

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

WISCONSIN PROFESSIONAL CONSERVATION
WARDEN'S ASSOCIATION

Requesting a Declaratory Ruling with
Respect to the Application of Section
111.81(3)(am) of the State Employment
Labor Relations Act

Involving Employees in the Employ of

STATE OF WISCONSIN

Case XLV

No. 18076 DR(S)-6

Decision No. 12841-A

Appearances:

Bakken & Feifarek, Attorneys at Law, by Mr. James F. Bakken, appearing
on behalf of the Petitioner.

Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. David Loeffler,
appearing on behalf of Local 55, Wisconsin State Patrol, AFSCME,
AFL-CIO.

Lawton & Cates, Attorneys at Law, by Mr. Richard Graylow, appearing
on behalf of Council 24, AFSCME, AFL-CIO.

Mr. Gene A. Vernon, State of Wisconsin, Department of Administration,
Employment Relations Section, appearing on behalf of the
State of Wisconsin.

DECLARATORY RULING

Wisconsin Professional Conservation Warden's Association having
filed a petition with the Wisconsin Employment Relations Commission,
wherein it requested the Commission to issue a Declaratory Ruling with
respect to the application of Section 111.81(3)(am) of the State
Employment Labor Relations Act, involving employees in the employ of
the State of Wisconsin, and pursuant to notice to interested parties,
hearing in the matter having been held on July 19, 1974 at Madison,
Wisconsin, Chairman Morris Slavney and Commissioner Zel S. Rice II
being present, and during the course of the hearing, Wisconsin Council
24, AFSCME, AFL-CIO, and Local 55, Wisconsin State Patrol, AFSCME, AFL-
CIO, having been permitted to intervene in the matter; and the Commission
having considered the record and arguments of the parties, and being
fully advised in the premises, makes and files the following Findings
of Fact, Conclusions of Law and Declaratory Ruling.

FINDINGS OF FACT

1. That Wisconsin Professional Conservation Warden's Association,
hereinafter referred to as the Association, is a labor organization exist-
ing for the purpose of representing certain employees of the State of
Wisconsin in collective bargaining, and has its office at Madison, Wis-
consin.

2. That the State of Wisconsin, hereinafter referred to as the
Employer, has its principal offices at Madison, Wisconsin.

3. That the Commission on August 25, 1972 certified Wisconsin
Council 24, AFSCME, AFL-CIO, hereinafter referred to as Council 24, as the
exclusive collective bargaining representative of all otherwise eligible
state employees included in the statutorily created unit of "security

No. 12841-A

and public safety"; that at all times material thereafter, Council 24 has been, and is, the collective bargaining representative of the State employees in said unit; and that, as such, Council 24 and the Employer are parties to a collective bargaining agreement covering the wages, hours and conditions of employment of said employees, which agreement will expire June 30, 1975.

4. That the Association, on June 21, 1974, filed a petition with the Commission requesting the Commission to issue a Declaratory Ruling as to the timeliness of:

"a) Filing a Petition on about 1 July 1974 for the establishment of an additional statewide bargaining unit under Section 111.81(3)(am) Wisconsin Statutes; by a group of employees such as Conservation Wardens who are part of a larger group (Security and Public Safety) that is currently under a labor contract with the State that extends until 1 July 1975.

b) Assuming such additional statewide unit is found appropriate, whether a Petition for an election to determine the certified representative for such additional unit may be filed at a time more than ninety (90) days prior to the expiration of the labor agreement between the larger bargaining unit (Security and Public Safety) and the State.

c) Further assuming such additional statewide unit is found appropriate and a bargaining representative is elected, whether such certified representative can commence bargaining for the new unit with the State prior to ninety (90) days before the expiration of the existing labor agreement between the larger unit (Security and Public Safety) and the State."

