

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
MILWAUKEE DISTRICT COUNCIL 48,
AFSCME, AFL-CIO and its affiliated
LOCAL 2958
Involving Certain Employees of
VILLAGE OF FOX POINT
(POLICE & FIRE DEPARTMENTS)

Case X
No. 29115 ME-2081
Decision No. 20019

Appearances:

Mr. Earl Gregory, Staff Representative, Milwaukee District Council 48,
AFSCME, AFL-CIO, 3427 West St. Paul Avenue, Milwaukee, Wisconsin
53208, for the Union.

Hayes and Hayes, Attorneys at Law, by Mr. Tom E. Hayes, 161 W. Wisconsin
Avenue, Milwaukee, Wisconsin 53203, for the Village.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DIRECTION OF ELECTION

Milwaukee District Council 48, AFSCME, AFL-CIO and its affiliated Local 2958, having, on January 13, 1982, filed a petition requesting the Wisconsin Employment Relations Commission to conduct an election pursuant to the Municipal Employment Relations Act, among certain employees in the employ of the Village of Fox Point (Police and Fire Departments) to determine whether said employees desired to be represented for purposes of bargaining by said Labor Organization, and hearing in the matter having been conducted on May 5, 1982 by Examiner Jane B. Buffett, and a transcript having been prepared; and briefs and reply briefs having been filed by August 19, 1982; and the Commission, having considered the record and briefs of the parties, and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That Milwaukee District Council 48, AFSCME, AFL-CIO and its affiliated Local 2958, hereinafter jointly referred to as AFSCME, is a labor organization representing municipal employees for purposes of collective bargaining, and has its offices at 3427 West St. Paul Avenue, Milwaukee, Wisconsin 53208.

2. That the Village of Fox Point, hereinafter referred to as the Village, is a municipal employer, having its principal offices at 7200 North Santa Monica Boulevard, Fox Point, Wisconsin 53217; that among its municipal functions the Village provides police and fire fighting services for its residents and for various businesses located within the Village.

3. That Fox Point Professional Policemen's Association, hereinafter referred to as the Association, is a labor organization representing municipal employees for the purposes of collective bargaining, and has its offices at the residence of its president, Ralph Beck, 540 Power Street, Grafton, Wisconsin 53024.

4. That since at least 1969 the Village has recognized the Association as the exclusive collective bargaining representative of patrolmen and firefighters in the employ of the Village; that in 1979 the Village also voluntarily recognized the Association as the exclusive collective bargaining representative of firefighters in the employ of the Village; that on or about April 15, 1981 representatives of the Village and Association executed a collective bargaining agreement effective from January 1, 1981 through December 31, 1982, covering the wages, hours and conditions of employment of patrolmen and firefighters for said two year period of said agreement; and that said agreement contains the following "Recognition" provision:

The Village hereby recognizes the Association as the exclusive bargaining agent for the police officers in the certified bargaining unit in the police section and for the firefighters in the fire section of the Department of Public Safety of the Village of Fox Point. 1/

5. That the agreement contains various provisions relating to wages, fringe benefits, hours and conditions of employment pertaining to both the patrolmen and to firefighters; and that the following tabulation reflects the type of provisions which are identical or different for said patrolmen and firefighters:

<u>Nature of Provision</u>	<u>Identical</u>	<u>Different</u>
Salaries	x	
Hours of Work		x
Compensatory Time	x	
Additional Compensation		x
Acting as Supervisor	x	
Clothing Allowance		x
Duty Exchange	x	
Shift Selection		Police Only
Holiday Pay	In Part	In Part
Vacations		x
Vacation Pay on Termination	x	
Longevity Increases	x	
Sick Leave	In Part	In Part
Insurance	x	
Grievance Procedure	x	
False Arrest	No Distinction	
Third Shift Assignment		Police Only
Dues Checkoff	x	

6. That said collective bargaining agreement between the parties does not contain any provision relating to negotiations on a successor agreement, e.g. when notice must be given to commence negotiations on such successor, etc.

