

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of	:	
WISCONSIN FEDERATION OF TEACHERS,	:	Case XXVIII
LOCAL 3271, AFT, AFL-CIO	:	No. 16176 SE-63
Involving the Unit of Professional -	:	Decision No. 11885-L
Education Employees in the Employ of	:	
STATE OF WISCONSIN	:	

Appearances:

Mr. John S. Williamson, Jr., Attorney at Law, appearing on behalf of the Union.
Mr. Lionel L. Crowley, Attorney at Law, Bureau of Collective Bargaining, appearing on behalf of the State Employer.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND
ORDER CLARIFYING BARGAINING UNIT

On January 11, 1978, the above-named Union petitioned the Commission to issue an order clarifying the existing Professional-Education unit of employees of the State Employer. ^{1/} Examiner Sherwood Malamud held a hearing in the matter on May 2, 1978, at Madison, Wisconsin. Briefs were submitted on or before September 28, 1978. The Commission has considered the evidence, arguments and briefs, and, being fully advised in the premises, issues the following Findings of Fact, Conclusions of Law and Order Clarifying Bargaining unit.

FINDINGS OF FACT

1. Wisconsin Federation of Teachers, Local 3271, AFT, AFL-CIO, herein Union, is a labor organization with a mailing address of c/o Margaret A. Liebig, Staff Representative, Wisconsin Federation of Teachers, 1335 Spaight Street, Madison, Wisconsin 53703.

2. The State of Wisconsin is the State Employer, with a mailing address of Department of Employment Relations, State of Wisconsin, 149 East Wilson Street, Madison, Wisconsin 53702. The State Employer, through its agent, the State Historical Society of Wisconsin, operates, inter alia, four historical sites known as Stonefield Village, Pendarvis Historical Site, Villa Louis Museum, and Old Wade House-Carriage House.

3. The Union was certified as the representative of the Professional-Education unit of state employees on February 7, 1974, following an election. During the representation proceeding leading to that certification, the Union and the State Employer stipulated to the inclusion in the unit of all Curator and Archivist positions.

^{1/} The original petition for election concerning this bargaining unit resulted in Decision No. 11884-J Case XX.

At that time, the Curator positions included Curators I, II, III and IV. Since each of the individuals who managed one of the four historical sites noted above held either a Curator I, II or III position at the time of said election, the position of each was included in the unit at that time and was treated as included therein until December, 1977.

4. In December, 1977, following a survey of the positions in the Archivist and Curator classification by the State Employer, the State Employer's Personnel Board retitled as Historical Site Managers the positions of the individuals managing the four historical sites noted above, and also restructured the Archivist and Curator positions across six grades instead of four, i.e., Curator I through Curator VI. Since that time, the State Employer has treated the Historical Site Managers as excluded from the unit.

5. The Union filed the instant petition on January 11, 1978, requesting an order declaring that the Historical Site Managers are properly included in the bargaining unit. The State Employer has opposed the petition on the grounds that the positions are management employes and/or performing in a supervisory capacity.

6. The only material change in the duties and responsibilities of the individuals managing the four sites noted above, from the time of the above-noted stipulation to the present, resulted from a reorganization of the Society, pursuant to which the Society's Historical Sites and Markers Division was transferred from the close supervision of an Administrator of its own to the more general supervision of an Administrator and a proposed Assistant Administrator of a broadened Museums Division.

7. The duties and responsibilities of the Historical Site Manager now consist, in small part, of work assignment, evaluation, grievance adjustment and effective recommendation of hiring (from a list of qualifieds supplied by other State Employer personnel functionaries), and promotion with regard to from one to three subordinate permanent employee(s) who perform maintenance (and in some cases clerical) work at the site managed. The Historical Site managers are the only source of on-site supervision of said permanent personnel since the next higher level of supervision is headquartered at a geographically remote location and visits the site only sporadically and infrequently. Therefore, the Historical Site Managers have sufficient supervisory duties and responsibilities to warrant the conclusion that they are supervisors.

Based on the above Findings of Fact, the Commission makes and issues the following

CONCLUSIONS OF LAW

1. The State Employer's late 1973 or early 1974 stipulation to the inclusion in the unit of Curator and Archivist positions does not estop it from treating the Historical Site Manager position as excluded from the Professional-Education unit.

