

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
**FIREFIGHTERS LOCAL 311,
INTERNATIONAL ASSOCIATION OF FIREFIGHTERS**

Involving Certain Employees of the
VERONA FIRE DISTRICT

Case 1
No. 65186
ME-4055

Decision No. 31777

Appearances:

Joe Conway, Jr., 5th District Vice-President, International Association of Fire Fighters, 821 Williamson Street, Madison, Wisconsin, 53703, appearing on behalf of Fire Fighters Local 311, International Association of Fire Fighters.

Steven C. Zach, Boardman Law Firm, Attorney at Law, Fourth Floor, 1 South Pinckney Street, Madison, Wisconsin 53701, appearing on behalf of the Verona Fire District.

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DIRECTION OF ELECTION**

On September 29, 2005, Fire Fighters Local 311, International Association of Fire Fighters filed a petition with the Wisconsin Employment Relations Commission seeking an election to determine whether certain fire fighters employed by the Verona Fire District wish to be represented for the purposes of collective bargaining by Local 311.

Local 311 and the District disagree as to whether one of the fire fighters Local 311 seeks to represent is a supervisor. As to this disagreement, the parties entered into a stipulation of facts and filed written argument-the last of which was received July 19, 2006.

Having reviewed the record and being fully advised in the premises, the Commission makes and issues the following

Dec. No. 31777

FINDINGS OF FACT

1. The Verona Fire District ("District") is a joint fire protection district created pursuant to Section 66.0301, Stats. by the City of Verona and the Townships of Verona and Springdale.

2. The District has both full-time paid employees and volunteer firefighters who are reimbursed for responses to fire calls and training sessions.

3. The District is operated by a Fire Commission pursuant to Section 62.13(2), Stats.

4. The District operates out of one fire station.

5. The Commission employs a Chief. The current incumbent is Marc Lindquist.

6. Subordinates to the Chief are:

- a. Deputy Chief – The current incumbent is Pat McPeak. In the absence of the Fire Chief the Deputy Chief acts with the authority of the Fire Chief.
- b. Fire Assistant Chief – The current incumbent is James Barger. In the absence of a higher ranking officer, the First Assistant Chief acts with the authority of the Fire Chief.
- c. Second Assistant Chief – The current incumbent is Melissa Helgeson. In the absence of a higher ranking officer, the Second Assistant Chief acts with the authority of the Fire Chief.

7. In addition to these subordinates to the Chief, the District employs two full-time firefighters. The current incumbents are Matt Miller and Alex Miller. The District also is comprised of a number of volunteer officers and firefighters who receive monetary compensation for the time they report for calls or training. They receive W-2 forms for this compensation.

8. Effective January 1, 2006, the Chief is paid a salary of \$20,000 per year and is provided life insurance, WRS benefits and a car. He does not keep regular hours at the fire station.

9. The Deputy Chief and First Assistant Chief are volunteer firefighters. They are paid a stipend of \$1440 and \$1210 for their services as well as an hourly rate for the time they report for fire calls or training. They do not keep regular hours at the fire station and are generally not present during the weekday between 8:00 a.m. and 4:00 p.m. The current incumbents each have employment during the day as their primary means of employment.

10. The Second Assistant Chief is a full-time employee of the District. She is paid a salary of \$45,124.

11. The Second Assistant Chief and the two full-time fire fighters work a standard schedule of Monday through Friday between the hours of 8:00 a.m. and 4:00 p.m. They also respond to fire calls and training sessions after these hours.

12. The Second Assistant Chief supervises the two full-time fire fighters. The Second Assistant Chief authorizes their sick and vacation usage and directs their daily activities. The Second Assistant Chief completes their performance reviews, in particular she conducted a 90-day performance evaluation of Lt. Alex Miller on 3/15/04 and his performance evaluation on 3/22/05. She also performed the Probationary Review of Firefighter Matt Miller in June of 2004 at which time he was placed on probation. Since that time Firefighter Matt Miller's monthly probationary reviews have been conducted by the Chief. The Second Assistant Chief can discipline employees up to five days suspension with the concurrence of the Fire Chief.

13. The two full-time fire fighters report to the Second Assistant Chief except at incidents where they report to the officer in charge of the scene for direction.

14. The Second Assistant Chief and the two full-time fire fighters are generally the only firefighters, volunteer or otherwise, at the fire station from Monday through Friday between 8:00 a.m. and 4:00 p.m.

15. The Deputy Chief heads the hiring personnel committee. The Second Assistant Chief sits on the personnel hiring committee. The personnel committee hired the two full-time firefighters. The incumbents were the only candidates interviewed for the full-time positions. The personnel committee also interviews candidates for volunteer firefighter positions.

16. The Deputy Chief is in charge of all the personnel records and files. The Second Assistant Chief maintains day-to-day maintenance of the personnel records and files.

17. The Verona fire department issued new job descriptions for all employee positions on December 5, 2005.

Based on the above and foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSIONS OF LAW

1. Second Assistant Chief Melissa Helgesen is not a supervisor within the meaning of Sec. 111.70 (1) (o) 2, Stats. and therefore is a municipal employee within the meaning of Sec. 111.70 (1)(i), Stats.

2. A question concerning representation exists in the following collective bargaining unit found to be appropriate within the meaning of Sec. 111.70 (4)(d) 2.a., Stats.

All regular full-time and regular part-time fire fighters employed by the Verona Fire District excluding supervisors and confidential, managerial and executive employees.