7. That on July 22, 1981 the Association, in a letter over the signature of its president, advised the firefighters in the employ of the Village, that at a meeting held on July 20 the Association determined that it would cease to represent said firefighters after August 1, 1981 "in any new contractual matters", and that "However, we will meet our obligations regarding execution of our current contract thru 1982 for the Fire Fighters"; that the Village received a copy of said letter, and on September 1, 1981, in a letter over the signature of its Manager, the Village notified the Association's president as follows:

The Village has received your letter of July 22, 1981 advising that the Fox Point Professional Policemen's Association will not represent the Fox Point Fire Fighters in negotiations for a collective bargaining agreement to succeed the current agreement.

Your letter, of course, cannot alter the composition of the bargaining unit. This can be accomplished only by agreement of the parties if they can agree, and if they cannot, by order of the Employment Relations Commission.

At this time at least, the Village is not willing to agree that the bargaining unit should be changed. Before a succeeding agreement is to be executed, either or both parties may change its or their position.

8. That on October 6, 1981 the Association's president sent the following letter to the Village:

1/ The Captain and Fire Lieutenant were excluded from the combined unit covered by the collective bargaining agreement.

On October 6, 1981, the Fox Point Professional Policemens Association and the Fox Point Firefighters met to discuss their representation. After a discussion was held between the concerned parties, the Firefighters by a majority vote voted not to have the Fox Point Professional Policemens Association represent them henceforth.

I believe this should end this matter, as it meets one of the two criteria set forth in your letter of September 1, 1981.

The Association requests that at your convenience you advise us if this action is acceptable to the Village. If so, please, delete taking Association dues deductions from the Firefighters paychecks.

9. That on October 27, 1981 the Village Manager, by letter to the Association, indicated that it would not amend the agreement, and further that it was the Village's intent "to perform under it as written".

10. That on December 11, 1981 AFSCME, over the signature of its Staff Representative sent a letter to the Village, which, in material part, stated as follows:

This letter is to officially notify you that the Fire Fighters of the Village have requested Local 2958 and Milwaukee District Council 48, AFSCME, AFL-CIO to represent them thru a petition signed by a large majority of your employees.

Therefore, I am requesting the Village to grant our Union recognition as the Fire Fighters bargaining agent. Our Union makes this request on the basis that the Professional Policeman's Association has voted to withdraw their representation and abandon the Firefighters.

Our Union would further request all future dues checkoff be sent to Local 2958. If you are in agreement, I will send you the new amount of dues, name of Local 2958 Treasurer and his address.

Our Union would further propose we enter into a separate agreement which would incorporate the present hours, wages and working conditions referred to in the present Agreement. Negotiations on a new contract will start upon dates set in the present Agreement.

Our Union intends to abide by the present agreement and honor all past commitments, unless we are forced to spend money and effort in hearings with the W.E.R.C.

The Village and Union will save time, effort and money on the granting of recognition as outlined.

We also will be willing to stipulate to an election if you doubt our majority.

11. That on December 29, 1981 the Village Manager responded to the above letter, stating, in material part as follows:

We are not agreeable to a bargaining unit composed only of firefighters. It is our opinion that the appropriate bargaining unit includes all of the employees in the Public Safety Department except for managers, supervisors and clerical employees and we are unwilling to enter into a stipulation contrary to this position.

It is premature, we believe, to attempt to determine the collective bargaining representative at this time.

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

In this proceeding, AFSCME is seeking an election among firefighters in the employ of the Village to determine whether said employees desire to be represented by AFSCME for the purposes of collective bargaining. The Village contends that the petition has not been timely filed, and therefore a question concerning representation of said employees does not presently exist, and, further, that under the circumstances, herein, including past bargaining history, the unit sought should be found to be inappropriate. Further, AFSCME would include the Lieutenants in the bargaining unit. While not addressed by the parties in their briefs, the Municipal Employment Relations Act (MERA) requires that a determination thereon be made in this proceeding.

Timeliness of the Petition

The initial issue to be determined is whether the petition has been timely filed. In other words does there presently exist a question of representation involving the firefighters. If we conclude in the negative, there is no need to determine the remaining issues.

