

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Respondent. :

2 That for the past number of years WCEU has been, and is, the
certified collective bargaining representative of various classified
employees of the State in various appropriate collective bargaining

Trooper, in the Department of Transportation since January 2, 1967; that on an unidentified date in 1972 Friedel was promoted to Trooper 2, and thereafter, on an unidentified date in 1978, was promoted to a Trooper 3; that since 1970 and continuing at all times material thereafter, Friedel has been assigned to the Governor's office, performing the duties of a driver and security officer for the Governor and his staff; that during this period, in addition to Friedel, other Troopers have been assigned such duties; and that as of the date of the hearing herein Trooper 3 Gerald P. Baumbach had for some time been so assigned; that Friedel, from the date he commenced State employment as a Trooper to at least January, 1980, was a member of WSEU and that his dues for membership therein had been deducted by the Department of Transportation pursuant to a dues check-off authorization executed by Friedel; and that Trooper Baumbach has not ever been a member of WSEU.

5. That during the past number of years, and especially during the term of the present Governor, Troopers assigned to the Governor have been increasingly privy to meetings and conversations between the Governor and his staff, members of his cabinet, and other State officials, including management personnel, relating to confidential labor relations matter, primarily including matters relating to collective bargaining on wages, hours and working conditions affecting State employees who are represented for the purposes of collective bargaining, including employees in bargaining units represented by WSEU.

6. That on January 3, 1980 the State Personnel Board, in a duly constituted meeting, considered the request of the State, initiated by the Department of Transportation, to create new classifications of "Trooper 1, 2 and 3, Confidential to be assigned to the individuals who occupied Trooper positions responsible for the security and protection of the Governor and his staff; that appearing at said meeting were representatives of the State urging such change in classification, as well as a representative of WSEU, who contended that the determination of such confidential status should be made by the Wisconsin Employment Relations Commission, rather than the State Personnel Board; that following such presentations, the State Personnel Board approved such new classification.

7. That, following such reclassification by the State Personnel Board, and on or about January 13, 1980, Friedel and Baumbach were reclassified to the new Trooper 3-Confidential position; that on or about the same date Friedel orally instructed the personnel secretary of the Department of Transportation to cease deducting dues, normally forwarded to WSEU, from his pay; and that pursuant to said instructions the Department of Transportation ceased such dues deduction.

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

CONCLUSIONS OF LAW

1. That the State Board of Personnel has no jurisdiction to determine whether any individual employed in the classified service of the State of Wisconsin should or should not be included in any appropriate collective bargaining unit consisting of State employees, as set forth in the provisions of the State Employment Labor Relations Act, and that, on the contrary, said jurisdiction and authority rests with the Wisconsin Employment Relations Commission, pursuant to said Act.

2. That, since State Patrol Troopers assigned to the Governor's office for the purpose of driving and for the protection of the Governor, as well as his staff, are confidential employees, the two individuals occupying the classification of "State Patrol Trooper 3-Confidential" are not "employees" within the meaning of Sec. 111.81(15) of the State Employment Labor Relations Act.

3. That the State of Wisconsin, by its officers and agents, has not committed, and is not committing, any unfair labor practices within the meaning of any provision of the State Employment Labor Relations Act by reclassifying State Patrol Trooper 3 assigned to the office of the

Governor to the classification of State Patrol Troopers 3-Confidential, or by, as of January, 1980, ceasing to deduct dues from the wages of James R. Friedel, which were previously remitted to Wisconsin State Employees Union (WSEU), Council 24, AFSCME, AFL-CIO and its Local #55, following the change in Friedel's classification as a result of the duties performed by him while assigned to the office of the Governor.

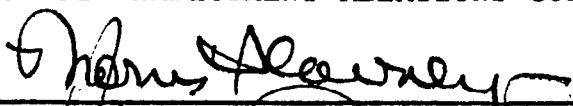
Upon the basis of the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following

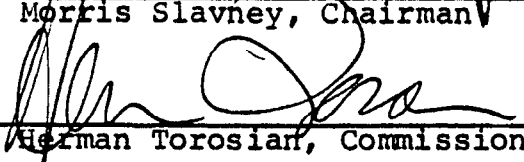
ORDER


That the complaint filed in the instant matter be, and the same hereby is, dismissed.

