

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

----- :
In the Matter of the Petition of :
PROFESSIONALS OF ENVIRONMENTAL :
PROTECTION (PEP) :
Involving Certain Employes Employed in the :
DEPARTMENT OF NATURAL RESOURCES, :
DIVISION OF ENVIRONMENTAL PROTECTION :
----- :

Case IV
No. 12745 SE-19
Decision No. 9109

ORDER OF DISMISSAL

The Wisconsin Employment Relations Commission having, on September 19 and October 11, 1968, conducted a hearing on petitions filed by Wisconsin State Foresters Association and Wisconsin State Employees Association Council 24, AFSCME, AFL-CIO, and its appropriate affiliated locals, requesting elections among certain employes employed in the Department of Natural Resources; and following the conduct of said hearing, and prior to any further action by the Commission, the Professionals of Environmental Protection (PEP) having filed a petition requesting the Commission to conduct an election pursuant to Section 111.84 of the State Employment Labor Relations Act among all professional and related positions in the Division of Environmental Protection of the Department of Natural Resources, excluding all other employes, confidential and supervisory employes; and the Commission having considered the record, arguments and briefs of counsel, and being satisfied that the unit desired by said Petitioner is not an appropriate unit within the meaning of the State Employment Labor Relations Act;

NOW, THEREFORE, it is

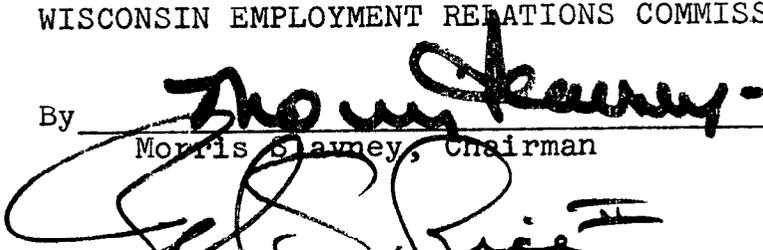
ORDERED

That the petition filed by Professionals of Environmental Protection (PEP) requesting an election among all professional and related positions in the Division of Environmental Protection of the Department of Natural Resources, excluding all other employes, confidential and supervisory employes, be, and the same hereby is, dismissed.

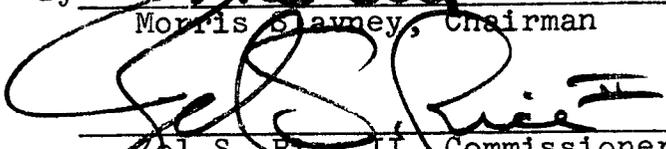
Given under our hands and seal at the
City of Madison, Wisconsin, this 1st
day of July, 1969.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

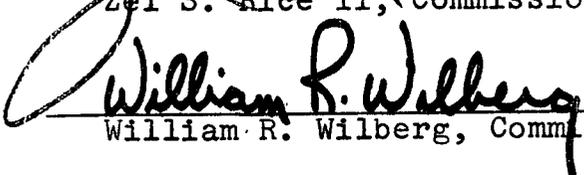
By



Morris Slawney, Chairman



Zel S. Rice II, Commissioner



William R. Wilberg, Commissioner

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Separate Petitions of	:	
WISCONSIN STATE FORESTERS ASSOCIATION;	:	Case I
	:	No. 12277 SE-15
	:	Decision No. 9106
WISCONSIN STATE EMPLOYEES ASSOCIATION	:	Case II
COUNCIL 24, AFSCME, AFL-CIO, AND ITS	:	No. 12356 SE-16
APPROPRIATE AFFILIATED LOCALS;	:	Decision No. 9107
WISCONSIN STATE EMPLOYEES ASSOCIATION	:	Case III
COUNCIL 24, AFSCME, AFL-CIO, AND ITS	:	No. 12342 SE-17
APPROPRIATE AFFILIATED LOCALS;	:	Decision No. 9108
and	:	Case IV
PROFESSIONALS OF ENVIRONMENTAL	:	No. 12745 SE-19
PROTECTION (PEP)	:	Decision No. 9109
Involving Certain Employees of the	:	
DEPARTMENT OF NATURAL RESOURCES,	:	
STATE OF WISCONSIN	:	
-----	:	

