

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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

Case CLX
No. 28025 DR(S)-13
Decision No. 18708

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

ORDER DENYING PETITION FOR DECLARATORY RULING

The State of Wisconsin, by its Department of Employment Relations, hereinafter referred to as DER, on April 28, 1981, filed a Petition for Declaratory Ruling under Section 227.06, Wis. Stats., wherein it seeks a ruling that an arbitration award issued by Robert J. Mueller and dated March 5, 1981 is null and void based on its claim that said award was in excess of the arbitrator's authority and was in disregard of certain provisions and/or the public policy expressed in certain provisions of the States Employment Labor Relations Act (SELRA); and DER having simultaneously filed a statement in support of said petition wherein it set out its position as to why the Commission should issue such a declaratory ruling; and Wisconsin Association of Science Professionals, Local 3732, WFT, AFL-CIO, hereinafter referred to as Local 3732 having, on May 14, 1981, filed a brief in opposition to the Petition for Declaratory Ruling, wherein it requests that the Commission decline to issue a declaratory ruling as requested; and the Commission having reviewed the petition and the statement in support thereof and the brief in opposition thereto and being satisfied that it ought to deny the Petition for Declaratory Ruling;

NOW, THEREFORE, it is

ORDERED

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 26th
day of May, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



MEMORANDUM ACCOMPANYING ORDER
DENYING PETITION FOR DECLARATORY RULING

By its petition DER seeks a declaratory ruling that an arbitration award issued by Robert J. Mueller and dated March 5, 1981 is null and void on the grounds: (1) that said award exceeds the arbitrator's authority in violation of sec. 778.10(1)(d), Wis. Stats. "as incorporated by section 111.86, Wis. Stats."; and/or (2) that said award is in disregard of SELRA and/or in violation of public policy as set forth in sections 111.81(3)(b) and/or 111.91(2)(b)2. It asks that said declaratory ruling be made binding upon Local 3732, which was the other party to the award in question.

In its letter in support of said petition, DER alleges that its petition meets all of the substantive requirements of section 227.06(1) Wis. Stats. inasmuch as it raises issues that are directly relevant to the applicability of the following provisions of SELRA which define the collective bargaining relationship between the state and labor organizations and which the Commission has the responsibility to administer and enforce:

- (a) Section 111.81(3)(b) which establishes the jurisdiction of the Commission to make bargaining unit delineations which provision was, according to DER, interpreted to be non-exclusive by the arbitrator
- (b) Section 111.91(2)(b)2 which establishes what shall be prohibited subjects of bargaining and which, according to DER, is properly to be interpreted by the Commission and not an arbitrator
- (c) Section 111.86 which, according to DER, incorporates by reference the relevant statutory standard for the review of arbitration awards which it set out in section 788.10(1)(d), and followed in Commission cases and recognized in Commission rule ERB 23.06.

According to DER there is no rational reason why the standards for the review of arbitrators' awards, which are set out in section 788.10(1) and applied by the Commission in complaint cases, should not be applied by the Commission in declaratory ruling proceedings as well. The Commission's concern, expressed in an earlier declaratory ruling case involving these same parties, 1/ that it could not issue an order which would be binding on the parties through a declaratory ruling, is inaccurate. Section 227.06(1) is unambiguous in its provision that the declaratory ruling will be binding on all parties to the proceeding on the statement of facts alleged. Finally DER argues that it has no alternative remedy available; that it can't seek a unit clarification since it is under an "order to arbitrate"; that Local 3732 has failed to identify the positions in dispute; and that DER should not be forced into a position of having an unfair labor practice complaint filed against it before it can bring these issues to the Commission for resolution.

Local 3732 argues that the Commission should not issue a declaratory ruling as requested because:

- (a) The Courts and not the Commission have jurisdiction to administer the provisions of section 788.10(1)(d)

1/ Department of Employment Relations (Professional-Science), No.
17954, 7/18/80.

