

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

CITY OF RICE LAKE (FIRE DEPARTMENT)

Case IX  
No. 22190 ME-1486  
Decision No. 16413

Mr. Edward M. Conley, City Attorney, appearing on behalf of the  
Municipal Employer.

Local 1793, International Association of Fire Fighters having on October 31, 1977 filed a petition with the Wisconsin Employment Relations Commission requesting the Commission to clarify a voluntarily recognized collective bargaining unit consisting of certain employes of the Fire Department of the City of Rice Lake; and a hearing in the matter having been held at Rice Lake, Wisconsin, on November 17, 1977 before Ellen J. Henningsen, a member of the Commission's staff; and the Commission, having considered the evidence and arguments of the parties, issues the following Findings of Fact, Conclusions of Law and Order Clarifying Bargaining Unit.

4. That from 1970 until 1975, the incumbent Fire Inspector was treated by the Union and the Municipal Employer as other than a Fire Department member in order that said employee could be retained in the Municipal Employer's employ beyond the age of 60; that for that reason, beginning in 1970 said parties treated said position as excluded from

the bargaining unit; that said exclusion was first reflected in the parties' collective bargaining agreement in 1974 when an express exclusion thereof was inserted in the recognition clause; that in 1975 said incumbent reached 65 and retired; that thereafter and until January 1, 1977, the duties of Fire Inspector were performed by Fire Department supervisory personnel and in small part by bargaining unit personnel; and that since January 1, 1977, said duties have been consolidated into one position and performed exclusively by a newly hired Fire Department employee.

5. That the negotiations between the Union and the Municipal Employer concerning the terms of a collective bargaining agreement to be effective on and after January 1, 1977 culminated on March 8, 1977 when the parties executed such an agreement; that at a time during said negotiations when the Union bargaining representatives were aware of the consolidation of Fire Inspector duties into one Fire Department position with a newly hired incumbent, the Municipal Employer proposed that an express exclusion of said position be inserted into the fair share clause of the new agreement so as to be parallel to the existing exclusion in the recognition clause; that the Union initially opposed said modification and proposed instead that the two clauses be made parallel by elimination of the Fire Inspector exclusion from the recognition clause; that the Municipal Employer did not modify its position, and the Union ultimately signed the agreement with knowledge that it contained both the pre-existing exclusion of Fire Inspector in the recognition clause and the newly added exclusion thereof in the fair share clause; that, as agreed upon by the parties, said provisions read as follows:

## "ARTICLE II

### RECOGNITION

The City of Rice Lake recognizes the Rice Lake Paid Firefighters Association as the designated representative of the employees in the Fire Department, except the Fire Chief, Fire Inspector, or supervisory personnel, for the purpose of collective bargaining with respect to wages, hours, working conditions, and other conditions of employment.

. . .

## ARTICLE XXI

### FAIR SHARE AGREEMENT

The Rice Lake Paid Fire Fighters, Local 1793, voted by a majority to have a fair share agreement. This means: All Rice Lake Fire Department employees, excluding the Fire Chief, Fire Inspector, and the officer in rank immediately below the Chief, will be required to pay their proportionate share . . .";

and that said collective bargaining agreement provides no express termination dates, but rather provides in pertinent part, as follows:

## "ARTICLE XXV

### EFFECTIVE DATE AND CHANGES

This Agreement shall become effective as of January 1st, 1977, if agreed upon by the authorized representatives of the city and the Rice Lake Paid Firefighters Association.

Wage negotiation may be initiated at any time upon 30 days written notice. However, the results of such negotiations shall not become effective until January 1st of the year in question.

Changes: Either party may initiate collective bargaining discussions over changes they may wish to introduce into this agreement, provided that notice of the substance of the change and the language with which such desired changes are to be expressed shall be presented to the authorized parties. The parties receiving notice of desired changes shall seek establishment of meeting of the parties for the purpose of discussion and amicable accomodation [sic] for the desired changes."

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

CONCLUSIONS OF LAW

1. That the Fire Inspector position in the Municipal Employer's Fire Department is held by a municipal employe within the meaning of Section 111.70(1)(b), of the Municipal Employment Relations Act.

2. That the Fire Inspector position should normally be included in the same unit with all other non-supervisory fire fighting personnel in the employ of the City of Rice Lake in order to constitute an appropriate collective bargaining unit within the meaning of Section 111.70(4)(d)2.a. of the Municipal Employment Relations Act, since the duties of the position relate to the prevention of fires, a mission assigned to fire departments, but because the Union, in negotiations leading up to the collective bargaining agreement executed on March 8, 1977 agreed to exclude said position from said unit, the Commission will not order inclusion of said position in the fire fighting personnel unit at this time.

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

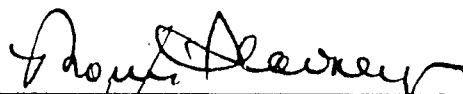
ORDER

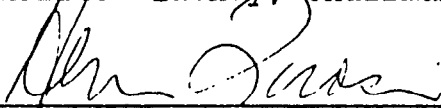
That as of January 1, 1979 the position of Fire Inspector in the employ of the City of Rice Lake in its Fire Department shall be included in the unit of non-supervisory fire fighting personnel in the employ of said Municipal Employer.

