

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Case LXXXV
No. 27993 ME-2007
Decision No. 19666

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"ARTICLE II

DEFINITIONS

. . .

- B. "Employees" means all non-civilian employees of the Eau Claire Fire Department, including by way of illustration and without limitation: Firefighter, Fire Equipment Operator, Fire Equipment Mechanic, Fire Lieutenant, Fire Captain, Assistant Fire Inspector; but not including: Fire Inspector, Training Officer, Deputy Fire Chief and Fire Chief.

. . ."

"ARTICLE III UNION RECOGNITION AND ACTIVITIES

Pursuant to and in accordance with all applicable provisions of Chapters 111.70 and 111.77 of the Wisconsin Statutes, the City hereby recognizes the Union as the exclusive representative for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment and conditions of employment for all non-civilian uniformed employees of the City's Fire Department for the term of this Agreement.

. . ."

5. That the City maintains and operates five fire stations; that Station No. 2 also houses the Fire Department's administrative offices on its second floor; that Station No. 10 also houses the Fire Department's maintenance shop; that the Fire Chief, the three Deputy Chiefs and the Fire Inspectors have their offices located on the second floor of Station No. 2; that the Platoon Commanders have their offices located on the ground floor of Station No. 2; and that the Superintendent of Fire Maintenance has a desk in the shop located at Station No. 10.

6. That prior to 1980 the City's Fire Department was commanded by the Fire Chief under the general supervision of the Police and Fire Commission; that immediately below the Fire Chief in rank and authority were three Deputy Chiefs who were each in charge of a platoon; that one Deputy Chief was also in charge of operations, another in charge of apparatus and the third in charge of purchasing; that immediately below the Deputy Chiefs in rank and authority were the Fire Inspector and the Training Officer; that the remaining positions in the Fire Department were the Assistant Fire Inspector, the Fire Equipment Mechanic, Captains, Lieutenants and uniformed firefighters, with Captains being in command of the Department's five fire stations; that the Deputy Chiefs worked twenty-four hour shifts with three days on and four days off; that the Fire Chief subsequently changed the Deputy Chiefs' work schedule to a forty hour work week in order to have them provide more constant supervision in their respective areas of responsibility; and that the change to a forty hour work week for Deputy Chiefs resulted in an alteration in the Department's command structure after 5:00 p.m. and on weekends, in that each of the five fire stations was commanded by a Captain and during those hours there was no one of higher rank on duty, and it was therefore unclear who was in charge of the Fire Department during those hours.

7. That during 1980 the City's Fire Department was reorganized; that the Deputy Chief positions were abolished and the positions of Deputy Chief/Field Operations, Deputy Chief/Training and Deputy Chief/Fire Prevention were created; that former Deputy Chief Duane Books was appointed Deputy Chief/Field Operations; that the former position of Fire Inspector was abolished and the incumbent, John Brown, was promoted to Deputy Chief/Prevention; that the former position of Training Officer was upgraded to Deputy Chief/Training with the incumbent Training Officer, Roy Prissel, promoted to that position; that the position of Superintendent of Fire Maintenance was created and filled by the promotion of the incumbent Fire Equipment Mechanic, Robert Darling; that the position of Assistant Fire Inspector was abolished and two Fire Inspector positions were created and were filled by the promotions of Morris Lear and William Schulte; that three Platoon Commander positions were created and were filled by the promotion of the

three Captains who had previously been assigned to, and in charge of, Station No. 2, Robert Fenner, DeLos Sather and Rod Sorenson; that the Captain positions at Station No. 2 were not filled after the promotion of the incumbents to Platoon Commander, leaving the rank of Lieutenant as the next highest ranking officer at that station; and that the Captains at the out stations, were placed under the command of the Platoon Commanders.

8. That the normal work hours for Deputy Chiefs and Fire Inspectors are from 8:00 a.m. to 5:00 p.m., Monday through Friday; that the normal work hours for the Superintendent of Fire Maintenance are from 7:00 a.m. to 4:00 p.m., Monday through Friday; that the Deputy Chiefs rotate "on call" duty for the hours of 5:00 p.m. till 8:00 a.m. and weekends between them on a weekly basis, so that there is always a Deputy Chief either on duty or on call; that Platoon Commanders basically work the same twenty-four hours shift as the platoon that they are in charge of; and that the platoon shifts change at 7:30 a.m. each day, however, the Platoon Commander for the in-coming shift comes on duty at approximately 6:45 a.m. in order to see to it that manpower will be at the necessary level in all stations when his platoon takes over at 7:30 a.m.

