

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of	:	
WISCONSIN EDUCATION ASSOCIATION	:	
For a Declaratory Ruling Under Sub	:	Case VIII
Chapter V of Chapter 111 of the	:	No. 16478 DR(S)-4
Wisconsin Statutes	:	Decision No. 11598-A
Involving Certain Employees Employed	:	
in the	:	
STATE OF WISCONSIN, DEPARTMENT OF	:	
PUBLIC INSTRUCTION	:	

Appearances:

Lawton & Cates, Attorneys at Law, by Mr. Richard Graylow, appearing on behalf of the Union.
Department of Administration, by Mr. Gene A. Vernon, Attorney at Law, appearing on behalf of the State of Wisconsin.

FINDINGS OF FACT AND DECLARATORY RULING

Wisconsin Education Association having filed a petition for Declaratory Ruling involving certain personnel in the employ of the State of Wisconsin, Department of Public Instruction; and hearing in the matter having been conducted at Madison, Wisconsin, on February 26, 1973, John T. Coughlin, Hearing Officer, being present; and during the course of the hearing evidence and arguments having been presented by the parties with respect to the following issue; whether the State of Wisconsin, Department of Public Instruction, has the duty to bargain with the Wisconsin Education Association, which Association claims to represent all classroom teachers employed at the Wisconsin School for the Visually Handicapped in Janesville, Wisconsin, and at the Wisconsin School for the Deaf in Delavan, Wisconsin; and the Commission, having considered the evidence and arguments of counsel, being fully advised in the premises makes and files the following Findings of Fact and Declaratory Rulings.

FINDINGS OF FACT

1. That the Wisconsin Education Association, hereinafter referred to as the WEA, is a labor organization and maintains offices at 222 West Washington Avenue, Madison, Wisconsin.
2. That State of Wisconsin, Department of Public Instruction, hereinafter referred to as the Employer, is an Employer within the meaning of Section 111.81(1)(16) of the State Employment Labor Relations Act as amended effective April 30, 1972.
3. That the Commission, subsequent to a duly conducted election, on November 3, 1971 certified that the WEA represented "all classroom teachers in the Department of Public Instruction employed at the Wisconsin School for the Deaf and the Wisconsin School for the Visually Handicapped."

4. That Chapter 270 of the Laws of 1971, effective April 30, 1972, amended the previously existing State Employment Labor Relations Act; and that included in such amendments were the following statutory provisions material herein:

"(3) 'Collective Bargaining unit' means a unit established under this subsection.

(a) It is the express legislative intent that in order to foster meaningful collective bargaining, units must be structured in such a way as to avoid excessive fragmentation whenever possible. In accordance with this policy, bargaining units shall be structured on a statewide basis with one unit for each of the following occupational groups:

1. Clerical and related.
2. Blue collar and nonbuilding trades.
3. Building trades crafts.
4. Security and public safety.
5. Technical.
6. Professional.
 - a. Fiscal and staff services.
 - b. Research, statistics and analysis.
 - c. Legal.
 - d. Patient treatment.
 - e. Patient care.
 - f. Social services.
 - g. Education.
 - h. Engineering.
 - i. Science.

. . . .

111.96 Effective date: transitional provisions. (1) EFFECTIVE DATE. This subchapter shall take effect upon passage and publication (published April 29, 1972), subject to the following procedure.

(a) Collective bargaining under this subchapter shall not commence prior to July 1, 1972.

(b) The provisions of any agreement negotiated under this subchapter shall not become effective prior to July 1, 1973.

(2) EXISTING AGREEMENT, EXPIRATION AND EXTENSION. (a) The provisions of all collective bargaining agreements in effect on April 30, 1972 shall be extended without change to June 30, 1973, at which time all agreements shall expire.

(b) Any additional collective bargaining agreements negotiated under the provision of the prior law must be signed and ratified prior to July 1, 1972, and such agreements shall expire on or before June 30, 1973."

5. That on August 1, 1972, almost ten months following the above-noted certification, WEA requested that the Employer bargain with it concerning said Employer's implementation of certain work schedules; that the Employer refused to bargain with WEA as requested.

