

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of	:	
	:	
MILWAUKEE POLICE SUPERVISOR'S	:	
ORGANIZATION	:	
	:	Case CCXXVI
For Final and Binding Arbitration	:	No. 28168 MIA-592
Involving Law Enforcement	:	Decision No. 19190
Personnel in the Employ of	:	
	:	
CITY OF MILWAUKEE (POLICE	:	
DEPARTMENT)	:	
	:	

Appearances:

Mr. Gerald P. Boyle, Attorney at Law, Knights Tower Building, 1100 West Wells Street, Suite 508, Milwaukee, Wisconsin 53233 appearing on behalf of the Petitioner.

Mr. James B. Brennan, City Attorney, by Mr. Nicholas M. Sigel, Assistant City Attorney, 800 City Hall, Milwaukee, Wisconsin 53202, appearing on behalf of the City of Milwaukee.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER
DISMISSING OBJECTIONS TO PETITION FOR ARBITRATION

Milwaukee Police Supervisors' Organization, herein MPSO, as the representative of supervisory law enforcement personnel in the employ of the Police Department of the City of Milwaukee, having on June 10, 1981, filed a petition requesting the Wisconsin Employment Relations Commission to initiate final and binding interest arbitration, pursuant to Sec. 111.70(4)(jm), Stats., to resolve an alleged impasse existing between the MPSO and the City of Milwaukee, arising in negotiations with respect to the wages, hours and working conditions of said supervisory law enforcement personnel; and the City of Milwaukee having on July 24, 1981 filed a statement in opposition to said petition; and the parties having waived hearing in the matter, and having filed briefs by October 28, 1981; and prior to any further action, the Commission having been advised that the parties had reached an accord on a new collective bargaining agreement but nevertheless desired the Commission to determine whether the MPSO had the statutory right to proceed to final and binding interest arbitration; and the Commission having considered the petition, the statement in opposition thereto, the briefs of the parties, and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That Milwaukee Police Supervisors' Organization, hereinafter referred to as MPSO, exists for the purpose of representing law enforcement supervisors with respect to the negotiation of wages, hours and working conditions affecting such supervisory personnel; and that MPSO has its offices at Knight Tower Building, 1100 West Wells Street, Suite 508, Milwaukee, Wisconsin.
2. That the City of Milwaukee, hereinafter referred to as the City, is a municipal employer, having a population of over 500,000 inhabitants; that the City maintains its principal offices at the City Hall, 200 East Wells Street, Milwaukee, Wisconsin; and that in providing municipal services to its inhabitants, the City, among other functions, maintains and operates a Police Department, in which it employs certain supervisory law enforcement personnel.
3. That since 1973 the MPSO has been the certified representative of supervisory law enforcement personnel in the employ of the Police Department of the City, excluding confidential, managerial and executive personnel; and that the MPSO has negotiated with the City with respect to wages, hours and conditions of

employment affecting such supervisory law enforcement personnel; and that on June 10, 1981 during such negotiations, MPSO filed a petition with the Wisconsin Employment Relations Commission, hereinafter referred to as the Commission, pursuant to Sec. 111.70(4)(jm), Stats., requesting the Commission to initiate final and binding interest arbitration with respect to an alleged impasse reached in such negotiations; and that in response the City has contended that such statutory procedure is not applicable to negotiations involving supervisory law enforcement personnel in its employ.

4. That the presently existing provisions of MERA which are pertinent to the issues herein are as follows:

111.70 Municipal employment. (1) DEFINITIONS. As used in this subchapter:

. . .

(b) "Municipal employe" means any individual employed by a municipal employer other than an independent contractor, supervisor, or confidential, managerial or executive employe.

. . .

(c) "Supervisor" means:

1. As to other than municipal and county firefighters, any individual who has authority, in the interest of the municipal employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employes, or to adjust their grievances or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

. . .

(4) POWERS OF THE COMMISSION.

. . .

(d) Selection of representatives and determination of appropriate units for collective bargaining. 1. A representative chosen for the purposes of collective bargaining by a majority of the municipal employes voting in a collective bargaining unit shall be the exclusive representative of all employes in the unit for the purpose of collective bargaining . . .

(jm) Binding arbitration, Milwaukee. This paragraph shall apply only to members of a police department employed by cities of the 1st class. If the representative of members of the police department, as determined under par. (d), and representatives of the city reach an impasse on the terms of the agreement, the dispute shall be resolved in the following manner:

1. Either the representative of the members of the police department or the representative of the city may petition the commission for appointment of an arbitrator to determine the terms of the agreement relating to the wages, hours and working conditions of the members of the police department.

