

STATE OF WISCONSIN	CIRCUIT COURT	DANE COUNTY
		#117463
CITY OF WAUWATOSA, a municipal corporation,	Petitioner,	
	vs.	
WISCONSIN EMPLOYMENT RELATIONS BOARD,	Respondent.	
		RULING FROM THE BENCH

Before: Hon. Edwin M. Wilkie, Circuit Judge.

May 21, 1965

APPEARANCES: Petitioner by Donald D. Eckhardt, Special Counsel  
Respondent by Beatrice Lampert, Assistant Attorney General

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THE COURT: The demurrer to the petition on the ground that the court does not have jurisdiction over the subject matter is sustained; and the court will here set down the basis for its ruling.

The petition purports to be a petition for review under Chap. 227, and specifically under Sec. 227.15, from a purported decision of a state agency, the Wisconsin Employment Relations Board, as in Sec. 227.13 Wis. Stats.

The question before us is whether or not we have, in fact and in law, a decision of the Wisconsin Employment Relations Board subject to review. The petition, on its face, reflects that the Wisconsin Employment Relations Board was proceeding pursuant to Chap. 111 Wis. Stats. and Sec. 111.70 of such statutes; and a question was raised with respect to proceeding in view of an ordinance of the City of Wauwatosa, all as set forth in Paragraph 4 of the petition, as follows:

"On April 13, 1965, Respondent Board made and filed its Findings of Fact, Conclusions of Law and Certification and Order finding Petitioner City's Ordinance Section 17.34 relating to fact finding in labor matters invalid, Respondent's jurisdiction to entertain petitions for fact finding exclusive, certifying that conditions precedent to fact finding in the case had been met and appointing a fact finder to proceed pursuant to Section 111.70 (4) (g), Wisconsin Statutes."

And further in Paragraph 5.:

"Petitioner has adopted an ordinance, Section 17.34 Code of the City of Wauwatosa, providing a fact finding procedure, which Petitioner contends is substantially in compliance with Section 111.70, Wisconsin Statutes. Petitioner contends that the validity of said ordinance is a matter of paramount public interest directly involving the jurisdiction of municipal government in matters involving working relations with its own employees."

The gist of the petition is that that particular determination of the board constitutes a decision and that it is in excess of the statutory authority or jurisdiction of the board and is erroneous as a matter of law; that it is arbitrary and capricious and abuse of the discretionary power vested in the board.

Well, now, the question before us in determining whether or not that constitutes a "decision" is to interpret the provisions of Chap. 227, and specifically Sec. 227.13 relative to "decisions". This section reads:

"Every decision of an agency in a contested case shall be in writing accompanied by findings of fact and conclusions of law. Findings of fact shall consist of a concise and separate statement of the ultimate conclusion upon each contested issue of fact without recital of evidence." (Emphasis supplied)

Looking to the provisions of Chap. 111 that are involved here there are issues of fact which are before the Wisconsin Employment Relations Board which must be determined by it and upon which it must make ultimate findings and conclusions. These ultimate findings and conclusions have not been made; and until they are made we do not have, within the meaning of the review statute, a decision from which a review may be taken. Consequently the attempted review here does not meet the calls of Chap. 227 and we do not have jurisdiction over the subject matter. It is premature. There is no "decision" upon which a review can be taken.

Now, counsel is disturbed over the matter of the board proceeding here under what counsel argues is an invalid and illegal procedure. Although not necessary to our decision, we observe that in our opinion counsel does have an opportunity to raise this question through an action in equity, or under the declaratory judgment statute seeking injunctive relief, to foreclose the Wisconsin Employment Relations Board from proceeding further if, indeed, the Wisconsin Employment Relations Board is proceeding illegally. Were that not available to petitioner, petitioner would, indeed, very possibly be without an opportunity to timely challenge the alleged invalidity and illegality of the Wisconsin Employment Relations Board's actions. But we can not, in this proceeding before us here, assume jurisdiction that has not been invoked. In order for petitioner to invoke the jurisdiction of the court, as we see it, it is necessary for petitioner to commence an action, as distinguished from this proceeding on review, and attack directly the action taken by the board, either a suit for declaratory judgment relief or in equity for injunctive relief.

Accordingly the demurrer is sustained; and counsel for the respondent Wisconsin Employment Relations Board can prepare a formal order in accordance herewith dismissing the petition and

submit the same to opposing counsel for approval as to form and to the court for signature.

I will ask the reporter to send you each a copy of our pronouncement from the bench, which will be filed with the record; and when our order is entered, the record can be remanded to the agency.