9. That when Deputy chiefs are "on call" they take a Department vehicle home and a radio to monitor fire calls; that when they are "on call" they can exercise their discretion as to which fires to respond to, except that they are required to respond to major fires, e.g. all structure fires; that they respond to fires on a city-wide basis; and that when they respond to a fire they are in charge at that fire, unless a higher-ranking Deputy Chief or the Fire Chief responds to the fire.

10. That there are three " platoons" in the Eau Claire Fire Department, A, B and C; that the platoons work twenty-four hour shifts; that a platoon consists of five engine companies, one ladder company, two ambulances and one CFR vehicle, with the components being located at the Department's five fire stations; that Captains are in charge of the four out stations; and that Platoon Commanders are in charge of their assigned platoon, as well as being in charge of Station No. 2.

11. That after the Fire Chief, the succession to command in the Eau Claire Fire Department is in the following order: (1) Deputy Chief/Field Operations, (2) Deputy Chief/Prevention, (3) Deputy Chief/Training, (4) Platoon Commanders, (5) Fire Inspectors, (6) Captains; and that the Superintendent of Fire Maintenance is not included in the succession to command.

12. That the Deputy Chief/Field Operations, Duane Books, reports directly to the Fire Chief and is responsible on a department-wide basis for the efficient performance of the Field Operation Division, which includes fire suppression and emergency medical services, the supervision of a program of maintenance for the Department's buildings, furnishings, grounds, vehicles and special equipment; and that he responds to major fires during the hours of 8:00 a.m. to 5:00 p.m. and when he is on "on call" duty.

13. That the Deputy Chief/Prevention, John Brown, reports directly to the Fire Chief and is responsible for all matters involving a city-wide fire prevention program consisting of fire investigation, code enforcement and public education, as well as the training and supervision of the Fire Inspectors; and that he responds to, and directs emergencies in the absence of the Deputy Chief/Field Operations and when he is on "on call" duty.

14. That the Deputy Chief/Training, Ray Prissel, reports directly to the Fire Chief and is responsible on a department-wide basis for obtaining and selecting coarse material, scheduling training classes and personnel, for conducting and coordinating training for other City departments and local industries or organizations, for recruiting and for job performance evaluation review; and that he responds to, and directs, emergencies in the absence of the Deputy Chief/Field Operations and when he is on "on call" duty.

15. That the Superintendent of Fire Maintenance, Robert Darling, reports directly to the Fire Chief and, under direction, is responsible for maintaining all mechanical and electrical equipment of the Fire Department, directs fire personnel in the proper use and operation of fire apparatus and equipment; that although he has been trained as a fire fighter he does not normally respond to fires and would only respond to major fires where his function would be to see that the equipment is operating properly; that Darling was promoted to the new position of Superintendent of Fire maintenance from his previous position as Fire Equipment Mechanic and received a pay increase equal to the pay of a Platoon Commander upon his promotion; that Darling had been a Fire Equipment Mechanic in

the Eau Claire Fire Department for ten years before being promoted; that Darling was included in the bargaining unit while he was in the Fire Equipment Mechanic position; that except for the authority to suspend subordinate personnel, Darling's functions, responsibilities and authority as a Superintendent of Fire Maintenance are basically the same as those that he had as a Fire Equipment Mechanic; and that there are no employees in the Fire Department who normally report directly to Darling.

16. That the Platoon Commanders, Robert Fenner, DeLos Sather and Rod Sorenson, report to the Deputy Chief/Field Operations and, under direction, are responsible for directing the personnel and equipment of their assigned platoons and are responsible for coordinating platoon activities and fire and emergency medical services operations with the company officers and the Deputy Chiefs; that, in addition to being in charge of Station No. 2 during their shifts, Platoon Commanders are responsible for coordinating the activities and maintaining the necessary manpower levels of the four out stations, including temporarily transferring personnel when necessary; that in carrying out these duties Platoon Commanders are required to visit the out stations during their shifts; that the Captains in charge of the out stations report to their respective Platoon Commander if there is a need to contact a superior officer; that between the hours of 5:00 p.m. and 8:00 a.m. a Platoon Commander is the highest ranking officer on duty in the Eau Claire Fire Department, unless it is necessary for the Deputy Chief who is on call to respond to an emergency or major fire; that unlike Captains, during their respective shifts the Platoon Commanders respond to fires on a city-wide basis, and are not restricted to only responding to fires within the jurisdiction of Station No. 2; that Platoon Commanders have the authority to initiate disciplinary action against personnel at or below the rank of Captain; that Platoon Commanders evaluate the personnel in their respective platoons and make recommendations regarding the promotions of such personnel; and that the Platoon Commanders' input into the Department's budget is de minimis.