Based upon the above and foregoing Findings of Fact, the Commission makes the following

CONCLUSIONS OF LAW

1. That the State Employment Labor Relations Act does not, after July 1, 1974, place any time limitation for the filing and the processing of any petition for the establishment of additional or modified statewide units within the meaning of Section 111.81(3)(am) of the Act.

2. That Section 111.83(5) of the State Employment Labor Relations Act precludes the Wisconsin Employment Relations Commission from processing a petition for an election in an additional or modified statewide unit, where the employees in the unit so established are covered by an existing collective bargaining agreement, unless such petition is filed not more than 90 but less than 60 days prior to the expiration of such collective bargaining agreement.

3. That, assuming the required number of employees in the additional or modified statewide unit select a bargaining representative pursuant to Section 111.83(1) of the State Employment Labor Relations Act, said representative has the right and the State Employer has the duty to bargain collectively with respect to the wages, hours and working conditions affecting employees in the modified or additional statewide unit upon the certification of the results of the representation election conducted by the Commission; but that, however, as a result of our Conclusion of Law set forth in paragraph two hereof, such collective bargaining cannot commence any time prior to 90 days preceding the expiration date of any existing collective bargaining agreement covering employees in the additional or modified statewide unit.

Based upon the above and foregoing Findings of Fact and Conclusions of Law, the Commission issues the following

DECLARATORY RULING

1. That the Wisconsin Employment Relations Commission deems any petition filed after July 1, 1974 by the State Employer or any labor organization, wherein the petitioner seeks to establish statewide units in addition to, or in modification of the statewide units statutorily established in Section 111.81(3)(a) of the State Employment Labor Relations Act, to be timely filed notwithstanding the existence of any existing certification or collective bargaining agreement covering employees involved in the claimed appropriate additional or modified statewide unit; and that, in said regard, the Commission will process said petition and determine whether the requested additional or modified statewide unit is appropriate.

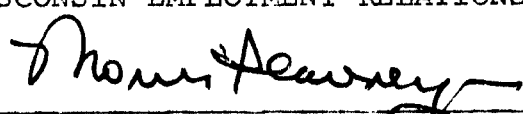
2. That, assuming such modified or additional statewide unit is found to be appropriate, a petition for election to determine the collective bargaining representative for the employees in said unit may only be filed within the time period set forth in Section 111.83(5) of the State Employment Labor Relations Act.

3. That, assuming a bargaining representative is selected to represent employees in a modified or additional statewide unit, such representative may commence collective bargaining with the State Employer at any time following the issuance by the Commission, of a certification of such representative status; but, that, however, any collective bargaining agreement in effect covering the employees in the pre-existing unit shall continue in full force and effect, as it applies to the wages, hours and working conditions of the employees in the pre-existing unit, including the employees in the modified or additional statewide unit, until the termination date of said collective bargaining agreement.

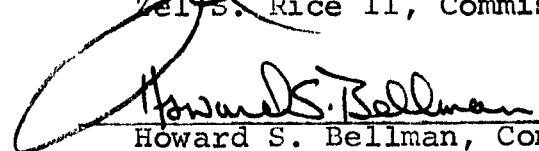
Given under our hands and seal at the
City of Madison, Wisconsin this 25th
day of November, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner


Howard S. Bellman, Commissioner

MEMORANDUM ACCOMPANYING
DECLARATORY RULING

In issuing the instant Declaratory Ruling, the Commission has considered the provisions of the State Employment Relations Act (SELRA) which are deemed pertinent to the determination of such issues. Such provisions are as follows:

"111.81 Definitions. In this subchapter:

. . .

(2) 'Collective bargaining' means the performance of the mutual obligation of the state as an employer, by its officers and agents, and the representatives of its employees, to meet and confer at reasonable times, in good faith, with respect to the subjects of bargaining provided in s. 111.91(1) with the intention of reaching an agreement, or to resolve questions arising under such an agreement.

. . .

(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:

. . .

4. Security and public safety.

. . .

