

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

-----  
UNIVERSITY OF WISCONSIN EMPLOYEES'  
LOCAL 171, AFSCME, AFL-CIO,

Complainant,

vs.

DEPARTMENT OF ADMINISTRATION OF  
THE STATE OF WISCONSIN, 1/

Respondent.  
-----

Case XLV  
No. 18369 PP(S)-24  
Decision No. 13082-A

Appearances:

Lawton & Cates, Attorneys at Law, by Mr. Bruce Davey, Esq.,  
appearing on behalf of Complainant.

State of Wisconsin, Department of Administration, by Mr. Gene  
Vernon, Esq., and Lionel L. Crowley, Esq., appearing for  
Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

University of Wisconsin Employees' Local 171, AFSCME, AFL-CIO, having filed a complaint and amended complaint 2/ with the Wisconsin Employment Relations Commission, herein Commission, alleging that Department of Administration of the State of Wisconsin has committed certain unfair labor practices within the meaning of Section 111.84 (1)(a) and (c) of the Wisconsin Statutes; and the Commission having appointed Amedeo Greco, a member of the Commission's staff, to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order as provided in Section 111.07(5) of the Wisconsin Statutes; and hearing on said complaint having been held at Madison, Wisconsin, on November 11, 1974, before the Examiner, and the parties having thereafter filed briefs which were received by February 26, 1975; and the Examiner having considered the evidence and arguments of counsel, makes and files the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That University of Wisconsin Employees' Local 171, AFSCME, AFL-CIO, herein Complainant, is a labor organization and at all times material herein has been the exclusive bargaining representative of certain state employees employed by the State of Wisconsin, including employees employed at the University of Wisconsin Hospital in Madison, Wisconsin.

2. That Department of Administration, State of Wisconsin, herein Respondent, is an employer within the meaning of Section 111.81(16) of the State Employment Labor Relations Act.

---

1/ Respondent's name was amended at the hearing.

2/ Complainant amended its complaint at the hearing.

5. That Respondent and Complainant are parties to a collective bargaining agreement; that Article 2, Section 1, of said agreement provides in part that Respondent recognizes Complainant as the exclusive collective bargaining agent for certain listed employee classifications, including employees classified as Radiological Technicians 1, 2, 3, and 4; and that the same section provides that:

"Employees excluded from these collective bargaining units are all office clerical, professional, confidential, limited term, management, supervisory and building trades-craft employees. All employees are in the classified service of the State of Wisconsin as listed in the certifications by the Wisconsin Employment Relations Commission as set forth in this Section.

The parties will review all new classifications and if unable to reach agreement as to their inclusion or exclusion from the bargaining units, shall submit such classifications to the Wisconsin Employment Relations Commission for final resolution."

4. That in about December 1973, Respondent posted a job description for the newly created position of "radiological technician 4 - supervisor" in Respondent's University of Wisconsin Hospital in Madison, Wisconsin; and that said description in part provided:

"RADIOLOGICAL TECHNICIAN 4-SUPERVISOR

December, 1973

Please Post

WHO MAY APPLY: This is a competitive promotional examination open to any classified employee in the University of Wisconsin-Madison in the Center for Health Sciences employing unit not serving on a limited term, emergency or provisional employment basis who meets the qualifications listed below. Seasonal or probationary employees who meet the qualifications are eligible to compete.

LOCATION: Radiotherapy Center, University Hospitals. Persons who apply at this time will be considered for employment in this position only.

SALARY RANGE: \$734-\$1023 a month. Within the limitations of the salary range of the classification to which he or she is promoted, an employee will start at \$35.00 above his present salary or at the minimum of the new salary range, whichever is higher. Upon the successful completion of a six-month probationary period, the appointee will receive an additional \$35.00 a month increase. Biweekly Salary Range: \$360.46-\$470.35.

JOB DESCRIPTION: Act as Chief Radiotherapy Technologist and lead worker on treatment planning. Assist in the formal instruction of radiotherapy technologist students. Supervise Radiotherapy Technologists, assign and schedule students to work, and schedule patients for treatment. Be responsible for the administering of treatments, and perform related duties as required.

BARGAINING UNIT DESIGNATION: This classification is not included in any certified bargaining unit.

No. 13082-A

QUALIFICATIONS: Training and Experience - Graduation from high school, successful completion of an approved course from a school of radiotechnology, three years of experience equivalent to the Radiological Technician 2 level, and registration as a radiological technician by the A.R.R.T."

5. That Patrick Polencheck applied for said position after it was posted; that Polencheck was then employed as a radiological technician 2 at the University of Wisconsin Hospital; that Polencheck had been employed in that position for several years; and that Polencheck was then a member of a collective bargaining unit and was then required to pay union dues to Complainant.

6. That Respondent thereafter granted the posted position to Polencheck; that Polencheck assumed his duties on or about January 7, 1974, 3/ and was then reclassified as a "radiological technician 4 - supervisor"; that part of Polencheck's duties covered the special procedures area of the radiotherapy center at the University of Wisconsin Hospital; that Mary Olson, who was a member of the collective bargaining unit, had previously performed some of the duties assigned to Polencheck, but that said duties did not include the special procedures area; and that Respondent thereafter advised Polencheck on or about September 17 that he was a supervisor and as such he would have to discontinue his union membership.

7. That upon being reclassified as a "radiological technician 4 - supervisor", Polencheck received an immediate raise of thirty-five (35) dollars a month during the first six months of his new classification; that Polencheck thereafter received an additional raise of thirty-five (35) dollars for the next six months of such employment; and that, unlike bargaining unit employees, Polencheck is eligible for merit increases.

