STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of CITY OF MANITOWOC (FIRE DEPARTMENT) Requesting a Declaratory Ruling Pursuant to Section 111.70(4)(b) Wis. Stats. Involving a Dispute Between Said Petitioner and MANITOWOC PROFESSIONAL FIREFIGHTERS ASSOCIATION, LOCAL 368, INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, AFL-CIO	Case XXXVII No. 25608 DR(M)-141 Decision No. 18333

Appearances:

Mr. Gerald W. Hutchinson, President, Local 368, I.A.F.F., 1750 Lilac Drive, Manitowoc, Wisconsin 54220 and Mr. Leroy Waite, International Representative, I.A.F.F., 1600 East Ridge Road, Beloit, Wisconsin 53511, on behalf of the Manitowoc Professional Firefighters Association, Local 368, International Association of Firefighters, AFL-CIO.

Mr. Patrick L. Willis, City Attorney, 817 Franklin Street, Manitowoc, Wisconsin 54220, on behalf of the City of Manitowoc.

FINDINGS OF FACT, CONCLUSION OF LAW AND DECLARATORY RULING

The City of Manitowoc filed a petition on January 14, 1980 requesting the Wisconsin Employment Relations Commission to issue a declaratory ruling, pursuant to Section 111.70(4)(b) of the Municipal Employment Relations Act, with respect to whether a provision included in the 1978-1979 collective bargaining agreement entered into by and between the City and the Manitowoc Professional Firefighters AFL-CIO and proposed by said Association to be incorporated substantially intact into said parties' 1980 collective bargaining agreement constituted a mandatory subject of bargaining. The parties jointly executed a Stipulation of Facts in the matter and agreed to resolution of the dispute on the basis of briefs. Both parties filed briefs and reply briefs, the last of which was received on October 22, 1980. Upon consideration of the entire record of this matter, the Commission issues the following

FINDINGS OF FACT

1. That the City of Manitowoc, hereinafter referred to as the City, is a municipal corporation and has its offices at P.O. Box 765, 817 Franklin Street, Manitowoc, Wisconsin 54220.

2. That Manitowoc Professional Firefighters Association, Local 368, International Association of Firefighters AFL-CIO, hereinafter referred to as the Association, is a labor organization and has its offices at 1750 Lilac Drive, Manitowoc, Wisconsin 54220, and that at all times relevant herein, the Association has been the exclusive collective bargaining representative of all firefighters employed by the City holding the rank of Captain, Lieutenant, Motor Pump Operator and Firefighter.

3. That the City and the Association are parties to two collective bargaining agreements covering the wages, hours and working conditions of the employes described above for the calandar years 1978

and 1979 and calandar years 1980 and 1981; and that the 1978-1979 collective bargaining agreement between the parties included, as Article IV paragraph (F) of said agreement, the following provision:

> "The Chief shall endeavor to maintain a fourteen (14) man work crew on each shift.",

and that said provision was included in several of the parties' collective bargaining agreements which were in effect prior to the 1978-1979 agreement.

4. That on September 25, 1979, in connection with the transmittal to the Association of the City's initial bargaining requests for the parties' 1980-1981 collective bargaining agreement, the City proposed to remove the above noted provision from the 1980-1981 agreement, contending that said provision did not constitute a mandatory subject of bargaining; and that, however, the Association had earlier proposed in its initial requests for the 1980-1981 agreement that Article IV paragraph (F) be continued in the latter agreement, with the deletion of the words "endeavor to".

5. That during the course of collective bargaining, the parties reached agreement on all matters to be included in their 1980-1981 collective bargaining agreement, with the sole exception of the dispute with respect to Article IV paragraph (F) of the 1978-1979 agreement, and that as result the parties did not engage in bargaining therein.

6. That on December 31, 1979, the parties agreed that they would execute their 1980-1981 collective bargaining agreement as it pertained to all matters other than the status of the provision in issue, and that the dispute regarding same would be resolved by the filing by the City of a petition requesting a declaratory ruling as to whether the provision in issue did or did not relate to a mandatory subject of bargaining; and that, the 1980-1981 collective bargaining agreement between the parties, with the exception of the matter involved in this proceeding, was approved by the City's Common Council on January 7, 1980.

7. That the City filed the instant petition for declaratory ruling on January 14, 1980, contending that a minimum manpower requirement per shift did not constitute a mandatory subject of bargaining inasmuch as it related primarily and fundamentally to basic managerial policy, and specifically to its authority to implement staff reductions or work schedule changes "because of need for economy, lack of work or funds or for other just causes", rather than primarily to wages, hours and working conditions.