(am) Notwithstanding par. (a), the legislature recognizes that additional or modified statewide units may be appropriate in the future. Therefore, after July 1, 1974, the employer or employe organizations may petition the commission for the establishment of additional or modified statewide units. The commission shall determine the appropriateness of such petitions taking into consideration both the community of interest and the declared legislative intent to avoid fragmentation whenever possible.

. . .

5. 'Election' means a proceeding conducted by the commission in which the employees in a collective bargaining unit cast a secret ballot for collective bargaining representatives, or for any other purpose specified in this subchapter.

. . .

111.83 Representatives and elections.

(1) A representative chosen for the purposes of collective bargaining by a majority of the state employees voting in a

collective bargaining unit shall be the exclusive representative of all of the employes in such unit for the purposes of collective bargaining.

. . .

(2) Whenever the commission decides to permit employes to determine for themselves whether they desire to establish themselves as a collective bargaining unit, such determination shall be conducted by secret ballot. In such instances, the commission shall cause the balloting to be conducted so as to show separately the wishes of the employes in the voting group involved as to the determination of the collective bargaining unit.

. . .

(5) While an agreement between a labor organization and an employer is in force under this subchapter, a petition for election may only be filed not more than 90 days nor less than 60 days prior to the expiration of such agreement. An election held pursuant to such petition shall be held only if the petition is supported by proof that at least 30% of the employes desire a change or discontinuance of existing representation."

It is clear that after July 1, 1974, the State Employer or any labor organization may petition the Commission for additional or modified statewide units. SELRA does not set forth time limitations for the filing of petitions seeking the establishment of such units, nor does the Act set forth any limitation upon the Commission as to the processing of such a petition. Therefore, it logically follows that the Commission may conduct a hearing on such petition at any time following the filing thereof and make its determination as to whether the additional or modified unit involved in the petition is an appropriate unit for the purposes of collective bargaining.

However, Section 111.83(5) sets forth a specific period of time for the filing of petitions for elections where the employes involved are covered by a collective bargaining agreement. Such petitions may only be filed between 90 and 60 days prior to the expiration of the agreement. We recognize that should a petition be filed within said time period and be processed by the Commission, including the conduct of the election, that there exists a possibility that the certification of results of such election might not issue until after the commencement of the new fiscal biennium, since collective bargaining agreements presently existing in state employment terminate upon the close of the fiscal period. While the Commission recognizes that the statutory period for the filing of such petitions undoubtedly curtails the period for collective bargaining on an agreement which the parties would desire to fully consummate prior to the commencement of the fiscal biennium, the statute is quite clear and permits the Commission no other interpretation.

It, therefore, follows that should the Commission establish an additional or modified statewide unit, and should the employes therein select a bargaining representative, bargaining cannot commence until the certification of the results of the representation election are

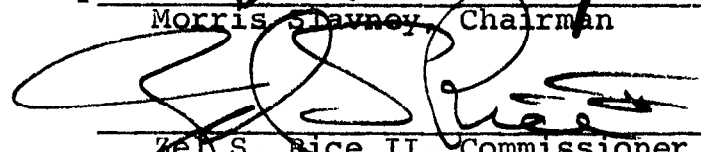
However, where there exists no collective bargaining agreement covering employees in a statewide unit, there is no time limitation on when petitions for elections may be filed involving employees in an additional or modified statewide unit, and should the employees select a bargaining representative, where no agreement exists, such bargaining representative has the right, and the State Employer has the duty, to commence bargaining in good faith immediately following the issuance of the certification of the results of the representation election.

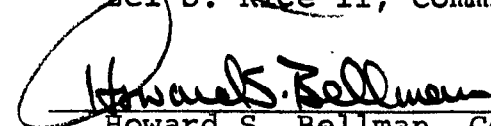
Dated at Madison, Wisconsin this 25th day of November, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Ter S. Rice II, Commissioner


Howard S. Bellman, Commissioner