

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of  
**LOCAL 1793, I.A.F.F.**  
**RICE LAKE PROFESSIONAL FIREFIGHTERS ASSOCIATION**

and

**CITY OF RICE LAKE**

Case 9  
No. 42734  
ME-352

**Decision No. 16413-B**

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Appearances:

Weld, Riley, Prens & Ricci, S.C., by **Attorney Richard J. Ricci** on behalf of the City of Rice Lake.

**Mr. Michael Kunesh**, State Representative, I.A.F.F., 4539 Kuchera Lane, Manitowoc, Wisconsin, on behalf of the Rice Lake Professional Firefighters Association, Local 1793, International Association of Fire Fighters.

**FINDINGS OF FACT, CONCLUSIONS OF LAW**  
**AND ORDER CLARIFYING BARGAINING UNIT**

On June 3, 1998, the Rice Lake Professional Fire Fighters Association, Local 1793 of the International Association of Fire Fighters, filed with the Wisconsin Employment Relations Commission a petition seeking clarification of a bargaining unit of certain employees of the City of Rice Lake Fire Department.

By its petition, the Association seeks the inclusion in the unit of two Captains-Operations. The City asserts that these Captains are supervisors who should continue to be excluded from the unit.

No. 16413-B

Hearing in the matter was held before Examiner Stuart Levitan, a member of the Commission's staff, on October 15, 1998, in Rice Lake, Wisconsin. A stenographic transcript was made available to the parties by October 29, 1998. The parties filed written arguments by December 1, 1998.

The Commission, now being fully advised in the premises, hereby makes and issues the following

### **FINDINGS OF FACT**

1. The Rice Lake Professional Fire Fighters Association, Local 1793 of the International Association of Fire Fighters, herein the Association, is a labor organization having its principal offices at 1122 West Knapp Street, Rice Lake, Wisconsin 54868.

2. The City of Rice Lake, herein the City, is a municipal employer having its principal offices at 11 East Marshall Street, Rice Lake, Wisconsin 54868. Among its myriad municipal obligations, the City maintains a Fire Department, which it operates from a single fire station, and under a Police and Fire Commission. The current Fire Department Organizational Chart which the City has promulgated lists the Fire Chief; an Administrative Assistant; two Captains, of the "A" and "B" squads respectively, in the Fire Operations Division; a Captain of the Fire Prevention Division; and three levels of squad personnel, namely lieutenant, motor pump operator and firefighter 1.

3. The Association is the collective bargaining representative of a unit described in the 1997-1999 contract between the Association and the City as "the employees in the Fire Department, except the Fire Chief or supervisory personnel...." At present, the Captain-Fire Prevention and the two Captains-Operations are excluded from the bargaining unit.

4. The Rice Lake Fire Department has undergone various organizational changes over the past decade. In 1987, the Fire Chief and the Assistant Fire Chief were excluded from the bargaining unit as supervisors. The Assistant Chief oversaw the inspection and prevention functions for the Department.

The City then removed the fire inspection and prevention function from the Fire Department and abolished the Assistant Chief position. The two Captains-Operations then became the officers in rank immediately below the Chief.

In 1989, a dispute arose concerning the unit status of two Captains of Operations and the City filed a unit clarification petition. On September 27, 1989, the Wisconsin Employment Relations Commission's Coordinator of Elections Douglas V. Knudson, wrote to the parties as follows:

This letter is to confirm that the Commission's interpretation of Sec. 111.70(1)(O)2, Stats., set forth in VILLAGE OF SHOREWOOD, DEC. NO. 15094 (WERC, 12/76) has not been changed in subsequent decisions.

Based on said case, both Captains in the Fire Department of the City of Rice Lake should be excluded from the bargaining unit as supervisors, since there is one fire station and the Captain is the officer in rank immediately below the Chief.

It is my understanding that the parties have agreed the petition in the captioned matter can be dismissed based on this letter.

The City's petition was then dismissed and the Captains-Operations were excluded from the unit as supervisors.

