

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

---

In the Matter of the Petition of

**SOUTH MILWAUKEE FIREFIGHTERS'  
PROTECTIVE ASSOCIATION, LOCAL 1633, IAFF**

Requesting a Declaratory Ruling Pursuant to Sec. 111.70(4)(b), Stats.  
Involving a Dispute Between Said Petitioner and

**CITY OF SOUTH MILWAUKEE**

Case 114  
No. 66675  
DR(M)-670

**Decision No. 32059**

---

**Appearances:**

**Richard Saks**, Hawks, Quindel, Ehlke & Perry, S.C. Attorneys at Law, 700 West Michigan, Suite 500, Milwaukee, Wisconsin 53201-0442, appearing on behalf of the South Milwaukee Protective Association, Local 1633, IAFF.

**Joseph G. Murphy**, City Attorney, 2013 Fourteenth Avenue, South Milwaukee, Wisconsin 53172-0308, appearing on behalf of the City of South Milwaukee.

**ORDER**

On January 22, 2007, the South Milwaukee Fire Fighters' Protective Association, Local 1633, IAFF, filed a petition with the Wisconsin Employment Relations Commission pursuant to Sec. 111.70 (4)(b), Stats., seeking a declaratory ruling regarding the City of South Milwaukee's duty to bargain with Local 1633 over the City's decision to reduce the number of firefighters on a shift. Local 1633 asserts the decision is a mandatory subject of bargaining because of its impact on employee safety.

On January 30, 2007, the City asked that the Commission to dismiss the Local 1633 petition citing the administrative rules and complaint procedures of the Wisconsin Department of Commerce regarding firefighter safety.

No. 32059

The parties thereafter filed written argument-the last of which was received February 16, 2007.

Having considered the matter and being fully advised in the premises, the Commission makes and issues the following

**ORDER**

The motion to dismiss is denied.

Given under our hands and seal at the City of Madison, Wisconsin, this 29th day of March, 2007.

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

**CITY OF SOUTH MILWAUKEE**

**MEMORANDUM ACCOMPANYING ORDER**

Local 1633 asserts that the City's decision to reduce the number of firefighters on a shift from seven to six has a sufficient impact on firefighter safety to make the decision a mandatory subject of bargaining.

The City disagrees with Local 1633's assertions but also contends that the Local 1633 petition should be dismissed because the Commission is not jurisdictionally competent to determine the impact of the manning change on firefighter safety where, as here, such safety issues are governed by the administrative rules of the Wisconsin Department of Commerce. The City further argues that the Local's petition should be dismissed because the Local has failed to exhaust its remedies as to the safety issue with the Department of Commerce.

We disagree with the City's contention that we lack jurisdiction to proceed. The Local 1633 petition for declaratory ruling filed pursuant to Sec. 111.70 (4) (b), Stats. asks that we resolve a duty to bargain dispute between Local 1663 and the City over the decision to reduce manning levels. Section 111.70(4)(b), Stats. provides in pertinent part as follows and explicitly gives us jurisdiction to resolve this dispute.

(b) *Failure to bargain.* Whenever a dispute arises between a municipal employer and a union of its employees concerning the duty to bargain on any subject, the dispute shall be resolved by the commission on petition for declaratory ruling.

Given our statutory jurisdiction over duty to bargain disputes and the lack of any such jurisdiction by the Wisconsin Department of Commerce, we deny the City's motion to dismiss. We are jurisdictionally competent to proceed, and Local 1633 has no obligation to exhaust any remedies it may have before the Department of Commerce because that Department lacks jurisdiction over duty to bargain disputes.

To the extent the City is arguing that the Department of Commerce administrative rules and the City's alleged compliance therewith are relevant to the resolution of the duty to bargain dispute, we agree. To the extent the City is arguing that City compliance with those Department rules prohibits the Commission from concluding that the safety relationship of the manning change outweighs the relationship to service level choices, we disagree, for the reasons that follow.

In CITY OF FOND DU LAC, DEC. NO. 22373 (WERC, 2/85), the Commission concluded that a variety of factors must be considered when evaluating the effect of a manning change on firefighter safety, which, in turn, is balanced against the relationship between the manning change and the municipal employer's service level choices. Primary among those "safety" factors was "evidence of local conditions" which was viewed as "determinative." "Evidence of

local conditions” includes “types and quantities of safety equipment and applicable safety procedures.” We also noted the relevance of what we identified as the “heroic factor” – the potential for firefighters to act contrary to safety procedures in life threatening situations.

We do not know whether the Department of Commerce considered all of these relevant factors when promulgating the Department’s rules on firefighter safety. But even if the Department did so, we are satisfied that within our duty to bargain dispute resolution jurisdiction, it remains our judgment as to the relationship between a manning decision and firefighter safety that is dispositive. Thus we do not agree with the City’s view that a manning decision that may comport with the Commerce Department’s rules is ipso facto a permissive subject of bargaining

Therefore, we have denied the City’s motion to dismiss.

Dated at Madison, Wisconsin, this 29th day of March, 2007.

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

