

Herman Torosian being present during the entire course of the hearing, 2/ and Commissioner Howard S. Bellman being present during a number of days of hearing; and at the outset of the hearing AFSCME Council 24, Wisconsin State Employees Union, AFL-CIO, and its Appropriate Affiliated Locals, hereinafter referred to as WSEU, having been permitted to intervene in the matter on the basis that it is presently the bargaining representative of state employees included in the statutorily created unit of "Security and Public Safety"; and the Commission, having considered the evidence and arguments of Counsel, being satisfied that neither of the Petitioners has established that conditions presently exist for the establishment of the units sought by each of the Petitioners, and, as a result, no question of representation exists among the employees occupying the classifications covered by the two petitions filed herein;

NOW, THEREFORE, it is

ORDERED

That the petitions filed in the above entitled matters be, and the same hereby are, dismissed.

Given under our hands and seal at the
City of Madison, Wisconsin, this *3rd*
day of July, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By *Morris Slavney*
Morris Slavney, Chairman

Howard S. Bellman
Howard S. Bellman, Commissioner

Herman Torosian
Herman Torosian, Commissioner

2/ Although a reporter was present at each session of the hearing, all parties waived the preparation of a transcript.

MEMORANDUM ACCOMPANYING
ORDER DISMISSING PETITIONS TO ESTABLISH ADDITIONAL
BARGAINING UNITS AND REQUESTING ELECTIONS TO
DETERMINE BARGAINING REPRESENTATIVES OF
THE EMPLOYEES THEREIN

The Wisconsin Professional Conservation Warden's Association, hereinafter referred to as the Association, filed a petition with the Commission requesting the Commission to establish a new collective bargaining unit consisting of employees of the State occupying the classifications of Conservation Wardens 1, 2, 3 and 4. Robert Kiewig, a State Patrol Officer, on behalf of Locals 55 and 538, AFSCME, AFL-CIO, hereinafter referred to as Locals, filed a petition requesting the Commission to establish a new collective bargaining unit consisting of police-type employees in various classifications, which would include Conservation Wardens 1, 2, 3 and 4. Presently the Conservation Wardens, as well as the employees occupying most of the classifications which the Locals desire to be included in a new bargaining unit, are included in the statutorily created unit of "Security and Public Safety." The employees in said unit are covered by a collective bargaining agreement effective July 1, 1973, through at least June 30, 1975, executed by WSEU, which, incidentally, includes Locals 55 and 538, AFSCME, AFL-CIO.

The specific classifications which the Locals desire to be included in a separate collective bargaining unit consist of the following police-type employees:

Department of Natural Resources:

Conservation Wardens 1, 2, 3, and 4
Natural Resource Patrol Officer 1 and 2 (full-time)
Park Rangers 1, 2 and 3

Department of Transportation:

Enforcement Cadet
Motor Vehicle Inspector 1 and 2
Police Communications Operator 1, 2 and 3
State Patrol Trooper 1 and 2

Department of Justice:

Criminal Investigator 1, 2 and 3
Special Agent
Deputy Fire Marshall

University of Wisconsin System:

Police Officer 1 and 2
Police Detective
Police Cadet
Security Officer [at only Eau Claire, River Falls and Superior campuses]
Security Officer (Lead) [at River Falls campus only]

Department of Administration:

Police Officer 1 and 2

Department of Health and Social Services:

Building and Grounds Patrol Officers (at Mendota State Hospital
and Northern Colony)

Security Officers (at Southern Colony only)

The Positions of the Parties:

The Association contends that education, training and duties, as well as the manner in which the Conservation Wardens perform such duties, creates a separate and distinct community of interest sufficient to warrant the establishment of a separate unit of Conservation Wardens. The Locals contend that the unit desired by said Locals consists of all of the police-type employees of the State, and that, therefore, the authority given to such employees, as well as the conduct expected of them, both on and off duty, establishes a community of interest separate and distinct from all other employees of the State.

