

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of	:	
VILLAGE OF SHOREWOOD	:	
For Clarification of a Bargaining	:	Case XIII
Union Consisting of Certain Employes of	:	No. 20928 ME-1378
VILLAGE OF SHOREWOOD	:	Decision No.15094
	:	

Appearances:

Mr. Alvin R. Meyer, Village Attorney, appearing on behalf of the Petitioner.
Mr. Edward Durkin, Vice President, IAFF, appearing on behalf of the Union.

ORDER CLARIFYING BARGAINING UNIT

The Village of Shorewood having filed a petition with the Wisconsin Employment Relations Commission on October 21, 1976 requesting that the Commission issue an Order clarifying a certified collective bargaining unit with respect to the appropriate inclusion or exclusion of certain positions in the unit consisting of "all firemen of the Village of Shorewood, employed in its Fire Department, excluding the Chief, Assistant Chief, and Senior Fire Captain"; and a hearing in the matter having been held on November 12, 1976, in Shorewood, Wisconsin, before Peter G. Davis, Hearing Officer, and the Commission having considered the evidence and arguments of the parties and being fully advised in the premises, l/makes and issues the following

ORDER

That the aforementioned collective bargaining unit should be, and the same hereby is, clarified to exclude the position of Captain.

Given under our hands and seal at the City of Madison, Wisconsin this 9th day of December, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
 Morris Slavney, Chairman

Herman Torosian
 Herman Torosian, Commissioner

Charles D. Hoornstra
 Charles D. Hoornstra, Commissioner

1/ At the hearing the parties entered into a written stipulation wherein they waived the requirements of Section 227.09(4), Wis. Stats.

MEMORANDUM ACCOMPANYING ORDER
CLARIFYING BARGAINING UNIT

The instant proceeding was initiated by the Village's request that the bargaining unit consisting of firefighting personnel be clarified to exclude employes holding the rank of Captain. The Village asserts that inasmuch as the rank of Captain is immediately subordinate to that of the Chief, Section 111.70(1)(o)2 of the Municipal Employment Relations Act requires that Captains be defined as supervisory personnel and thus excluded from the bargaining unit. The Union disputes the exclusion of Captains by contending that the rank of Deputy Chief, still exists as the position immediately subordinate to the Chief, and thus that Captains should remain within the bargaining unit.

When preparing the 1976 budget, the Village, aware that the Deputy Chief was to retire in August, 1976, decided not to fund the position for 1976 in an effort to cut expenditures. Thus, when the Deputy Chief retired he was not replaced. The Village intends to eliminate the position in its 1977 budget. A detailed description of the duties and responsibilities of the Deputy Chief remains in the General Rules for the Government of the Shorewood Fire Department although a revision of the rules is contemplated. The rather limited responsibilities of the Chief Deputy were assumed by the Chief and the three Captains, who function as Platoon leaders with general responsibility for the day-to-day operation of the single firestation during their rotating 24-hour shifts. The Village currently employes ten Firefighters, six Equipment Operators, three Lieutenants, three Captains, and the Chief.

Section 111.70(1)(o)2 of MERA states that:

"In municipalities where there is but one firestation, 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 record clearly establishes that the position of Deputy Chief is vacant and unfunded and that the Village intends to eliminate all vestiges of the position when it establishes the 1977 budget. Even assuming that the rank continues to exist, the statutory reference to the "officer in the rank immediately below the chief" (emphasis added) shows that the legislature meant to refer to a position which is actually filled or to be filled. Thus the Commission concludes that Section 111.70(1)(o)2 requires the exclusion of the three Captains. Should the Deputy Chief position be filled, the Captains shall be deemed to be included in the unit.

Dated at Madison, Wisconsin this 9th day of December, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

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Herman Torosian, Commissioner

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