The collective bargaining agreement, by its terms, is in effect from January 1, 1981 through December 31, 1982. The agreement contains no reference with respect to when it may be reopened for negotiations on a successor agreement. The petition was filed by AFSCME on January 13, 1982, eleven and one-half months prior to its expiration date.

It is a well-established policy of the Commission not to entertain petitions for elections to determine bargaining representative where there presently exists a collective bargaining agreement unless said petition is filed in a period within 60 days prior to the date on which the collective bargaining agreement may be reopened for negotiations on a new agreement or during the 60 day period prior to the date when either party may notify the other as to its intent to terminate the agreement. 2/

It is obvious, even in the absence of a "reopener" date in the agreement, that ordinarily the Commission would have found the petition to be untimely filed for the reason that the agreement had almost one year to run before its expiration. Significant in this regard is that while the Association does not desire to represent firefighters beyond this agreement, it does intend, unlike an abandonment situation, to continue to represent the firefighters and enforce and administer the present agreement until it expires. However, hearing in the matter was not held until May, 1982, and final briefs of the parties were not received until August, 1982, and as of this date, the existing agreement has approximately only two months to run prior to its expiration. Further, there is no evidence or other indication that the Village and Association have engaged in any negotiations with respect to the firefighters. Furthermore, any dismissal of the instant petition at this time would not preclude AFSCME from filing a new petition, which in our opinion we would conclude that the latter petition would be timely filed. For said reasons, and also in order to avoid a repetitious proceeding, we have concluded that the petition has been timely filed, and we shall now proceed to determine the remaining issues.

The Appropriate Unit

The Village urges that the Commission not disturb the existing Department of Public Safety unit and conclude that, under the circumstances herein, a separate unit of firefighters should be found to be inappropriate. The Village, in its brief, summarizes its position as follows:

2/ City of Milwaukee (8622) 7/68; Barron County (18005) 8/80.

1982 does not constitute a bar to the processing of the petition filed by Milwaukee District Council 48, AFSCME, AFL-CIO and its affiliated Local 2958 seeking an election to determine the collective bargaining representative of all otherwise eligible firefighter personnel in the employ of said Village, within the meaning of Sec. 111.70(4)(d) of the Municipal Employment Relations Act (MERA).

2. That the Chief, as well as the Captain, in the employ of the Department of Public Safety of the Village of Fox Point are supervisory positions within the meaning of Sec. 111.70(1)(o)2 of MERA; and that however, the position of Lieutenant in the Fire Section of said Department of Public Safety is not a supervisory position within the meaning of Sec. 111.70(1)(o)2 of MERA, and that, therefore Lieutenant positions are occupied by individuals who are municipal employees within the meaning of Sec. 111.70(1)(b) of MERA.

3. That all firefighters, including Lieutenants, in the employ of the Department of Public Safety of the Village of Fox Point, excluding the Chief, Captain, auxiliary firefighters and all other employees, constitute an appropriate collective bargaining unit within the meaning of Sec. 111.70(4)(d)2.a. of MERA.

4. That a question concerning representation exists among the employees included in the bargaining unit described in para. 3, supra, within the meaning of Sec. 111.70(4)(d) of MERA.

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


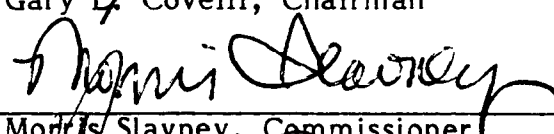
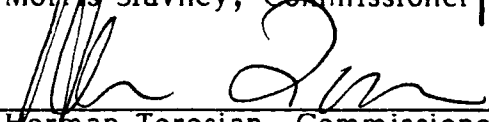
DIRECTION OF ELECTION

That an election, by secret ballot, shall be conducted under the direction of the Wisconsin Employment Relations Commission, within forty-five (45) days from the date of this Direction among employees in the following collective bargaining unit:

All firefighters, including Lieutenants, in the employ of the Department of Public Safety of the Village of Fox Point, excluding the Chief, Captain, auxiliary firefighters and all other employees, who were employed on October 21, 1982, except such employees who, prior to the conduct of the balloting, quit their employment or are discharged for cause, for the purpose of determining whether a majority of such employees voting desire to be represented by Milwaukee District Council 48, AFSCME, AFL-CIO and its affiliated Local 2958, for purposes of collective bargaining on wages, hours and working conditions with the Village of Fox Point.

