

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of

PIERCE COUNTY COURT HOUSE EMPLOYEES,  
LOCAL 556-A, AFSCME, AFL-CIO

Requesting a Declaratory Ruling  
Pursuant to Section 227.06, Wisconsin  
Statutes Involving a Dispute Between  
Said Petitioner and

PIERCE COUNTY and WILLIAM MCEWEN  
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Case XVII

No. 22233 DR(M)-82

Decision No. 16067-A

ORDER DISMISSING PETITION FOR DECLARATORY RULING

On November 11, 1977, Pierce County Courthouse Employees, Local 556-A, AFSCME, AFL-CIO, hereafter Local 556-A, filed a petition for declaratory ruling pursuant to sec. 227.06, Wis. Stats., involving a dispute between Local 556-A and Pierce County and Pierce County Judge William McEwen. Prior to the filing of the instant petition, on October 3, 1977, Judge McEwen filed a summons and complaint in Pierce County Circuit Court, naming Local 556-A and Pierce County as respondents. In addition to an issue of the constitutional separation of powers, the case filed by Judge McEwen raised the same issues of statutory construction as the petition before the Commission. On December 8, 1977, Judge McEwen filed with the Commission a motion to dismiss the petition or stay proceedings pending the outcome in the Circuit Court case. The motion to hold the petition in abeyance was granted by the Commission on January 17, 1978. 1/ On March 29, 1978, Local 556-A filed a motion with Pierce County Circuit Court to defer the court proceedings pending a decision on the merits from the Commission. On June 23, 1978, the Pierce County Circuit Court denied Local 556-A's motion, retaining jurisdiction of the dispute. Pursuant to Local 556-A's appeal, the Court of Appeals, on September 20, 1978, affirmed the lower court's denial of Local 556-A's motion. On June 12, 1979, the Wisconsin Supreme Court, pursuant to Local 556-A's appeal also affirmed the Circuit Court's denial of Local 556-A's motion. 2/ Local 556-A thereafter notified the Commission that the declaratory ruling pending before the Commission should not be dismissed but that a hearing should be scheduled. The Commission is satisfied that the petition for declaratory ruling should be dismissed and therefore it is

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1/ Decision No. 16067.

2/ Case No. 78-126.


ORDERED


That the declaratory ruling petition be dismissed without prejudice in order that the case may be reopened should the court later refer the matter to the Commission.

Given under our hands and seal at the  
City of Madison, Wisconsin this  
day of July, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Herman Torosian, Commissioner

  
Gary L. Covelli, Commissioner

MEMORANDUM ACCOMPANYING ORDER  
DISMISSING PETITION FOR DECLARATORY RULING

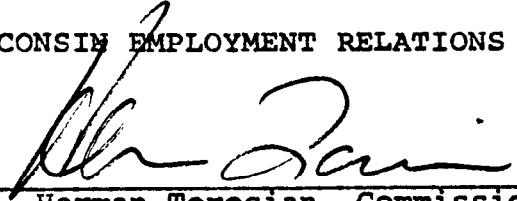
The procedural aspects of this case have been set forth in the introduction to the order. In response to a Commission inquiry to Local 556-A concerning its position on dismissing the instant case pending before the Commission, Local 556-A stated that it believed that the Supreme Court decision did not mean that the declaratory ruling petition had to be dismissed and that "inasmuch as the Commission has concurrent jurisdiction in this matter, it should exercise that jurisdiction and schedule a hearing at its earliest convenience."

The Commission has determined that the petition for declaratory ruling should be dismissed. It is the Commission's policy not to assert its jurisdiction over issues which have also been submitted to a court, even though the Commission might have jurisdiction over the issue. Thus, the Commission previously held the petition in abeyance, pending the Circuit Court's decision as to whether or not it would proceed under its jurisdiction. Now that Pierce County Circuit Court has determined to exercise its jurisdiction over the matter, the Commission declines to exercise its own jurisdiction. Ordinarily, the Commission would dismiss the petition with prejudice. However, it is possible that the court might, at some later point, decide to refer the matter to the Commission. <sup>3/</sup> Therefore, the Commission will dismiss the declaratory ruling petition without prejudice. The matter will be reopened only if the court should refer the case to the Commission.

Dated at Madison, Wisconsin, this *25th* day of July, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Herman Torosian, Commissioner

  
Gary L. Covelli, Commissioner

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<sup>3/</sup> See, for instance, Browne v. Milwaukee Board of School Directors, 83 Wis. 2d 316 (1978).