

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

STATE ASSOCIATION OF CAREER
EMPLOYEES,

Complainant,

vs.

STATE OF WISCONSIN,
DEPARTMENT OF ADMINISTRATION.

Respondent.

Case XLI
No. 17110 PP(S)-19
Decision No. 12119-C

Appearances:

Mr. Robert C. Kelly, Attorney at Law, appearing on behalf of
the Complainant.

Mr. John F. Kitzke, Director Employment Relations, appearing on
behalf of the Respondent.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

The above named Complainant having on August 24, 1973 filed a complaint with the Wisconsin Employment Relations Commission wherein it alleged that the above named Respondent has committed unfair labor practices within the meaning of the Wisconsin State Employment Labor Relations Act; and hearing on said complaint having been held at Madison, Wisconsin, on September 24, 1973, Howard S. Bellman being present; and the Commission having considered the evidence and arguments and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That State Association of Career Employees, hereinafter referred to as the Complainant, is a labor organization within the meaning of Section 111.81(9), Wisconsin Statutes, having its offices at 114 East Mifflin Street, Madison, Wisconsin 53703.

2. That State of Wisconsin, Department of Administration, hereinafter referred to as the Respondent, is an employer within the meaning of Section 111.81(16), Wisconsin Statutes; and that the Department of Transportation and the Department of Natural Resources are agencies of the State of Wisconsin.

3. That, prior to June 15, 1973, certain individuals employed by the Respondent as supervisors within the meaning of Section 111.81(19), Wisconsin Statutes, authorized deductions from their earnings for payment of dues to the Complainant.

4. That, prior to June 15, 1973, the Respondent caused a directive to be distributed to various departments, including the Department of Transportation and the Department of Natural Resources, directing such departments to no longer deduct sums of monies from the earnings of supervisory employees in such, departments for dues for the Complainant; that on or about June 15, 1973, Robert W. Connors, an agent of the Department of Natural Resources, caused a document to be distributed to supervisory employees employed by said department who had previously authorized a dues deduction from their earnings for the Complainant, to the effect that the said department would no longer continue to deduct dues for the Complainant from their earnings after July 1, 1973; that on or about July 10, 1973, John Roslak, an agent of the Department of Transportation, caused a document to be

distributed to supervisory employees of the Department of Transportation, named therein, who had previously authorized a dues deduction from their earnings for the Complainant, advising said supervisors that cancellation of their dues deduction for the Complainant was to become effective July 22, 1973; and that the Respondent, by said agents, terminated the dues deductions of such supervisory employees and refused, and continues to refuse, to reinstate the payroll deduction of dues for the Complainant from the earnings of said supervisory employees.

On the basis of the above and foregoing Findings of Fact, the Commission makes the following

CONCLUSION OF LAW

That all of the individuals whose payroll deductions for dues for the Complainant were terminated on or about July 1, 1973 in the Department of Natural Resources, and on or about July 22, 1973 in the Department of Transportation, were supervisors within the meaning of Section 111.81(19), Wisconsin Statutes, and were not employees within the meaning of Section 111.81(15), Wisconsin Statutes; and that, therefore, by the said terminations of dues deductions, the Respondent, State of Wisconsin, Department of Administration, has not committed, and is not committing, unfair labor practices within the meaning of Section 111.84(1)(b) of the State Employment Labor Relations Act.

On the basis of the above and foregoing Findings of Fact and Conclusion of Law, the Commission makes the following

ORDER

IT IS ORDERED that the complaint initiating the instant matter be, and the same hereby is, dismissed.

Given under our hands and seal at the
City of Madison, Wisconsin this 18th
day of January, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner


Howard S. Bellman, Commissioner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER

The complaint was filed in this matter on August 24, 1973. The matter was set for hearing by notice issued on August 29, 1973. On September 5, 1973, the Respondent filed a Motion to Dismiss. Based on a finding that the instant matter was a contested case within the meaning of Section 227.01, Wisconsin Statutes, requiring a hearing pursuant to Section 227.07, Wisconsin Statutes, said Motion to Dismiss was denied by an Order dated September 6, 1973. 1/ Answer was filed on September 17, 1973. Hearing was held on September 24, 1973, and the transcript of said hearing issued on November 26, 1973.

The Commission initially appointed Howard S. Bellman to act as Examiner in this matter, pursuant to Section 111.07(5) of the Wisconsin Statutes. 2/ During the period intervening since that Order, Mr. Bellman has been appointed to the Commission, and the Commission has issued a separate Order setting aside the appointment of the Examiner and transferring the case to the Commission. 3/

POSITION OF THE COMPLAINANT:

In its complaint, the State Association of Career Employees (SACE) alleges that it is a professional organization whose membership consists of "employee(s)", as that term is defined by Section 111.81(15) of the State Employment Labor Relations Act (SELRA), and "supervisor(s)" as that term is defined by Section 111.81(19) of the SELRA. SACE also alleges that it is a "labor organization" within the meaning of Section 111.81(9) of the SELRA.