8. That the Union contends that the subject matter of the provision involved primarily relates to the wages, hours and working conditions of employes, and in particular, that it directly and substantially impacts on firefighter safety, on the extent of hazardous conditions to which firefighters may be subjected in the course of their employment, and on the efficiency with which firefighters are able to perform their duties; and therefore such provision constitutes a mandatory subject of bargaining.

9. That there was no evidence adduced in the instant proceeding to establish that any reduction in the fourteen (14) man work crew on each shift would in any way affect the safety of any firefighter employed by the City on any shift; therefore the obligation on the part of the City's Fire Chief to maintain, or to endeavor to maintain, a certain size of firefighter crew per shift primarily relates to the formulation, implementation and management of public policy, and to

the exercise of the City's municipal powers on behalf of its citizens.

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

CONCLUSION OF LAW

That since the obligation on the part of the Fire Chief of the City of Manitowoc to maintain, or to endeavor to maintain, a certain size of firefighter crew per shift primarily relates to the formulation, implementation and management of public policy, and not to the safety of the firefighting crew, the proposal of Manitowoc Professional Firefighters Association, Local 368, International Association of Firefighters, AFL-CIO to the effect that the size of the firefighting crew on each shift be maintained at 14 firefighters, does not constitute a mandatory subject of bargaining within the meaning of Section 111.70(1) of the Municipal Employment Relations Act.

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

DECLARATORY RULING

That the City of Manitowoc has no duty to bargain with the Manitowoc Professional Firefighters Association, Local 368, International Association of Firefighters AFL-CIO with respect to latter's proposal relating to an obligation on the part of the Fire Chief of the City of Manitowoc to maintain or to endeavor to maintain a firefighting crew of a certain number of firefighters on each shift.

Given under our hands and seal at the City of Madison, Wisconsin this 19th day of December, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Morris Slavney, Chairman

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Herman Torosian, Commissioner

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Gary L. Covelli, Commissioner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECLARATORY RULING

The City filed a petition for declaratory ruling in this proceeding alleging that Article IV paragraph (F) of its 1978-1979 collective bargaining agreement with the Association concerned a permissive or prohibited subject of bargaining, and that therefore it was not obligated to bargain over its inclusion into the parties' 1980-1981 collective bargaining agreement. The disputed provision read as follows:

> "The Chief shall endeavor to maintain a fourteen (14) man work crew on each shift."

This proceeding in effect, concerns the status of a minimum manning requirement as a mandatory or permissive subject of bargaining. 1/ It should be noted that the disputed provision contained in the expired agreement does not in all instances mandate a minimum staffing requirement. Rather, it binds the City's Fire Chief to use his best efforts to meet such a requirement.

POSITIONS OF THE PARTIES

The City claims that Article IV paragraph (F) of the 1978-1979 agreement is clearly a permissive subject of bargaining under the ruling of the Wisconsin Supreme Court in the case of City of Brookfield v. Wisconsin Employment Relations Commission 2/, and that therefore it may insist on that provision's removal from the parties' 1980-1981 and subsequent collective bargaining agreements. It notes that the Brookfield decision dealt precisely with the sort of minimum manpower requirement as that involved here, in the context of the City of Brookfield's desire to implement an economically-motivated layoff of a number of firefighters. It notes further that the Supreme Court determined that the decision to lay off in that context was "a matter primarily related to the exercise of municipal powers and responsibilities and to the integrity of the political processes of municipal governments", and that therefore any contractual provision that interferred with the City of Brookfield's ability to implement such layoffs constituted a permissive subject of bargaining.

The City recognizes the distinction between the Brookfield decision (in which the City had approved and attempted to implement a number of economically-motivated layoffs) and the situation presented in this matter (in which no such action is contemplated by the City of Manitowoc). It concludes that for purposes of the issue presented herein, the same result should apply, i.e. that a minimum manning requirement is primarily related to the exercise of municipal powers

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1/ Although the City's Petition for Declartory Ruling contends that "the contents (of Article IV paragraph (F) deal with a permissive or prohibited subject of bargaining", the City's brief and reply brief contended that said provision constituted a permissive subject of bargaining. Nothing contained in the record or set forth by applicable law indicates that the disputed provision would contitute an illegal or prohibited subject of bargaining.

2/ 87 Wis. 2d 819, 275 N.W. 2d. 723 (1979).

and responsibilities, the exercise of which would necessarily be impeded by the continuation of Article IV paragraph (F) in the parties' collective bargaining agreement. The City therefore concludes that it has the right to insist on the deletion of that provision from the agreement.

