

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

UNIVERSITY OF WISCONSIN-MADISON

Case XXXII through XXXVI
No. 15176 through 15180
SE-34 through SE-38
Decision No. 10727-G
through No. 10731-G

The Wisconsin Employment Relations Commission heretofore and on April 17, 1972, issued an Order Dismissing Petitions filed in the above entitled matter; and on April 20, 1972, Counsel for the Petitioner having, in writing, filed a Motion with the Commission requesting the Commission to reconsider the matter; and the Commission, being fully advised in the premises and being satisfied that the Motion for reconsideration be denied;

That the Motion for reconsideration filed in the instant matters be, and the same hereby is, denied.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

~~Morris Blaney~~ Chairman

Zel S. Rice II, Commissioner

Jos. B. Kerkman, Commissioner

UNIVERSITY OF WISCONSIN-MADISON, XXXII through XXXVI, Decision No.
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MEMORANDUM ACCOMPANYING
ORDER CORRECTING MEMORANDUM ACCOMPANYING
ORDER DISMISSING PETITIONS AND ORDER
DENYING MOTION FOR RECONSIDERATION

On April 17, 1972, the Commission issued an Order Dismissing Petitions filed by the Petitioner requesting elections in five claimed appropriate bargaining units on the basis that the units sought were inappropriate within the meaning of Section 111.81(3) of the State Employment Labor Relations Act. On April 20, 1972, Counsel for the Petitioner filed a Motion requesting the Commission to reconsider its action in dismissing the petitions involved for the following reason:

"1. On the face of the petition, on XXXVI, the Union seeks to represent all workers in a division, except certain workers who are not employees within the meaning of 111.81(12) [supervisors, confidential employees], and other workers not traditionally grouped with regular blue collar workers who do make up the unit petitioner is seeking, as the Commission found by 'Judicial notice' [office clerical, professional, management employees, Building Trades Craft employees, limited term employees]. On the face of the petition and consistent with the Commission's 'judicial notice' of the character of the workers in Case No. XXXVI, the petitioner seeks to represent all regular blue collar workers in the physical plant division, Madison (see page 4 of the decision of April 17, 1972 in Case XXXVI).

2. The Commission's opinion holds that the petitioner seeks to represent less than all of the blue collar workers in the Physical Plant Division. 'The Petitioner seeks a unit of employees in the Physical Plant Divisions of the UW-Madison....' [on its face, the petition seeks 'all employees in the classified service of the University of Wisconsin (excluding University of Wisconsin-Milwaukee) physical plant divisions']. 'The majority of classifications employed in the Physical Plant Divisions are "blue collar" positions. (footnote omitted) However since there are a number of other "blue collar" type positions which are employed in the Physical Plant Divisions, the Commission deems that the employees employed in the Physical Plant Divisions are not an appropriate unit.' (emphasis added) The opinion indicates that the petitioner is classifying among regular blue collar employees within a given plant division at Madison (see decision and order of April 12, 1972). On the face of the petition and in fact, this is not the case. The petitioner seeks all regular blue collar workers in the physical plant division at Madison, excluding only workers who are not such regular blue

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collar workers. See page 2 of Decision of April 17, 1972, see Decision of April 12, 1972. A unit of all regular blue collar workers in a Division of a given university location is an appropriate unit within the meaning of 111.81(3), before amendment.

3. On the other hand, if the Commission meant to say that there were blue collar workers in other divisions of the employer, and that a unit which separated job functions by Division is inappropriate, such conclusion is directly contradictory to, and inconsistent with the decisions in Cases XXXII and XXXIII which denied petitions because the petitioned for workers performing the same job functions, do so in separate Divisions of the Employer. Whatever the scope of Commission discretion under 111.81(3), it can't inconsistently apply the same criteria of decision (work function by Division) to consistently deny the workers a right to vote, even though the petitioner has made its showing of interest in all 3 units."

