

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

STATE OF WISCONSIN

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Case LXIV  
No. 19083 SE-73  
Decision No. 15103-A

Bakken, Feifarek & Taylor, Attorneys at Law, by Mr. James F. Bakken, appearing on behalf of the Petitioners and the Wisconsin Association of Science Professionals.  
Mr. Alfred C. Hunsicker, State of Wisconsin, Department of Administration, appearing on behalf of the Employer.  
Lawton and Cates, Attorneys at Law, by Mr. Richard V. Graylow, appearing on behalf of Wisconsin State Employees Union, Council 24, AFSCME, AFL-CIO.

On April 15, 1975, various employees classified as Public Health Sanitarians I, II and III and Evaluation Officers, Restaurants and Hotels, hereinafter referred to as the Petitioners, petitioned the Wisconsin Employment Relations Commission to determine the professional status of employees with those classifications, to transfer said classifications from the Security and Public Safety bargaining unit to a professional bargaining unit 1/ and to conduct any elections deemed necessary. Prior to any further action by the Commission, the Wisconsin Association of Science Professionals, hereinafter referred to as the Association, is the certified bargaining representative of the employees in the Science bargaining unit, 2/ and, on September 17, 1976, petitioned the Commission to intervene on behalf of the Petitioners. On November 12, 1976, the Wisconsin State Employees Union, Council 24, AFSCME, AFL-CIO, hereinafter referred to as WSEU, moved the Commission to dismiss both petitions on the basis that individual Petitioners lack standing to file such a petition, and that the Association could not intervene in a matter which was not properly before the Commission, and that the petitions were untimely filed and were not accompanied by a showing of interest. WSEU is the certified bargaining representative of the employees in the Security and Public Safety bargaining unit, which includes the classifications of Public Health Sanitarians I, II and III and Evaluation Officer, Restaurants and Hotels. 3/ The Association and Petitioners opposed

3/ State of Wisconsin (11243) 8/72.

the motion to dismiss and the State Employer took no position on said motion. The Commission, after reviewing the petitions and positions of the parties, denied the motion to dismiss on December 13, 1976. 4/ A hearing was held on December 20, 1976 at Madison, Wisconsin before Ellen J. Henningsen, Examiner. During the course of the hearing, WSEU was permitted to intervene on the basis that it presently represents the classifications in question. The Commission, having considered the evidence and arguments of the parties and being fully advised in the premises, makes and issues the following


ORDER


That the classifications of Public Health Sanitarian I, II and III and Evaluation Officer, Restaurants and Hotels, be, and the same hereby are, excluded from the Security and Public Safety collective bargaining unit and included in the Professional-Science collective bargaining unit.

Given under our hands and seal at the  
City of Madison, Wisconsin this 24th  
day of May, 1977,

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Herman Torosian, Commissioner

  
Charles D. Hoornstra, Commissioner

MEMORANDUM ACCOMPANYING  
ORDER CLARIFYING BARGAINING UNIT

The Security and Public Safety bargaining unit consists of the approximately 2,500 security and public safety employees employed in the classified service of the State of Wisconsin, excluding limited term, sessional, supervisory, managerial and confidential employees. 5/ The specific classifications to be included in said unit, were voluntarily agreed upon by the State Employer and WSEU prior to certification by the Commission. The employees within the unit, including the fifty-five Public Health Sanitarians and Evaluation Officers involved in this matter, 6/ are covered by a collective bargaining agreement which expires June 30, 1977.

The Professional-Science bargaining unit consists of the approximately 700 classified employees of the State of Wisconsin engaged in the profession of Science, excluding limited term, confidential, supervisory, managerial and all other employees. 7/ The composition of the unit, including the particular classifications to be included in the unit, was voluntarily agreed upon by the State Employer and the Association 8/ prior to the election conducted in said unit. 9/ The collective bargaining agreement covering said unit expires June 30, 1977.

POSITIONS OF THE PARTIES

The Petitioners and the Association contend that the classifications of Public Health Sanitarian I, II and III and Evaluation Officer, Restaurants and Hotels, are professional within the meaning of Section 111.81(11) of the State Employment Labor Relations Act (SELRA) and that these classifications are improperly included in the Security and Public Safety bargaining unit, a non-professional unit, and should be included in the Professional-Science bargaining unit. The Petitioners and Association contend that the Commission has the authority to transfer said classifications from one unit to the other without an election.

The State Employer agrees that the classifications involved herein are professional but takes no position as to their proper unit placement.

WSEU renews its motion to dismiss the petitions, alleging that Petitioners and the Association lack standing and that the petitions

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5/ See footnote 3, above.

6/ As of July 31, 1976, there were seven Public Health Sanitarian I's, nine Public Health Sanitarian II's, thirty-seven Public Health Sanitarian III's and two Evaluation Officers, Restaurants and Hotels.

7/ See footnote 2, above.

8/ The Association was called the Wisconsin State Foresters Association at that time.