In 1998, the City decided to return the fire inspection and prevention function to the Fire Department and created the position of Captain-Fire Prevention to perform these functions. Prior to the creation of the new Captain position, the City considered several options, including a bargaining unit position of Fire Inspector; recreating the position of Assistant Chief; or creating a nonbargaining unit position with the rank of Captain.

The City filled the position with Dennis Nivarel. Prior to accepting position as Captain-Fire Prevention on April 19, 1998, Dennis Nivarel had been member of bargaining unit since 1987, and had served approximately nine years in a variety of leadership positions, including a period of approximately five years as Association president.

The Captain-Fire Prevention position is salaried, based on a 40-hour work week for 2,080 hours annually, with the incumbent setting his own inspection schedule. The City expects that the incumbent will on occasion work beyond the 40 hours. The Captains-Operations work a 56-hour week, based on a rotating 24 hour shift, for approximately 2,768 hours annually, the same schedule as the platoons they supervise. They receive approximately \$5,000 in annual overtime pay. The Captain-Fire Prevention does not receive overtime pay. The base rate for Captain-Operations is \$36,371.52; for Captain-Fire Prevention, the base rate is \$36,628.80.

The Fire Chief is the direct supervisor of both of the Captains-Operations and of the Captain-Fire Prevention. The Captains have no supervisory or any other authority relationship to one another. The Captains have similar responsibility in the preparation of their respective budgets. The Captains-Operations have the authority, which the Captain-Fire Prevention lacks, to discipline. In the absence of the Fire Chief, the senior Captain-Operations assumes leadership of the Department, remaining within his established schedule.

5. The position description for the Captain-Fire Prevention is as follows:

**CITY OF RICE LAKE  
POSITION DESCRIPTION**

**Class Title:** Captain-Fire Prevention

<b>Department:</b> Fire	<b>Position Number:</b> 03
<b>Program/Activity:</b> 52200	<b>Rating:</b> 147
<b>Draft Revision Date:</b> March 05, 1998	<b>Union:</b> N/R
<b>Location:</b> Rice Lake Public Safety Facility	

**Date of Approval by Governing Body:** March 10, 1998

**I. GENERAL PURPOSE.** The principal function of this position within the City of Rice Lake Fire Department is to prevent fire loss by reducing or eliminating potential fire hazards accomplished by conducting physical inspections of city facilities, industrial, educational, mercantile or multiple occupancies and educate fire department personnel in fire prevention procedures.

Ancillary functions of the position include Underground Storage Tank (UST) inspection activities, fire prevention, fire investigation and supplement the command structure during emergency incident operations. Further, the position is tasked with the development and administration of said programs.

**II. SUPERVISION RECEIVED.** Works under the Occasional Supervision of the Fire Chief. Supervision received during emergency incident operations is based upon direction of the designated Incident Commander.

Rating: 18

**III. SUPERVISION EXERCISED: TYPE.** Only occasional and sporadic, job-specific supervision is exercised by this position. May exercise supervision over temporary clerical or other staff, as assigned. Supervision during emergency incident operations shall include, but shall not be limited to, division or sector officer responsibilities.

Rating: 3

**IV. SUPERVISION EXERCISED: EXTENT.** Normally, this position is not responsible for the supervision of any employee. When occasionally required, supervision would involve up to two (2) FTE. Emergency incident operations may result in the supervision of up to five (5) or fewer FTE and up to fifteen (15) Paid-On-Call (POC) Firefighters (ratio of 3:1) for a total of 10 FTE.

Rating: 12

**V. ESSENTIAL DUTIES AND RESPONSIBILITIES:**

**A. Illustrative Listing.** The following are illustrative of the essential duties and responsibilities of the position.