The Petitioner contends that the Commission should

". . . consistently apply the criteria of allocation of work function by Division, and direct an election in the unit requested in XXXVI because the union seeks to represent all workers in a given category within a Division within the meaning of 111.81(3), or alternatively direct an election in the units in XXXII and XXXIII because the Union seeks to represent all workers in a given category at Madison, regardless of Division. It has to be one way or the other if the articulated criteria of the relationship between job function and Division in which the function is performed is to be rationally and lawfully applied; alternatively, if some criteria other than that articulated in the decision of April 17 is controlling, then petitioner requests a hearing to determine what principles of decision do determine whether its units are appropriate under the law, 111.81(3) and 111.83, prior to amendment."

In reviewing the Motion for reconsideration and the Order of dismissal of the petitions, the Commission observes that a phrase was inadvertently omitted from the Memorandum with respect to the dismissal of the petition in Case XXXVI. It has today issued an Order correcting said omission. The rationale of the Commission as expressed in the original Order read as follows:

". . . However, since there are a number of other 'blue collar' type positions which are employed in the Physical Plant Divisions, the Commission deems that the employees employed in the Physical Plant Divisions are not an appropriate unit."

The sentence should have correctly read:

". . . However, since there are a number of other 'blue collar' type positions which are employed in divisions other than those employed in the Physical Plant Divisions,

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the Commission deems that the employees employed in the Physical Plant Divisions are not an appropriate unit." 1/

The Commission is satisfied that its determination that the blue collar employees employed in the Physical Plant Divisions is not contradictory to nor inconsistent with the rationale for its decision in dismissing the petitions in Cases XXXII and XXXIII, but rather it is consistent with the rationale for dismissing the petitions in those cases. Accompanying the employee list furnished by the State Employer to the Commission in order for the Commission to determine there was a sufficient showing of interest in support of the various petitions, the State Employer also forwarded a letter indicating the positions that were employed in the units alleged to be appropriate by the Petitioner in its various petitions. The following positions were listed by the State Employer as being employed in the Physical Plant Divisions of the State Employer"

"Automotive Mechanic 1 & 2	Mechanician 1 & 2
Body and Fender Repairman	Motor Vehicle Dispatcher
Building Maintenance Helper 1,	Motor Vehicle Operator 1 & 2
2 & 3	Parking Attendant
Exterminator	Power Plant Equipment Operator
Gardner 1 & 2	Power Plant Helper
Groundsman	Power Plant Operator 1 & 2
Labor Foreman	Shipping and Mailing Clerk 1,
Life Saving Station Operator	2 & 3
Maintenance Man	Utility Plant Operator 1 & 2
Maintenance Mechanic 1 & 2	Window Washer"

One of the lists furnished by the State Employer was broken down by classification, including the sites of employment, the division employed, the department employed and the name of the employee occupying that position in that division and department. In determining the showing of interest in all cases and especially in the case involving the Physical Plant Divisions the Commission only considered those "blue collar" employees occupying the positions set forth above 2/ employed at the University of Wisconsin-Madison. The showing of interest with respect to the alleged blue collar unit in the Physical Plant Divisions was sufficient to warrant further consideration. However, a number of the blue collar positions in the Physical Plant Divisions are also in other divisions or departments of the Madison campus. The following tabulation indicates the classification involved, the number of positions in the Physical Plant Divisions, the number of other divisions where employees occupying the similar classifications are employed, as well as the total number of employees occupying the same classifications in such other divisions:

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- 1/ Counsel for the Petitioner seems to have anticipated the intent of the Commission's rationale as indicated in paragraph 3 of its Motion for reconsideration.
- 2/ The Petitioner did not question the correctness of said list of classifications.