Given under our hands and seal at the City of Madison, Wisconsin this 18th day of May, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Slavney, Chairman


Herman Torosian, Commissioner


Gary L. Covelli, Commissioner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

The Union filed a pleading containing a request for a declaratory ruling, as well as a complaint alleging that the State committed certain unfair labor practices within the meaning of the State Employment Labor Relations Act (SELRA). The Union seeks a ruling establishing that only the Wisconsin Employment Relations Commission (Commission), and not the State Personnel Board, nor any other State agency, "has the authority to determine the confidential status of an employee and/or his/her inclusion or exclusion from any collective bargaining unit". With respect to the complaint the Union alleges that the State committed unfair labor practices within the meaning of Sec. 111.84(1)(a), (c) and (f) of SELRA (interference and discrimination of employees to engage in concerted activities) by not honoring a previously executed authorization for the check-off of dues in favor of the Union, which the Union argues was not properly terminated by Friedel.

The facts material to the issues involved herein are set forth in the Findings. The State Personnel Board reclassified the Trooper positions involved to designate same as "confidential". Thereupon, Friedel, who had previously executed a check-off authorization, instructed that dues on his behalf no longer be remitted to the Union. The Department of Transportation honored said request. The other Trooper assigned to the Governor was not a member of the Union. The facts establish that the Troopers assigned to the office of the Governor are privy to confidential labor relations matters.

The State contends that the Personnel Board action, in creating the new classifications, did not infringe on the statutory authority of the Commission to determine whether positions are included or excluded from bargaining units, and that, as a result, the Commission lacks jurisdiction to issue a declaratory ruling with respect to the jurisdiction of another duly created State agency. The State also contends that it filed a petition to seek clarification of the bargaining unit with respect to the classifications involved, and as a result, the Commission should determine the issues with respect to the matter in such a proceeding, rather than in the complaint proceeding. Finally, the State argues that it did not commit any unfair labor practices with respect to the matters alleged.

We recognize the right of the State Personnel Board to establish classifications of State employees, including those covered by SELRA. However, the fact that the Personnel Board determines a particular classification to be "confidential", and so describes said classification, does not constitute a determination that the individuals occupying same are excluded from a collective bargaining unit established in SELRA. Such a determination is to be made by the Commission, pursuant to the authority vested in it by Sec. 111.81(3)(b) of SELRA, which provides, "The commission shall assign eligible employees to the appropriate statutory bargaining units . . .", and therefore the Commission is not bound to accept the Personnel Board's determination that a classification is "confidential". It necessarily follows that the State, and its labor relations agent, the Department of Employment Relations (DER) cannot properly rely on such a determination by the Personnel Board as a basis for excluding or including positions from or in appropriate collective bargaining units. Sole reliance on change in classification by the Personnel Board as a basis for the unilateral removal from, or addition to, a bargaining unit without agreement of the employee organization involved, as the bargaining representative, subjects the State to a possible unfair labor practice proceeding, as in the instant matter, and to a possible conclusion that the State committed an unfair labor practice should the Commission arrive at an opposite conclusion with respect to the classification involved. No unfair labor practice was committed herein since the evidence adduced at the hearing established that the two individuals occupying the newly established classification were indeed confidential employees within the meaning of SELRA.


Further, since he was already performing confidential duties Friedel, as of the date of the revocation of his check-off authorization, was not an "employee" within the meaning of SELRA, and the fact that the revocation may not have been in conformity with the terms thereof, as statutorily provided, precludes a determination that the State committed an unfair labor practice by ceasing to honor the authorization originally executed by Friedel.

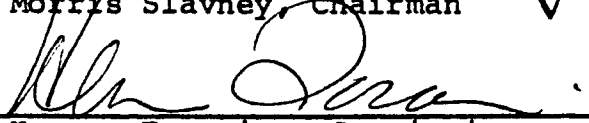
The Commission is the only State agency which has the authority and jurisdiction to determine "employee" status, for the purposes expressed in SELRA, and no other State agency, including the Personnel Board has such authority or jurisdiction. Since we have set forth such conclusion in our decision herein, we see no reason to issue a separate declaratory ruling with respect thereto, and therefore we are dismissing the declaratory petition filed by WSEU.

It should be noted that the State filed a petition for unit clarification involving the change in the classification some eight months after the cessation of Friedel's check-off, and some two months after the complaint was filed herein. We are dismissing said petition without further comment, except to note that the bargaining unit involved herein specifically excludes confidential employees from its scope.

Dated at Madison, Wisconsin this 18th day of May, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Slavney, Chairman


Herman Torosian, Commissioner


Gary L. Covelli, Commissioner