1. Plans, develops, organizes and administers the fire prevention program for the City of Rice Lake and contacted Townships and is directly responsible for making decisions and recommendations regarding fire prevention matters by:

a. Conducting physical inspections of all required buildings, institutions and facilities to detect and assure correction of conditions which might cause or contribute to a potential hazard to life by fire, explosion, panic or asphyxiation.

b. Conducting pre-fire planning for designated high risk facilities within the City of Rice Lake and contracted Townships.

c. Conducting special inspections of buildings, institutions or facilities or areas where unusual or extra hazardous operations or conditions exist.

d. Implementing decisions regarding a fire protection issue based upon practicality, feasibility and economics. Solutions shall be based upon not only sound principles of fire protection but also a thorough understanding of the inherent problems of the building, institution, facility or area involved. Where established criteria does not cover situations, a solution(s) that provides an adequate degree of fire protection shall be developed.

e. Developing, implementing and administering a company fire inspection/pre-fire planning program.

2. Plans, develops, organizes and administers the Underground Storage Tank (UST) inspection program for the City of Rice Lake.

3. Participates in and performs structural fire suppression and rescue operations, natural cover firefighting operations and miscellaneous firefighting operations including sector/division command responsibilities.

4. Performs basic life support measures, including administering emergency first aid, cardiopulmonary resuscitation (CPR) and semi-automatic defibrillation.

5. Participates in fire drills, attends academic and practical training sessions pertaining to structural firefighting, natural cover firefighting, extrication, specialized rescue, emergency medical treatment, hazardous materials and related subjects.

6. Operates radio, cellular telephone and other communication equipment.

7. Presents programs to the community on fire safety, medical and fire prevention topics.

8. Performs duties in conformance with Federal, State, County and City laws, statutes and ordinances.

9. Participates in the operation of departmental in-service training activities.

10. Assists in the development of departmental policies, procedures and Standard Operating Guidelines (SOG's).

11. Assists in developing plans for special assignments such as emergency preparedness, hazardous communications, training programs, firefighting, hazardous materials, and emergency aid activities.

12. Assists the Fire Chief and/or Training Officer in the development and delivery of the department training program.

13. Cooperates and coordinates with other municipal departments in the correction and/or removal of hazards.

14. Prepare an annual inspection/prevention budget proposal and prepare data on inspection/prevention activities for incorporation into the annual departmental budget.

15. Conducts and assists in the investigation of fires and analyze to determine cause and origin.

16. Participates in local, regional, state and national conferences and seminars on fire administration, technical advances, to maintain a continuing level of professional and technical competence.

17. Other career field related duties as assigned by the Fire Chief.

**B. Effect of Errors.** Errors by the incumbent in the position are likely to be difficult to discover: impact >\$5,000 but <\$100,000 as a direct result of a single error. Illustrative duties/responsibilities – numbers 1, 2, 3 and 4 are indicative of this aspect of the position.

Rating: 24

**C. Contact with Others.** The incumbent has regular contact with individuals outside and limited inside of the organization.

Rating: 24

**D. Confidential Data.** The incumbent has regular access with some knowledge of supervisor or potential for detecting abuse.

Rating: 12

## **VI. PERIPHERAL DUTIES.**

Functions as the lead fire investigator for the City of Rice Lake Fire Department.

Performs minor repairs to departmental equipment.

Attends and represents the City of Rice Lake Fire Department in a variety of local, county, state and other meetings.

Coordinates activities with other supervisors and other City departments and exchanges information with officers in other fire departments.

Maintains contact with general public, department officers and other City officials in the performance of fire department activities.

Maintains a close working relationship with the building inspector(s) and other interested parties to review planned new construction, alteration and/or modification of buildings and proposed new operations regarding fire protection issues and provide sound technical advise on issues pertaining to provisions of, and compliance with, fire protection requirements.

## **VII. DESIRED MINIMUM QUALIFICATIONS**

**A. Education.** Graduation from a college or university with an Associate or Technical Degree in fire science, public administration or a closely related field, with additional specialized training.

Rating: 18

**B. Experience.** Minimum of three (3) years experience with an anticipated two (2) years in the position for proficiency acquisition for a total of five (5) years.

Rating: 24

**C. Necessary Knowledge, Skills and Abilities.**

1. Extensive knowledge of modern fire inspection and prevention principles, procedures, techniques and equipment including knowledge of installed fire protection systems.