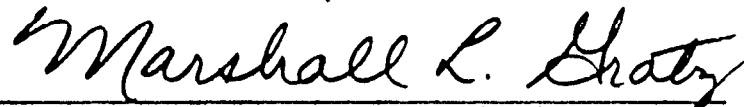
Given under our hands and seal at the  
City of Madison, Wisconsin this 19th  
day of June, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Herman Torosian, Commissioner

  
Marshall L. Gratz, Commissioner

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

The Petitioner is the voluntarily recognized bargaining representative of certain employees in the Rice Lake Fire Department. On October 31, 1977, the Petitioner filed the instant petition for unit clarification, requesting the Commission to include the position of Fire Inspector in the bargaining unit. Hearing in the matter was held on November 17, 1977, at Rice Lake, Wisconsin. A transcript was issued on February 9, 1978. Neither the Petitioner nor the Municipal Employer filed a brief.

The Petitioner contends that the Fire Inspector appropriately belongs in the bargaining unit it represents because the Fire Inspector shares a community of interest with the bargaining unit members. The Petitioner also contends that the Fire Inspector was previously excluded from the bargaining unit solely because, at that time, the Fire Inspector was not considered by the parties to be an employee of the Fire Department; and that since the Fire Inspector is once again considered by the parties to be an employee of the Fire Department, the position should be included in the bargaining unit.

The Municipal Employer argues that the Fire Inspector does not share a community of interest with the bargaining unit members and thus is not appropriately included in the bargaining unit. In addition, the Municipal Employer contends that the petition for unit clarification should be dismissed, even assuming that the Fire Inspector belongs in the bargaining unit, since the parties have previously agreed to exclude that position.

The threshold issue presented by the petition is whether the Commission will permit a party to a voluntarily agreed upon collective bargaining unit to expand the scope of that unit by way of a unit clarification petition, although the other party opposes such expansion. In a non-consensual unit clarification proceeding (i.e., without a certification election) it is the Commission's policy 1/ to refuse to expand a voluntarily recognized unit to include positions which were excluded by mutual agreement at the time of the initial grant of voluntary recognition. In our view, however, the particular facts of this case make inapplicable said Commission policy. Here, the position at issue had been included in the unit at the time voluntary recognition was initially granted; and it was excluded thereafter for a reason which ceased to exist by January 1, 1977. Hence, there is no showing that the union obtained or avoided losing its voluntary recognition (and the accompanying presumption of continuing majority status) by agreeing to continue said exclusion in the March 8, 1977 agreement. Therefore, the rationale of Cudahy and subsequent cases is inapplicable herein, and it would serve no significant policy end to require the Union to demonstrate its majority status in the broader unit as a condition precedent to the Union's right to bargain for the Fire Inspector as a part of the Fire Department unit. For said reason, the Commission concludes that the Union ought not be precluded from seeking a Commission determination as to the inclusion of the Fire Inspector position in the unit of fire fighter personnel.

Turning to that issue, the Fire Inspector's duties consist primarily of the inspection of premises for the purpose of ascertaining and causing to be corrected any condition liable to cause a fire, which function is closely allied with the fire fighting duties of fire fighters and the overall mission of the fire department. As such, the position of Fire Inspector shares a substantial community of interest with the balance of

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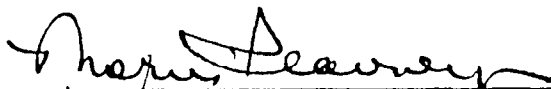
1/ City of Cudahy, (12997), 9/74; Fox Valley Technical Institute, (13204), 12/74; Amery Schools, (15793-A, 15794-A), 4/78.


the unit of non-supervisory fire fighter personnel and properly belongs in that unit.


Having so concluded, an issue remains as to what effect should be given to the Union's agreement in negotiations to exclude said position from the unit. The Commission concludes that the purposes of MERA would best be served by honoring the agreement of the parties in this case for the term of their agreement. To allow the Union to agree to such an exclusion, which it was not required to do since unit questions are not mandatory subjects of bargaining, and thereafter, during the term of the agreement, seek to include said position through a unit clarification would be detrimental to the collective bargaining process and the stability of the parties' collective bargaining relationship. Therefore, like an agreement on any other permissive subject of bargaining, the agreement to exclude the Fire Inspector position is binding until such time as it can be terminated under the terms of the applicable duration provision 2/ (herein Article XXV). Since that collective bargaining agreement has no fixed term, and since it can be opened for negotiations for changes to become effective on January 1 following any one year of its existence, we have construed the earliest date on which the agreement could be terminated as December 31, 1978, and we have determined that the position of Fire Inspector shall be included in the bargaining unit as of January 1, 1979, without the necessity of requiring an election among all the employees in the bargaining unit.

Dated at Madison, Wisconsin, this 20<sup>th</sup> day of June, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By   
Morris Slavney, Chairman

  
Herman Torosian, Commissioner

  
Marshall L. Gratz, Commissioner

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2/ Oak Creek-Franklin School District, (14027-B), 12/77.