9/ Two other labor organizations were parties to that proceeding and joined in the stipulation.

were not timely filed and were not accompanied by a showing of interest. In addition, it argues that the Commission's policy against changing the composition of a voluntarily agreed upon unit warrants the dismissal of the petitions. 10/ WSEU takes no position concerning the alleged professional status of the classifications involved. It however requests the Commission to consider, in the event that the Commission does not dismiss the petitions and determines that the classifications are appropriately included in the Professional-Science unit, whether an election among either the employees involved or the entire Professional-Science unit should be conducted.

#### 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 employees in issue. 11/ In the instant proceeding, the issue is whether the inclusion of the Public Health Sanitarians and the Evaluation Officers in the Security and Public Safety unit is repugnant to SELRA.

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

It is apparent that the legislature intended that professional and non-professional employees cannot be included in the same units.

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10/ WSEU cites City of Cudahy (12997) 9/74.

11/ State of Wisconsin (Professional-Education) (15108) 12/76, citing City of Cudahy, above, and Milwaukee Board of School Directors (13134-A) 1/76.

Thus, if the classifications involved herein are professional, their inclusion in the Security and Public Safety bargaining unit, a non-professional bargaining unit, would be repugnant to SELRA. Accordingly, the Commission has the duty to change the voluntarily agreed upon composition of either of the bargaining units involved herein if they contain a mix of professionals and non-professionals.

Public Health Sanitarians I, II and III and Evaluation Officers, Restaurants and Hotels, are employed within the Division of Health of the Department of Health and Social Services. A college degree with a major in environmental health or a closely related area is required for each position and, except for the Sanitarian I position, certification as a registered sanitarian by the Department of Health and Social Services is also required. The Sanitarian I position requires no prior experience while the Sanitarian II and III and Officer positions require a minimum of one, two and three years, respectively, of sanitation experience.

Sanitarians conduct inspections of facilities such as restaurants, hotels, motels, nursing homes, acute care facilities, swimming pools and vending machines to assure compliance with the appropriate sanitation laws, investigate possible sources of disease, collect samples for laboratory analysis, advise owners of the above facilities concerning the appropriate sanitation laws, determine necessary corrective measures, establish compliance deadlines and recommend punitive action to the appropriate body. Sanitarian III's specialize in specific areas such as milk certification and hotel and restaurant sanitation. Evaluation Officers evaluate the hotel and restaurant inspection programs of city and county health departments to assure compliance with state standards.

"Professional employee" is defined in Section 111.81(11)(a) as:

"(a) Any employee 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 Commission concludes that the Sanitarians and Evaluation Officers are professional employees within the meaning of Section 111.81(11)(a). Their job requires advanced educational training which is directly related to the jobs that they perform. Such job duties as the interpretation of sanitation laws, investigation of facilities and determination of necessary corrective action and compliance deadlines involves the consistent exercise of discretion and judgment.

Because these positions are professional, their placement in the Security and Public Safety unit is inappropriate and the Commission is not bound by the stipulation between the State Employer and WSEU that they should be included in that unit. For this reason and the reasons stated in the previously issued Order denying motion to dismiss, WSEU's renewed motion is dismissed.

A comparison of the duties and educational requirements of the Sanitarian and Evaluation Officer classifications with those of the classifications included in the Professional-Science unit indicate that the former share a community of interest with the latter and that, therefore, the Sanitaricians and Evaluation Officers are appropriately included in the Professional-Science unit. Classifications in the unit require a college degree with a major in specified, job-related areas such as chemistry, plant sciences and sanitation and include Microbiologists, Chemists, Pharmacists and Natural Resources Specialists. A Natural Resources Specialist IV, employed in the Department of Natural Resources, who specializes in well design and pump installation performs similar work to that performed by a Public Health Sanitarian. Such a Specialist, who is a registered sanitarian, conducts inspections of private water supplies to assure compliance with the appropriate sanitation laws, collects samples for laboratory analysis, advises owners concerning the pertinent laws, determines necessary corrective measures and establishes compliance deadlines. Because of the similarity in job duties and educational requirements, the Sanitaricians and Evaluation Officers appropriately belong in the Professional-Science unit.

An issue was raised as to whether an election should be conducted either among the Sanitaricians and Evaluation Officers or the entire Professional-Science unit. The Commission will not direct an election among the Sanitaricians and Evaluation Officers for to do so presumes that the incumbents, if they voted not to merge with the Professional-Science unit, constituted a separate bargaining unit. In fact, Section 111.81(3) does not authorize such a unit. The Commission also declines to direct an election among the entire Professional-Science unit. Section 111.81(3)(b) mandates the Commission to "assign eligible employes to the appropriate statutory bargaining units set forth in par. (a)." The exercise of that authority is not dependent upon the conduct of an election.

The Public Health Sanitaricians I, II and III and Evaluation Officers, Restaurants and Hotels, will remain covered by the collective bargaining agreement between the State Employer and WSEU until its expiration.

Dated at Madison, Wisconsin this 24th day of May, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Herman Torosian, Commissioner

  
Charles D. Hoornstra, Commissioner