MEMORANDUM ACCOMPANYING DIRECTIONS OF ELECTIONS
AND ORDER OF DISMISSAL

These proceedings were initiated with the Wisconsin Employment Relations Commission by petitions filed, pursuant to the State Employment Labor Relations Act, by three employe organizations, having among their membership employes in the employ of the Department of Natural Resources, State of Wisconsin, hereinafter referred to as the Department.

Case I

The Wisconsin State Foresters Association, hereinafter referred to as the Foresters Association, in its petition requested an election to determine the bargaining representative for employes in a claimed appropriate collective bargaining unit consisting of "all professional Foresters employed in the Bureau of Forest Management," excluding supervisory, confidential and all other employes of the Department.

Case II

In its petition the Wisconsin State Employees Association Council 24, AFSCME, AFL-CIO, hereinafter referred to as the WSEA, requested a representation election in a claimed appropriate unit consisting of all "blue collar" employes in the Department, excluding supervisory, confidential and all other employes.

Case III

Another petition filed by the WSEA seeks an election among employes in a unit consisting of all professional and related employes in the Department, except supervisory and confidential employes.

Case IV

The Professionals of Environmental Protection, hereinafter referred to as PEP, filed a petition seeking an election among employes in a unit consisting of all professional employes, excluding supervisors, employed in the Division of Environmental Protection. PEP's petition was filed following the hearing on the aforementioned petitions.

Post-Hearing Matters

Following the conduct of the hearing on the petitions filed in Cases I, II and III, the Department, by its Administrative Officer and the Chief of the Employment Relations Section of the Department of Administration, and the Executive Secretary of WSEA executed and filed a stipulation for an election, wherein they agreed as to the appropriateness of a unit consisting of "blue collar" employes of the Department, excluding all other employes, limited term employes, non-permanent seasonal employes, confidential employes, supervisors and managerial employes.

The Department and WSEA also executed and filed a stipulation for election, wherein they also agreed to the appropriateness of a unit consisting of certain professional and related classifications employed throughout the entire Department.

Also following the conduct of the hearing, the Foresters Association, by letter, indicated that it had changed its position with respect to the unit desired by it, more specifically, that the unit should include non-supervisory Foresters and Forest Entomologists employed throughout the Department rather than limiting the unit to those classifications of employes employed only in the Bureau of Forest Management.

Background

The Department is responsible for providing an adequate and flexible system for the protection, development and use of the water, air, forest, fish and game, and plant life resources of the state, as well as the control of solid wastes and refuse disposal. In carrying out these responsibilities the Department has established six divisions.^{1/}

The Division of Land Resources is a small self-contained agency attached to the Department for budgetary and housekeeping services only. It has the responsibility for the management of school trust funds and the investment of those funds for public school purposes. It has a continuing responsibility to manage the state forest land which is entrusted to it. There are no separate bureaus in this division.

The Division of Tourism and Information is primarily concerned with education of the public and the promotion of out-of-state tourism. This division's functions are performed in the office of the Director-Natural Beauty Council, the Bureau of Information and the Bureau of Vacation and Travel Services.

The Division of Services, which provides the housekeeping and support services for the Department, is composed of the Bureau of Engineering, Bureau of Real Estate, Bureau of Personnel, Bureau of Clerical Services, Bureau of Research, and Bureau of Finance.

The Division of Environmental Protection, a small field service agency with responsibility for air pollution control and solid waste disposal, is composed of the Bureau of Water Supply and Pollution Control, Bureau of Standards and Water Surveys, Bureau of Air Pollution Control and Solid Waste Disposal, and Bureau of Water and Shoreland Management.

