

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Case XCI
No. 20944 SE-83
Decision No. 15811

Office and Professional Employees International Union, Local No. 9, AFL-CIO, hereinafter referred to as the Petitioner, having, on October 27, 1976, filed a petition with the Wisconsin Employment Relations Commission, hereinafter referred to as the Commission, requesting that the Commission conduct an election among all professional supervisory employees of the State of Wisconsin, hereinafter referred to as the State Employer, pursuant to Section 111.81(3)(d) of the State Employment Labor Relations Act; and the State Employer having, on November 5, 1976, filed a motion requesting the Commission to dismiss the petition for the reasons that (1) the Petitioner is affiliated with labor organizations presently representing certain state employees, namely, AFSCME, Council 24, Wisconsin State Employees Union, AFL-CIO, and the Wisconsin Federation of Teachers, AFL-CIO, in contravention of Section 111.81(3)(d) of the State Employment Labor Relations Act, and (2) the petition was not accompanied by a 30 percent showing of interest as required by Section 111.81(3)(c)4 of the State Employment Labor Relations Act; and hearing on said motion having been held at Madison, Wisconsin, on January 14, 1977, before Examiner Thomas L. Yaeger; and the Commission, being fully advised in the premises, and being satisfied that said motion should be granted;

ORDERED

Given under our hands and seal at the
City of Madison, Wisconsin this 13th
day of September, 1977.

By Morris Slavney
Morris Slavney Chairman

Herman Torosian, Commissioner

Charles D. Hoornstra, Commissioner

MEMORANDUM ACCOMPANYING
ORDER GRANTING MOTION TO DISMISS PETITION

Position of the Parties:

The Petitioner, which organization presently does not represent any state employees for the purposes of collective bargaining, filed a petition requesting that the Commission conduct an election in a state-wide unit of professional-supervisory employees in the employ of the State, pursuant to Section 111.81(3)(d) of the State Employment Labor Relations Act, hereinafter referred to as SELRA. Such provision provides as follows:

"(d) Although supervisory personnel are not considered employees for purposes of this subchapter, the commission may consider petitions for a statewide unit of professional supervisory employees and a statewide unit of nonprofessional supervisory employees, but the certified representatives may not be affiliated with labor organizations representing employees assigned to the statutory units set forth in s. 111.81(3)(a). The certified representatives for supervisory personnel may not bargain on any matter other than wages and fringe benefits as defined in s. 111.91(1)."

The State urges two grounds for the dismissal of the petition. Said grounds are set forth in the preface to the Order issued herein. The State contends that the term "affiliated" should be construed in the broadest sense, i.e., "sympathize with or associate with". AFSCME, Council 24, Wisconsin State Employees Union, AFL-CIO and the Wisconsin Federation of Teachers, AFL-CIO, 1/ both of which organizations represent certain state employees for the purposes of collective bargaining, are affiliated with the Wisconsin State AFL-CIO. The State contends that since the Petitioner is also affiliated with the Wisconsin State AFL-CIO, it is necessarily also affiliated with said two labor organizations. Therefore, the State argues that the instant petition must be dismissed since the petitioner, because of its affiliation, is precluded by the pertinent statutory provision from representing any supervisory employees for the purposes of collective bargaining on matters pertaining to wages and fringe benefits. The State further contends that had the legislature intended to bar only those labor organizations which represent non-supervisory employees in any of the statutory units set forth in Section 111.81(3)(a) of the State Employment Relations Act, as argued by the Petitioner, such exclusion could have been set forth in the pertinent subsection.

1/ Although the State in its evidence and arguments merely noted the fact that the Wisconsin State Employees Union represents state employees for purposes of collective bargaining and that said organization is affiliated with the Wisconsin State AFL-CIO, the parties agreed that copies of all the agreements between the State and labor organizations representing state employees should be submitted. Those arguments disclose, as do the Commission's records, that the Wisconsin Federation of Teachers, AFL-CIO represents state employees as well.

The Petitioner argues that the term "affiliated" appearing in the pertinent statutory provisions pertains only to direct affiliation with labor organizations representing state employees for the purposes of collective bargaining and that the statutory provision does not preclude the Petitioner's affiliation with labor federations, i.e., State of Wisconsin AFL-CIO. The Petitioner argues that the legislative purpose in prohibiting affiliations between organizations representing supervisory employees and those representing employees was to avoid conflicts of interest and that such conflicts do not arise simply as a consequence of the Petitioner's affiliation with the Wisconsin State AFL-CIO and the consequence of the similar affiliation of AFSCME, Council 24, Wisconsin State Employees Union, AFL-CIO or the Wisconsin Federation of Teachers, AFL-CIO. The Petitioner further contends that the Legislature, by defining the term "labor organization" as an organization which has as its purpose the representation of state employees, 2/ excluded the Wisconsin State AFL-CIO from its scope inasmuch as the Wisconsin State AFL-CIO does not act as a representative of any state employees for the purposes of collective bargaining. The Petitioner directs the Commission's attention to the fact that it and its international are autonomous of the Wisconsin State AFL-CIO. The Petitioner compares the prohibition against the affiliation respecting plant guard units under the National Labor Relations Act with Section 111.81(3)(d) of SELRA, and concludes that the proscription in issue herein is less broad than the direct or indirect affiliations found by the National Labor Relations Board to be proscribed by such federal statute. Therefore, the Petitioner concludes that it is not affiliated with any labor organization presently representing state employees within the meaning of Section 111.81(3)(d).