17. That Fenner, Sather and Sorenson were promoted to the new Platoon Commander positions from their former positions as Captains in charge of Station No. 2, and that at the time of their promotions received an increase in pay to a level higher than that of a Captain.

18. That the Fire Department's four out stations are commanded by Captains; that the Captains report to their respective Platoon Commanders and are in charge of their stations' physical facilities and personnel, assigning duties to those personnel and maintaining their buildings; that on the shifts when a Captain is not present at an out station Lieutenants are in charge of the personnel on their respective shifts at the out stations; that at fires which Deputy Chiefs or Platoon Commanders are not required to respond to, and elect not to respond to, a Captain or Lieutenant is in charge of the fire; that Captains review the operations of their respective stations and may make recommendations for improvements of those operations; that when a Platoon Commander is absent from his platoon's shift a Captain or Lieutenant from that platoon is temporarily assigned as an acting Platoon Commander; that Captains, in functioning as commanders of their respective stations, do not visit the Department's other stations in the course of their normal duties, and normally only respond to fires within the jurisdiction of their stations, unless directed to do otherwise; that Captains make recommendations regarding promotions only for those personnel under their command and participate in evaluations of those personnel; that Captains have the authority to initiate disciplinary action against subordinate personnel; and that the Captains' input into the Fire Department's budget is de minimis.

19. That the Fire Inspectors, Morris Lear and William Schulte, report to the Deputy Chief/Prevention and are responsible, under his general direction, for generally directing the fire inspection and fire prevention activities, assigning inspection routes, making fire investigations, training personnel in fire inspection procedures and investigating complaints by, or regarding, personnel assigned to inspection duties; that although they have been trained as fire fighters, Fire Inspectors do not perform fire fighting duties; that, other than investigating a fire at its scene or directing or training personnel in fire inspection procedures, the Fire Inspectors do not have duties that require them to direct other Fire Department personnel; that in the case of a fire of suspicious origin, the officer in charge of the fire, be it a Deputy Chief, Platoon Commander, Captain or Lieutenant, who feels that a Fire Inspector should be called notifies the Department's dispatch center and a Fire Inspector is sent to the fire scene to investigate; that during the course of a fire investigation a Fire Inspector may request that the officer in charge of the fire keep personnel out of an area in order to preserve evidence; that the Fire Inspectors' input into

promotions is de minimis and is less than that of the Captains; and that the Fire Inspectors have no input into the Department's budget.

20. That upon being promoted to the new Fire Inspector positions Lear and Schulte received pay increases to the same level as that of a Platoon Commander.

21. That the Deputy Chiefs are responsible for preparing budget recommendations for their respective divisions, which recommendations are submitted to the Fire Chief for his consideration and final approval; that the Superintendent of Fire Maintenance submits budget recommendations to the Fire Chief regarding equipment repairs and supplies for the shop; that Platoon Commanders and Captains also are required to submit budget recommendations to the Fire Chief, although those recommendations do not involve fire fighting equipment; that due to recent creations of the Platoon Commander positions they were not involved in the Department's last budget; that the Deputy Chief/Field Operations is responsible for ordering supplies for the Department and that in his absence the Platoon Commanders assume that duty; and that the Deputy Chiefs have the authority to purchase equipment or have equipment repaired on their own only in an emergency situation when the Fire Chief is absent.

22. That the Deputy Chiefs have the authority to make effective recommendations regarding the hiring of new employees; that the Deputy Chiefs and the Superintendent of Fire Maintenance at times have participated in the interviews of new applicants, although the input from the Superintendent of Fire Maintenance into the decision to hire is de minimis; that all officers in the Fire Department are involved to some extent in evaluating personnel and in making recommendations regarding the promotion of personnel; that Platoon Commanders, Captains and Lieutenants evaluate and make recommendations regarding promotions only as to those personnel under their respective commands; that the evaluations and recommendations regarding promotions from the Superintendent of Fire Maintenance are in regard to Fire Equipment Operators; and that the input from the Fire Inspectors regarding promotions and the hiring of new employees is de minimis.