Two divisions, the Division of Forestry and Recreation and the Division of Fish, Game and Enforcement, are the Department's field service agencies and have the primary responsibility for the preservation and utilization of the state's natural resources. The Bureau of Parks and Recreation, the Bureau of Forest Management, and the Bureau of Fire Control are within the Division of Forestry and Recreation. The Bureau of Fish Management, the Bureau of Game Management, and the Bureau of Law Enforcement make up the Division of Fish, Game and Enforcement.

^{1/} The Department's organizational chart is attached hereto as Appendix A.

Two bureaus, that of Planning and Air Programs and that of Legal Services, are directly attached to the office of the Secretary of the Department.

Discussion

We are satisfied that a unit consisting of the otherwise eligible so-called "blue collar" employes of the Department is appropriate for the purposes of collective bargaining, and further that a unit consisting of professional and related classifications may constitute an appropriate unit under the State Employment Labor Relations Act. The issues which must be determined are whether the Commission will permit two claimed units to be severed from the otherwise appropriate unit of professional and related classifications, namely, (1) whether those employes engaged in the profession of Forestry in the Department constitute an appropriate unit, and (2) whether mixed professional employes and related positions employed in a separate division of the Department constitute an appropriate unit for the purposes of collective bargaining.

With respect to the unit desired by the Foresters Association, all parties concede that employes who are employed as Foresters and Forest Entomologists are engaged in the profession of Forestry. PEP desires a unit consisting of all "professionals" employed in the Division of Environmental Protection, more specifically it desires a unit to consist of the following classifications:

- Chemist 1, 2, 3, 4, 5
- Civil Engineer 1, 2, 3, 4
- Economist 1, 2, 3
- Electrical Engineer 1, 2, 3, 4
- Microbiologist 1, 2, 3, 4, 5
- Planning Analyst 1, 2, 3, 4, 5, 6
- Public Health Biologist 1, 2, 3
- Public Health Engineer 1, 2, 3, 4
- Public Health Sanitarian 1, 2, 3
- Research Analyst 1, 2, 3, 4, 5, 6

It is to be noted that there are no employes employed in the Department having the classification of Microbiologist or Economist, but apparently there is a possibility that employes in said classifications may be employed in the Division of Environmental Protection.

While there may be some issue as to whether some of the above noted classifications are professional employes within the meaning of the statute, inclusion of such questionable positions in the unit desired by PEP is not material to the disposition of this unit issue since the Department and WSEA, in their stipulation, would include professional and related classifications in one unit.

Under the State Employment Labor Relations Act the Wisconsin Employment Relations Commission has administrative discretion with respect to the establishment of appropriate bargaining units.^{2/} The exercise of such discretion, however, requires full consideration of the policies expressed in the Statute, with due regard to the rights and obligations created thereunder. The Act encourages collective bargaining in state employment and protects the right of state employes to associate with others for that purpose. In that regard it recognizes the need for orderly and constructive employment relations and the efficient administration of the state government.

In a direction of election involving employes of University of Wisconsin-Milwaukee, issued in November 1967,^{3/} which was the first state employment case involving unit issues, the Commission stated as follows:

"We believe that excessive fragmentation of bargaining units in state employment collective bargaining will not effectuate the policies of the state employment collective bargaining law. However, this does not necessarily mean that the Commission will establish the largest possible unit claimed to be appropriate by the party seeking to establish same. There must be such an existing separate community of interest among the employes in the desired unit as will persuade the Commission to permit the employes to determine for themselves whether they desire to constitute a separate unit or which the Commission itself will establish as being appropriate. This community of interest may be reflected in various ways, such as the nature of the function of the department or division of the State Employer in which the employes are employed, the nature of the duties performed by the employes in issue, the skills involved, separate supervision in significant levels of supervision, and the similarity or dis-similarity in conditions of employment."

^{2/} Section 111.81(3)

^{3/} Decision No. 8296

The record discloses that all of the Chemists, Planning Analysts, Public Health Biologists, Public Health Engineers and Public Health Sanitarians employed in the Department are employed solely in the Division of Environmental Protection. Civil Engineers are employed in the Division of Environmental Protection and in the Division of Services, and Research Analysts are employed in the Division of Environmental Protection and in the office of the Secretary.

