

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

:

In the Matter of the Petition of :

:

WINNEBAGO COUNTY :

:

Requesting a Declaratory Ruling : Case 237

Pursuant to Sec. 227.41, Stats., : No. 49277 DR(M)-520

Involving a Dispute Between : Decision No. 27669

Said Petitioner and :

:

WINNEBAGO COUNTY PROFESSIONAL :

POLICE ASSOCIATION :

:

Appearances:

Mr. William J. Wagner, Director of Personnel, 415 Jackson Street, P.O.
Mr. Patrick J. Coraggio, Labor Consultant, 2825 North Mayfair Road,

Box 28
Wauwat

ORDER DISMISSING PETITION FOR
DECLARATORY RULING

On May 11, 1993, Winnebago County filed a petition for declaratory ruling. The petition asked the Wisconsin Employment Relations Commission to determine whether a dispute between the County and the Winnebago County Professional Police Association over alleged subcontracting of work was more appropriately resolved in a Commission unit clarification proceeding than a grievance arbitration case scheduled for hearing on May 19, 1993.

The Commission considered the matter, concluded it would not assert jurisdiction over the petition, and telephonically advised the parties of its decision on May 18, 1993.

NOW, THEREFORE, it is

The petition for declaratory ruling is dismissed.

Given under our hands and seal at the City of Madison, Wisconsin this 28th day of May, 1993.

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 therefore 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.

(Footnote 1/ continues on the next page.)

(Footnote 1/ continues from previous page.)

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 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.

WINNEBAGO COUNTY

MEMORANDUM ACCOMPANYING ORDER DISMISSING PETITION
FOR DECLARATORY RULING

In its petition, the County asserts:

Winnebago County recently created ten new non-sworn employment positions within the Jail Division of its Sheriff's Department entitled, Control Module/Booking Clerk. Because these positions are essentially clerical in nature and are non-sworn, the County has placed them within the Winnebago County Courthouse Employees' Association. The Courthouse Employees' Association represents all clerical employees assigned to the Sheriff's Department except for 911 dispatchers, who are represented by another bargaining unit.

As a result of the County's determination of the bargaining unit placement of these positions, the Winnebago County Professional Police Association has filed a grievance against the County claiming that the placement of these positions within the Courthouse Association constituted a subcontracting of the Police Association's bargaining unit work and therefore entitled the Police Association to remedy under the contractual grievance procedure. The Police Association consists exclusively of sworn officers of the Sheriff's Department. The grievance is scheduled for hearing by WERC staff member, Edmond Bielarczyk, on May 19, 1993.

Winnebago County contends that the appropriate forum for resolving this matter is the WERC unit clarification procedure, not the contractual grievance procedure.

Accordingly, Winnebago County hereby petitions the Commission to issue a declaratory ruling regarding the appropriate forum for this matter to be resolved and asks further that the grievance hearing regarding this matter and scheduled for May 19, 1993 be postponed until after the declaratory ruling has been issued.

. . .

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

2/ Ashwaubenon Schools, Dec. No. 14474-A (WERC, 10/77); Milwaukee Board of School Directors, Dec. No. 17505 - 17508 (WERC, 12/79); Green Lake

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 Police Association is asserting a contractual claim for relief against the County. Interpretation of the parties' contract is at the core of the contractual dispute. 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 contractual dispute resolution procedures by encouraging parties to bypass same when they have disputes.

Thus, we have concluded it is not appropriate for us to assert jurisdiction over the County's petition. If, upon completion of the grievance arbitration process, there remains some statutory dispute over the appropriate unit placement of the new positions, we stand ready to resolve said dispute through a unit clarification proceeding.

Dated at Madison, Wisconsin this 28th day of May, 1993.

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

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.