

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

CITY OF FRANKLIN (FIRE DEPARTMENT)

**Appearances:**

Mr. Gregory P. Gregory, 4702 South Packard Avenue, Cudahy,  
Wisconsin 53110, appearing on behalf of the City.

Franklin Professional Firefighter Association having, on October 2, 1980, filed a petition originally requesting the Wisconsin Employment Relations Commission to conduct an election among firefighter personnel in the employ of the City of Franklin, and thereafter having amended said petition to request the Commission to clarify a bargaining unit consisting of firefighter personnel in the employ of said City; and hearing in the matter having been conducted on November 7, 1980, before Timothy E. Hawks, member of the Commission's staff, at Franklin, Wisconsin; and the Commission, having considered the evidence and arguments of the parties and being fully advised in the premises, hereby makes and issues the following

3. That in this proceeding the Association initially requested the Commission to conduct an election among firefighter personnel in the employ of the City to determine whether said personnel desired to be represented by the Association for the purposes of collective bargaining; that, however, prior to hearing on the petition the City voluntarily recognized the Association as the exclusive collective bargaining representative for all full-time, non-supervisory firefighters in the employ of the City; that following such recognition an issue arose between the parties as to whether the position of Administrative Captain, occupied by Allen J. Martin is supervisory; and that, contrary to the Association, the City contends that the position is that of a supervisor, and therefore should be excluded from the aforesaid collective bargaining unit.

4. That the City, in the operation of its Fire Department utilizes both regular full-time and paid on-call firefighters; that the City currently employs nine paid full-time personnel as follows: one Fire Chief, one Administrative Captain, one Fire Inspector, one Superintendent of Equipment, and five Firefighters; and that the parties agree that the Fire Inspector, as well as the Superintendent of Equipment, are properly included in the collective bargaining unit involved herein, and that the Chief is excluded therefrom.

5. That the City maintains three fire stations; that all of the full-time paid personnel work out of Station No. 2 at all times, except for two of the Firefighters, who spend approximately one hour a day, during their five day - 40 hours tour of duty, performing routine maintenance and cleaning duties, at the start of their work day, at Stations No. 1 and 3, where fire fighting vehicles are also housed; and that after performing said duties said two Firefighters report to Station No. 2; and that Stations No. 1 and 3 are not manned during the normal day time hours.

6. That during the hours when the paid full-time personnel are not on duty the City utilizes the services of approximately seventy-two "paid on-call" personnel, as well as regular personnel, who may be "on-call" and who are paid at over-time rates when responding to a call; non-regular "paid on-call" personnel are assigned various ranked positions as follows: one Assistant Chief, three Battalion Chiefs, three Captains, three Lieutenants, sixty-three Firefighters; that the Assistant Chief, when called, works out of Station No. 2; and that the "on-call" Captains, Lieutenants, and Firefighters work out of one of the three stations to which they are assigned.

7. That the Assistant Chief, whose rank is interposed between the Chief and the Administrative Captain, does not answer calls during day shift hours, since he has other full-time employment, except when he does respond to such calls when he is on vacation or on leave from his other employment; and that in the latter regard he responds to approximately six calls during the year when called during normal day shift hours, while he does respond to approximately one hundred calls a year during the hours when full-time firefighter personnel are not normally scheduled.

8. That the firefighter personnel, who are regularly employed spend the vast majority of their time and perform their station house duties at one of the three stations maintained by the City, and since the other two stations are primarily utilized to house firefighter equipment rather than personnel, the firefighter "employee" personnel in the employ of the City's Fire Department is housed in a single station; and further, that the Administrative Captain in the employ of the City's Fire Department, in relationship to the Chief and the remaining regularly employed firefighter personnel, occupies the rank immediately below the Chief.

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

#### CONCLUSION OF LAW

That the position of Administrative Captain in the employ of the Fire Department of the City of Franklin is a supervisory position within the meaning of Section 111.70(1)(o)2 of the Municipal Employment Relations Act, and therefore said position is not occupied by an "employee" within the meaning of Section 111.70(1)(b) of the Act.

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

ORDER CLARIFYING BARGAINING UNIT

That the position of Administrative Captain in the employ of the Fire Department of the City of Franklin is excluded from the collective bargaining unit of non-supervisory firefighter personnel employed in the Fire Department of the City of Franklin, which unit is represented by Franklin Professional Firefighters Association.

Given under our hands and seal at the City of Madison, Wisconsin this 9th day of April, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By   
Morris Slavney, Chairman

  
Gary L. Covelli, Commissioner

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

The City has voluntarily recognized the Association as the exclusive collective bargaining representative of its non-supervisory full-time paid firefighter personnel. An issue has arisen as to whether the Administrative Captain should or should not be included in said unit. The Association contends that the position should be included, while the City argues that it should be excluded since the position is that of a supervisor as defined in the Municipal Employment Relations Act. The facts material to the issue are succinctly set forth in the Findings of Fact.

Section 111.70(1)(o)2 of MERA defines the positions deemed to be occupied by supervisors in the employ of fire departments maintained by municipal employers in this State as follows:


As to firefighters employed by municipalities with more than one fire station, the term "supervisor" shall include all officers above the rank of the highest ranking officer at each single station. In municipalities where there is but one fire station, 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.

There is only one fire station manned by unit personnel. The rank directly under the Chief and performing his duties at said station is that of the Administrative Captain. The other two stations are not manned by unit personnel. Thus the Administrative Captain, by statutory definition, is a "supervisor". Even assuming that "on-call" paid firefighters were "employees" under MERA, then all three stations would be "manned", and the facts disclose that the highest ranking officer at all three stations, when regular full-time employees are not on their regular duty, would be the Battalion Chiefs, and, therefore, under the statutory definition, the Administrative Captain would also be deemed supervisory.

Dated at Madison, Wisconsin this 9th day of April, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Gary L. Covelli, Commissioner