

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of

STATE OF WISCONSIN, DEPARTMENT  
OF EMPLOYMENT RELATIONS

Requesting a Declaratory Ruling Pursuant:  
to Section 227.06, Wis. Stats.,  
Involving a Dispute Between Said  
Petitioner and

WISCONSIN ASSOCIATION OF SCIENCE  
PROFESSIONALS, LOCAL 3732, WISCONSIN  
FEDERATION OF TEACHERS, AFL-CIO

and

ROBERT J. MUELLER  
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Case CXLVII  
No. 26287 DR(S)-11  
Decision No. 17954

ORDER DENYING PETITION FOR DECLARATORY RULING

The State of Wisconsin by its Department of Employment Relations, hereinafter referred to as DER, on May 29, 1980, filed a petition for Declaratory Ruling under Section 227.06, Wis. Stats., wherein it seeks a ruling that it is not required under Section 111.84(1)(e) of the State Employment Labor Relations Act (SELRA) to submit to arbitration a dispute over the arbitrability of a grievance which DER contends deals with a prohibited subject of bargaining within the meaning of Section 111.91(2) of SELRA; and the Wisconsin Association of Science Professionals, Local 3732, Wisconsin Federation of Teachers, AFL-CIO, hereinafter referred to as the Association, being one of the parties whom DER seeks to bind by said ruling pursuant to the provisions of Section 227.06(2)(b), Wis. Stats., having moved to dismiss the petition, and on June 23, 1980, filed a response to said petition, wherein it denied certain matters asserted in the petition and, by way of affirmative defense, asserted that a declaratory ruling is not the appropriate procedure to determine the question of arbitrability; and thereafter DER having filed a Motion for Summary Declaratory Ruling and a Memorandum in support thereof and in opposition to the Association's motion to dismiss; and the Commission having reviewed the pleadings and arguments, and being satisfied that it ought to deny the petition for Declaratory Ruling;

NOW, THEREFORE, it is

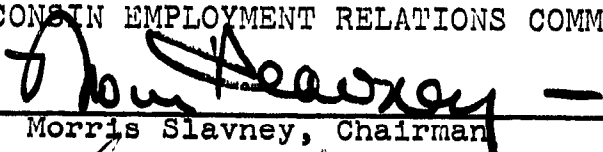
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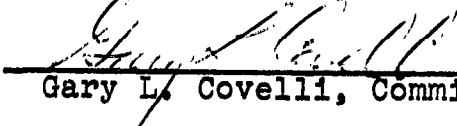
That the petition for Declaratory Ruling be, and the same hereby is, denied.

Given under our hands and seal at the  
City of Madison, Wisconsin, this 18th  
day of July, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Gary L. Covelli, Commissioner

No. 17954

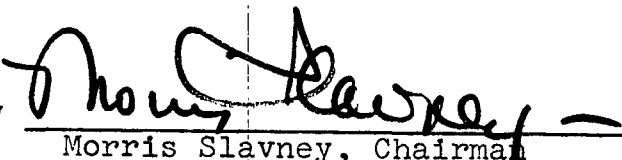
MEMORANDUM ACCOMPANYING  
ORDER DENYING PETITION FOR DECLARATORY RULING


The Commission's jurisdiction to entertain the petition herein is discretionary, pursuant to the provisions of Section 227.06, Wis. Stats. There is no question that the Commission has the jurisdiction under that statutory provision to entertain a petition for a declaratory ruling with regard to the question of whether a particular proposal in bargaining or provision in a collective bargaining agreement is a mandatory, permissive or prohibited subject of bargaining under Section 111.91 of SELRA, and ordinarily we would do so. However, the issues sought to be raised in this proceeding extend well beyond the question of DER's duty to bargain under that section. Also disputed are issues of substantive arbitrability and contract interpretation.

In a declaratory ruling proceeding such as that which DER seeks to invoke here, any ruling issued by the Commission will not resolve these other issues. More importantly, the Commission may not in a declaratory ruling proceeding such as this issue an order directing the parties to take any action or refrain from taking any action in relation to the pending arbitration proceeding. In an unfair labor practice proceeding where one party to an agreement to arbitrate is refusing to do so, the Commission may issue such an order. However, no such proceeding has been filed herein. For these reasons we have declined to issue a declaratory ruling as requested.

Dated at Madison, Wisconsin, this 18th day of July, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By   
Morris Slavney, Chairman

  
Gary L. Covelli, Commissioner