



**BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

STATE OF WISCONSIN

**ORDER DENYING MOTION TO DISMISS**

On April 15, 1975, various employees classified as Public Health Sanitarians 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, and prior to any action by the Commission, on September 17, 1976, the Wisconsin Association of Science Professionals, hereinafter referred to as the Association, petitioned the Commission to intervene on behalf of the Petitioners. The Association is the certified bargaining representative of the employees in the Science bargaining unit. 2/ On November 12, 1976, the Wisconsin State Employees Union, Council 24, AFL-CIO, hereinafter referred to as Council 24, 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. Council 24 is the certified bargaining representative of the employees in the Security and Public Safety bargaining unit, which includes the classifications of Public Health Sanitarians and Evaluation Officer, Restaurants and Hotels. 3/ The Association 4/ opposed the motion to dismiss and the State Employer has taken no position on it. The Commission, after reviewing the petitions and positions of the parties, has determined that the motion to dismiss should be denied.

1/ Petitioners allege that the Science bargaining unit is the most appropriate unit.

2/ State of Wisconsin (11328-E) 9/73.

3/ State of Wisconsin (11243) 8/72. The composition of the unit was stipulated to by Council 24 and the Employer.

**4/ The Association apparently also speaks for the Petitioners.**

NOW, THEREFORE, it is

ORDERED

That the motion to dismiss filed by the Wisconsin State Employees Union, Council 24, AFL-CIO, to dismiss the instant proceeding be, and the same hereby is, denied.

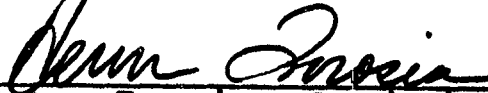
Given under our hands and seal at the City of Madison, Wisconsin this 13th day of December, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Morris Slavney, Chairman



Herman Torosian, Commissioner



Charles D. Hoornastra, Commissioner

MEMORANDUM ACCOMPANYING ORDER  
DENYING MOTION TO DISMISS

The Commission will entertain petitions which contest the placement of specific employees in a particular bargaining unit if such petitions are filed by an interested labor organization or the employer 5/ or if filed by the employees involved and by an interested labor organization or the employer. 6/ As the Association, an interested labor organization, supports the Petitioners' request, the Commission concludes that the matter has been raised by the proper parties.

Section 111.83(5) of the State Employment Labor Relations Act, hereinafter referred to as SELRA, states that:

"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 employees desire a change or discontinuance of existing representation."

Said two statutory requirements are not applicable to petitions which seek to clarify existing bargaining units. Although the Petitioners requested the Commission to conduct any election deemed necessary, the petitions actually request a unit clarification and, therefore, the above requirements are not applicable. Assuming that the classifications of Public Health Sanitarian and Evaluation Officer, Restaurants and Hotels, are professional and appropriately are included in the Science unit, the Commission would not direct an election among those classifications. For such a direction would presume that the occupants of those positions, if they voted not to merge with the Science unit, could choose to constitute a separate bargaining unit. In fact, however, such a separate bargaining unit is not authorized by law.

Moreover, Section 111.81(3) of SELRA mandates the Commission to "... assign eligible employees 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.

For the above reasons, the Commission denies the motion to dismiss. The matter will proceed to hearing as scheduled.

Dated at Madison, Wisconsin this 13th day of December, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney  
Morris Slavney, Chairman  
Herman Torosian  
Herman Torosian, Commissioner  
Charles D. Hoorstra  
Charles D. Hoorstra, Commissioner

5/ State of Wisconsin (13824) 7/75.

6/ State of Wisconsin (12682) 5/74.

