

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of

**UNIVERSITY OF WISCONSIN HOSPITAL AND CLINICS BOARD**

Requesting a Declaratory Ruling Pursuant to Section 227.41, Wis. Stats.,  
Involving a Dispute Between Said Petitioner and

**AFSCME, COUNCIL 24, WISCONSIN STATE EMPLOYEES UNION,  
AFL-CIO, LOCAL 1942, CERTAIN EMPLOYEES BELONGING  
THERE TO, AND THEIR INDIVIDUAL REPRESENTATIVES**

Case 7  
No. 57941  
DR(S)-5

**Decision No. 29784-B**

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Appearances:

**Ms. Jennifer A. Peshut**, P.O. Box 11116, Milwaukee, Wisconsin 53211, appearing on her own behalf.

Boushea, Segull & Joanis, by **Attorney Helen Marks Dicks**, 124 West Broadway, Suite 100, Monona, Wisconsin 53716-3902, appearing on behalf of Pamela Blankenheim.

Lawton & Cates, S.C., by **Attorney Ellen Schmitz Hughes**, Ten East Doty Street, Suite 400, P.O. Box 2965, Madison, Wisconsin 53701-2965, appearing on behalf of Wisconsin State Employees Union, AFL-CIO.

vonBriesen, Purtell & Roper, by **Attorney Doris E. Brosnan**, 411 Building Office, Suite 700, P.O. Box 3262, Milwaukee, Wisconsin 53201-3262, appearing on behalf of University of Wisconsin Hospital and Clinics Board.

**ORDER DENYING MOTION TO INTERVENE**

On May 1, 2000, Jennifer A. Peshut filed a motion to intervene in the above matter. AFSCME Council 24, University of Wisconsin Hospital and Clinics Board, and Pamela Blankenheim filed written argument opposing the motion. Briefing was completed May 22, 2000.

No. 29784-B

Having considered the matter and being fully advised in the premises, the Commission makes and issues the following

**ORDER**

The motion to intervene is denied.

Given under our hands and seal at the City of Madison, Wisconsin this 21st day of June, 2000.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

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James R. Meier, Chairperson

A. Henry Hempe /s/

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A. Henry Hempe, Commissioner

Paul A. Hahn /s/

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Paul A. Hahn, Commissioner

University of Wisconsin Hospital and Clinics Board

MEMORANDUM ACCOMPANYING  
ORDER DENYING MOTION TO INTERVENE

BACKGROUND

Peshut seeks to intervene in the ongoing proceedings regarding the Sec. 227.41, Stats., declaratory ruling petition filed by University of Wisconsin Hospital and Clinics Board. Through the petition, the Board seeks answers to various legal issues involving the interaction between the State Employment Labor Relations Act (SELRA) and a contractual grievance arbitration provision. Hearings in that matter are complete -- subject to the right of the existing parties (the Board, WSEU, and certain Board employes) to request additional hearing related to post-hearing exhibits.

POSITIONS OF THE PARTIES

Peshut

Peshut argues that she is an “interested party” within the meaning of Sec. 227.41, Stats., and thus is entitled to intervene. Alternatively, she moves to intervene under Sec. 803.09, Stats., or Secs. 111.07(2)(a) and 111.84(4), Stats., and ERC 20.12(2).

Peshut contends that she has a pending complaint case before a Commission examiner that involves the same issue as is pending in the declaratory ruling -- the interaction between SELRA and a contractual grievance arbitration provision. Thus, Peshut asserts that she would be affected by the result of the declaratory ruling that she notes the Commission has itself held “. . . will provide state-wide guidance.” UNIVERSITY OF WISCONSIN HOSPITAL AND CLINICS BOARD, DEC. NO. 29784 (WERC, 12/99).

Peshut contends that she is providing evidence and argument which has not been presented by the existing declaratory ruling parties and further argues that her intervention will not delay the declaratory ruling proceedings because she attached the written argument/evidence she wishes to have considered to her motion to intervene.

Should the Commission deny the motion to intervene, Peshut asks that her written argument be accepted as a brief *amicus curiae*.

### **The Board**

The Board asks that Peshut's motion be denied.

It argues Sec. 227.44(2m), Stats., requires that intervenors have a "substantial interest" and that Peshut's interest in the declaratory ruling does not rise to the "substantial" level. Contrary to Peshut, the Board asserts that the focal point of the declaratory ruling is the interpretation of a contract provision -- not the interpretation of SELRA. The Board further contends that because Peshut is already litigating her complaint, she will not be aggrieved by any decision in the declaratory ruling.