Based on the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following

DIRECTION OF ELECTION

An election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within forty-five (45) days of the date of this Direction among all regular full-time and regular part-time fire fighters employed by the Verona Fire District excluding supervisors and confidential, managerial and executive employees who were employed on August 22, 2006, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of the employees voting desire to be represented by Local 311, International Association of Fire Fighters, for the purposes of collective bargaining with the Verona Fire District as to wages, hours and conditions of employment or desire not to be so represented.

Given under our hands and seal at the City of Madison, Wisconsin, this 22nd day of August, 2006.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

VERONA FIRE DISTRICT

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

The parties disagree as to whether the Second Assistant Chief is the supervisor of the two full-time fire fighters employed at the one station of the Verona Fire District and thus is ineligible to vote in the election sought by Local 311 and to be represented for the purposes of collective bargaining if Local 311 wins the election. Both parties agree that their disagreement is to be resolved by interpretation of Sec. 111.70 (1)(o) 2, Stats. which provides:

2. As to fire fighters 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 fire fighter shall be included under the term “supervisor” for the purposes of this subchapter. (emphasis added)**

The parties further agree that the District’s organizational chart contains the following positions:

- Chief
- Deputy Chief
- First Assistant Chief
- Second Assistant Chief
- Full-time Fire Fighters
- Volunteer Fire Fighters

Local 311 asserts Sec. 111.70 (1)(o)2, Stats. clearly provides that the Second Assistant Chief is not a supervisor because she is not the officer in rank immediately below the Chief where, as here, only one fire station exists. The District contends that the Second Assistant Chief would be found to be a supervisor under the conventional definition of supervisor found in Sec. 111.70(1)(o)1, Stats. and that Sec. 111.70(1)(o)2., Stats. ought not be interpreted in a manner that places a real world supervisor in the same potential bargaining unit as the employees being supervised. The District further contends that because the Deputy Chief and the First Assistant Deputy Chief are “volunteer” paid on call part-time employees who do not exercise traditional supervisory authority over the two full-time fire fighters, the Second Assistant Chief is de facto the “officer in rank immediately below the chief” within the meaning of Sec. 111.70(1)(o)2, Stats.

We begin by noting that we do not necessarily agree with the District’s assumption that the Second Assistant Chief would be found to be a supervisor under a Sec. 111.70(1)(o)1,

Stats. analysis.¹ Because her authority as to hiring and discipline is shared with others, she may well lack sufficient authority in these critical areas to qualify as a Sec. 111.70(1)(o)1, Stats. supervisor. But assuming for the sake of argument that the District is correct as to a Sec. 111.70(1)(o)1, Stats. analysis, we have consistently concluded that the supervisory definition in Sec. 111.70(1)(o) 2, Stats. is to be applied based on its plain meaning and thus without regard to whether the individual in question actually has supervisory authority. CITY OF RICE LAKE, DEC. NO. 16413-B (WERC, 1/99); CITY OF ST. FRANCIS, DEC. NO. 17437-A (WERC, 9/82); TOWN OF MADISON, DEC. NO. 17667-A (WERC, 6/80); VILLAGE OF SHOREWOOD, DEC. NO. 15094 (WERC, 12/76). While the District is correct that in multiple station cases we have looked to the scope of the responsibilities of the disputed individuals when determining the “rank of the highest ranking officer in each single station”, we have also held in those cases that the presence of actual supervisory authority as measured by Sec. 111.70(1)(o)1, Stats. is irrelevant. CITY OF WAUKESHA, DEC. NO. 11342-B (WERC, 9/83). Particularly in the absence of any amendment to Sec. 111.70 (1)(o) 2, Stats., in the response to our long standing interpretation, we remain persuaded that giving the language of Sec. 111.70(1)(o) 2, Stats., its plain meaning best reflects the legislative intent. Thus, we conclude that whatever supervisory authority the Second Assistant Chief possesses is irrelevant to her supervisory status.

The District also argues that where, as here, the Deputy Chief and First Assistant Chief are paid on call part-time employees, the Commission should exclude their ranks when applying Sec. 111.70 (1)(o) 2, Stats. As is evident from the language of Sec. 111.70 (1)(o) 2, Stats. itself, the statute does not draw the distinction the District asks us to make. There are no distinctions made between regular and paid on call employees in terms of the “officer in rank”.² Consistent with our historical application of Sec. 111.70 (1) (o) 2, Stats., we conclude that the plain meaning of the statute should govern the resolution of this dispute.

¹ Section 111.70 (1)(o) 1, Stats. provides:

(o) “Supervisor” means:

1. As to other than municipal and county fire fighters, 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 conjunction 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 the Union notes, we have concluded that there are also no distinctions between full-time fighters and paid on-call “volunteer” fire fighters in terms of “municipal employee” status within the meaning of Sec. 111.70 (1)(i), Stats. of the Municipal Employment Relations Act. CITY OF LAKE GENEVA (FIRE DEPARTMENT), DEC. NO. 30225 (WERC, 10/01). This conclusion further supports our view that Sec. 111.70 (1)(o) 2, Stats. ought not be interpreted in a manner that draws such distinctions.

Given all of the foregoing, it is apparent that the Second Assistant Chief is not the “officer in rank immediately below the chief” in the Verona Fire District. Therefore, we conclude she is not a “supervisor” within the meaning of Sec. 111.70 (1)(o) 2, Stats. and is eligible to vote in the election sought by Local 311.

Dated at Madison, Wisconsin, this 22nd day of August, 2006.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