Given under our hands and seal at the City of
Madison, Wisconsin this 21st day of October, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Gary L. Covelli, Chairman

Morris Slavney, Commissioner

Herman Torosian, Commissioner

12. That on January 13, 1982 AFSCME initiated the instant proceeding by petition requesting the Wisconsin Employment Relations Commission to conduct an election among employees of the Village in a bargaining unit consisting of "All Firefighters and Lieutenant, excluding Police Officers and Chief", to determine whether the employees in said alleged appropriate bargaining unit desire to be represented by AFSCME for the purposes of collective bargaining; and during the course of the instant proceeding the Village has contended that the petition has not been timely filed, and, further, that a separate bargaining unit consisting of only firefighter personnel would create undue fragmentation of bargaining units within the meaning of the pertinent provisions of the Municipal Employment Relations Act.

13. That since 1957 the Village has maintained a Department of Public Safety, and since 1959 the Department has been organized into two separate and distinct sections; and that the present organizational chart of the Village sets forth the Department's organization and classifications of employees and volunteers (Auxiliaries) as follows:

Department of Public Safety

1 Chief
1 Captain

Police Section

3 Sergeants
12 Patrolmen
4 Dispatchers
1 Secretary (Part Time)
13 Auxiliaries

Fire Section

2 Lieutenants
8 Firemen
22 Auxiliaries

14. That all the employees of the Department are stationed at the same building; that the Chief is the primary supervisor and administrative officer, assisted by the Captain; and that the Fire Lieutenants are in charge of all firefighter personnel, both at the station and at fires.

15. That the major duties of the firefighters consist of responding to fire and rescue (ambulance) calls; maintaining the building, yard, vehicles, and, equipment; keeping firefighting records; issuing bike licenses; assisting police officers in controlling traffic and measuring and investigating at accident scenes, in identifying and booking suspects, and, in relieving the dispatcher for approximately eight hours a week; and that the principal responsibility of the police is law enforcement.

16. That on one occasion a firefighter was issued a gun to take control of a prisoner; that another firefighter, who previously had been a policeman with the Village, was permitted to keep his service revolver to maintain his proficiency and on one occasion said firefighter used the revolver to stop a burglary in progress; and that while the Village Code specifies police officers are to assist with fire calls, said Code also states that police patrolmen are to be relieved from fire fighting as soon as possible.

17. That firefighters work twenty-four hour shifts, whereas police work eight hour shifts; that firefighters' uniforms are clearly distinguishable from those of the police with patches stating "Fox Point Fire" whereas the Police patches state "Fox Point Police"; that firefighters are not certified by the Wisconsin Law Enforcement Standards Board as are the police; that firefighters do not have the power of arrest; that firefighters receive no formal training in law enforcement duties; that firefighters perform law enforcement duties only in the presence of police officers; and that the Village makes payments to different state pension funds for the firefighters and the police.

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

CONCLUSIONS OF LAW

1. That the collective bargaining agreement executed by representatives of the Fox Point Professional Policemen's Association and the Village of Fox Point, covering the wages, hours and working conditions of patrolmen and firefighters in the employ of said Village, effective from January 1, 1981 through December 31,

Employees of each section perform work for its brother section within the department. There is an overwhelming community of interest among all employees of the Department. The similarities of duties, skills, wages, working conditions, work place, and supervision, warrant continuation of the present unit, and continuation of the established bargaining history. Based on the foregoing, and in furtherance of the police against fragmentation, and the policy in favor of stability, the employees of the police and fire sections should continue as an appropriate unit. Village of Williams Bay, (18972), 9/81.