. . .

(8) SUPERVISORY UNITS. This subchapter does not preclude law enforcement or fire fighting supervisors from organizing in 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 in the units. The commission may require that the representative in a supervisory unit shall be an organization that is a separate local entity from the representative of the nonsupervisory municipal employes, but such requirement does not prevent affiliation by a supervisory representative with the same parent state or national organization as the non-supervisory municipal employe representative. In cities of the 1st class, this section applies to law enforcement supervisors. For such purposes, the term "municipal employe" includes law enforcement supervisors in cities of the 1st class.

. . . .

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

CONCLUSION OF LAW

1. That the final and binding interest arbitration procedures set forth in Sec. 111.70(4)(jm), Stats., are applicable to impasses arising in negotiations between Milwaukee Police Supervisors' Organization and the City of Milwaukee with respect to wages, hours and working conditions affecting law enforcement supervisory personnel in the employ of the Police Department of the City of Milwaukee, a city of the 1st class.

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

ORDER

1. That inasmuch as the Milwaukee Police Supervisors' Organization, as the representative of law enforcement supervisors in the employ of the Police Department of the City of Milwaukee, may proceed to final and binding interest arbitration pursuant to Sec. 111.70(4)(jm), Stats., to resolve an impasse in negotiations with respect to the wages, hours and working conditions of said law law enforcement supervisors, the objections filed herein by the City of Milwaukee are hereby dismissed.

Given under our hands and seal at the City of Madison, Wisconsin this *8th* day of December, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By *Gary L. Covelli*
Gary L. Covelli, Chairman

Morris Slavney
Morris Slavney, Commissioner

Herman Torostan
Herman Torostan, Commissioner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER DISMISSING
OBJECTIONS TO PETITION FOR ARBITRATION

The issue before the Commission is whether final and binding interest arbitration under the provision of Sec. 111.70(4)(jm), Stats., is available to MPSO as the representative of supervisory law enforcement personnel in the employ of the Police Department of the City for the resolution of an impasse between said representative and the City with respect to the wages, hours and conditions of employment of said personnel to be included in a collective bargaining agreement.

The MPSO alleges that use of Sec. 111.70(4)(jm), Stats., is available to it as it is a "representative of members of the police department" within the meaning of said statutory provision. It further contends that any doubt as to applicability of the statute is removed by that portion of Sec. 111.70(8), Stats., which states that the term "municipal employe" includes law enforcement supervisors in cities of the 1st class. MPSO asserts that the foregoing language, which was added to Sec. 111.70(8), Stats., by Chapter 422, Laws of 1977, extends to law enforcement supervisors of the City the same statutory rights enjoyed by the non-supervisory law enforcement employes employed by the City.

The City argues that if any impasse resolution mechanism is available to the MPSO, it is fact finding, under Sec. 111.70(4)(c)3, and not arbitration under Sec. 111.70(4)(jm), Stats. It contends that the provisions of Sec. 111.70(8), Stats., define the supervisors in question as "municipal employes" for the purpose of "negotiating" not "bargaining", and that, as "municipal employes" engaged in law enforcement, Sec. 111.70(4)(c)4, Stats., by its terms makes fact finding available. The City asserts that, given the absence of a clear extension of Sec. 111.70(4)(jm), Stats., to its supervisory law enforcement employes, and the fact that MPSO did not become a "representative" pursuant to Sec. 111.70(4)(d), Stats., but rather through Sec. 111.70(8), Stats., the Commission must conclude that final and binding interest arbitration, as set forth in Sec. 111.70(4)(jm), Stats., is not applicable to impasses involving supervisory law enforcement employes of the City who are represented by MPSO.

DISCUSSION:

The issues herein must be determined under the current statutory provisions. However, when interpreting such provisions we must also examine the statutes which existed prior thereto, especially the provision replaced by Sec. 111.70(8), Stats.

Sec. 111.70(8), Stats., as set forth in the Findings of Fact, became effective June 7, 1978, following the enactment of Chapter 442 by the Wisconsin Legislature. Said provision replaced Sec. 111.70(3)(d), Stats., which provided as follows:

Nothing in this subchapter shall preclude law enforcement or firefighting 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. The commission may require that the representative in a supervisory unit shall be an organization that is a separate local entity from the representative of the employes but such requirement shall not prevent affiliation by a supervisory representative with the same parent state or national organization as the employe representative.