6. That on February 1, 1973, WEA petitioned the Wisconsin Employment Relations Commission, hereinafter referred to as the Commission,

requesting that a Declaratory Ruling be rendered as to whether the Employer had a duty to bargain with WEA concerning a change in work schedules implemented by the Employer; that during the course of the hearing the parties agreed that the threshold issue involved in the instant case was whether the Employer had any duty to bargain with WEA on any matter, therefore, the issue to be decided was amended to reflect the foregoing agreement between the parties. 1/

7. That at all times material herein, up to and including the issuance of this Declaratory Ruling, no collective bargaining agreement had been entered into by the parties to the instant matter.

Upon the basis of the above and foregoing Findings of Fact the Commission makes the following

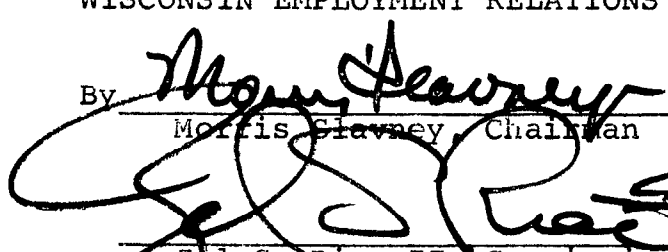
DECLARATORY RULING

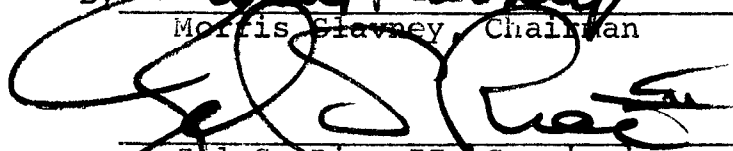
1. That the State of Wisconsin, Department of Public Instruction, does not have a duty to bargain with the Wisconsin Education Association on any matter involving the unit consisting of all classroom teachers in the employ of the Department of Public Instruction at the Wisconsin School for the Deaf and the Wisconsin School for the Visually Handicapped.

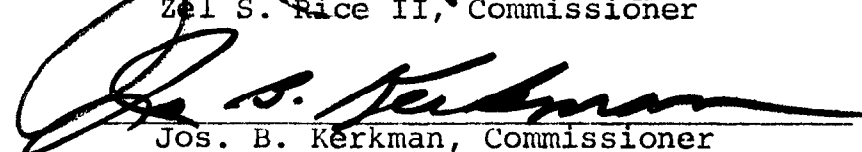
Given under our hands and seal at the
City of Madison, Wisconsin, this 19th
day of March, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Flannery, Chairman


Zel S. Rice II, Commissioner


Jos. B. Kerkman, Commissioner

1/ On November 6, 1972, a complaint of unfair labor practices was filed by the WEA against the Employer; on November 15, 1972, the WEA amended the aforesaid complaint; on November 24, 1972, the Employer filed a Motion to Dismiss; subsequent to that motion, the parties agreed to an indefinite postponement of the aforementioned unfair labor practices until the Commission would render its Declaratory Ruling in the instant matter.

STATE OF WISCONSIN, DEPARTMENT OF PUBLIC INSTRUCTION,
VIII, Decision No. 11598-A

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT AND DECLARATORY RULING

UNION'S POSITION:

The WEA contends that, as of November 3, 1971, the date on which it was certified by the Commission to represent the employees involved herein, it was, and continues to be, the bargaining representative for said employees. It argues that Section 111.83 of the Wisconsin Statutes indicate that representatives chosen for the purpose of collective bargaining by a majority of the State employees voting in a collective bargaining unit shall be the exclusive representative for all the employees in such unit for the purposes of collective bargaining. The WEA avers that at all times subsequent to its certification in November of 1971 it has been the collective bargaining representative of the employees described in the aforesaid certification description because of the language found in Section 111.96(2)(b) of the State Employment Labor Relations Act, which states that "Any additional collective bargaining agreements negotiated under the provision of the prior law must be signed and ratified prior to July 1, 1972 and such agreements shall expire on or before June 30, 1973." Finally, WEA argues that there is no provision in the aforementioned State Act which states that its certification is null and void and that consequently the WEA continues to represent the employees involved herein.