The evidence establishes that the Department's policies with respect to scheduling of vacations, use of sick leave, application of work rules, health and safety practices, seniority application, intradepartmental transfers and grievance procedures are centrally established and applied for all employes in the Department regardless of classification or the divisions and bureaus in which they are employed.

As we have previously indicated,^{4/} "employes engaged in a recognized and identifiable profession, because of the nature of the specialized skills utilized in performing their duties, may constitute units separate and apart from all other employes, including other professional employes."

Following the hearings on the petitions herein, the state created a new classification of employes, that of Natural Resource Specialist, which included the former classifications of Game Manager, Fish Manager, Park Manager, Forester, Forest Entomologist and other related job descriptions. The fact that such new classifications were created does not eliminate the fact that the Foresters and Forest Entomologists are performing duties which require specialized education and professional skills. The creation of a new classification of employes, which includes various professionals and non-professionals, does not, and will not, affect our determination with respect to employes engaged in a recognized profession. In this case the change of classification does not effect a change in the duties performed by the employes involved, especially that of the Foresters and Forest Entomologists. Since the Foresters

^{4/} Dept. of Industry, Labor and Human Relations et al, Case I, (8340) 1/68.

and Forest Entomologists are practicing the profession of Forestry, and since the desired unit now includes the employes occupying said classifications employed throughout the Department, we conclude that all otherwise eligible Foresters and Forest Entomologists employed in said classifications in the Department constitute an appropriate unit, and the employes therein will be given an opportunity to determine whether they desire to be represented by the Foresters Association, the WSEA, or neither of said organizations for the purposes of collective bargaining.

While there is a certain community of interest among all the professional and related positions employed in the Division of Environmental Protection, such community of interest primarily being the fact that they are employed in a separate division which is engaged in a function not performed by any of the other divisions of the Department, we are not satisfied that this community of interest warrants a further fragmentation of the larger unit of professional and related employes in the Department. The establishment of bargaining units on a divisional basis in state employment would result in such fragmentation as would create an almost impossible climate for collective bargaining in state employment and therefore would not effectuate the policies of the Act. The unit desired by PEP is inappropriate, and we have dismissed its petition.

Therefore, in these proceedings, we have established three collective bargaining units, as follows:

1. All "blue collar" employes of the Department of Natural Resources, excluding non-permanent seasonal employes, limited term employes, office clerical employes, professional and related employes, confidential employes, supervisory employes, and managerial employes.
2. All employes of the Department of Natural Resources engaged in the profession of Forestry (Foresters and Forest Entomologists), excluding confidential, supervisory, managerial and all other employes.
3. All professional and related classifications employed in the Department of Natural Resources, excluding Foresters and Forest Entomologists, and also excluding non-permanent seasonal employes, limited term employes, office clerical employes, confidential employes, supervisory employes, and managerial employes.

Eligibles

Blue Collar Unit:

The Department and WSEA agreed that the following employe classifications are eligible to vote in the "blue collar" unit:

Automotive Mechanic 1, 2, 3	Graphic Artist 1, 2
Building Maintenance Helper 1, 2	Labor Foreman
Building and Grounds Repairman	Laborer 1, 2
Communications Technician	Maintenance Man
Conservation Aid	Maintenance Mechanic 1, 2
Conservation Patrolman	Mechanician 1, 2
Draftsman 1, 2, 3	Motor Vehicle Operator 1, 2, 3
Engineering Technician 1, 2, 3, 4	Painter
Exhibits Technician 1, 2, 3	Park Ranger 1, 2, 3, 4
Fish Conservation Technician 1, 2	Photographer 1, 2, 3
Forest Conservation Technician 1, 2	Poultryman 1, 2, 3
Forest Fire Control Assistant	Stock Clerk 1, 2
Game Conservation Technician 1, 2	Storekeeper 1, 2

Foresters and Forest Entomologists Unit:

The Department, WSEA and the Foresters Association agreed as to the following with respect to the eligibility to participate in the election involving Foresters and Forest Entomologists:

Eligible to Vote

Forest Entomologist 1, 2
Forester 1
Forester 2 (Nelson to vote by challenged ballot)
Forester 3--except Borkenhagen, Berndt, Wojahn and Derr
(Steiro and Enerson to vote by challenged ballot)
Forester 4

The parties agreed that the individuals occupying the classifications of Forest Entomologist 3, namely, Renlund, and Forester 5, namely, MacDonald, Santala, Smith, Hummel and Mueller, are supervisory and therefore are not eligible to vote.

Professional and Related Positions:

The Department and WSEA agreed that the following positions are eligible to vote in the professional and related positions unit:

Accountant 1, 2, 3	Game Manager 4 (Except Bell)
Administrative Assistant 3 (Except Mayfield)	Institution Superintendent
Administrative Assistant 4 (Except Grant)	Landscape Architect 1, 2, 3
Administrative Assistant 5 (Except Taylor)	Landscape Architect 4 (Except Hanson)
Attorney 11, 12	Management Information Specialist 1, 2, 3, 4, 5, 6
Attorney 13 (Except Kaminski)	Management Information Supervisor (Micke only)
Chemist 1, 2, 3, 4	Mechanical Engineer 1, 2, 3
Civil Engineer 1, 2, 3	Park Manager 1
Conservation Biologist 1, 2, 3, 4	Park Manager 2 (Except following will vote by challenged ballot)
Conservation Pilot 1, 2	Nesvold
Conservation Staff Specialist	Eklund
Conservation Warden 1, 2, 3, 4	Peterson
Conservation Warden 5 (Bubesch only)	Park Manager 3, 4 (Except following will vote by challenged ballot)
Electrical Engineer 1, 2, 3	Gibson
Fish Manager 1, 2	Konkol
Fish Manager 3 (Except Maracek)	Halverson
Fish Manager 5 (Klingbiel and Truog only)	Trecker
Forest Ranger 1	Vacant
Forest Ranger 2 (Frank to vote by challenged ballot)	Patrol Boat Captain
Forest Ranger 3 (Except Kirkpatrick)	Planning Analyst 1, 2, 3, 4, 5, 6
In addition, the following will vote by challenged ballot:	Public Health Biologist 1, 2
Jerabek	Public Health Biologist 3 (Except Hueschow)
Fronek	Public Health Engineer 1, 2, 3, 4
Martini	Public Health Sanitarian 1, 2, 3
Kozel	Public Information Officer 1, 2, 3
Klugow	Public Information Officer 4 (Except Thoma)
Jacobson	Publications Supervisor
Wood	Purchasing Agent 1, 2
Hanson	Press Relations Officer
Plowman	Research Analyst 1, 2, 3, 4, 5, 6, 7 (Except Wirth)
Anderson	Right of Way Agent 1, 2, 3
Jackelen	Tourist Promotion Representative 1, 2, 3
Puskala	Visual Aids Supervisor
Forestry Research Coordinator	
Game Manager 1, 2, 3	

Representatives of the Department and WSEA stipulated that the following positions and the incumbents thereof are supervisory and are to be excluded from the unit:

Accountant 4 Goldsworthy	Conservation Administrator 2 LeMay
Accountant 5 Summers	King
Administrative Assistant 2 Speth	Lloyd
Administrative Assistant 3 Mayfield only	Zelinske
Administrative Assistant 4 Grant only	Conservation Biologist 5 Hale
Administrative Assistant 5 Taylor only	Christenson
Administrative Officer 1 Faber	Conservation Warden 5 Waggoner
Kabat	Mau
Administrative Officer 2 Schneberger	Thomsen
Evans	Galston
Matson	Gillette
Administrative Officer 3 Ehly	Fiscal Officer 2 Goetz
Administrative Secretary 4 Knollman	Fish Manager 3 Maracek only
Hacker	Fish Manager 4 Simonson
Administrator II Reinke	Ensign
Attorney 13 Kaminski only	Vacancy
Civil Engineer 4 Wallin	Bredemus
Lee	Fish Manager 5 Wistrom
Civil Engineer 5 Sayles	Dehmcke
Corbin	Cline
Civil Engineer 6 Motl	Harris
Conservation Administrator 1 Meharg	Miller
Kenner	Forest Ranger 3 Kirkpatrick
Brasch	Forest Ranger 5 Johnson
Heltrick	Landphier
Riech	Hilliker
Nelson	Game Manager 4 Bell only
Vacancy	Game Manager 5 Dahlberg
	Wendt
	Dreis
	Truax
	Stroebe
	Damaske
	Landscape Architect 4 Hanson