More efficient utilization of municipal employees is a compelling need. Any study of this need invariably leads to the consideration of consolidation of fire and police services not only in one municipality, but among a group of municipalities for it is common knowledge that many man hours are consumed in both services and particularly fire, awaiting events that seldom occur.

Any single standard for determining the appropriate bargaining unit which does not recognize the trend toward higher utilization of personnel and greater productivity is outdated and ignores reality. The multiple factors heretofore considered by the Commission should also be applied to employees providing protective services.

The Union, on the other hand, contends that the factors normally considered by the Commission in establishing appropriate bargaining units mandate the establishment of a separate unit of firefighters, primarily for the reason of the different skills involved, as well as differences in employment conditions.

The Commission normally considers the following factors in determining whether employees constitute an appropriate collective bargaining unit under MERA:
3/

1. The duties and skills of employees in the unit sought as compared with duties and skills of other employees.
2. The similarity of wages, hours and working conditions of the employees in the unit sought as compared to wages, hours and working conditions of other employees.
3. Whether the employees in the unit sought have separate or common supervision with all other employees.
4. Whether the employees in the unit sought have a common work place with the employees in said declared unit or whether they share the work place with other employees.
5. Whether the unit sought will result in undue fragmentation of bargaining units.
6. Bargaining history.

The consideration of the above factors generally involve union determinations with respect to "white collar" and "blue collar" positions. MERA, in Sec. 111.70(4)(d)2.a. recognizes the appropriateness of units consisting of single crafts and professions and also permits the Commission to determine that combined crafts or combined professions constitute an appropriate unit. The inclusion of non-craft and non-professional employees in the same unit with draft or profes-

3/ Kenosha Unified School District No. 1, (13431), 3/75; Hartford Union High School, (15745), 8/77; Madison Joint School Dist. No. 8, (14814-A), 12/76; Lodi Joint School District No. 1, (16667), 11/78; Village of Williams Bay, (18972) 9/81.

sional employees requires an election among the craft and professionals to determine whether the draft or professional employees desire such a combined unit. 4/

While the recognition provision seems to recognize the Association as the bargaining representative of two separate units, for the sake of argument we shall assume that the Village and the Association voluntarily combined the units into a single unit. Originally the Village recognized the Association as the representative of only a police unit. 5/ It cannot be said that such a unit was inappropriate. Further, the Commission has consistently held that units consisting of only firefighter personnel are appropriate. The Commission has never conducted an election in a unit consisting of both law enforcement and firefighting personnel since no employee organization or municipal employer, prior to the instant proceeding, has ever contended that such a combined unit is appropriate under MERA. 6/

Assuming that the Village and the Association considered the personnel involved herein to be included in a single unit, we do not deem the fact that said personnel are employed in the same Department (which is managed and supervised by a single Chief) and the fact that said personnel are headquartered in a single station, are, in this situation, sufficient in combination and degree to warrant the conclusion that separate units of police and firefighters are inappropriate. While some conditions of employment relating to both groups are similar, others are different, as are the primary job duties of the police and firefighters. The firefighters work twenty-four hour shifts, during which they eat and sleep in the Public Safety building. In contrast, the police work eight hour shifts. The firefighters are required only to receive Emergency Medical Technician Training, whereas the police may, but are not required, to obtain an EMT certification. Further, as we have set forth in numerous cases, the critical issue in determining placement in a law enforcement unit is whether the positions in issue have been given authority to make arrests. 7/

The Village argues that the firefighters interchange with police officers and their functioning as police and guards indicates their effective power of arrest. The record does not support this assertion. There is almost no true interchange. New firefighters "cross train" by riding with police in squad cars but only for the purpose of learning the streets and neighborhoods. In a single recorded instance, a firefighter did ride in a squad car as a police support for a few hours during an emergency. However, the Safety Department would not use a firefighter either to patrol by himself in a squad car, or, to fill a vacancy of two to three weeks in the police section because of law enforcement certification restrictions. In one case a police officer who transferred to the fire section retained his service revolver to maintain his firing proficiency. He happened to use that revolver to apprehend a burglar in the midst of a burglary. This one instance is insufficient to establish that firefighters regularly function as law enforcement employees.

