

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

TOWN OF MADISON (FIRE DEPARTMENT)

Decision No. 17667-A

Brynelson, Herrick, Gehl & Bucaida, Attorneys at Law, by Mr. Thomas J. Kennedy, 122 West Washington Avenue, P.O. Box 1767, Madison, Wisconsin 53703, appearing on behalf of the Town.

The Town of Madison Fire Department Supervisor's Association having filed a petition with the Wisconsin Employment Relations Commission requesting that an election be conducted among the supervisory fire fighting personnel of the Town of Madison (Fire Department) to determine whether said supervisory personnel desired to be represented by said Union for the purposes of collective bargaining; and hearing in the matter having been conducted on January 23, 1980 at Madison, Wisconsin by Douglas V. Knudson, a member of the Commission's staff, and by the Commission on March 25, 1980, and the Commission, having considered the evidence and the arguments of the parties and being fully advised in the premises, issues the following Findings of Fact, Conclusions of Law, and, Direction of Election.

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

CONCLUSIONS OF LAW

1. That all of the Assistant Chiefs in the employ of the Fire Department of the Town of Madison are supervisory employes within the meaning of Sec. 111.70(o)2 of the Municipal Employment Relations Act.

2. That all regular full-time and regular part-time Assistant Chiefs (with the exception of the Inspection Chief) in the employ of the Fire Department of the Town of Madison, excluding the Chief and all volunteers, constitute an appropriate supervisory collective bargaining unit within the meaning of Sec. 111.70(8) of the Municipal Employment Relations Act.

Upon the basis of the above and foregoing Findings of Fact and conclusions of Law, the Commission makes and enters the following

DIRECTION OF ELECTION

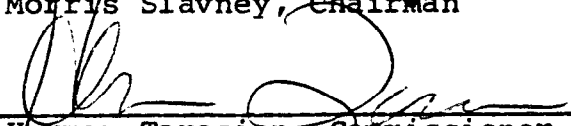
IT IS HEREBY DIRECTED that an election by secret ballot shall be conducted among all Assistant Chiefs (with the exception of the Inspection Chief) in the employ of the Fire Department of the Town of Madison, who were employed on June 11, 1980, excluding the Chief and all volunteers, and such supervisory employes as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of such supervisory employes desire to be represented by the Town of Madison Fire Department Supervisors' Association for the purposes of collective bargaining with the Town of Madison with respect to wages, hours and conditions of employment.

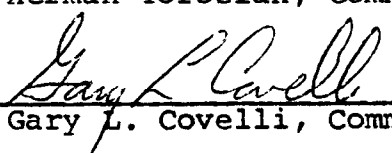
Given under our hands and seal at the
City of Madison, Wisconsin, this 11th
day of June, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Herman Torosian, Commissioner


Gary L. Covelli, Commissioner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND DIRECTION OF ELECTION

On December 13, 1979, the Association filed a petition requesting the Commission to conduct an election in the following bargaining unit:

All full time and regular permanent part-time salaried supervisory employes of the Town of Madison Fire Department.

"Section 111.70(8) of MERA states in material part as follows:

This subchapter does not preclude law enforcement or fire fighting supervisors from organizing separate units of supervisors for purposes of negotiating with their municipal employers. The Commission shall by rule establish procedures for certification of such units of supervisors and the levels of supervisors to be included."

Rule ERB 17.01 sets forth the basic procedures in establishing such supervisory bargaining units.

At the hearing, the Town contended that the bargaining unit description, as contained on the petition, should be altered by the deletion of the words "permanent" and "salaried," and further, by the addition of the following exclusions; the Fire Chief, the Inspection Chief, 1/ all confidential, managerial and executive employes, and, all other employes. The Union did not object to said changes except that if in the future the duties of the Inspection Chief should be changed, then, at that time, said position should be included in the bargaining unit.

The Town, contrary to the Union, claims that the other three Assistant Chiefs are managerial employes, and therefore, should be excluded from the bargaining unit.