SACE contends that the Respondent has committed unfair labor practices, in violation of Section 111.84 of SELRA, which states, inter alia:

"111.84 UNFAIR LABOR PRACTICES. (1) It is an unfair labor practice for an employer individually or in concert with others:

. . . .

"(b) To initiate, create, dominate or interfere with the formation or administration of any labor or employee organization or contribute financial support to it. However, it is not an unfair labor practice for the employer to reimburse state employees at their prevailing wage rate for the time spent during the employee's regularly scheduled hours conferring with the employer's officers or agents and for attendance at commission or court hearings necessary for the administration of this subchapter. Professional supervisory personnel may maintain membership in professional organizations; however, as members of such organizations they shall be prohibited from those activities related to collective bargaining in which the professional organization may engage."

It is undisputed that agents of the Department of Transportation and the Department of Natural Resources, acting on instructions from the Department of Administration, terminated deductions from the earnings of

1/ Decision No. 12119-A.
2/ Decision No. 12119.
3/ Decision No. 12119-B.

certain supervisors of amounts previously authorized by those supervisors for payment of dues to SACE. Thus, SACE argues, the Respondent's actions "interfere with the . . . administration of [a] labor or employe organization."

POSITION OF THE RESPONDENT:

The Respondent contends first that the supervisors in question were not "employee(s)" within the meaning of the SELRA and that they have no right to dues deduction. Secondly, while recognizing Section 20.921, Wisconsin Statutes, authorized payroll deduction for payment of dues to employe organizations for any state officer or employe, the Respondent contends that an unfair labor practice proceeding before the Commission is an inappropriate proceeding for a claim that the Respondent has violated Section 20.921 with regard to state officers or employees other than those within the definition of "employee" contained in the SELRA. Thirdly, the Respondent denies that SACE is a professional organization within the meaning of Section 111.84(1)(b) of the SELRA, but contends alternatively that said provision refers to membership in such organizations, not dues deductions for such organizations.

DISCUSSION:

The hearing held in this case was devoted entirely to the arguments of the parties and to the taking of evidence on the question of whether SACE is a professional organization within the meaning of Section 111.84(1)(b) of the SELRA. However, in our view, after hearing the arguments of the parties, the crucial fact in this case is both alleged in the complaint and admitted in the answer: i.e., that the individuals whose dues checkoffs were terminated by the Respondent were supervisors within the meaning of Section 111.81(19) of the SELRA.

The definition of "employee" contained in the SELRA and cited in the complaint clearly excludes supervisors, and the rights granted by Section 111.82 of the SELRA extend only to such "employees" and not to supervisors. Section 111.81(3)(d) also specifically states that supervisors are not considered employees under the SELRA.

We hold that although the Complainant herein is a labor organization, and it may suffer from the loss of the dues deduction of its supervisor-members, such loss is not actionable as an unfair labor practice under the SELRA because said supervisor-members are not such "employees" as the SELRA protects. Furthermore, the rights provided by the SELRA do not extend to labor organizations except insofar as such organizations represent or claim to represent employees.

The effect upon the Complainant's nonsupervisor-members of the Respondent's refusal to continue the dues deductions is considered beyond the scope of the SELRA's intent. Section 111.81(3)(d) prohibits a single labor organization from holding certified representative status respecting both employees and supervisors. Therefore, it is inferred that the membership of supervisors in an organization, such as Complainant which represents employees is, for the purposes of the Act, incidental and not within the Act's contemplation.

We agree with the Respondent that the instant proceeding is not an appropriate proceeding for testing the validity of the Respondent's action under Section 20.921, Wisconsin Statutes.

A determination of the question of whether SACE is a professional organization within the meaning of Section 111.84(1)(b) of the SELRA

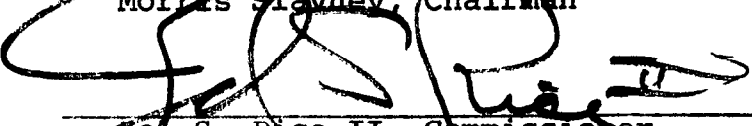
is not necessary to our findings and conclusions herein, and we do not reach that issue.

Dated at Madison, Wisconsin this 18th day of January, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slawney, Chairman


Zel S. Rice II, Commissioner


Howard S. Bellman, Commissioner