

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of	:	
STATE OF WISCONSIN	:	
Requesting a Declaratory Ruling	:	
Pursuant to Sec. 227.41, Stats.,	:	
Involving Said Petitioner and	:	
STATE ENGINEERING ASSOCIATION	:	Case 301
	:	No. 44523 DR(S)-1
and	:	Decision No. 26725
WISCONSIN STATE EMPLOYEES UNION,	:	
AFSCME, COUNCIL 24, AFL-CIO	:	
	:	
and	:	
WISCONSIN SCIENCE PROFESSIONALS,	:	
AFT, LOCAL 3272, AFL-CIO	:	
	:	

Appearances:

Ms. Constance P. Beck, Secretary, Department of Employment Relations, 137 East Wilson Street, P.O. Box 7855, Madison, Wisconsin 53707-7855, for the State.

Kelly and Haus, Attorneys at Law, by Mr. William Haus, 121 East Wilson Street, Madison, Wisconsin 53703-3422, for the State Engineering Association.

Lawton & Cates, S.C., Attorneys at Law, by Mr. Richard V. Graylow, 214 West Mifflin Street, Madison, Wisconsin 53703-2594, for the Wisconsin State Employees Union.

Shneidman, Meyers, Dowling & Blumenfield, Attorneys at Law, by Mr. Timothy E. Hawks, Suite 500, 700 West Michigan, P.O. Box 442, Milwaukee, Wisconsin 53201-0442, for the Wisconsin Science Professionals.

ORDER DISMISSING PETITION FOR DECLARATORY RULING

The State of Wisconsin having filed a petition for unit clarification and declaratory ruling on September 6, 1990 with the Wisconsin Employment Relations Commission asking that the Commission take the following action as to issues allegedly arising out of a Personnel Management Survey conducted by the State:

- a. Due to the changed circumstances affecting the Professional Engineering Bargaining Unit as a result of the Survey implementation, conduct a unit clarification of all the classifications in the new classification structure of the Survey to determine the propriety of their inclusion within the Professional Engineering Bargaining Unit represented by SEA and the Technical Bargaining Unit represented by the WSEU.
- b. Due to the changed circumstances affecting the Professional Science Bargaining Unit as a result of the creation of the Hydrogeologist classification series, conduct a unit clarification to determine the propriety of the inclusion of that classification series in the Professional Science Bargaining Unit represented by WSP.
- c. Issue a Declaratory Ruling that reallocations of positions from one classification to another is a prohibited subject of bargaining under SELRA sec. 111.91 (2)(b)(2)., Wis. Stats., and that jurisdiction to review such classification decisions lies solely with the statutory body charged with that responsibility, namely the Personnel Commission under sec. 230.45(1)(a), Wis. Stats.

and the State having on September 17, 1990 amended its petition for declaratory ruling to identify Sec. 227.41, Stats. as the jurisdictional basis for said petition and confirmed the State's desire that declaratory ruling and unit clarification by consolidated for proceedings before the Commission; and the Wisconsin Science Professionals (WSP), State Engineering Association (SEA) and Wisconsin State Employees Union (WSEU), having on or before October 17, 1990 filed written statements with the Commission stating the various positions of

said labor organizations as to whether the Commission should exercise its jurisdiction under Sec. 227.41, Stats., and, if so, whether the petition for declaratory ruling should be consolidated with the petition for unit clarification; and WSP and SEA having urged the Commission to decline to exercise jurisdiction over the petition for declaratory ruling and WSEU having advised the Commission that it takes "no position" as to such an exercise of jurisdiction; and the Commission having considered the matter and concluded that it will not exercise its jurisdiction under Sec. 227.41, Stats. over the matters raised in subsection(c) of the State's petition because: (1) no specific set of facts presently exists which would allow for a meaningful examination of issues raised in subsection (c); (2) the petition raises issues relative to the alleged exclusive jurisdiction of the Wisconsin Personnel Commission as to which the Wisconsin Employment Relations Commission may have no jurisdiction to rule upon under Sec. 227.41, Stats.; 1/ and (3) the Wisconsin Employment Relations Commission has previously expressed itself as to the Commission's role in relationship to that of the Personnel Commission in the determination of the composition of the bargaining units of State employes; 2/

NOW, THEREFORE, it is

ORDERED 3/

That the petition for declaratory ruling is dismissed. 4/

Given under our hands and seal at the City of
Madison, Wisconsin this 20th day of December,
1990.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

A. Henry Hempe, Chairman

Herman Torosian, Commissioner

William K. Strycker, Commissioner

1/ Section 227.41(1) provides:

(1) Any agency may, on petition by any interested person, issue a declaratory ruling with respect to the applicability to any person, property or state of facts of any rule or statute enforced by it. (Emphasis added.)

2/ As we held in State of Wisconsin, Dec. No. 18696 (WERC, 5/81)

We recognize the right of the State Personnel Board to establish classifications of State employes, 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 employes 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.

3/ Pursuant to Sec. 227.48(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.49 and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.53, Stats.

227.49 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025(3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefore personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the

continued

4/ Please find footnote 4/ on page 4.

3/ continued

petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59(6)(b), 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If

all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified.

. . .

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

4/ We will proceed to process the unit clarification petition as to those positions whose unit status is disputed.