The Fire Department is comprised of five paid personnel and thirty-five volunteer fire fighters. The paid personnel are the Chief and the four Assistant Chiefs, one of whom is the Inspection Chief. The Inspection Chief and one other Assistant Chief are part-time hourly-paid employes. The other two Assistant Chiefs and the Chief are full time employes who receive a monthly salary. The Chief works approximately one-third of the time during which the Fire Department is operating. During the other two-thirds of the time, the Fire Department is staffed by one of the Assistant Chiefs.

The Assistant Chiefs attend staff meeting with the Chief, during which managerial departmental policies, procedures, budgets and operation are discussed. The Chief considers suggestions and recommendations made by the Assistant Chiefs with respect to those matters, however, he makes the final decisions in regard thereto. The Chief testified that he also considers suggestions from the volunteer firefighters in the same manner he considers the suggestions from the Assistant Chiefs. The Assistant Chiefs plan and conduct training sessions for the volunteer fire fighters. Although the Assistant Chiefs can select the training materials for a

1/ The position referred to as the Inspection Chief carries the rank of Assistant Chief.

particular training session, the printed handouts are standard materials which the Chief has purchased for the Department's library. The Chief determines the overall training program. The Assistant Chiefs select and conduct drills from that program for the training sessions. Although the Assistant Chiefs possess the authority to have emergency repairs of equipment performed, non-emergency repairs of equipment performed, non-emergency repairs of equipment are discussed with the Chief before such repairs are scheduled. The Assistant Chiefs also function as dispatchers while on duty. They receive telephone complaints and inquiries concerning fire hazards and prevention. Many of those situations are governed by municipal ordinances and state regulations. The Chief testified that the Assistant Chiefs do not determine any policies. Policies and procedures are developed by the Chief. The Assistant Chiefs are involved in the implementation of new policies and procedures, under the Chief's direction.

The Commission has stated that in making determinations as to whether positions are managerial, it must consider the degree to which the individuals in question participate in the formulation, determination and implementation of management police, and, possess the authority to commit the employer's resources. The power to commit the employer's resources involves the authority to establish an original budget or to allocate funds for differing program purposes from such an original budget. By comparison, the authority to make expenditures from certain accounts to achieve those program purposes is ministerial, even though some judgement and discretion are required in determining when such expenditures should be made. 2/

The record demonstrates that, although the Assistant Chiefs have some input into policy decisions, virtually all policy decisions are made by the Chief and are implemented under his direction. Similarly, the Assistant Chiefs lack any significant input into the establishment of a budget and only occasionally authorize the disbursement of budget funds. Therefore, the Commission concludes that the degree to which the Assistant Chiefs participate in policy functions, or commit resources, does not merit their exclusion, as managerial employees, from a bargaining unit of supervisory personnel.

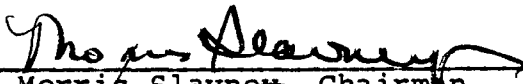
The Assistant Chiefs do not supervise any employees of the Town, since the remainder of the Fire Department personnel is composed of volunteer fire fighters who are not "employees" of the Town. Normally, the usual duties of a supervisor include some activity with regard to employees. There are no employees supervised by the Assistant Chiefs involved herein. However, the definition of a firefighter supervisor is quite clear under the statute. Sec. 111.70(o)2 defines a firefighter supervisor in a municipality having a single fire station, as including "the chief and the

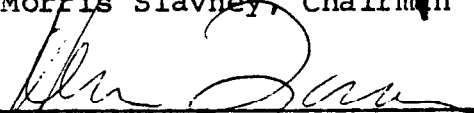
2/ Shawano County (Sheriff's Department), (15257), 3/77.


officer in rank immediately below the Chief". Here the Assistant Chiefs are the rank immediately below the Chief. Therefore, regardless of the lack of employees, the Assistant Chiefs are deemed to be supervisors under MERA.

Dated at Madison, Wisconsin this 11th day of June, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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