

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Respondent.

No. 9261-A

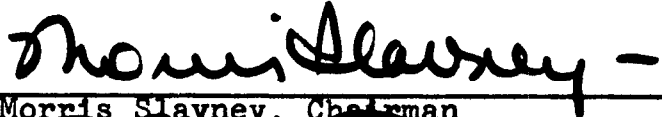
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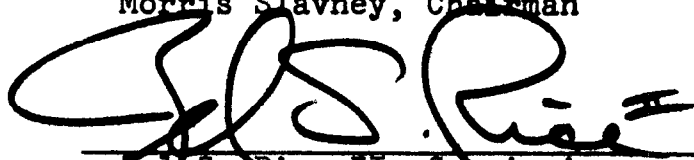
That the complaint filed in the above entitled matter be, and the same hereby is, dismissed for lack of jurisdiction.

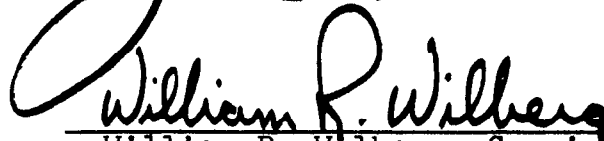
Given under our hands and seal at the City of Madison, Wisconsin, this 20th day of October, 1969.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Lel S. Rice II, Commissioner


William R. Wilberg, Commissioner

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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TEACHING ASSISTANTS' ASSOCIATION,		:
	Complainant,	:
vs.		:
THE UNIVERSITY OF WISCONSIN-MADISON,		:
	Respondent.	:
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Case XIII
No. 13176 PP(S)-6
Decision No. 9261-A

MEMORANDUM ACCOMPANYING ORDER OF DISMISSAL

Teaching Assistants' Association, an organization representing, for purposes of collective bargaining, individuals employed as teaching assistants by the University of Wisconsin-Madison, filed a complaint with the Wisconsin Employment Relations Commission, wherein it alleged that said State Employer had committed prohibited practices within the meaning of Sections 111.84(1)(d) and (e) of the State Employment Labor Relations Act, in that said Association and the State Employer were parties to a collective bargaining agreement whereby "the parties agreed to subject themselves to the procedural and substantive provisions of the Wisconsin State Employment Relations Act," and that the State Employer had violated the above noted provisions of the Act in violating said agreement by "refusing, through its agents, to engage in departmental bargaining in the departments of Anthropology, Mathematics, Music, and Physics"

The jurisdiction of the Commission is derived from statutes enacted by the legislature and not from any agreement or agreements between organizations and employers, unless so provided by such statutes.

The Commission administers three separate labor relations statutes affecting employers and employees in the State of Wisconsin, as follows:

1. The Wisconsin Employment Peace Act, Subchapter I, Chapter 111, Wisconsin Statutes, regulating collective bargaining and labor relations between private employers and their employees;

2. The Municipal Employment Labor Relations Law, Subchapter IV of Chapter 111, Wisconsin Statutes, regulating collective bargaining and labor relations between municipal employers and their employees; and
3. The State Employment Labor Relations Act, Subchapter V, Chapter 111, Wisconsin Statutes, regulating collective bargaining and labor relations between state employers and their employees.

It is apparent, since the Respondent herein, the University of Wisconsin-Madison, is a "State Employer" within the meaning of Section 111.81(13) of the State Employment Labor Relations Act (SELRA), that neither the provisions of the Wisconsin Employment Peace Act nor of the Municipal Employment Labor Relations Act apply herein. Therefore if the Commission has any jurisdiction to entertain and process the instant alleged prohibited practice complaint, such jurisdiction must evolve from the provisions of SELRA.

Section 111.82 provides as follows:

"111.82 RIGHTS OF STATE EMPLOYEES. State employees shall have the right of self-organization and the right to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection; and such employees shall also have the right to refrain from any or all of such activities."

Section 111.84(1)(d) and (e) provide as follows:

"111.84 PROHIBITED PRACTICES. (1) It shall be a prohibited practice for a state employer individually or in concert with others:

. . .

(d) To refuse to bargain collectively on those matters set forth in s. 111.91 with the representative of a majority of its employees in an appropriate collective bargaining unit,

. . .

(e) To violate the provisions of any written agreement with respect to terms and conditions of employment affecting state employees"

Section 111.85 provides as follows:

"111.85 PREVENTION OF PROHIBITED PRACTICES. Any controversy concerning prohibited practices may be submitted to the commission as provided in s. 111.07."

The term "state employe" is defined in Section 111.81(12) as

"any employe in the classified service of the state, as defined in s. 16.08, except employes who are performing in a supervisory capacity, and individuals having privy to confidential matters affecting the employer-employe relationship, as well as all employes of the commission."

Section 16.08(3) of the Wisconsin Statutes defines "classified service" as

"(a) the classified service comprises all positions not included in the unclassified service."

Section 16.08(2) defines "unclassified service" as including

"(d) All presidents, deans, principals, professors, instructors, research assistants, librarians and other teachers, as defined in s. 42.20 in the university and state colleges."

Section 42.20(13) describes the term "teacher" as "any person legally or officially employed or engaged in teaching as a principal occupation."

The term "teaching" is described, in Section 42.20(14), as including

"the exercise of any educational function for compensation, in . . . the university, . . . in instructing or controlling . . . students, or in administering, directing, organizing or supervising any educational activity."

Section 42.20(15) defines "university" as "any college, school or department under the control and management of the regents of the University of Wisconsin."

The teaching assistants in the employ of the University of Wisconsin-Madison are engaged in such teaching activities so as to establish that they are in the unclassified service of State employment, and, therefore, as such, are not employes within the meaning of that term as contemplated in the State Employment Labor Relations Act. Therefore, whatever collective bargaining relationship may exist between the University and the Teaching Assistants' Association is not statutorily subject to the provisions of the State Employment Labor Relations Act. Therefore, neither the teaching assistants nor their designated representative have access to the provisions and procedures established in the Act. Thus, it necessarily follows that the Commission has no jurisdiction to

formally process any unfair labor practice complaint relating to the relationship between the Teaching Assistants' Association and the University with respect to the employment of the teaching assistants. We are, therefore, dismissing the complaint filed herein for lack of jurisdiction.

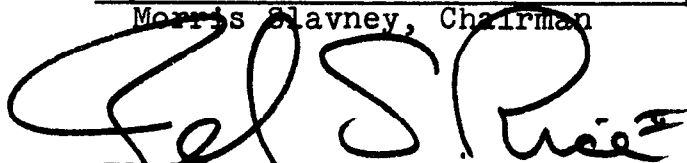
Dated at Madison, Wisconsin, this 20th day of October, 1969.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

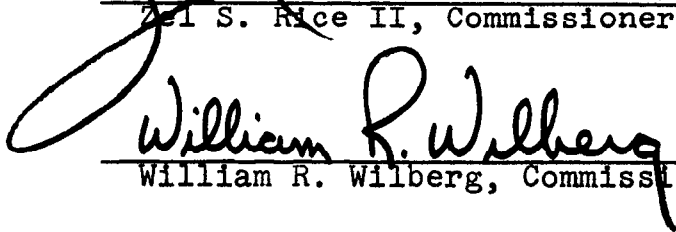
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