2. Extensive knowledge of modern fire suppression, rescue, prevention and emergency medical services principles, procedures, techniques and equipment; extensive knowledge of emergency medical techniques and their application as demonstrated through State E.M.T. Certification; considerable knowledge of applicable laws, ordinances, departmental standard operating guidelines and regulations;

3. Extensive knowledge of National Fire Protection Association (NFPA) Standards, Wisconsin State Law and Wisconsin Department of Commerce Administrative Code.

4. Skill and thorough knowledge of the use of fire and rescue service tools and equipment and an ability to demonstrate their use to others.

5. Ability to perform work requiring good physical condition; ability to communicate effectively orally and in writing; ability to exercise sound judgment in evaluating situations and in making decisions; and the ability to effectively give and receive verbal and written instructions.

6. Considerable knowledge of fire behavior, electrical fundamentals, chemistry fundamentals, physics, building construction, hydraulics, explosives, hazardous properties and potentials of chemicals, liquids and gases and the combustion qualities of materials used in construction.

7. Ability to express ideas clearly, orally and in writing to groups and individuals.

8. Knowledge of training methods.

9. Ability to plan, schedule and coordinate with minimal supervision and direction.

10. Ability to establish and maintain effective working relations with the department personnel, agency employees, community officials, media and the general public.

## **VIII. SPECIAL REQUIREMENTS.**

A. Must be twenty-one (21) years of age or older at time of appointment.

B. Must possess at the time of appointment **and** maintain throughout employment, a valid Wisconsin operator's license **without** record of suspension or revocation in any State;

C. No felony convictions or disqualifying criminal history within the past seven (7) years;

D. U.S. citizen;

E. Must be able to read and write the English language;

F. Must be able to meet departmental physical standards;

G. Must meet the requirements established by all applicable City Ordinances;

H. Must not have grooming habits that would interfere or impede the ability to wear personal protective clothing and self-contained breathing apparatus; and

I. Must not have any record of claustrophobia, pyrophobia or acrophobia.

J. Must be certified as a Fire Inspector at the time of appointment or be certified within one (1) year of appointment.

K. Must be certified as an Underground Storage Tank (UST) inspector at the time of appointment or be certified within one (1) year of appointment.

L. Must be certified as a Fire Officer I at the time of appointment or obtain certification within two (2) years of appointment;

M. Must be certified as a Hazardous Materials Technician (HMT) at the time of appointment, within one (1) year of appointment if currently certified as Firefighter I or within one (1) year of after certification as a Firefighter I.

N. Must be certified as an Emergency Medical Technician (EMT) at the time of appointment or be certified within two (2) years of appointment.

O. Must complete the National Fire Academy Incident Command System course of instruction within one (1) year of appointment.

P. Must be scheduled to attend the National Fire Academy Fire/Arson Investigation (R205) course within two (2) years of appointment.

Q. Must complete a minimum of twenty-four (24) hours of approved training outside of the scheduled departmental training per year.

R. Ability to learn the geography of the community, the location of streets, nature and location of hazardous premises, principle buildings, fire alarm reporting equipment and hydrant or other water source locations.

S. Ability to learn and effectively utilize computer software programs specifically adaptable towards the fire service.

T. Ability to deal courteously with the public who may or may not act without regard for manners or courtesy.

#### **IX. TOOLS AND EQUIPMENT USED.**

Fire apparatus, fire pumps, hoses, and other standard firefighting equipment, ladders, atmospheric monitoring equipment, emergency medical equipment, radio, pager, personal computer, telephone, cellular telephone, FAX machine and photography equipment.

#### **X. PHYSICAL DEMANDS**

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this position. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this position, the employee is frequently required to stand, walk, use hands to finger, handle, or operate objects, tools or controls and reach with hands and arms. The employee is occasionally required to sit, climb or balance, stoop, kneel, crouch, crawl, talk and hear.