Both Petitioners contend that the statute, specifically Section 111.81(3)(am), anticipates the establishment of units other than those originally statutorily established in Section 111.81(3)(a), and that, in that regard, the Legislature granted the Commission discretionary authority to establish additional or modified state-wide units, taking into consideration the community of interest of the employees sought in said separate units. Both Petitioners also contend that the establishment of the units sought by them does not constitute excessive fragmentation and that, therefore, the Commission should establish said separate units and direct representation elections among the employees therein.

Section 111.81(3) of the State Employment Labor Relations Act (SELRA), in material part, states 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 statewide 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.
 - e. Patient care.
 - f. Social services.
 - g. Education.
 - h. Engineering.
 - i. Science.

(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 employee 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."

As stated in the attached Order Dismissing Petitions, the separate Petitioners invoke subsection (am) requesting the establishment of additional units that may be generally described as a conservation warden unit and a police unit. Said petitions constitute the first attempts to implement subsection (am).

In reaching the following conclusions, we have considered the above-quoted provisions, as well as the statute as a whole, and the record as a whole, which includes certain evidence of the statute's historical background, as well as the arguments of the parties.

When the Legislature amended SELRA in 1971, so as to include the above-quoted provisions, presumably it was knowledgeable and informed as to the then current employee complement covered by the Act,^{3/} and as to the manner in which said employees were classified, assigned and deployed. The Legislature, on the basis of said knowledge, concluded that the 14 bargaining units, which it established, constituted sufficient and appropriate units to cover and include all such employees so as to realize the intent of the Act.

It is clear, particularly upon the basis of the specific references in subsection (a) and (am), that the Legislature was especially adverse to fragmentation where avoidable; and that this attitude guided its determination in establishing the 14 units, and must guide our determination of the appropriateness of any additional or modified units.

Establishing additional units by rearranging categories of employees, as the Petitioners herein request, of which categories the Legislature was presumably knowledgeable at the time of the enactment of SELRA, would imply that as of July 1, 1974, the judgment of the Commission may be substituted for that of the Legislature, within the restrictions placed upon the Commission by subsection (am).

We do not read the pertinent provisions to grant such discretion, but rather interpret such provisions to indicate that the Legislature recognized that by July 1, 1974, or thereafter, the State Employer and the Legislature may have established new state functions or program responsibilities, or made significant changes in the provisions of SELRA, not considered by the Legislature at the time of the pertinent enactment, and which might, if affected employees could not be properly placed within the 14 units set forth, require the establishment of new units, and some modification of one or more of the statutorily created units.

Under such circumstances, in our view, the Commission may find additional or modified state-wide units appropriate, avoiding fragmentation and respecting communities of interest considerations. Neither of the instant petitions is based upon such factors, however, and thus, both are dismissed.

^{3/} Section 111.81(15).

It should be noted that prior to and during the course of the hearing the representatives of the State Employer and WSEU were engaged in bargaining on an agreement to succeed the collective bargaining agreement which, by its terms, was to expire on June 30, 1975. As noted above, employees in the statutorily created unit of "Security and Public Safety" were covered in said negotiations. At the initial stage of the hearing a ruling was requested from the Commission as to the authority of the State Employer and WSEU to bargain on wages, hours and working conditions with respect to the employee classifications involved in the petitions filed by the individual Petitioners. During the hearing an oral ruling was made by the Commission that, while the State Employer and WSEU could continue their collective bargaining, bargaining was to cease on those matters directly affecting the employees involved in the classifications covered by the petitions. It should be further noted that as the hearing progressed the Petitioner Locals amended its petition when its Counsel discovered that employees in certain classifications, not originally set forth in the petition, were found to have the power of arrest; and that when such amendments were made on the record, the Commission, during the hearing, amended its oral declaratory ruling, above referred to, to cover the employees in said additional classifications.

Now that the Commission has dismissed the petitions filed herein, it considers its oral declaratory ruling, and the oral amendments thereto, to have no further effect, and, therefore, both the State Employer and WSEU are no longer under the restriction to refrain from bargaining on the wages, hours and working conditions affecting employees occupying the classifications covered by the petitions.

Dated at Madison, Wisconsin, this 3rd day of July, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Thomas Slavney -
Morris Slavney, Chairman

Howard S. Bellman
Howard S. Bellman, Commissioner

Herman Torosian
Herman Torosian, Commissioner