23. That the Deputy Chiefs have the effective authority to suspend subordinate officers and personnel when in their judgement the circumstances warrant such action, however, they must submit a written report of such action to the Fire Chief; that the Platoon Commanders have the effective authority to suspend subordinate officers and personnel for insubordination, misconduct or inefficiency when in their judgement the circumstances warrant such action, and that Fire Inspectors have similar authority, but only in a situation involving interference with a fire investigation, and otherwise would report misconduct to an employee's Platoon Commander; and that the Superintendent of Fire Maintenance has the authority to suspend subordinate personnel where in his judgement such action is warranted and in situations involving insubordination, misconduct or inefficiency a written report must be submitted to the Fire Chief, but that since he normally does not have direct contact with other personnel it is unlikely that he would have occasion to exercise such authority; and that the individuals in the positions of Deputy Chief, Superintendent of Fire Maintenance, Platoon Commander and Fire Inspector have never exercised their authority to discipline an employee while in their present positions, but that Platoon Commander Sorenson did suspend an employee while he held the position of Captain at Station No. 2.

24. That the Fire Chief holds a brief staff meeting every morning at approximately 8:00 a.m., Monday through Friday, for the purpose of discussing the Department's daily operation and activities, and personnel problems, if there are any; that the staff meetings are normally attended by the Fire Chief, the three Deputy Chiefs, the Platoon Commander on duty that day, the Superintendent of Fire Maintenance and the Fire Inspectors; and that when a Platoon Commander is on vacation a Captain is assigned to take his place and attend the staff meetings, but that personnel problems are not discussed at the staff meetings on those occasions.

25. That the Deputy Chiefs, the Superintendent of Fire Maintenance, the Platoon Commanders and the Fire Inspectors belong to a group of non-represented employees of the City of Eau Claire known as the Clerical, Technical and Supervisors Association (CTSA); that the City meets and confers with this group of employees for the purpose of discussing wages and fringe benefits; that an agreement reached between CTSA and the City is approved by both the City Council and the members of CTSA; and that there is no written agreement between the City and the CTSA or any of its members.

26. That, contrary to the City, the Union contends that the positions of Deputy Chief/Field Operations, Deputy Chief/Presvention, Deputy Chief/Training, Platoon Commanders, Superintendent of Fire Maintenance and Fire Inspectors should be included in the existing collective bargaining unit represented by the Union on the basis that those positions cannot be considered supervisory within the meaning of section 111.70(1)(o)2, Wis. Stats.

27. That Captains function as "station commanders" in the Eau Claire Fire Department; that the three Deputy Chiefs and the three Platoon Commanders in the Department function above the level of the Captains; and that the Department's two Fire Inspectors and the Superintendent of Fire Maintenance function at the same level, or below, that of the Captains.

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

CONCLUSIONS OF LAW

1. That the occupants of the positions of Deputy Chief/Field Operations, Deputy Chief/Prevention, Deputy Chief/Training and Platoon Commanders in the Eau Claire Fire Department are "supervisors" within the meaning of Section 111.70(1)(o)2 of the Municipal Employment Relations Act.

2. That the occupants of the positions of Fire Inspector and Superintendent of Fire Maintenance in the Eau Claire Fire Department are not "supervisors" within the meaning of Section 111.70(1)(o)2 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 issues the following

ORDER CLARIFYING BARGAINING UNIT

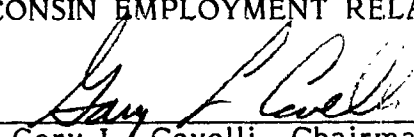
1. That the Deputy Chief/Field Operations, Deputy Chief/Prevention, Deputy Chief/Training and the Platoon Commanders are appropriately excluded from the collective bargaining unit consisting of all non-civilian uniformed employees of the Eau Claire Fire Department, but excluding the Fire Chief, Deputy Chiefs and Platoon Commanders, which unit is presently represented for the purposes of collective bargaining by Local 487, International Association of Fire Fighters, AFL-CIO.