The employee must frequently lift and/or move up to 25 pounds and occasionally lift and/or move up to 100 pounds. Specific vision abilities required by this position include close vision, distance vision, color vision, peripheral vision, depth perception and the ability to adjust focus.

A detailed analysis of the physical demands of the position follows. An evaluation by a physician and/or the employer in accordance with the detailed analysis shall be required of the applicant following the offer and acceptance of a position offer. The position offer shall be contingent upon the successful completion of these evaluations and determination that a reasonable accommodation (if necessary) can be made.

**XIV. POSITION DESCRIPTION QUALIFIERS AND EMPLOYER RESERVATION OF MANAGEMENT RIGHTS.**

The duties listed above are intended only as illustrations of the various types of work that may be performed. The omission of specific statements of duties does not exclude them from the position if the work is similar, related or a logical assignment to the position.

The position description does not constitute an employment agreement between the employer and the employee and is subject to change by the employer as the needs of the employer and requirements of the position change.

**XV. REVISION HISTORY.** This document was revised and approved by the Governing Body on the following dates.

**XVI. AUTHENTICATION.** The signatures of the supervisor and appointing authority indicate that the foregoing has been approved by the Governing Body.

The current position description for the position of Captain-Operations reads as follows:

**CITY OF RICE LAKE  
POSITION DESCRIPTION**

**Class Title:** Captain-Operations

**Department:** Fire **Position Number:** 02  
**Program/Activity:** 52200 **Rating:** 222  
**Draft Revision Date:** February 25, 1998 **Union:** N/R  
**Location:** Rice Lake Public Safety Facility  
**Date of Approval by Governing Body:** March 10, 1998

**I. GENERAL PURPOSE.** Performs a variety of administrative, supervisory and technical functions in the supervision and administration of fire suppression, rescue, emergency medical treatment, hazardous material incidents, fire prevention activities and personnel management.

**II. SUPERVISION RECEIVED.** Works under the Occasional Supervision of the Fire Chief.

Rating: 18

**III. SUPERVISION EXERCISED: TYPE.** Exercises immediate supervision over one (1) Lieutenant, two (2) Motor Pump Operators (MPO's) and two (2) Firefighter/EMT's.

Rating: 24

**IV. SUPERVISION EXERCISED: EXTENT.** Normally, this position is responsible for the supervision of three (3) to four (4) employees. Emergency operations may result in the supervision of up to 10 or fewer FTE employees and up to 30 Paid-On-Call (POC) Firefighters (ratio of 3:1) for a total of 20 FTE.

Rating: 24

**V. ESSENTIAL DUTIES AND RESPONSIBILITIES.**

**A. Illustrative Listing.** The following are illustrative of the essential duties and responsibilities of the position.

1. Supervises a Lieutenant and subordinate staff in performance of their assigned duties, station and scene, as directed.
2. Determines proper methods of firesuppression, rescue and mitigation of hazardous material incidents by determining the proper strategical priorities and tactical objectives.
3. Responds to and participates in emergency situations and supervises personnel performing standard fire suppression and rescue tasks.
4. Supervises maintenance of departmental equipment, supplies and facilities.
5. Instructs and drills career and Paid-On-Call Firefighters in fire supprssion and rescue techniques.
6. Submits disciplinary recommendations to the Fire Chief.
7. Monitors and observes departmental activities to ensure that conduct and performance conform to department standards.
8. Performs duties in conformance with Federal, State, County and City laws, statutes and ordinances.
9. Responds to multiple alarm fire as needed; assumes command in the absence of the Fire Chief.
10. Participates in the operation of departmental in-service training activities.
11. Participates in the inspection of buildings, hydrants, and other structures in fire prevention programs.
12. Presents programs to the community on fire safety and prevention topics.
13. Prepares and maintains reports and records to include personnel records, payroll, incident reports and daily activity logs.

14. Assists in the development of departmental policies, procedures and Standard Operating Guidelines (SOG's).

15. Assists in developing plans for special assignments such as emergency preparedness, hazardous communications, training programs, firefighting, hazardous materials, and emergency aid activities.