Management Information Supervisor 4 Brader	Public Information Officer 4 Thoma
Personnel Manager 3 Vacancy	Regional Director, Water Resources Strautz
Personnel Manager 4 Connors	Krochn Lissack
Public Health Biologist 3 Hueschow only	Doyle Kozel
Public Health Engineer 5 Blabawm Vacancy Strovinski Calabresa Schraufregel	Research Analyst 6 Wirth

In addition, the Department and WSEA have agreed that the following individuals in the Department are confidential employes and therefore not eligible to vote in any unit:

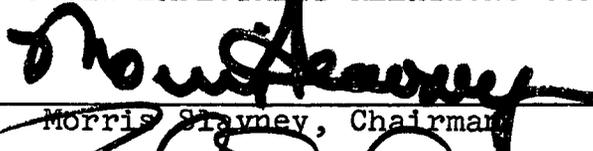
L. P. Voigt - Secretary
John Beale - Deputy Secretary
Donald Mackie - Executive Assistant
J. R. Smith - Administrator, Fish, Game and Enforcement
S. W. Welsh - Administrator, Forestry and Recreation
Thomas Frangos - Administrator, Environmental Protection
Arthur Jorgensen - Administrator, Tourism & Information
William Matson - Administrator, Services
Robert Connors, Personnel Officer
Alice Ellis - Administrative Assistant 2 (Sec. to Personnel Officer)
Francis Deitelhoff - Administrative Assistant 4 (Chief of Payrolls)
Rose Mary Scanlan - Account Examiner (Payroll)
Hilma Trollop - Account Examiner (Payroll)
Audrey Kunstman - Assistant Clerk (Payroll)
Typist 3 - Vacant (Personnel)
Lulu Korn - Assistant Secretary of Natural Resources Board
John Goetz - Director, Bureau of Finance
Emil Kaminski - Chief Counsel
Edward Main - Attorney
Richard Summers - Director, Bureau of Data Processing
George Brader - Assistant Director, Bureau of Data Processing
Clarence Goldsworthy - Chief Accountant
Robert Mayfield - Director, Bureau of Clerical Services

Mavis Knollman - Chief, Secretarial Section
Jerome Speth - Chief, Mail & Supply
Delma Brensike - Secretary to John Beale
Doris Hoppe - Secretary to L. P. Voigt
Helen Karberg - Secretary to William Matson
Suzanne Thurn - Secretary to Emil Kaminski
Laurabelle Vinje - Secretary to Tom Frangos
Trygve Thoresen - Assistant to William Matson

Dated at Madison, Wisconsin, this 1st day of July, 1969.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