4/ City of Oak Creek (10890) 3/72; Dane County (16946) 4/79.

5/ While the recognition provision in the agreement refers to the police officers as being in a "certified" unit, the Commission has not issued such a certification. It has issued Orders clarifying such unit.

6/ In Village of Bayside (11514) 1/73, the Commission issued an order clarifying an existing unit consisting of law-enforcement-firefighting personnel in the employ of the Department of Public Safety of the Village. Therein said employees spent 90% of their time in police work, and less than 10% of their time fighting fires. That Village did not employ employees classified either as police or firefighters. In addition approximately sixteen volunteer firefighters assisted in fire fighting duties, as did Department of Public Works employees.

7/ City of Greenfield (7252) 8/65; City of Milwaukee (8605) 7/68; Village of Fox Point (9959-A) 2/71; City of Wauwatosa (12032) 6/73; City of Menomonee Falls (13159-A) 5/75; City of Burlington (13777) 6/75; Waukesha County (14534-A) 11/76.

The Village's assertion that the firefighters' duties in guarding prisoners demonstrates power of arrest is not supported by the facts. While it is true that for approximately eight hours a week employees from the fire section function in the dispatcher position, which is normally occupied by a civilian employee, the dispatcher is primarily responsible for checking on the welfare of a prisoner in lockup. The dispatcher is to report any problems to someone in the police section and to enter the lock-up only in extreme circumstances, such as to intervene if a prisoner should attempt suicide. The Chief of the Department of Public Safety testified that the dispatchers did not have arrest powers.

The Village also asserts that the firefighters' possession of the power of arrest is shown by their being in the same department, the Department of Public Safety, and by their being under the same supervisor, the Chief of Public Safety or the Captain of Police in the Chief's absence, as are the police employees. However, the combination of two relatively small sections into a single department under the supervision of a single Chief and the Captain, does not overcome the fact that each section has separate and distinct functions and that the daily activities of the Police section are directed by the Captain of Police, whereas the daily activities of the Fire section are directed by the Fire Lieutenant.

It is true that the Police and Fire sections cooperate closely. When a police officer arrives at an accident scene involving a fire before a firefighter, the police officer will attempt to extinguish the fire with a portable extinguisher carried in the squad car. But such cooperation and overlap in some minor duties is not the same as a fully integrated department which existed in the Village in 1957 and 1958. At that time the same employees performed police and fire duties simultaneously and on a regular basis. Nor is this cooperation the same as existed in the Public Safety Department of Bayside in which all the employees performed patrolling, firefighting and maintenance functions in eight-hour shifts, and were identified as Public Safety Employees, with no distinction as to Fire or Police sections. Bayside clearly is distinguishable from the instant case. Here, the Village itself acknowledges the distinction between the employees when it classifies them as firefighters or police for the purpose of paying into the State-supported pension fund.

As noted previously in this memorandum the Commission issued an Order Clarifying the law enforcement unit of the Village in Decision No. 9959-A, issued in February, 1971, wherein the Commission concluded that Radio Dispatchers employed in the then Police Department were not to be included in the law enforcement bargaining unit. Therein the Commission set forth the following:

The Municipal Employer employs six Radio Dispatchers who perform, under the supervision of the Police Department, on behalf of both the Police Department and the Fire Department which are located in the same building. Three of the Dispatchers work 40 hours per week whereas the other three are part-timers who usually work 16 hours per week and receive substantially lesser wages and fringe benefits. The Municipal Employer contends that none of the Dispatchers should be in the bargaining unit in question. The Petitioner would include the full time Dispatchers in the bargaining unit.

The full time Dispatchers are hired by the Chief of the Police Department. They receive no training to perform usual police functions, are not sworn or interviewed by the Police and Fire Commission as police officers, and although they wear parts of the usual police officer's uniform they have no badge or sidearms, or coat or cap. The part-time Dispatchers generally are students who perform as Dispatchers on weekends. In addition to the usual Dispatching functions, the Dispatchers perform the Department's clerical functions.