In 1974, after MPSO had been certified as the representative of the supervisory law enforcement employes involved herein, MPSO filed a complaint alleging that the City was committing certain prohibited practices within the

meaning of MERA, by failing to bargain collectively with MPSO on wages, hours and working conditions of the supervisory personnel represented by it. In its decision issued in the matter, 1/ dismissing the complaint, the Commission, in its memorandum stated as follows:

There is no issue that the personnel employed by the Respondent, which are involved in this proceeding, are law enforcement supervisory personnel. Section 111.70(3)(d) states, in material part, as follows:

"Nothing in this subchapter shall preclude law enforcement or firefighting supervisors from organizing separate units of supervisors for purposes of negotiating with their municipal employers."

This section of MERA permits municipal employers, if they so desire, to negotiate with organizations representing supervisory law enforcement or firefighting personnel. There is no provision in MERA which requires that a municipal employer do so. Nor is there any provision in MERA which grants supervisory personnel the same rights afforded to "municipal employes" in the Act. Further, the prohibited practices set forth in MERA only apply to activities involving municipal employers and employes or their organizations, or to any person acting on behalf or in the interest of municipal employes or municipal employers, and not to law enforcement or fire fighter supervisory personnel or their organizations.

Sec. 111.70(8), Stats., was first introduced in the Wisconsin Legislature on April 12, 1977 as Senate Bill 326. Said Bill contained the following analysis by the Legislative Reference Bureau:

This bill extends to law enforcement supervisors in the City of Milwaukee the same collective bargaining rights as are now held by other law enforcement employes. Included are the right to self-organization, the right to bargain collectively with respect to wages, hours and conditions of employment, and the right to negotiate a "fair-share" agreement in which non-members of a labor union may be required to pay dues. Unfair labor practices are extended to apply to such supervisors and to the city of Milwaukee as their employer. The employment relations commission may conduct mediation and fact-finding in labor disputes involving such supervisors. As with other supervisors, the commission may insist that their union be a separate local from the local which represents nonsupervisory police officers. The bill also extends the compulsory arbitration law to apply to police supervisors in the event that a deadlock occurs with respect to wages, hours and working conditions. The no-strike prohibition also is extended to apply to police supervisors, as well as the fine of \$10 per day which may be levied against strikers after an injunction is issued.

As Sec. 111.70(8), Stats., indicates, the Legislature added two provisions to the pre-existing statutory language in Sec. 111.70(3)(d), Stats., which are relevant herein. One sentence states "In cities of the 1st class, this section applied to law enforcement supervisors." Said sentence would appear to merely confirm the already existing applicability of former Sec. 111.70(3)(d), Stats., to supervisory law enforcement personnel of the City. The next sentence makes a critical extension of the definition of the term "municipal employe" to include law enforcement supervisors presently represented by MPSO. While the use of the

1/ Decision No. 12742-A, 4/75.

preliminary phrase "For such purposes" arguably muddies the legislative intent of the remainder of the sentence, if one were to assume that said phrase merely refers back to the rest of Sec. 111.70(8), Stats., it would render the remainder of the sentence a mere repetition of the preceding sentence which already establishes the applicability of Sec. 111.70(8), Stats., to the supervisory law enforcement personnel in question. Furthermore, such an interpretation of the preliminary phrase would render the following reference to "municipal employe" a virtual nullity, inasmuch as Sec. 111.70(8), Stats., does not, in itself, establish or contain any "municipal employe" rights. As it should not be presumed that any part of a statute is superfluous 2/ or that the Legislature intended to create a nullity 3/, the Commission concludes that the extension of "municipal employe" status to supervisory law enforcement personnel in the employ of cities of the 1st class must also extend to them all rights enjoyed under the Municipal Employment Relations Act by their non-supervisory "municipal employe" law enforcement counterparts in the City's Police Department. Therefore, MPSO, in its capacity as the representative of said supervisory personnel, has the right to utilize the final and binding arbitration procedure set forth in Sec. 111.70(4)(jm), Stats.

Dated at Madison, Wisconsin this 8th day of December, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Gary L. Covelli
Gary L. Covelli, Chairman

Morris Slavney
Morris Slavney, Commissioner

Herman Torosian
Herman Torosian, Commissioner

2/ Associated Hospital Service, Inc. v. City of Milwaukee, 13 Wis 2d 447 (1961).
3/ Green Bay Drop Forge Co. v. Industrial Commission, 265 Wis 38 (1953).