The Association contends that Article IV paragraph (F) is related primarily to the effect of the City's managerial prerogatives rather than to the very exercise of those prerogatives and therefore that it constitutes a mandatory subject of bargaining. In particular, it argues that a minimum staffing provision directly concerns the safety and well-being of the City's firefighters and therefore that it primarily relates to the conditions of employment applicable to the firefighters. In support of its contention in this regard, the Association cites numerous analyses of manpower, staffing and safety as applied to fire companies and departments, referring in particular to discussions of the size of fire teams and crews and engine companies as they relate to firefighter safety and efficiency. It concludes that this aspect of the disputed minimum manning requirement distinguishes this instance from the situation involved in the Brookfield case.

DISCUSSION

The parallel between this situation and that presented by the City of Brookfield decision is compelling. Both situations involve minimum man-power requirements as applied to municipal fire departments. Both raise the issue of the possible impact of such requirements on firefighter safety and well-being on the one hand, and on the authority of a municipality to determine the extent and level of services that are to be provided its constituents, on the other. The only apparent difference between the two situations is the possibility of layoffs or other personnel actions, i.e. in Brookfield, layoffs of firefighters were imminent and indeed the motivating factor behind the City's challenge to a minimum manning provision, while in this instance, no such layoffs are contemplated. For purposes of determining the issue involved herein, this distinction is not of great significance.

The Supreme Court's Brookfield decision stated that economically motivated layoffs of public employes resulting from budgetary restraints constituted non-mandatory subjects of bargaining, insofar as other state statutes, in particular Chapter 62, Wis. Stats. 3/, granted municipalities the power to decide the necessity of layoffs in view of the policy objectives of the affected citizenry - as expressed through their elected representatives. However, the Commission's decision in Brookfield 4/ specifically determined the status of a minimum daily manpower requirement as a non-mandatory subject of bargaining. The Union's proposal in that instance was a daily minimum manpower requirement of not less than 16 men with the rank of Captain and under for each 24-hour duty period (with certain exceptions not material herein). In Brookfield, the City had actually reduced by two the number of bargaining unit employes on duty daily, which affected response time and

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3/ See in particular Section 62.11(5) Wis. Stats. (setting forth the powers of a municipality's common council) and Section 62.13(5m) (relating to dismissals and re-employment in municipal service).

4/ City of Brookfield (11489-B, 11500-B) 4/75.

the quantity of men and equipment available to respond to fire calls. The Commission determined that the City did not have a duty to bargain on the number of unit employes on duty in and of itself:

> ". . .Complainant argues that the number of unit employes on duty significantly affects working conditions (to wit, safety and workload) or nonlaid-off employes. The Commission finds, however, that said working conditions are much more directly and intimately affected by decisions as to the types and quantities of safety equipment transported to first responses, the safety practices and procedures followed at fires, and the amount of non-fire-extinguishing work to be required of unit employes as a group. Moreover, the record facts do not establish that unit employes have experienced so unreasonably hazardous or unduly burdensome a workload--either before or after the number of employes normally on duty was reduced by two--that their interests and concerns in safety and workload seem amenable to protection and fulfillment by bargaining about the above-mentioned subjects that are more directly and intimately related thereto and since bargaining about those subjects is much less restrictive of Respondent's freedom to determine the basic scope of protective services to be provided to the public, the Commission concludes, as did the Examiner, that determinations as to the number of unit employes to be on duty do not directly and intimately affect the wages, hours and working conditions of nonlaid-off employes. That result both serves the public policy underlying MERA and reflects an effort to harmonize MERA with Sections 62.11(5), 62.13(5m), and (8).
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> Therefore, Respondent did not, and does not, have a duty to bargain collectively about the number of unit employes to be on duty during each 24-hour Fire Department shift." 5/

The portion of our decision in Brookfield that concerned minimum daily manpower requirements was not appealed and said subject did not become part of the Supreme Court's subsequent decision relating to the status of economically-motivated layoffs as a subject of bargaining. Therefore, in light of the fact that the proposal involved herein is virtually identical in substance to that involved in Brookfield and since there was no evidence adduced herein to establish that the size of the firefighter crew on any particular shift primarily affected the safety of the firefighters on duty, we conclude that the proposal involved does not relate to a mandatory subject of bargaining.

Dated at Madison, Wisconsin this 19th day of December, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Morris Slavney, Chairman

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Herman Torosian, Commissioner

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Gary L. Covelli, Commissioner

5/ Id. at pp. 15-16.