16. Assists the Fire Chief and/or Training Officer in the development and delivery of the department training program.

17. Reviews reports and records of department activities and operations and take appropriate actions when required to ensure correctness.

18. Cooperates and coordinates with other municipal departments in the correction and/or removal of hazards.

19. Assists in the investigation of fires and analyze to determine cause and origin.

20. Assists the Fire Chief in the preparation of departmental budgets, annual reports and long range planning.

21. Participates in local, regional, state and national conferences and seminars on fire administration, technical advances, supervision and management development to maintain a continuing level of professional and technical competence.

**B. Effect of Errors.** Errors by the incumbent in the position are likely to be not readily detected and corrected and may cause large expenditures, loss of life and significant liability exposure as a direct result of a single error. Illustrative duties/responsibilities – numbers 1, 2, 8 and 9 are indicative of this aspect of the position.

Rating: 48

**C. Contact with Others.** The incumbent has regular contact with individuals inside the organization and limited outside the organization.

Rating: 24

**D. Confidential Data.** The incumbent has some contact with confidential data, but only with the direct knowledge of the supervisor.

Rating: 12

## **VI. PERIPHERAL DUTIES**

Performs the duties of subordinate personnel as needed

Attends and represents the City of Rice Lake Fire Department in a variety of local, county, state and other meetings

Coordinates activities with other supervisors or other City departments and exchanges information with officers in other fire departments.

Maintains contact with general public, department officers and other City officials in the performance of fire department activities.

## **VII. DESIRED MINIMUM QUALIFICATIONS**

**A. Education.** Graduation from a college or university with an Associate or Technical Degree in fire science, public administration or a closely related field.

Rating: 12

**B. Experience.** Five (5) years of experience in fire or emergency medical service work, three (3) years of which must have been served in a supervisory capacity, with an anticipated two (2) years in the position for proficiency acquisition for a total of seven (7) years.

Rating: 48

### **C. Necessary Knowledge, Skills and Abilities.**

1. Extensive knowledge of modern fire suppression, rescue, prevention and emergency medical services principles, procedures, techniques, and equipment; extensive knowledge of emergency medical techniques and their application as demonstrated through State E.M.T. Certification; considerable



knowledge of applicable laws, ordinances, departmental standard operating guidelines and regulations;

2. Skill in the operation of listed tools and equipment.
3. Ability to train and supervise subordinate personnel; ability to perform work requiring good physical condition; ability to communicate effectively orally and in writing; ability to exercise sound judgment in evaluating situations and in making decisions; ability to effectively give and receive verbal and written instructions; ability to establish and maintain effective working relationships with other employees, supervisors and the public and ability to meet the special requirements listed below.
4. Considerable knowledge of explosives, hazardous properties and potentials of chemicals, liquids and gasses and the combustion qualities of materials used in construction.
5. Ability to plan, assign, direct and supervise fire fighting equipment and personnel under emergency conditions.
6. Ability to express ideas clearly, orally and in writing to groups and individuals.
7. Thorough knowledge of the use of fire fighting tools and equipment and an ability to demonstrate their use to others.
8. Ability to perform position analysis and evaluate employee performance.
9. Considerable knowledge of training methods and the ability to supervise training of personnel.
10. Ability to plan, coordinate and supervise duty assignments of the fire department.
11. Ability to maintain discipline among subordinates in the department.

12. Ability to establish and maintain effective working relations with the department personnel, community officials, media and the general public.

**VIII. SPECIAL REQUIREMENTS.**

A. Must be twenty-one (21) years of age or older at time of appointment;

B. Must possess at the time of appointment **and** maintain throughout employment, a valid Wisconsin operator's license **without** record of suspension or revocation in any State;

C. No felony convictions or disqualifying criminal history within the past seven (7) years;

D. U.S. citizen;

E. Must be able to read and write the English language;

F. Must be able to meet departmental physical standards;

G. Must meet the requirements established by all applicable City Ordinances;

H. Must not have grooming habits that would interfere or impede the ability to wear personal protective clothing and self-contained breathing apparatus; and

I. Must not have any record of claustrophobia, pyrophobia or acrophobia.

J. Must meet Fire Officer I requirements within two (2) years of appointment;

K. Must be certified as a Hazardous Materials Technician (HMT) within one (1) year after formation of a Level B Hazardous Materials Response Team.