2. That the Fire Inspectors and the Superintendent of Fire Maintenance are properly included in the collective bargaining unit described in paragraph 1 of this order. 2/

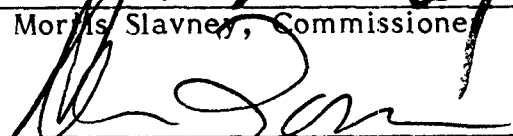
Given under our hands and seal at the City of Madison, Wisconsin this 17th day of August, 1982

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Gary L. Covelli, Chairman


Morris Slavney, Commissioner


Herman Torosian, Commissioner

2/ Pursuant to Sec. 227.11(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.12(1) and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.16(1)(a), Stats. (Footnote continued on page 7)

(Continuation of Footnote 2)

227.12 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

227.16 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.15 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.12, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.11. If a rehearing is requested under s. 227.12, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

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

Since the 1960's the City has voluntarily recognized the Union as the exclusive bargaining representative of the non-civilian uniformed employees of the Eau Claire Fire Department, excluding the Fire Chief. In 1974 the parties agreed to exclude the Deputy Fire Chiefs, the Fire Inspector and the Training Officer from the bargaining unit.

In order to improve the efficiency of the administration of the Fire Department, and to clarify its command structure, the Department was reorganized during 1980. The positions of Deputy Fire Chief, Fire Inspector and Training Officer, as they previously existed, were abolished and the new positions of Deputy Chief/Field Operations, Deputy Chief/Prevention and Deputy Chief/Training were created. Also created during 1980 were the new positions of Platoon Commander, Fire Inspector and Superintendent of Fire Maintenance.

The City took the position that all of the new positions were supervisory and excluded them from the bargaining unit. On May 11, 1981, the Union filed a Petition for Unit Clarification wherein it requested that all positions, except the Fire Chief, be included in the bargaining unit. The City took the position at the hearing that it opposed the inclusion of the new positions solely on the basis that they were supervisors within the meaning of section 111.70(1)(o)2, Stats.

Section 111.70(1)(o)2 provides in relevant part:

"(o) "Supervisor" means:

. . .

2. 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 support of its position that the positions of Deputy Chief/Field Operations, Deputy Chief/Fire Prevention, Deputy Chief/Training, Platoon Commander, Fire Inspector and Superintendent of Fire Maintenance are not supervisory, the Union contends that 111.70(1)(o)2 should be construed so as to include only those officers who are above the rank of the highest ranking officer physically present at each single station. Since the three Deputy Chiefs are physically present at Station No. 2 and the Superintendent of Fire Maintenance, who the Union understands the City to allege is on the same level as a Deputy Chief, is physically present at Station No. 10, the only officer that may be considered a supervisor within the meaning of 111.70(1)(o)2 is the Fire Chief.

The City contends that 111.70(1)(o)2 should be interpreted so as to exclude as supervisors all officers above the rank of the highest ranking officer that is found at all of the City's fire stations. In this case the rank of Lieutenant is the highest ranking officer present at all of the City's five fire stations. The City concedes, however, that the intent of the statute is to include Captains, or those officers that function at the level of a "station commander", in the bargaining unit. The City contends that all of the positions in question function above the level of a station commander, and thus, should be excluded as supervisors.

In the Eau Claire Fire Department Captains function as station commanders at all stations except Station No. 2, which building also houses the Department's administrative offices. There are no Captains assigned to Station No. 2 and that station is commanded by a Platoon Commander who also has additional departmental duties, as will subsequently be discussed.

As the City contends, the Commission has interpreted 111.70(1)(o)2 to include those officers who function above the level of a "station commander". 3/ In

3/ City of Janesville, (12460-A) 5/74; City of Waukesha, (11342) 11/72; City of Wauwatosa, (10956-A) 6/72.

making the determination as to the level at which an officer is functioning the Commission has considered the scope and level of the duties and responsibilities of the officer and looked beyond the mere physical presence of an officer at a station.

Deputy Chiefs

As is indicated in the Findings of Fact, all three of the Deputy Chiefs have department-wide duties. Although their offices are located at Station No. 2 their responsibilities are for the administration of their respective divisions, and they are not involved in the day-to-day command of that station.

The three Deputy Chiefs also share "on call" duty on a rotating basis. During the hours that a Deputy Chief is on call he is responsible for taking command of the Fire Department in case of an emergency, and if he responds to a fire he is in charge of that fire unless the Fire Chief or a higher ranking Deputy Chief also responds to the fire.

Based upon those facts it is clear that the Deputy Chiefs function above the level of a station commander, and therefore, are supervisors within the meaning of section 111.70(1)(o)2 of MERA.

