

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**

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Appearances:

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

Boushea, Segall, Joanis & Johnston, 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 P. Scott Hassett**, Ten East Doty Street, Suite 400, P.O. Box 2965, Madison, Wisconsin 53701-2965, appearing on behalf of AFSCME Council 24, Wisconsin State Employees Union, AFL-CIO.

**ORDER ASSERTING JURISDICTION AND DENYING MOTION TO DISMISS**

On September 2, 1999, the University of Wisconsin Hospital and Clinics Board filed a petition with the Wisconsin Employment Relations Commission seeking a declaratory ruling pursuant to Sec. 227.41, Stats., regarding the Board's obligations when processing and arbitrating grievances under an existing collective bargaining agreement and the State Employment Labor Relations Act.

No. 29784

On September 8, 1999, Attorney Helen Marks Dicks, acting on her own behalf and as a representative of Pamela Blankenheim, filed a motion to dismiss the petition.

Briefing on the motion was completed October 8, 1999.

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

**ORDER**

1. The motion to dismiss is denied.
2. The Commission hereby asserts its jurisdiction over the petition.

Given under our hands and seal at the City of Madison, Wisconsin this 7th day of December, 1999.

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 ASSERTING  
JURISDICTION AND DENYING MOTION TO DISMISS**

**BACKGROUND**

The Board seeks a declaratory ruling as to its obligation under a collective bargaining agreement with AFSCME, Council 24 and under the State Employment Labor Relations Act regarding grievances which individual employees wish to process/arbitrate with their own representatives.

The Board asserts that it is confronted with conflicting contentions from individual employees and from the employees' collective bargaining representative as to how and whether such grievances can be processed/arbitrated.

The Dicks' motion to dismiss notes that under Sec. 227.41, Stats., the exercise of jurisdiction is discretionary with the administrative agency. Dicks argues that the Commission ought not exercise its discretionary jurisdiction because the collective bargaining agreement in question is not enforced by the Commission and because issuance of a declaratory ruling will not resolve the controversy given the pendency of the petition for rehearing in STATE OF WISCONSIN, CASE 430.

The Board responds to the motion to dismiss by arguing that Sec. 111.84(1)(e), Stats., gives the Commission authority to enforce collective bargaining agreements and that the agreement itself specifies that the agreement is an implementation of the State Employment Labor Relations Act. Thus, the Board urges the Commission to deny the motion to dismiss and to assert jurisdiction over the issues raised in the petition.

AFSCME, Council 24, also urges rejection of the motion to dismiss and assertion of jurisdiction over the petition. Like the Board, it contends that the State Employment Labor Relations Act gives the Commission jurisdiction over the parties' contract. AFSCME also argues that the issues and facts raised in the petition are broader than those before the Commission on rehearing in STATE OF WISCONSIN and that a Commission ruling would provide clarity for all affected parties. Citing the Declaration of Policy section of Sec. 111.80(2), Stats., which promotes "Orderly and constructive employment relations . . .", AFSCME asserts that it would be "highly appropriate" for the Commission to rule on the issues raised in the petition.

### DISCUSSION

We have considered the parties' positions and conclude that we have jurisdiction over the issues raised by the petition and that it is appropriate to exercise our jurisdiction over said issues through this petition for declaratory ruling.

Section 227.41(1), Stats., provides in pertinent part:

- (1) Any agency may, on petition by any interested person, issue declaratory ruling with respect to the applicability to any person, property or state of facts of any rule of statute enforced by it.

Here, Dicks initially argues that the petition does not involve a "statute enforced by" the Commission. We reject this argument because as noted by both the Board and AFSCME, Sec. 111.84(1)(e) of the State Employment Labor Relations Act gives us jurisdiction over the collective bargaining agreement in question. Section 111.84(1)(e), Stats., provides that it is an unfair labor practice:

- (e) To violate any collective bargaining agreement previously agreed upon by the parties . . .

In addition, the petition raises issues as to the interaction between a contractual grievance procedure and Sec. 111.83(1), Stats., which provides in pertinent part:

- (1) . . . Any individual employee, or any minority group of employees in any collective bargaining unit, may present grievances to the employer in person, or through representatives of their own choosing . . .

Given the foregoing, we think it clear that the petition does raise issues as to statutes we enforce. There remains the question of whether we should exercise our discretionary jurisdiction under Sec. 227.41(1), Stats., to decide the issues raised.

When deciding whether to assert our discretionary jurisdiction over petitions for declaratory ruling filed under Sec. 227.41(1), Stats., we consider the extent to which issuance of the declaratory ruling will undercut other available forums for resolution of the issues presented and the extent to which a ruling will provide broad guidance. SEE WINNEBAGO COUNTY, DEC. NO. 27669 (WERC, 5/93).

While we generally do not assert jurisdiction over alleged violations of collective bargaining agreements where, as here, the agreement provides for final and binding arbitration of contractual disputes, both parties to this contract (the Board and AFSCME) have asked us to do so in the context of this petition. In such circumstances, the exercise of our jurisdiction under Sec. 227.41(1), Stats., over this petition for declaratory ruling provides the contractual parties with a requested service and thus does not denigrate their final and binding arbitration provision.

As noted earlier, the issues raised by the petition involve interpretation of Sec. 111.83(1), Stats. -- a statutory provision of state-wide application over which we also have jurisdiction. To the extent the petition raises issues as to how the contractual grievance procedure interacts with Sec. 111.83(1), Stats., exercise of our jurisdiction will provide state-wide guidance.

Given the foregoing, we are satisfied that asserting jurisdiction over this petition will not undercut other forums and will provide state-wide guidance.

Dicks correctly argues that there is some relationship between the issues presently before us on rehearing in STATE OF WISCONSIN, CASE 430.

However, as AFSCME correctly responds, the issues and facts presented by this petition are broader than those at issue in CASE 430 and exercise of our jurisdiction to resolve the issues raised by the petition will be consistent with the State Employment Labor Relations Act's interest in "Orderly and constructive employment relations."

Given all of the foregoing, we have denied the motion to dismiss and have affirmatively asserted our jurisdiction over the petition.

Dated at Madison, Wisconsin this 7th day of December, 1999.

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