8. That in the performance of his new duties, Polencheck generally works the same hours as the approximately eight unit employees who work in radiotherapy center in the hospital; that neither Polencheck nor these unit employees punch a time clock; and that Polencheck operates a treatment planning machine which helps prepare patients for radiation therapy; that Polencheck operated this same machine prior to his reclassification; and that Polencheck spends about six hours daily performing the same type of duties performed by unit employees.

9. That Polencheck has interviewed four prospective job applicants by himself; that Polencheck thereafter made recommendations regarding their hire; that all of the recommendations were adopted by Polencheck's immediate supervisor, Dr. William Caldwell, the Director of the Radiotherapy Center; that in three of these four instances, Caldwell rested entirely on Polencheck's recommendations and did not conduct any separate independent investigation of the applicants' qualifications; that Caldwell only once interviewed an applicant after Polencheck had done so earlier, and that Caldwell did so then because that applicant whom Polencheck had recommended for hire had no prior radiotherapy training; that Caldwell in that instance hired the applicant, as recommended by Polencheck; and that Polencheck has the effective authority to hire.

10. That new hires are subject to a six month probationary period; that Polencheck recommends whether probationary employees should be retained or terminated at the end of this six month period; that

---

3/ Unless otherwise noted, all dates hereinafter refer to 1974.

Polencheck twice has made such recommendations and in both instances those recommendations were subsequently followed; that it appears that Respondent in both instances did not thereafter conduct any separate independent investigations to determine the qualifications of said probationary employees; and that Polencheck has the effective authority to discharge employees.

11. That Polencheck assigns work to unit employees; that he approves their vacation and sick leave requests; that Polencheck has warned unit employees not to abuse sick leave; that Polencheck has instituted certain work rules pertaining to vacation requests and supervision of student employees; that Polencheck assigns and approves overtime; and that Polencheck has verbally reprimanded employees on about ten or fifteen occasions.

12. That, as he did prior to his reclassification, Polencheck attends supervisory meetings; and that Polencheck meets with Caldwell weekly to discuss personnel matters.

13. That Complainant failed to present any evidence at the hearing regarding its complaint allegations that Respondent had improperly created the classification of "radiological technician 3."

Based upon the foregoing Findings of Fact, the Examiner makes and issues the following

#### CONCLUSIONS OF LAW

1. That Patrick Polencheck is a supervisor under Section 111.81(19) of the State Employment Labor Relations Act, herein Act, and that, therefore, Respondent's actions in advising Polencheck to quit his union membership were not violative of Section 111.84(1)(a) or (c), nor any other section, of the Act.

2. That no evidence has been presented to the effect that Respondent improperly created the position of "radiological technician 3" and, as a result, there is no basis for finding that Respondent's actions in this matter violated Section 111.84(1)(a) or (c), nor any other section, of the Act.

Upon the basis of the above and foregoing Findings of Fact and Conclusions of Law, the Examiner makes the following

#### ORDER

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

Dated at Madison, Wisconsin, this 13th day of May, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Amedeo Greco  
Amedeo Greco, Examiner

No. 13082-A

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

Both parties in effect agree that the primary issue 4/ presented centers on whether Polencheck is a supervisor, with Complainant alleging, and Respondent denying, that Polencheck is not a supervisor. For, once that issue is resolved, it can then be determined whether Respondent had a right to demand that Polencheck had to terminate his union membership on or about September 17, 1974.

As correctly noted by Complainant, there are some factors which support the view that Polencheck lacks supervisory status. Thus, for example, the Examiner particularly notes that Polencheck receives about the same benefits, works the same hours, and spends about seventy per cent of his time performing the same type of duties as unit employees. Further, Polencheck works alongside such unit employees, in the same general work area. Also, unit employees to some extent have a voice in arranging their own overtime and vacations.

But, on the other hand, there are also countervailing factors which show that Polencheck does exercise a considerable number of supervisory functions. Thus, as noted in paragraph 11 of the Findings of Fact, Polencheck: (1) assigns work; (2) approves vacations and leave requests; (3) has warned employees not to abuse sick leave; (4) has implemented certain work rules; (5) assigns and approves overtime and; (6) has verbally reprimanded employees. Additionally, Polencheck attends weekly meetings with Dr. Caldwell where personnel policies are discussed. Moreover, as noted in paragraphs 9 and 10 of the Findings of Fact, Polencheck has in the past effectively hired new applicants, and further, has similarly effectively recommended whether probationary employees should be either retained or terminated at the end of their probationary period. In both areas, Polencheck's recommendations were accepted (with but one exception) without any separate independent investigation being conducted. Additionally, since Polencheck spends about seventy per cent of his time on the same machine that he operated as a unit employee, and inasmuch as Polencheck is now being paid about seventy dollars a month more than in his former classification, it is reasonable to assume that Polencheck is receiving this higher salary to compensate him for the performance of the aforementioned supervisory functions.

In light of the latter factors, particularly the fact that Polencheck effectively hires applicants and recommends whether probationary employees should be retained or terminated, the undersigned finds that Polencheck is a supervisor under Section 111.81(19) of the Act and that as such, Polencheck is ineligible to be in the collective bargaining unit. As a result, Respondent did not act unlawfully when it insisted that Polencheck should drop his union affiliation with Complainant. Accordingly the complaint will be dismissed.

Dated at Madison, Wisconsin, this 13~~th~~ day of May, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Amedeo Greco  
Amedeo Greco, Examiner

---

4/ As noted above, no evidence was presented regarding the complaint allegation that Respondent improperly created the classification of "radiological technician 3." Accordingly, this complaint allegation is hereby dismissed.