

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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| In the Matter of the Petition of    | : |                      |
|                                     | : |                      |
| WISCONSIN STATE EMPLOYEES UNION,    | : |                      |
| AFSCME, COUNCIL 24, AFL-CIO         | : |                      |
|                                     | : | Case LX              |
| For Clarification of the Bargaining | : | No. 18944 SE-70      |
| Unit for Certain Employees in the   | : | Decision No. 13455-B |
| Employ of                           | : |                      |
|                                     | : |                      |
| STATE OF WISCONSIN                  | : |                      |
|                                     | : |                      |

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Appearances:

Lawton & Cates, Attorneys at Law, by Richard Graylow, Esq., appearing on behalf of the Petitioner.  
Lionel L. Crowley, Esq., Department of Employee Relations, appearing on behalf of the State Employer.

ORDER CLARIFYING BARGAINING UNIT

Wisconsin State Employees Union, AFSCME, Council 24, AFL-CIO having filed a petition with the Wisconsin Employment Relations Commission requesting the Commission to clarify an existing collective bargaining unit; and hearing on said petition having been held on May 10, 1978, at Madison, Wisconsin before Examiner James D. Lynch; and the Commission having considered the evidence and arguments of the parties and being fully advised in the premises, hereby issues the following Findings of Fact, Conclusions of Law and Order Clarifying Bargaining Unit.

FINDINGS OF FACT

1. That Wisconsin State Employees Union, AFSCME, Council 24, AFL-CIO, hereinafter referred to as Petitioner, is a labor organization representing employes for the purposes of collective bargaining and has its offices at 5 Odana Court, Madison, Wisconsin.
2. That the State of Wisconsin, hereinafter referred to as the State Employer, has its offices at Madison, Wisconsin, and has in its employ, among others, individuals occupying the classification of Research Assistant in various departments and independent agencies of State government.
3. That since April 28, 1975, AFSCME has been the exclusive representative for purposes of collective bargaining of the following unit of employes: All classified employes in the employ of the State of Wisconsin engaged in the profession of research, statistics and analysis, excluding limited term employes, confidential employes, supervisory employes, managerial employes, and all other employes; that on February 19, 1976, the unit was clarified to include the classifications of Research Analysts VI, VII, and VIII.
4. That the classification of Research Assistant was previously allocated to the clerical and related bargaining unit by the Commission based on the stipulation of the State Employer and the Petitioner, the latter as the bargaining representative of said unit.
5. That Petitioner filed the instant petition for unit clarification on February 27, 1978, wherein it requested the Commission to include the classification of Research Assistant in the professional research, statistics and analysis unit.

6. That the job duties of Research Assistants have remained the same since the date of the parties' stipulation.

7. That employes working in the classification of Research Assistant do not perform duties which involve the consistent exercise of discretion and judgment, nor do they require knowledge of an advanced type customarily obtained through a prolonged course of specialized intellectual instruction and, therefore, are not professional employes.

Upon the basis of the above and foregoing Findings of Fact, the Commission issues the following

CONCLUSIONS OF LAW

1. That the employes occupying the classification of Research Assistant are not professional employes within the meaning of Section 111.81(11)(a) of the State Employment Labor Relations Act.

2. That the inclusion of the Research Assistant classification in the clerical and related bargaining unit is not repugnant to the State Employment Labor Relations Act.

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

ORDER

That the classification of Research Assistant is properly included in the clerical and related bargaining unit and that the instant petition be, and hereby is, dismissed.

Given under our hands and seal at the City of Madison, Wisconsin, this 20<sup>th</sup> day of October, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney  
Morris Slavney, Chairman

Herman Torosian  
Herman Torosian, Commissioner

Marshall L. Gratz  
Marshall L. Gratz, Commissioner

MEMORANDUM ACCOMPANYING ORDER CLARIFYING  
BARGAINING UNIT

At hearing the parties agreed that they had previously stipulated that the classification of Research Assistant was properly included in the clerical and related bargaining unit. The Petitioner filed the instant petition for clarification on February 27, 1978 contending that "upon further reflection, study and review" Petitioner is of the opinion that said unit placement was inappropriate. It alleges no change of job duties for Research Assistants since the time of the stipulation. However, it argues that its earlier stipulation should be disregarded as the Assistants are properly considered to be professionals and their inclusion in a non-professional unit is repugnant to the State Employment Labor Relations Act (SELRA). The State Employer contends that the petition should be dismissed because the parties stipulated to the inclusion of Research Assistants in the clerical and related bargaining unit, there has been no change in job duties performed by Research Assistants since the date of stipulation, and the Research Assistants are not professional employes within the meaning of Section 111.81(11)(a).

DISCUSSION

In a unit clarification proceeding, the Commission will generally not change the composition of a bargaining unit which was voluntarily agreed upon and recognized as being appropriate unless the composition is repugnant to the relevant statute, or intervening events have occurred which materially affect the status of the employes in issue. 1/ It is undisputed that there have been no intervening events which materially affect the status of the Research Assistants. Thus, the issue is whether the inclusion of Research Assistants in the clerical and related bargaining unit is repugnant to the State Employment Labor Relations Act.

Section 111.81(3) of SELRA, defines a collective bargaining unit as follows:

"(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 state-wide 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.

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1/ State of Wisconsin (Professional-Education), No. 15108 (12/76); State of Wisconsin, No. 15103-A (5/77).

- e. Patient care.
- f. Social services.
- g. Education.
- h. Engineering.
- i. Science."

It is apparent that the legislature intended that professional and non-professional employes cannot be included in the same unit. Thus, if the classifications involved herein are professional, their inclusion in the clerical and related bargaining unit, a non-professional bargaining unit, would be repugnant to SELRA.

A professional employe is defined in Section 111.81(11)(a) as:

"(a) Any employe engaged in work:

1. Predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work;
2. Involving the consistent exercise of discretion and judgment in its performance;
3. Of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time;
4. Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical processes;"

The Research Assistants perform duties of collection, compilation, analysis, and editing of statistical data and other information. While such duties are also performed by entry level Research Analysts, which are undisputedly professional, the ability of the latter to apply a broad knowledge of statistical theory in the selection and evaluation of data differentiates them from the Assistants. Similarly, while the Assistants and Analysts often work closely, the Assistants' work is generally in support of the Analysts', and the Analysts' work is generally done with a greater degree of independence. In view of the limited educational requirements, and the absence of consistent exercise of discretion and judgment in the performance of their work, we conclude that the Assistants are not professional employes.

Because the Assistant positions are not professional, the request herein for inclusion of them in the research, statistics and analysis unit has been denied.

Dated at Madison, Wisconsin this 20<sup>th</sup> day of October, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney  
Morris Slavney, Chairman

Herman Torosian  
Herman Torosian, Commissioner

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