An ordinance of the Municipal Employer provides that Dispatchers ". . . while on or about the station premises, but not elsewhere, shall be considered and treated as an officer of the police section. On or about the station premises he shall have specific authority to act as a peace officer, and as a jailer during the absence from the station premises of officials of the Department or the patrolmen." This Commission has ruled that only persons vested with the power of arrest come within the aforementioned exclusion of police personnel from the definition of "employee" in Section 111.70.

The record in the instant case does not indicate that the Dispatchers have the requisite power of arrest. Their functions on the premises of the Police Department as authorized by the above-quoted ordinance may coincide with functions also performed by regular police officers but the evidence fails to indicate that they are trained, equipped or hired in such a manner as to allow them to make an arrest.

Therefore we have concluded that the Radio Dispatchers should be excluded from the bargaining unit of police officers.

Thus we are satisfied, and have so concluded, that the differences in the training, responsibilities, duties and working conditions of the firefighters and the police officers in the employ of the Village mandate that the firefighters constitute a bargaining unit separate and apart from a unit of police officers, and we further conclude that such determination does not constitute the "undue fragmentation" of bargaining units as contemplated by the provisions of MERA.

Supervisory Status of the Position of Lieutenant

It is obvious from the plain reading of ss. 1 and 2 of Sec. 111.70(1)(o) of MERA that the determination of issues, as to whether certain firefighter positions are or are not supervisory, require consideration of criteria different than those considered in making such determinations involving police and other municipal personnel. Said statutory provisions read as follows:

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 employees, 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.

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 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.

Here the Department of Public Safety is housed in "one station". The record testimony of the Chief establishes that the officer in rank immediately below the Chief is the Captain. Therefore, it is obvious that the Lieutenants cannot be deemed supervisors under MERA.

The Administration of the Existing Collective Bargaining Agreement


The two year agreement covering the wages, hours and working conditions of the police and firefighters does not expire until December 31, 1982. While AFSCME claims that the Association abandoned the firefighters, it should be noted that no evidence, other than the exchange of correspondence between the Association and the Village, was introduced to establish such an abandonment. As a matter of fact in one of said letters, it was noted that the firefighters voted among themselves not to continue to be represented by the Association. It is the policy of MERA, among others, to maintain stability in collective bargaining as much as possible. To permit municipal employees, in the midst of an existing collective bargaining agreement, and in the instant matter, with eleven and one-half months to run prior to expiration, to reject their bargaining representative, and seek a new representative, especially where the Municipal Employer objects, would certainly not aid and abet the stabilization of collective bargaining. On the contrary, it would disturb same.


Further, since the Association has not folded and disappeared, for it still represents the police officers and intends to enforce and administer the agreement for all employees until the agreement expires, should the Commission, following an election, certify AFSCME as the bargaining representative of the firefighters

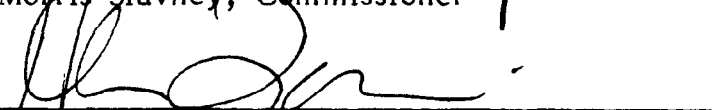
prior to December 31, 1982, AFSCME will only have the right to engage in negotiations on the successor agreement. We conclude that AFSCME will not succeed to the existing agreement with respect to its applicability to the firefighters, as is the case where a new bargaining representative is certified prior to the expiration of an existing agreement, for the reason that, in the instant matter, one agreement covers both the police officers and the firefighters, and the Association has agreed to fully administer said agreement until its expiration date. Of course, the Association, which has indicated that it does not desire to represent the firefighters and therefore does not wish to be placed on the ballot, has no right to engage in negotiations with the Village on wages, hours and working conditions of the firefighters for a new agreement.

Dated at Madison, Wisconsin this 21st day of October, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Gary L. Covelli, Chairman


Morris Slavney, Commissioner


Herman Torosian, Commissioner