Discussion:

In 1971 SELRA was amended to permit the Commission to consider petitions for a state-wide unit of professional-supervisory employees and a state-wide unit of non-professional supervisory employees. If an organization were selected to represent the employees in such supervisory units, the State has a duty to bargain only on matters pertaining to wages and fringe benefits. The issue herein is the nature and extent of affiliation permitted by organizations representing state employees and state supervisory employees. There can be no doubt that the purpose of the proscription against affiliation is intended to avoid conflicts of interest. The question is how far did the Legislature intend that the proscription be applied to avoid such conflicts. We conclude that the Legislature intended to avoid the possibility of any conflict of interest arising out of the representation of supervisory employees. Thus, we necessarily conclude that affiliations with any labor organization representing state employees, whether such affiliation be direct or indirect, is proscribed by Section 111.81(3)(d). We believe that a reasonable construction of said provision supports this conclusion. The principal function in statutory construction is to define the legislative intent 3/ as disclosed from the language in relation to scope, history, context, subject matter and the object intended to be accomplished. 4/ Thus,

2/ Section 111.81(9).

3/ State ex rel. Mitchell v. Superior Court of Dane County, 109 NW 3d 522, 14 Wis. 2d 77 (1961); Dunmore Co. v. Snader, 13 NW 2d 915, 245, Wis. 300 (1944).

4/ Scanlon v. City of Menasha, 14 NW 2d 791, 16 Wis. 2d 437.

in language analysis words must be given their plain, ordinary and commonly accepted meaning. 5/

Black's Law Dictionary defines "affiliate" as follows:

"AFFILIATE. Signifies a condition of being united, being in close connection, allied, or attached as a member or branch. Johanson v. Riverside County Select Groves, 4 Cal. App. 2d 114, 40 P.2d 530, 534.

"Affiliate with" is defined as to receive on friendly terms; to associate with; to be intimate with; to sympathize with; to consort with; and to connect or associate one's self with. Wolck v. Weedin, C.C.A. Wash. 58 F. 2d 928, 930. But "affiliated" does not bear construction that one of affiliated organizations is in all particulars identical with or covered by parent organization with which it may be said to be affiliated. People v. Horiuchi, 114 Cal. App. 415, 300 P. 457, 460."

Thus, the generally accepted definition would include direct, as well as indirect, association with another. The Legislature, however, did not see fit to limit or restrict this definition through the inclusion of modifiers to said term and, therefore, we must presume it intended the term be used in its broadest sense. We do not agree with Petitioner's reasoning that by not copying verbatim the language of the National Labor Relations Act 6/ the Legislature intended only to proscribe direct affiliations. The term's normal and ordinary meaning includes indirect affiliations as well as direct, and, therefore, absent language to the contrary, it is reasonable to presume that the Legislature intended the generally accepted definition of the term to apply.

The Constitution and By-Laws of both Petitioner and the Wisconsin State Employees Union 7/ explicitly acknowledge their indirect affiliation with each other. Petitioner's Constitution and By-Laws provides:

5/ Snorck v. Boyle, 118 N.W. 2d 132, 18 Wis. 2d 202 (1962); Torti v. U.S., 249 F. 2d 623 (1958); State v. Reslev, 55 N.W. 2d 35, 62 Wis. 285 (1958).

6/ Section 9(b)(3) provides:

" . . . but no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards."

7/ There is no dispute that WSEU is a "labor organization" representing employes in bargaining units delineated in Section 111.81(3)(a), Stats.

"ARTICLE XV

"Affiliations and Delegates

"Section 1. This Union shall be affiliated with the Milwaukee County Labor Council, AFL-CIO, the Wisconsin State AFL-CIO, the Milwaukee Union Label Trades Department and the North Central Education Conference."

The Wisconsin State Employees Union Constitution and By-Laws provides:

"ARTICLE III

"AFFILIATIONS

"Section 1. This Council shall be affiliated with the AFSCME, AFL-CIO as a State Council of State Employees Local Unions, and with the Wisconsin State AFL-CIO."

Surely, although the affiliation of Petitioner with the Wisconsin State Employees Union or the Wisconsin Federation of Teachers is indirect, it nonetheless falls within the proscription of Section 111.81(3)(d), Stats. We believe the Legislature intended that such indirect affiliations give rise to the possibility of a conflict of interest and, thus, must be proscribed.

To permit supervisors to be represented by a labor organization which is affiliated with an organization which represents rank and file state employees would create a substantial possibility of conflicts of interest, not only in the day-to-day supervision of employees in the performance of their duties, but also in administering collective bargaining agreements covering state employees, including the processing of grievances. Further, should an organization representing state employees engage in a concerted work stoppage, supervisory employees, who are represented by an affiliated union, would possibly be subject to pressures from the affiliated striking organization to observe picket lines and thus refrain from carrying out their work functions, and also to pressures from the state organization to cooperate with the striking organization under the threat of the imposition of internal organizational sanctions.

Since we have dismissed the petition on the basis of affiliation, we do not deem it necessary to determine in this proceeding whether an organization which seeks to represent supervisory employees must accompany their petition for election with a showing of interest.

Dated at Madison, Wisconsin this 13th day of September, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney
Morris Slavney, Chairman

Herman Torosian
Herman Torosian, Commissioner

Charles D. Hoornstra
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