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WISCONSIN EMPLOYMENT
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Madison, May 4, 1984

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Hon. Clarence R. Parrish
(L.C. #602-413)

You are hereby notified that the Court entered the following opinion and order:

83-1953 Village of Fox Point v.
Wisconsin Employment Relations Commission
District Council 48, American Federation of
State, County & Municipal Employees, ALF-CIO,

Before Wedemeyer, P.J., Decker and Moser, JJ.

Decision No.
20019

This is a review of the circuit court's affirmance of a decision and order of the Wisconsin Employment Relations Commission (Commission) which certified Milwaukee District Council 48, AFSCME, Local 2958 as the exclusive collective bargaining representative for the firefighters of the Village of Fox Point. The Village petitioned the circuit court for review of the order, claiming it violated the "antifragmentation" principle embodied in sec. 111.70(4)(d)2.a., Stats., a section of Wisconsin's Municipal Employment Relations Act. The circuit court found sufficient evidence to support the findings of the Commission, and affirmed the Commission's order. Upon our review of the briefs and record, we conclude on our own motion that this appeal is appropriate for summary disposition. See Rule 809.21, Stats.

The Village of Fox Point (Village) argues on appeal that the Department of Public Safety bargaining unit, consisting since 1979 of both police officers and firefighters, should not be disturbed. The Village argues that, because the police and firefighters in Fox Point have overlapping duties and common supervision and work in close physical proximity with each other, they should continue to belong to a single bargaining unit.

Section 111.70(4)(d)2.a., Stats., provides that the Commission shall determine the appropriate bargaining unit and that it shall, whenever possible, avoid fragmentation. The "community of interest" concept is used by the Commission to determine whether employees with shared

interests and a shared purpose should be grouped together in a single bargaining unit. See Arrowhead United Teachers Organization v. Wisconsin Employment Relations Commission, 116 Wis. 2d 580, 592-94, 342 N.W.2d 709, 715-16 (1984). The Commission argues that the firefighters and police officers do not have a sufficient community of interest to require a single, combined collective bargaining unit.

The determination of what is an appropriate collective bargaining unit is a mixed question of fact and law. Our review encompasses the Commission's construction of sec. 111.70(4)(d)2.a., Stats., and its application of the statute to the particular set of facts involved in the case. Such issues are questions of law. We also review the Commission's purely factual determinations. Arrowhead, supra at 587, 342 N.W.2d at 713.

The Commission's interpretation of sec. 111.70(4)(d)2.a., Stats., is entitled to great weight. See Arrowhead, supra at 593, 342 N.W.2d at 716. We will defer to the agency's interpretation unless it is an irrational one. Id.

In Arrowhead, supra, the supreme court affirmed the Commission's bargaining unit determination because it found that the Commission had reached its decision after rationally considering factors consistently used by the Commission to determine the appropriateness of a bargaining unit within the intent of sec. 111.70(4)(d)2.a., Stats. Id. at 598, 342 N.W.2d at 721. These factors, which were also considered by the Commission in the present case, are as follows:

1. Whether the employees in the unit sought share a "community of interest" distinct from that of other employees.
2. The duties and skills of employees in the unit sought as compared with the duties and skills of other employees.
3. The similarity of wages, hours, and working conditions of employees in the unit sought as compared to wages, hours, and working conditions of other employees.
4. Whether the employees in the unit sought have separate or common supervision with all other employees.

5. Whether the employees in the unit sought have a common work place with the employees in said desired unit or whether they share a work place with other employees.

6. Whether the unit sought will result in undue fragmentation of bargaining units.

7. Bargaining history.

Arrowhead, supra at 591-92, 342 N.W.2d 715 (citing City of Franklin, WERC Dec. No. 18208 (November 4, 1980); Wisconsin Heights School District, WERC Dec. No. 17182 (August 7, 1979); Kenosha Unified School District No. 1, WERC Dec. No. 13431 (March 11, 1975)).

In reaching its Fox Point decision, the Commission found that the primary duties and responsibilities of firefighters and police officers differ. The primary duty of police officers is law enforcement; the primary duties of firefighters are firefighting and ambulance rescue service. Potential candidates for firefighters must have different qualifications from police candidates. Once selected, candidates undergo different training.

Although firefighters and police officers receive the same wages, the Village is required by statute to pay different amounts for pensions. Firefighters receive less sick leave and a lower clothing allowance. Vacations are selected on different bases. Working hours are different.

Although the ultimate supervision of the Department of Public Safety rests in the chief and captain, direct supervision of the police and fire sections differs. On an assigned shift, a fire lieutenant supervises the fire section while a police sergeant is in charge of the police section. Although both police and fire sections are headquartered in the same building, police officers spend most of their time away from the station while firefighters spend most of their time at the station. Although the police and fire sections overlap for some duties, the duties are minor and do not create an integrated department.

The Commission enumerated these and other factors in support of its finding that the duties, responsibilities, training and working conditions of the firefighters differed sufficiently from those of the police officers to warrant a separate bargaining unit. Section 111.70(4)(d)2.a., Stats., does not mandate that employees with some shared

interests or duties be grouped within a single unit. See Arrowhead, supra at 595, 342 N.W.2d at 717. Because the Commission used the factors consistently applied when determining the community of interest needed for an effective bargaining unit, the Commission's decision is grounded upon a rational basis. We therefore uphold the agency's order, and its affirmance by the circuit court.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is affirmed.

Marilyn L. Graves
Clerk of Court of Appeals