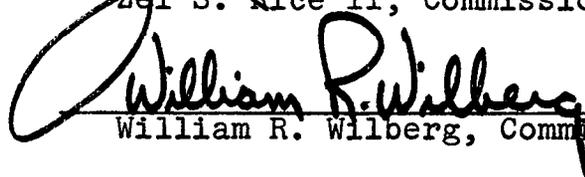
By



Morris Stawney, Chairman

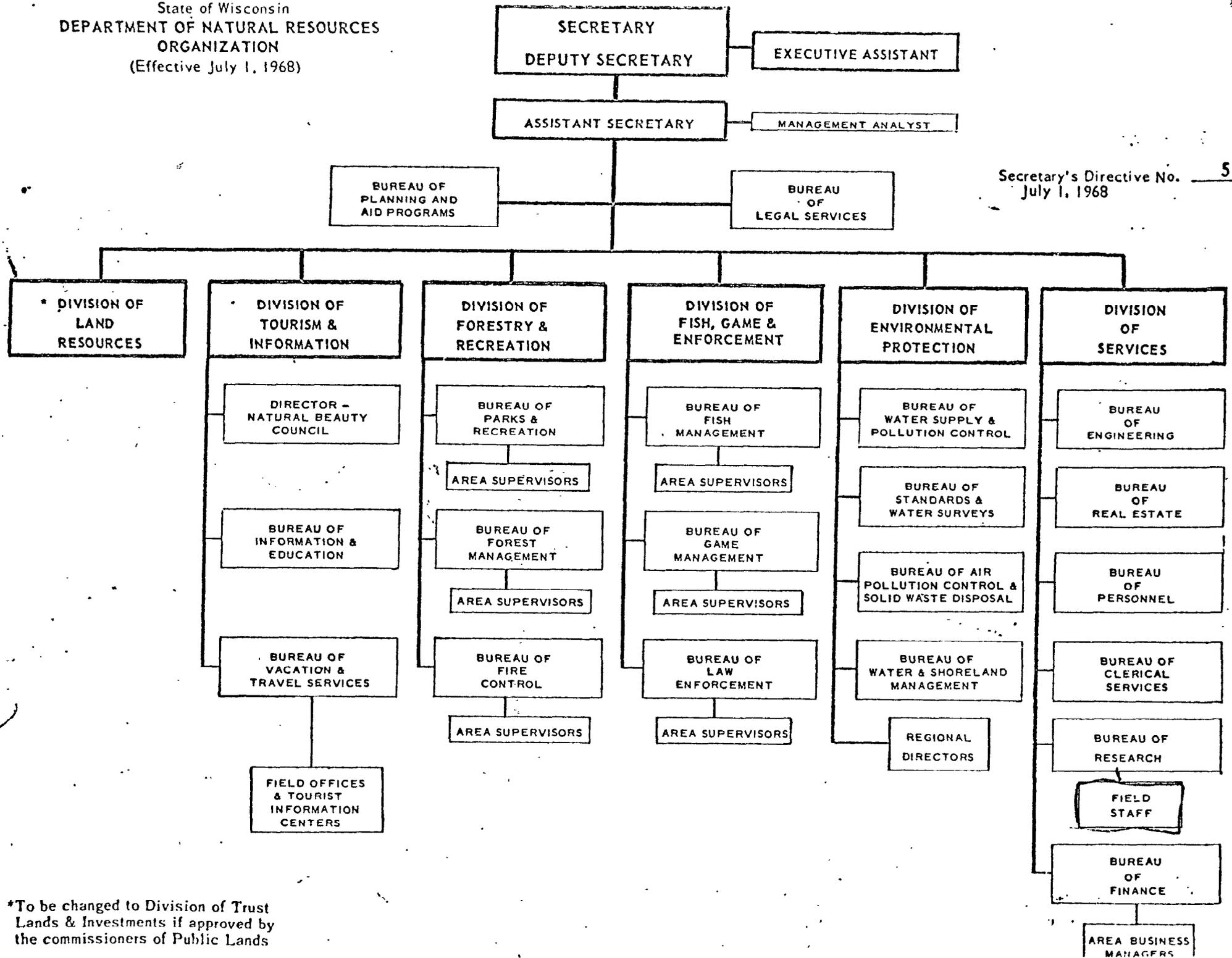


Zel S. Rice II, Commissioner



William R. Wilberg, Commissioner

State of Wisconsin
 DEPARTMENT OF NATURAL RESOURCES
 ORGANIZATION
 (Effective July 1, 1968)



Secretary's Directive No. 5
 July 1, 1968

APPENDIX A

*To be changed to Division of Trust Lands & Investments if approved by the commissioners of Public Lands