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<u>Classification</u>	<u>Number of Positions in Physical Plant Divisions</u>	<u>Number of Other Divisions</u>	<u>Total Number of Employees in Other Divisions</u>
Automotive Mechanic 1	3	0	0
Automotive Mechanic 2	3	1	3
Body and Fender Repairman	1	0	0
Building Maintenance Helper 1	79	4	105
Building Maintenance Helper 2	333	8	162
Building Maintenance Helper 3	23	6	15
Exterminator	1	0	0
Gardner 1	3	3	11
Gardner 2	1	3	15
Groundsman	9	0	0
Labor Foreman	3	4	4
Laborer 1 3/	0	3	5
Laborer 2 3/	19	8	20
Life Saving Station Operator	2	0	0
Maintenance Man	10	4	20
Maintenance Mechanic 1	8	8	34
Maintenance Mechanic 2	0	1	3
Mechanician 1	2	4	7
Mechanician 2	12	6	19
Motor Vehicle Dispatcher	2	1	1
Motor Vehicle Operator 1	11	8	13
Motor Vehicle Operator 2	6	0	0
Parking Attendant	4	2	11
Power Plant Equipment Operator	11	0	0

3/ Not included in classification list furnished by the State Employer, but employe list indicates classification to be included in Physical Plant Divisions.

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<u>Classification</u>	<u>Number of Positions in Physical Plant Divisions</u>	<u>Number of Other Divisions</u>	<u>Total Number of Employees in Other Divisions</u>
Power Plant Helper	2	0	0
Power Plant Operator 1	0	0	0
Power Plant Operator 2	7	0	0
Shipping and Mailing Clerk 1	0	8	17
Shipping and Mailing Clerk 2	0	3	3
Shipping and Mailing Clerk 3	4	0	0
Utility Plant Operator	4	0	0
Window Washer	23	2	3

In a Direction issued by the Commission involving the University of Wisconsin-Milwaukee (Decision No. 8296), issued on November 30, 1967, 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 employees in the desired unit as will persuade the Commission to permit the employees 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 employees are employed, the nature of the duties performed by the employees in issue, the skills involved, separate supervision in significant levels of supervision, and the similarity or dis-similarity in conditions of employment."

In that proceeding the Commission refused to establish divisional units among blue collar employees and found that all blue collar employees employed at the University of Wisconsin-Milwaukee campus constituted an appropriate collective bargaining unit.

The Petitioner in requesting a unit of employees employed in the Physical Plant Division would not include all blue collar employees employed on the Madison campus of the State Employer, as indicated in the tabulation reflected above.

Furthermore, it is to be noted that all blue collar employees on the Madison campus are presently included in a collective bargaining unit consisting of "all employees in the classified service of the

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University of Wisconsin (excluding the University of Wisconsin-Milwaukee) excluding office clerical employees, professional employees, confidential employees, limited term employees, management employees, supervisory employees and building trades craft employees" employed throughout the University of Wisconsin-Madison campuses.

It is to be understood that the basic reason for a finding that the unit desired in the case involved is inappropriate since the unit desired does not include all blue collar employees employed by the University of Wisconsin-Madison but only those in the Physical Plant Divisions. Further, the Physical Plant Division is not such a division, or divisions, which constitute such a separate division or divisions, wherein, in the Commission's opinion, the employees should be given the opportunity to establish themselves as a separate unit.

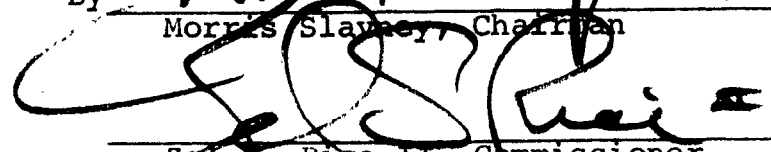
Since the newly enacted State Employment Labor Relations Act has now been signed by the Governor and is awaiting publication and since said Act statutorily establishes appropriate bargaining units, the Commission will not entertain and process any petition wherein the bargaining unit alleged to be appropriate does not fall within the statutory units established in the new legislation.

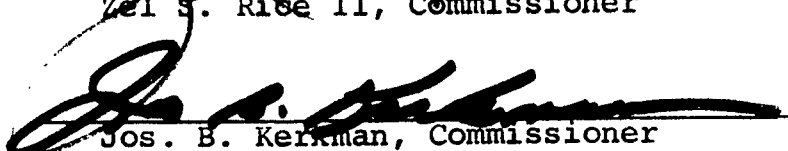
Dated at Madison, Wisconsin, this 27th day of April, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slaymaker, Chairman


Zel S. Rice II, Commissioner


Jos. B. Kerkman, Commissioner

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