L. Must complete the National Fire Academy Incident Command System course of instruction within one (1) year of appointment.

M. Must complete a minimum of ten (10) hours of approved training outside of the scheduled departmental training per year.

**IX. TOOLS AND EQUIPMENT USED.**

Fire apparatus, fire pumps, hoses, and other standard firefighting equipment, ladders, emergency medical equipment, radio, pager, personal computer, telephone, cellular telephone and FAX machine.

**X. PHYSICAL DEMANDS.**

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this position. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this position, the employee is frequently required to stand, walk, use hands to finger, handle, or operate objects, tools or controls and reach with hands and arms. The employee is occasionally required to sit, climb or balance, stoop, kneel, crouch, crawl, talk and hear.

The employee must frequently lift and/or move up to 25 pounds and occasionally lift and/or move up to 100 pounds. Specific vision abilities required by this position include close vision, distance vision, color vision, peripheral vision, depth perception and the ability to adjust focus.

A detailed analysis of the physical demands of the position follows. An evaluation by a physician and/or the employer in accordance with the detailed analysis shall be required of the applicant following the offer and acceptance of a position offer. The position offer shall be contingent upon the successful completion of these evaluations and determination that a reasonable accommodation (if necessary) can be made.

**XIV. POSITION DESCRIPTION QUALIFIERS AND EMPLOYER RESERVATION OF MANAGEMENT RIGHTS.**

The duties listed above are intended only as illustrations of the various types of work that may be performed. The omission of specific statements of duties does not exclude them from the position if the work is similar, related or a logical assignment to the position.

The position description does not constitute an employment agreement between the employer and the employee and is subject to change by the employer as the needs of the employer and requirements of the position change.

**XV. REVISION HISTORY.** This document was revised and approved by the Governing Body on the following dates.

**XVI. AUTHENTICATION.** The signatures of the supervisor and appointing authority indicate that the foregoing has been approved by the Governing Body.

6. On April 20, 1998, Fire Chief James Resac wrote to Michael Dietz, Association President, as follows:

This letter shall serve as notification that Mr. Dennis A. Nivarel, with the promotion to the rank of Captain on April 19, 1998, must be removed as a member of the bargaining unit representing members of the City of Rice Lake Fire Department in accordance with Wisconsin SS 111.70(1)(O)2.

The reorganization of the City of Rice Lake Fire Department to include the position of Captain-Fire Prevention position was officially approved by the City of Rice Lake Common Council on March 02, 1998.

Should you have any questions regarding this matter, please feel free to contact me.

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

**CONCLUSION OF LAW**

The incumbents in the positions of Captain-Fire Prevention and Captain-Operations are supervisors within the meaning of Sec. 111.70(1)(o)2, Stats.

On the basis of the above and foregoing Findings of Fact and Conclusion of Law, the Commission hereby makes and issues the following

**ORDER CLARIFYING BARGAINING UNIT**

The incumbents of the positions of Captain-Fire Prevention and Captain-Operations are excluded from the bargaining unit identified in Finding of Fact 3.

Given under our hands and seal at the City of Madison, Wisconsin this 14th day of January, 1999.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

James R. Meier /s/

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James R. Meier, Chairperson

A. Henry Hempe /s/

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A. Henry Hempe, Commissioner

Paul A. Hahn /s/

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Paul A. Hahn, Commissioner

**CITY OF RICE LAKE**

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER CLARIFYING BARGAINING UNIT**

**POSITIONS OF THE PARTIES**

The Association contends that the two Captains-Operations should be included in the bargaining unit, and the Captain- Fire Prevention should be excluded while the City contends that all three positions should be excluded from the bargaining unit as supervisors.

