

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

 :
 In the Matter of the Petition of :
 :
 GREEN LAKE COUNTY COURTHOUSE :
 EMPLOYEES, LOCAL 514C, AFSCME, :
 AFL-CIO; GREEN LAKE LAW :
 ENFORCEMENT EMPLOYEES, :
 LOCAL 514D, AFSCME, AFL-CIO; :
 and GREEN LAKE HIGHWAY :
 EMPLOYEES, LOCAL 514, AFSCME, :
 AFL-CIO :
 :
 Requesting a Declaratory Ruling :
 Pursuant to Sections 227.05, :
 227.06 and 806.04, Stats., :
 Involving a Dispute Between :
 Said Petitioners and :
 :
 GREEN LAKE COUNTY :
 :

Case 35
 No. 35005 DR(M)-0373
 Decision No. 22820

Appearances:

Lawton & Cates, 110 East Main Street, Madison, Wisconsin 53703, by
Mr. Richard V. Graylow, for the Petitioners.
Mr. John B. Selsing, Corporation Counsel, 120 East Huron Street, Berlin,
 Wisconsin 54923, for the County.

ORDER OF DISMISSAL

Green Lake County Courthouse Employees, Local 514C, AFSCME, AFL-CIO; Green Lake Law Enforcement Employees, Local 514D, AFSCME, AFL-CIO; and Green Lake Highway Employees, Local 514, AFSCME, AFL-CIO, herein the Petitioners, having on May 15, 1985 filed a petition with the Wisconsin Employment Relations Commission seeking a declaratory judgment pursuant to Sec. 806.04, Stats., as to whether certain health insurance premium cost savings should be returned to certain employees of Green Lake County who are represented for the purposes of collective bargaining by the Petitioners; and the Petitioners having subsequently clarified that they were seeking a declaratory ruling pursuant to Secs. 227.05, 227.06 and 806.04, Stats.; and Green Lake County, herein the County, having on June 11, 1985 filed a position statement with respect to said petition asserting that the Commission ought not assert jurisdiction over the petition and further that the County is not obligated to return the cost savings in question; and the Petitioners having on July 19, 1985 filed a statement urging the Commission to assert jurisdiction over the petition; and the Commission having considered the matter and concluded that the petition should be dismissed;

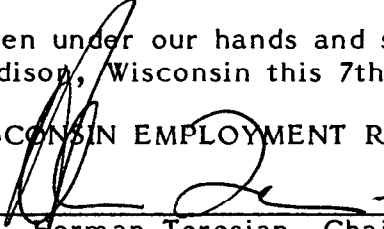
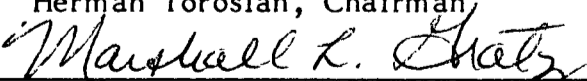
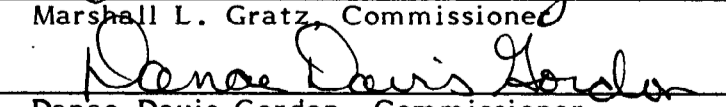
NOW, THEREFORE, it is

ORDERED 1/

That the Petition for Declaratory Ruling is hereby dismissed.

Given under our hands and seal at the City of Madison, Wisconsin this 7th day of August, 1985.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
 Herman Torosian, Chairman

 Marshall L. Gratz, Commissioner

 Danae Davis Gordon, Commissioner

1/ See Footnote 1 on Page 2.

1/ Pursuant to Sec. 227.11(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. 227.12(1) and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.16(1)(a), Stats.

227.12 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.

227.16 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.15 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor 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. 227.12, 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. 227.11. If a rehearing is requested under s. 227.12, 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 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. 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. 227.20 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.

MEMORANDUM ACCOMPANYING
ORDER OF DISMISSAL

We initially note that of the three jurisdictional bases cited by Petitioners (Secs. 227.05, 227.06 and 806.04, Stats.) only Sec. 227.06 is applicable to administrative agencies. 2/ Thus we commence our consideration of whether to assert jurisdiction over this petition by looking at the terms of that statute:

Sec. 227.06(1), Stats., specifies that:

"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"

Sec. 227.06(4), Stats., provides:

"Within a reasonable period of time after receipt of a petition pursuant to this section, an agency shall either deny the petition in writing or schedule the matter for hearing. If the agency denies the petition, it shall promptly notify the person who filed the petition of its decision, including a brief statement of the reasons therefor."

The foregoing statutory provisions clearly demonstrate that the Commission has considerable discretion to determine whether to issue a declaratory ruling under Sec. 227.06, Stats. The Commission has exercised that discretion in a manner which provided the requested ruling in several cases where no party objected to our assertion of jurisdiction. 3/ Where a party to the proceeding objects to the exercise of our jurisdiction, our response has been dependent upon a consideration of the needs of the parties which would be fulfilled if we were to issue the requested declaratory ruling and of the guidance, if any, such a decision might provide to parties around the State, with at least some consideration also being given to optimizing the use of Commission resources.

Thus, in Ashwaubenon Jt. School District No. 1, Dec. No. 14474-A (WERC, 10/77), the Commission elected to issue a declaratory ruling over the objection of one of the parties citing the value of and need for additional clarification of municipal employer rights concerning communication with represented employees during the pendency of collective bargaining. However, in Milwaukee Board of School Directors, Dec. No. 17505-17508 (WERC, 12/79), the Commission declined to issue a declaratory ruling to resolve a question whether certain bargaining proposals were mandatory subjects of bargaining because under the circumstances present therein, the parties had no pressing need for such a decision and because there was a danger in deciding matters of potential state-wide application where only one party could be counted on to vigorously litigate the issue. The Commission did indicate that it would expend some of its limited resources to issue a declaratory ruling if such a ruling would "advance the policies of the Employment Relations Act"

In the instant circumstances, our review of the petition reveals a dispute which appears to focus in large part upon what, if any, agreement was reached by the parties regarding disposition of monies saved where the level of health insurance premiums paid by the employer drops during the term of a contract. Resolution of such a dispute by the Commission through a Sec. 227 ruling would seem to have little value for other parties around the state because, unlike Ashwaubenon, it would not seem likely to provide any significant guidance in an

2/ Sec. 227.05, Stats., provides a mechanism for judicial review of the administrative rules. Section 806.04, Stats., provides a procedure through which courts can provide declaratory judgements.

3/ Wisconsin Housing & Economic Development Authority, Dec. No. 21780 (WERC, 6/84); Dodge County Dec. No. 21574 (WERC, 4/84).

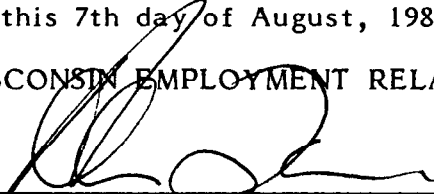
area of the law with general applicability. We also share the view expressed by both parties herein that there are one or more other available forums within which this dispute can be, and in our view more appropriately should be, resolved. Both the parties' contractual grievance arbitration procedures and/or the Commission's prohibited practices procedures would seem to be available depending upon the precise parameters of the Petitioner's legal theory of the dispute.

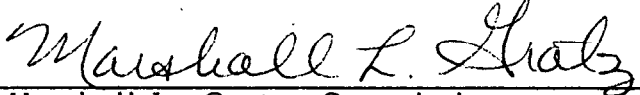
Given the foregoing, we decline to assert our Sec. 227.06 jurisdiction and have dismissed the petition.


Dated at Madison, Wisconsin this 7th day of August, 1985.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner