

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of :
CITY OF MILWAUKEE :
Requesting a Declaratory Ruling : Case 378
Pursuant to Sec. 227.41, Stats., : No. 46317 DR(M)-490
Involving a Dispute Between : Decision No. 27111
Said Petitioner and :
MILWAUKEE POLICE ASSOCIATION :

Appearances:

Mr. Thomas C. Goeldner, City Labor Negotiator, and Mr. Stuart S. Mukamal, Assistant City Attorney, 800 City Hall, 200 East Wells Street, Milwaukee, Wisconsin 53202-3551, appearing on behalf of the City.
Adelman, Adelman & Murray, S.C., Attorneys at Law, by Mr. Kenneth J. Murray, 1840 North Farwell Street, Suite 403, Milwaukee, Wisconsin 53202, appearing on behalf of the Association.

ORDER DISMISSING PETITION FOR DECLARATORY RULING

City of Milwaukee having, on September 26, 1991, filed a petition with the Wisconsin Employment Relations Commission seeking a declaratory ruling pursuant to Sec. 227.41, Stats., regarding the extent of the City's right and authority to implement and enforce certain provisions of a 1991-1992 collective bargaining agreement between the City and the Milwaukee Police Association; and the Association having, on October 21, 1991, filed a response to the petition asking that the Commission decline to assert jurisdiction over the matter; and the City having, on November 25, 1991, filed a response to the Association's position statement; and the Commission having considered the matter and concluded that it will not assert jurisdiction over the petition;

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 18th day of
December, 1991.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/
A. Henry Hempe, Chairperson

Herman Torosian /s/
Herman Torosian, Commissioner

William K. Strycker /s/
William K. Strycker, Commissioner

1/ Pursuant to Sec. 227.48(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. 227.49 and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.53, Stats.

227.49 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.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 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. 227.49, 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. 227.48. If a rehearing is requested under s. 227.49, 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

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(footnote continued on Page 3)

1/ (footnote continued from Page 2)

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. 77.59(6)(b), 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. 227.57 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 DISMISSING PETITION FOR DECLARATORY RULING

In its petition, the City requests a declaratory ruling upon the question of:

the extent to which it may lawfully enforce the provisions of Article 50 of the 1991-1992 Agreement against MPA President and Police Liaison Officer Bradley DeBraska including, but not limited to undertaking disciplinary action against him for willfully engaging in activities in violation of said Article.

In response to the petition, the Association contends that the Commission should not assert jurisdiction over the petition for the following reasons:

1. The City is asking the Commission to act as legal counsel to the City when enforcing provisions of the collective bargaining agreement;
2. The City is asking the Commission to assume an adversarial role by recommending what disciplinary action, if any, should be taken against the Association president;
3. The City is asking the Commission to guide the City through "the mine field of issues of statutory construction as well as issues of constitutional magnitude."

The Association argues that if the Commission were to assert jurisdiction over the petition, the Commission would not be acting as the "impartial tribunal" mandated by statutes.

In response to the Association's position, the City argues that it is not asking the Commission to act as its legal counsel or to recommend disciplinary action against the Association President. Instead, the City asserts that it is requesting a ruling as to the enforceability of certain contractual provisions pertaining to the conduct of Police Liaison Officers. The City contends that enforcement of the contractual provision in question raises issues regarding Sec. 111.70(3)(b)4, Stats., a statute administered and enforced by the Commission. Thus, the City asserts that the petition presents an issue as to "the applicability to any person, property or state of facts" of a statute enforced by the Commission and therefore that it is appropriate for the Commission to exercise jurisdiction over the petition.

The City further argues that by seeking guidance from the Commission, it seeks to avoid a situation wherein the City would be required to commit a potential prohibited practice when enforcing a contractual provision. The City contends that it is not conducive of labor peace to force one party to commit potential prohibited practices. Thus, the City argues that by asserting jurisdiction over the petition, the Commission would be furthering its mandate to promote labor peace.

In conclusion, the City asserts that it is precisely because of the statutory and constitutional issues raised by the parties' dispute that it is appropriate for the Commission to exercise its statutory jurisdiction to provide guidance to the parties herein.

Section 227.41, Stats., provides, in pertinent part, 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.

When determining whether to utilize its limited resources by exercising its discretionary jurisdiction over such petitions, the Commission considers the guidance, if any, which a decision might provide to parties around the State of Wisconsin as to matters of general applicability and the degree to which exercise of jurisdiction will denigrate other procedures available to the parties for resolution of their dispute. 2/ Where the focal point of the dispute is how a particular provision of a collective bargaining agreement should be interpreted, and where there are alternative contractual/statutory mechanisms for resolution of a dispute, the Commission has declined to assert its jurisdiction over such petitions. 3/

Here, the interpretation of a collective bargaining agreement is at the core of the dispute and there are contractual and statutory procedures by which the propriety of any City disciplinary action can be determined. Thus, if we were to assert jurisdiction over this petition, we would not be providing guidance as to legal matters of general state-wide applicability and we would be denigrating the alternative contractual/statutory dispute resolution procedures by encouraging parties to bypass same when they have potential disputes. Thus, although the City correctly argues that the enforcement of the contract provision in question may well raise issues regarding the interpretation of statutes administered by this agency, the Commission reluctantly concludes that it will not exercise its discretionary jurisdiction over the petition.

Dated at Madison, Wisconsin this 18th day of December, 1991.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/
A. Henry Hempe, Chairperson

Herman Torosian /s/
Herman Torosian, Commissioner

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2/ Ashwaubenon Schools, Dec. No. 14474-A (WERC, 10/77); Milwaukee Board of School Directors, Dec. No. 17505 - 17508 (WERC, 12/79); Green Lake County, Dec. No. 22820 (WERC, 8/85); Oakfield School District, (WERC, 11/87) unpublished.

3/ Milwaukee Board of School Directors, supra; Green Lake County, supra; Oakfield School District, supra.