Both parties rely on Sec. 111.70(1)(o)2, Stats., and Commission case law applying that provision, but they differ on how the statute and case law should be applied to the facts.

The Association argues that the Captain- Fire Prevention is the direct successor to a position that has historically be excluded, both as Assistant Chief and as Superintendent of Inspections. The Association maintains that it is this position which in fact, if not in name, is the officer in rank immediately below the chief referenced in the statute and case law. The Association argues that it is now only this position which qualifies for the supervisory exclusion, and that the other two Captains must be returned to the unit.

To allow all three positions to be excluded merely on the basis of their titles, the Association argues, would lead to the creation – and exclusion – of more and more captaincies.

The City, noting that it has but one fire station, states that the criterion in the statute for supervisory status is specifically and solely based on rank. There being no question that the a Captain is indeed a Captain, regardless of whether the program area is Operations or Fire Prevention, the City asserts that all three Captains must be excluded from the unit.

The City notes Commission caselaw involving municipalities maintaining only one fire station, in which the Commission excluded from the unit three Captains at a time when the position of Deputy Chief was vacant and unfunded; excluded four Assistant Chiefs who supervised no paid personnel, but only volunteer firefighters; and excluded all Captains, not only the senior Captain. These precedents, the City maintains, support the conclusion that as all three Captains at issue here are of the same “rank immediately below the chief,” and thus that all three must be excluded from the unit.

## **DISCUSSION**

Section 111.70(1)(o)2, Stats., 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.

We have spoken directly and clearly on the meaning and application of this statutory definition. In VILLAGE OF SHOREWOOD, DEC. NO. 15094 (WERC, 12/76), the municipality had left the position of Deputy Chief vacant and unfunded, and claimed that the three Captains were thus the officers in rank immediately below the Chief. We agreed, noting that the Captains would be returned to the unit in the event the Village filled the position of Deputy Chief. Then, in TOWN OF MADISON, DEC. NO. 17667-A (WERC, 6/80), we addressed the issue of a fire department where the Chief and the four Assistant Chiefs were the only paid personnel, supervising a roster of volunteer firefighters. Even though this volunteer status meant the firefighters were not employees, we found the Assistant Chiefs to be supervisors on the basis of the statute. And in CITY OF ST. FRANCIS (FIRE DEPT.), DEC. NO. 17437-A (WERC, 9/82), we addressed a situation where there was a senior Captain and other Captains; we found all Captains to be supervisors under the statute.

Citing SHOREWOOD, the Association argues that because the new Captain-Fire Prevention performs many of the same duties as the defunct Assistant Chief did 10 years ago, the City has, in effect, filled a vacant Assistant Chief position and the Captain-Fire Prevention is now the only officer in rank immediately below the Chief. Therefore, the Association argues, the Chief and the Captain-Fire Prevention are now the only supervisors and the Captains-Operations should return to the bargaining unit.

We disagree. The record satisfies us that the City acted upon legitimate operational considerations when it decided to return inspection services to the Department but to use a Captain as opposed to an Assistant Chief perform those services. It is possible that a municipal employer could create multiple captaincies as a subterfuge to remove personnel from the bargaining unit, in which case we would revisit our existing interpretation of Sec. 111.70(1)(o)2, Stats. We are confident, however, that no such subterfuge was present in the City of Rice Lake. While the City was certainly aware of the impact on the bargaining unit of the various options it considered regarding fire inspection and prevention services, that awareness does not establish that it chose the option it did in bad faith. As the record clearly establishes, the City has given to all

Captains significant authority in such a way as to justify their titular rank. As that rank is the one immediately below the Chief, all three Captains are statutorily excluded from the bargaining unit as supervisors pursuant to Sec. 111.70(1)(o)2, Stats.

Dated at the City of Madison, Wisconsin this 14<sup>th</sup> day of January, 1999.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

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James R. Meier, Chairperson

A. Henry Hempe /s/

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A. Henry Hempe, Commissioner

Paul A. Hahn /s/

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Paul A. Hahn, Commissioner