EMPLOYER'S POSITION:

The Employer argues that under Section 111.96 of the State Employment Labor Relations Act, as amended, any agreement negotiated under the provision of the prior law must be signed and ratified prior to July 1, 1972 and that such agreements expire on June 30, 1973. The Employer requests that the Commission take judicial notice of the fact that two labor organizations (The State Association of Career Employees and the Wisconsin Education Association) have filed petitions with the Commission requesting that they desire to represent a state-wide unit of professional education employees (including the employees involved in the instant case) pursuant to Section 111.81(3)(a) of the new State Act. The Employer stresses that the Union by attempting to continue their representation of a fragment of a state-wide unit is not in conformity with the aforementioned Section of SELRA which calls for the establishment of 14 state-wide units. Finally, the Employer contends that under Section 111.96(2)(b) of the above mentioned Act, its duty to bargain with WEA expired as of July 1, 1972, and that it would be committing an unfair labor practice if it bargained with WEA while a question of representation was pending.

DISCUSSION:

Section 111.96(2)(a) of the State Employment Labor Relations Act provides that the provisions of collective bargaining agreements in effect prior to the effective date of the statute "shall be extended without change to June 30, 1973, at which time all agreements shall expire." Assuming that a collective bargaining agreement was in effect between the parties on or before April 30, 1972, said agreement would have been extended, without further bargaining, to June 30, 1973, at which time said agreement would have expired.

Section 111.96(2)(b) provides that "any additional collective bargaining agreements" which were negotiated under the provisions of the prior law "must be signed and ratified prior to July 1, 1972," and further that its agreements would expire on or before June 30, 1973.

In this matter there were no agreements between the parties either signed or negotiated prior to July 1, 1972. The WEA, some 10 months after its certification, requested the Employer on August 1, 1972, to bargain on certain matters affecting the unit for which the WEA had been certified, namely, all classroom teachers in the employ of the Department of Public Instruction at the Wisconsin School for the Deaf and the Wisconsin School for the Visually Handicapped. This request occurred after the adoption of the amendments to the State Employment Labor Relations Act. The unit represented by the WEA is no longer appropriate as can be readily perceived under Section 111.81(3)(a).

The newly amended State Employment Labor Relations Act, effective April 30, 1972, extinguished the State's duty to bargain on matters affecting employees in previously certified units where such units do not constitute an appropriate unit under the provisions of the amended State Employment Labor Relations Act.

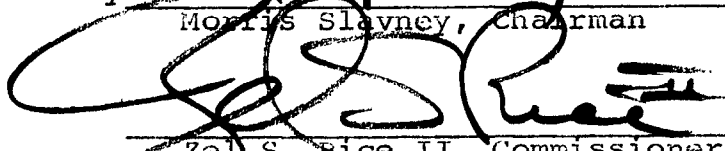
Had the WEA and the State reached an agreement with respect to the employees in the unit involved prior to July 1, 1972, neither party could have bargained any changes in such agreement after July 1, 1972. The fact that the parties had not reached any agreement prior to July 1, 1972, does not grant the WEA the right to bargain on matters relating to the unit involved. Also, the fact that petitions are pending before the Commission requesting an election in the professional unit of education would not in itself prevent the parties from bargaining since the request was made within one year of the date on which the WEA had been certified as the collective bargaining representative of the employees in the unit involved. However, the provisions in the amended State Employment Labor Relations Act, under the circumstances involved herein, negates any duty which the State would normally have to bargain with the certified representative. The provisions in Section 111.96 specifically eliminates any duty of the State to bargain on any matters affecting a unit which is no longer appropriate under the amended State Employment Labor Relations Act.

Dated at Madison, Wisconsin, this 19th day of March, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner


Jos. B. Kerkman, Commissioner