2. The Historical Site Manager positions are supervisors within the meaning of Section 111.81(19), Stats.

Based on the above Findings of Fact and Conclusions of Law, the Commission makes and issues the following

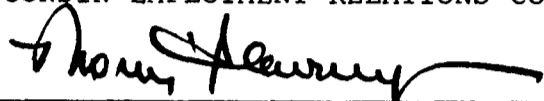
ORDER CLARIFYING BARGAINING UNIT

Since the Historical Site Manager positions are supervisors, they are properly excluded from the statutory Professional-Education unit of employees of the State Employer.

Given under our hands and seal at the
City of Madison, Wisconsin this 27th
day of February, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Morris Slavney, Chairman



Marshall L. Gratz, Commissioner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER CLARIFYING BARGAINING UNIT

BACKGROUND AND PARTIES' POSITIONS

The Union seeks an order clarifying the Professional-Education unit it represents so as to include the Historical Site Manager positions which the State Employer has treated as excluded from the unit since it so retitled four positions formerly in the bargaining unit in December of 1977.

The Union contends, contrary to the State Employer, that

1. Since the Historical Site Manager positions perform the same duties as did Curators I, II and III before their title was changed in December of 1977, the State Employer is estopped from treating said positions as excluded by its stipulation in connection with the 1974 certification election proceeding that the employees performing such duties were included in the unit.
2. If the merits of the case are addressed, the Historical Site Managers are neither supervisory nor managerial personnel.
 - a. In determining whether they are supervisory, no weight may be given to supervisory responsibilities as regards limited term employees since such individuals are not "employees" within the meaning of Section 111.81(15), Stats., and since supervisory activity under Section 111.81(19), Stats., is recognized only with respect to "employees".
 - b. Their supervisory responsibilities with regard to the other permanent employee(s) at the sites are routine and only incidental to their primarily curatorial positions.
 - c. Their budget preparation, site construction and public relations roles are not sufficient to make them managerial under the Commission's case law standards.

DISCUSSION:

Our policy of refusing, in a unit clarification, to undermine an agreement regarding the status of certain positions has been limited to cases ". . . where the agreement is not repugnant to the act . . . and, further, where there is an absence of any intervening events which materially affect the status of the employees in issue." ^{2/}
The cases cited by the Union do not stand for a contrary conclusion. ^{3/}

^{2/} Department of Administration (Professional-Education) (15108)
12/76.

^{3/} Amery Jt. School District (15793-A) 4/78; and Stoughton Jt. School District (15995) 12/77.

Here, if the State Employer's claim of managerial and/or supervisory status is valid, inclusion of the disputed positions in the unit would be repugnant to SELRA. For, SELRA clearly contemplates that collective bargaining units of "employees" shall exclude supervisors, managerial personnel and certain other categories of personnel. 4/ Moreover, there appears to have been a material change in circumstances affecting the status of the instant positions by reason of the reduction in the intensity of outside supervision (from weekly visitations through the year to sporadic and far less frequent ones) that resulted from the reorganization of the Society and transfer of the responsibility for the four sites in question to the Museum Division.

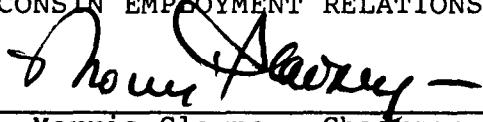
We therefore reject the Union contention that the 1974 stipulation forecloses the State Employer from claiming that the positions in question are supervisory and managerial so as to warrant exclusion from the unit.

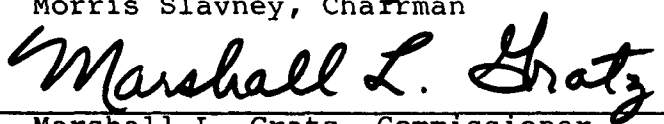
The supervisory duties and responsibilities of the Historical Site Managers with respect to the permanent employee(s) employed at the sites 5/ are substantial in nature, though they do not occupy a substantial portion of the Manager's work time. Nevertheless, since there is no other meaningful source of supervision of such employees available to perform those functions, we have deemed the Managers to be supervisors (and properly excluded from the unit) on the strength of that supervisory responsibility alone. We therefore do not find it necessary to determine what, if any, weight is to be accorded to supervision of limited term employees in determining supervisory status. We also find it unnecessary to determine whether the Managers are management personnel.

Dated at Madison, Wisconsin this 27th day of February, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Marshall L. Gratz, Commissioner

4/ See, Sections 111.81(2)(3)(5) and (15), Stats.

5/ Those duties and responsibilities are noted in Finding 7, above.