Platoon Commanders

As noted previously, the Platoon Commanders are responsible for the command of Station No. 2 during their shifts, however, they also have responsibilities beyond commanding Station No. 2. The Platoon Commander is responsible for ensuring that the proper manning levels are maintained at all of the stations during his platoon's shift and has the authority to make temporary transfers of personnel between stations in carrying out that responsibility. They are also responsible for coordinating the activities of their respective platoons. Unlike Captains, in carrying out their duties the Platoon Commanders are required to visit all of the stations at least once during their shifts. They also are not restricted to responding only to fires within the jurisdiction of Station No. 2, rather, unlike the Captains they respond to fires on a city-wide basis.

Moreover, the Platoon Commanders are in charge of the Fire Department during the hours of 5:00 p.m. until 8:00 a.m. unless a major emergency develops, such as a structural fire, in which case the Deputy Chief who is on call responds and takes command.

Conversely, the Captains are responsible only for their respective stations and personnel, and normally only respond to fires within the jurisdiction of their stations, unless directed to do otherwise.

Therefore, while Platoon Commanders function as commanders of Station No. 2 during their shifts, they also have sufficient additional duties and responsibilities, as well as authority, above the level of a station commander to require a conclusion that they are "supervisors" within the meaning of MERA.

Fire Inspector, Superintendent of Fire Maintenance

As the Findings of Fact demonstrate, the Fire Inspectors have a special technical function in the Department. They do not regularly direct or supervise Department personnel in the course of their normal duties. Rather, their interaction with other Department personnel primarily involves training personnel in fire inspection procedures, assigning inspection routes and investigating fires. The actual direct supervision and assignment of inspection duties are done by the Platoon Commanders and company commanders. 4/

Although Fire Inspectors are listed ahead of Captains in the succession to command of the Department, for them to succeed to the command would require the unlikely absence of at least seven higher ranking officers, i.e., the Fire Chief, the three Deputy Chiefs and the three Platoon Commanders. The Commission gives primary consideration to an officer's normal functions in making its

4/ Both Captains and Lieutenants function as "company commanders" in charge of their respective shifts at the out stations.

determination, and cannot base its decision on the possibility of the officer assuming higher level functions in the event that certain unlikely circumstances would occur.

Similarly, the fact that the Fire Inspectors appear to be on a higher level than the Captains on the Fire Department's organizational chart and receive a higher rate of pay, does not necessarily establish that the Inspectors function on a higher level. The Commission is primarily concerned with the officer's actual duties and responsibilities, and while placement on an organization chart or the rate of pay may be some indication of rank they are not, in themselves, determinative.

While Fire Inspectors share some of the responsibility for overseeing the Department's fire inspection and fire prevention programs, it is the Deputy Chief/Prevention that is primarily responsible for the overall supervision of those programs. Therefore, it is concluded that Fire Inspectors do not normally function at a level above that of a Captain or "station commander" in the Eau Claire Fire Department, and are not "supervisors" within the meaning of 111.70(1)(o)2.

Similar to the Fire Inspectors, the Superintendent of Fire Maintenance has a special technical function in the Fire Department. He is the Department's only mechanic and was with the Department in that capacity for ten years before being promoted. As a Fire Equipment Mechanic he was included in the bargaining unit and had basically the same duties and responsibilities then as he presently has as the Superintendent of Fire Maintenance. His primary responsibilities have been, and are, to maintain and repair the Department's equipment. He does not direct other personnel in the normal course of his duties, other than to instruct them in the proper care and operation of the equipment.

That Darling received a new title and a pay increase to the level of a Platoon Commander does not, in itself, justify a conclusion that he functions at the same level as a Platoon Commander. Rather it appears that those actions were taken in recognition of his special function and his length of service with the Department in that capacity.

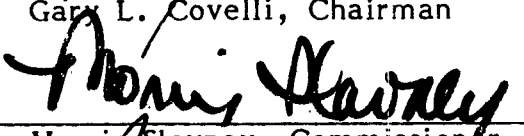
Based upon the foregoing, it is concluded that the Superintendent of Fire Maintenance is not a "supervisor" within the meaning of section 111.70(1)(o)2 of MERA, and is therefore, properly included in the bargaining unit.

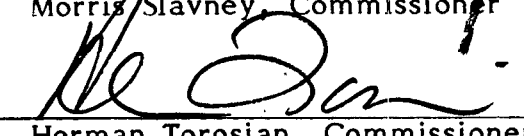
Dated at Madison, Wisconsin this 17th day of August, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Gary L. Covelli, Chairman


Morris Slavney, Commissioner


Herman Torosian, Commissioner