- (b) The remedy of declaratory ruling ought not be made available to adjudicate issues which are pending in another proceeding currently before the Commission for review 2/
- (c) This proceeding marks the third time that DER has attempted to prevent arbitration of the underlying grievance, which conduct evidences an intent to evade its obligation to arbitrate by causing the union to incur inordinate delay and expenses.
- (d) By granting the petition for a declaratory ruling the Commission would be encouraging and assisting DER in its efforts to evade its contractual obligation to arbitrate the underlying grievance.

Discussion:

We would start our discussion by observing that there are a number of flaws in the arguments presented by DER with regard to whether the Commission ought to exercise its discretion to issue a declaratory ruling. First of all we do not believe that section 111.86 or our administrative rule ERB 23.06 incorporates section 788.10(1)(d) by reference as alleged by DER. Those provisions merely establish, inter alia that either party may seek to vacate or affirm an arbitrator's award in court. It is true that in complaint proceedings to enforce agreements to arbitrate, such as those which can be brought pursuant to sections 111.84(1)(e) or 111.84(2)(d) and 111.84(4) and 111.07, the Commission has refused to enforce arbitration awards which are violative of the standards set out in section 788.10(1). However the Commission does not believe it is appropriate to exercise its discretion to issue declaratory rulings for the purpose of reviewing arbitration awards and ruling on the question of whether they ought to be declared null and void or effectively "vacated" pursuant to those standards. The jurisdiction for vacating awards under those standards lies in the Courts.

Therefore, contrary to DER's contentions, there is a rational basis for declining to issue a declaratory ruling this case. Further DER is not under an "order to arbitrate", it is free to seek a unit clarification from the Commission, and has a means for obtaining a review of the award in question without submitting to an unfair labor practice proceeding. It can, if it chooses, move to vacate the award under section 788.13. 3/

In declining to issue a declaratory ruling as requested we also wish to point out that we do so only for the first reason asserted by Local 3732, i.e., deference to the proper jurisdiction of the Courts. We do not accept Local 3732's claim that the issues sought to be raised herein are also pending in the other case referred to in its arguments. That proceeding does not involve the validity of the arbitration award. Rather it deals with the question of whether Local 3732 has committed an unfair labor practice by seeking to arbitrate the grievance in question.

Finally, we wish to note that notwithstanding the apparent reluctance of both parties to seek a unit clarification from the Commission that issue amenable to resolution as part of a petition for a fair

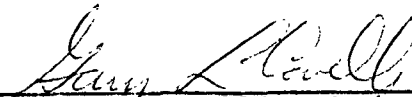
2/ See examiner's decision in Department of Employment Relations (Professional-Science), No. 18012-B, dated February 24, 1981. Local 3732 cites State v. WERC 65 Wis 2d 624 (1974) in support of this argument.

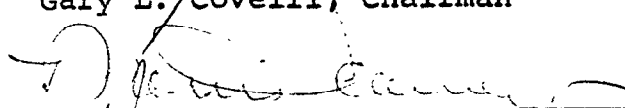
3/ It may also assert its claims here as a defense to an action brought under section 788.09 to confirm. See Milwaukee Police Association v. Milwaukee 92 Wis 2d 145 (1979). The commission is advised that such a proceeding has been brought in Dane County Circuit Court.

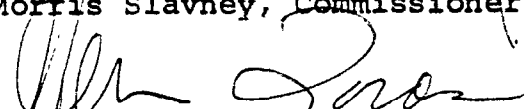
share referendum filed by Local 3732 on May 8, 1981. In that proceeding 4/ DER has refused to stipulate to the conduct of a referendum until the current composition of the bargaining unit is resolved. Local 3732 has taken the position that said objection is invalid and the Commission will be scheduling a hearing in that case.

Dated at Madison, Wisconsin this 26th day of May, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Gary L. Covelli, Chairman


Morris Slavney, Commissioner


Herman Torosian, Commissioner