### **WSEU**

WSEU asks that the motion to intervene be denied.

WSEU asserts that when rejecting Peshut's attempt to intervene in the Preller complaint case (DEC. NO. 28938-E (WERC, 12/99), the Commission decided Peshut's interests are not sufficient to warrant intervention. WSEU asks that the Commission again conclude that Peshut's status as a state employe does not give her a sufficient interest to justify intervention. WSEU contends that Peshut is not covered by the contractual language at issue in the declaratory ruling proceeding and that her interest is indistinguishable from that of any other state employe. WSEU argues that it would be "preposterous" to conclude that status as a state employe is sufficient to warrant intervention.

### **Employe Blankenheim**

Blankenheim asks that the motion to intervene be denied as causing unnecessary delay.

## **DISCUSSION**

As noted earlier herein, we have previously rejected Peshut's request to intervene in a complaint case pending before us on rehearing. DEC. NO. 28938-E (WERC, 12/99). In that decision, we decided that Peshut was not a "party in interest" within the meaning of Sec. 111.07(2)(a), Stats., and stated:

When considering motions to intervene as a part in interest under Sec. 111.07(2), Stats., we have generally held that "the applicant's claim of interest must relate to issues in controversy before a motion to intervene will be granted." ASHLAND COUNTY, DEC. NO. 14461-A (WERC, 4/76). In MILWAUKEE BOARD OF SCHOOL DIRECTORS, DEC. NO. 16635-B (WERC, 1/83),

relying in large part on *CHAUFFEURS, TEAMSTERS & HELPERS GENERAL UNION v. WERC*, 51 Wis.2d 391 (1971), we held that “interest” as used in Sec. 111.07(2), Stats., “means something more than to be affected by or interested in the outcome.”

Peshut does not dispute that she is no longer covered by the contract language in dispute on rehearing or that her own unfair labor practice complaints filed with the Commission are not covered by said language. Thus, the interest she identifies in this proceeding is a generic one. She is supportive of and interested in the position Preller is advancing in this litigation regarding employes’ rights to process grievances.

As noted above in *MILWAUKEE BOARD OF SCHOOL DIRECTORS*, we held that the level of “interest” required to become a “party” is greater than being “interested in” the outcome of the dispute. In our view, the interests Peshut has identified do not rise above this “interested in” standard. Therefore, we have denied her motion to intervene.

Here, the statutory standard against which Peshut’s right to intervene must be measured is not Sec. 111.07(2)(a), Stats., but rather Sec. 227.41(1), Stats., which provides in pertinent part:

**227.41 Declaratory rulings. (1)** 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. Full opportunity for hearing shall be afforded to interested parties.

Peshut asserts status as an “interested party.” We have not found any definitive precedent as to how broadly that phrase is to be interpreted in the context of Sec. 227.41, Stats. Having considered the matter, we are persuaded that “interested parties” -- like a “party in interest” -- need more than a generic interest in the proceeding. Because Peshut is not covered by the contract language in dispute, we conclude that her interest in the interaction between SELRA and contractual grievance arbitration provisions is not sufficient to qualify her as an “interested party” entitled to intervene in the Sec. 227.41, Stats., proceedings. Although Peshut correctly points out that the result of this proceeding is of “state-wide” interest, we do not believe it follows that the provisions of Sec. 227.41, Stats., entitle any SELRA covered employe to be a party.

In the alternative to Sec. 227.41, Stats., Peshut cites Secs. 803.09, 111.07(2)(a) and 111.84(4), Stats. and ERC 20.12(2) as bases for intervention. Section 803.09, Stats., has no application to our proceeding as it governs the right of intervention in civil proceedings before a court. Sections 111.07(2)(a) and 111.84(4), Stats., are relevant to achieving party status in a complaint proceeding and thus also do not apply to this declaratory ruling proceeding. ERC 20.12(2) provides the procedure for filing a motion to intervene in a SELRA proceeding and thus has no application to this proceeding under Sec. 227.41, Stats.

Given all of the foregoing, we have denied the motion to intervene.

In the alternative, Peshut asks that her brief be received as that of an *amicus curiae*. We ask that the Board, WSEU, and Blankenheim advise us on or before July 7, 2000 as to their positions regarding this request.

Dated at Madison, Wisconsin this 21st day of June, 2000.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

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James R. Meier, Chairperson

A. Henry Hempe /s/

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B. Henry Hempe, Commissioner

Paul A. Hahn /s/

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Paul A. Hahn, Commissioner