Effective November 11, 1970, the Municipal Employment Relations Act, herein Act, amended the previous Section 111.70 and, in relevant part, defined "supervisor" as follows 4/

" . . . 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."

The parties stipulated that the City has but one fire station and has a Chief, with the next lowest of rank being an Assistant Chief. It also employs four Captains. We conclude that the Captains are no longer supervisors within the meaning of the Act since they are below the rank of the Assistant Chief.

Accepting arguendo the City's primary position, that we should grant the Captains an accretion election, the possibility exists that the Captains would vote to establish a separate unit, resulting in two units of firefighter personnel employed by the same municipal employer. Because

2/ City of Greenfield (9801) 10/70.

3/ The unit has been substantially the same in all of the parties' collective bargaining agreements except that the Dispatcher has always been excluded until the parties' most recent agreement. The Dispatcher employed at the time of the original certification was excluded from the eligibility list and the description of the unit.

4/ Laws of 1971, Chapter 124. All references to statutes are to Wis. Rev. Stat. (1973) unless otherwise noted.

Section 111.70(4)(d)2a requires that we maintain as few units as practicable 5/ we reject the Municipal Employer's primary position.

It has been our policy to clarify and amend units certified prior to the amendment to Section 111.70 to include employees no longer supervisory within the meaning of the Act. In City of Milwaukee (10835-A) 12/72 we held that voluntary recognition excluding Captains as supervisory on the basis of our determination under the prior statute did not prevent their inclusion in the overall unit after the enactment of the Act. Our records reveal that in its 1970 petition Petitioner sought a unit of "... 12 firefighters . . . Excluded will be captains, asst. chief, chief, and any future rank that may be created between captain and chief. Any rank that may be created between firefighter and captain will be included." At page 2 of the transcript of the hearing on that petition, Petitioner's representative agreed to the description of the unit now appearing in the certification of representative status and stated that the only eligibles would be those classified as Fire Fighters. The City later agreed to that description of the unit and list of eligibles. We conclude that the parties agreed that Captains were not employees within the meaning of the prior statute and on that basis entered into the recognition agreements found in their subsequent collective bargaining agreements. In City of Janesville (Fire Department) (12460-A) 5/74 we held that voluntary recognition continued in a collective bargaining agreement executed after the statutory amendment does not prevent clarification and amendment to bring a unit into conformity with the Act. We therefore conclude that the parties' having executed an agreement after the amendment of the statute which continues to exclude the Captains from the unit does not prevent their inclusion by clarification and amendment of the unit.

Although we have today included the Captains in the bargaining unit represented by Petitioner, such inclusion does not automatically extend the coverage of the present collective bargaining agreement to them.

DISPATCHER

The evidence reveals that the parties originally excluded the then employed Dispatcher from its stipulation for election. As a result, the then employed Dispatcher was excluded from the bargaining unit. The parties thereafter continuously excluded the Dispatcher from the collective bargaining unit in all their collective bargaining agreements until their most recent agreement, dated December 29, 1974 and effective January 1, 1975. The evidence also reveals that the Dispatcher performs the following clerical/dispatching duties:

Upkeeping daily log, answering telephone, all typing, including Fire and Ambulance reports, referrals, inter-office memo's, inspection reports, inspection cards and files, occupancy permits, stenciling and running off all training materials and Fire Department reports, compiling and typing monthly reports, all filing of reports and correspondence, taking dictation and typing correspondence for Fire Chief, Assistant Chief and Captains, keeping gasoline records, vehicle records

5/ Section 111.70(4)(d)2a states in relevant part:

"The commission shall determine the appropriate bargaining unit for the purpose of collective bargaining and shall whenever possible avoid fragmentation by maintaining as few units as practicable in keeping with the size of the total municipal work force . . ." (emphasis added).

and office supply records, totalling [sic] and recording call-back pay for fulltime [sic] Fire Fighters to payroll clerk, completing State Fire Claim reports, completing Medicare Insurance forms for conveyances from Mount Carmel, Dispatching all fire and ambulance calls, setting up appointments.'

'The parties' most recent collective bargaining agreement reflects that the Dispatcher works forty hours per week, eight hours per day, Monday through Friday with a one-half hour unpaid lunch period. The Dispatcher does not perform firefighting duties and therefore she is excluded from the unit of firefighter personnel. 6/ However, the foregoing determination does not extinguish her rights under the existing collective bargaining agreement.

Dated at Madison, Wisconsin, this 29th day of April, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Gerrman Torosian
Gerrman Torosian, Commissioner

6/ Cf. City of Milwaukee (10835-A) 12/72; Menomonee Jt. School District No. 1 (13126-A) 3/75.