

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

LOCAL 2494, AFSCME, AFL-CIO

Requesting a Declaratory Ruling Pursuant to Section 111.70(4)(b), Wis. Stats.,
Involving a Dispute Between Said Petitioner and

WAUKESHA COUNTY

Case 162
No. 58830
DR(M)-611

Decision No. 29929

Appearances:

Shneidman Myers Dowling Blumenfield Ehlke Hawks & Domer, by **Attorney Aaron N. Halstead**, 217 South Hamilton, P.O. Box 2155, Madison, Wisconsin 53701-2155, appearing on behalf of Local 2494, AFSCME, AFL-CIO.

Michael, Best & Friedrich, by **Attorneys Marshall R. Berkoff and Jesús J. Villa**, 100 East Wisconsin Avenue, Milwaukee, Wisconsin 53202-4108, appearing on behalf of Waukesha County.

ORDER DENYING MOTION TO DISMISS

On May 2, 2000, Local 2494, AFSCME, AFL-CIO filed a petition with the Wisconsin Employment Relations Commission pursuant to Sec. 227.41, Stats., seeking a declaratory ruling that an interest arbitration award involving Local 2494 and Waukesha County is null and void.

On May 17, 2000, Waukesha County filed a response to the petition asserting among other matters that the petition should be dismissed because the Commission lacked statutory authority and jurisdiction to resolve the issue posed therein.

On May 30, 2000, Local 2494 replied to the County's jurisdictional argument.

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Having considered the matter, we are persuaded that we have the statutory jurisdiction and authority to resolve the issue raised in the petition and that it is appropriate to exercise that jurisdiction.

NOW, THEREFORE, it is

ORDERED

The motion to dismiss the petition is denied.

Given under our hands and seal at the City of Madison, Wisconsin this 22nd day of June, 2000.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

Waukesha County

MEMORANDUM ACCOMPANYING ORDER DENYING MOTION TO DISMISS

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

(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.

Through its petition for declaratory ruling, Local 2494 asks that we determine whether an interest arbitrator's award violated the statutory requirement found in Sec. 111.70(4)(cm)6.d., Stats., that "The arbitrator shall adopt without further modification the final offer of one of the parties"

The County argues that the petition should be dismissed because it seeks a ruling that is beyond the Commission's authority under Sec. 227.41, Stats., and because a ruling on the merits of the petition would circumvent the right of Local 2494 to use Sec. 788.10, Stats., to seek to vacate the award.

As noted by Local 2494 in its responsive argument, Sec. 111.70(4)(cm)9.a., Stats., specifically provides that Chapter 788 is not applicable to interest arbitration proceedings under Sec. 111.70(4)(cm), Stats. On that basis, we reject the County's argument that the exercise of jurisdiction under Sec. 227.41, Stats., would circumvent other statutory provisions.

As also noted by Local 2494, we have previously held that a Sec. 227.41, Stats., declaratory ruling petition is an appropriate vehicle for a labor organization to use to obtain Commission review of Sec. 111.70(4)(cm), Stats., interest arbitration awards. SCHOOL DISTRICT OF WAUSAUKEE, DEC. NO. 17576 (WERC 1/80), AFF'D CTAPP III (1/83) UNPUBLISHED, DEC. NO. 81-1869; NEKOOSA SCHOOL DISTRICT, DEC. NO. 25876 (WERC, 2/89). The County has not presented any argument that would cause us to reverse these prior holdings.

Given the foregoing, we conclude that we have the statutory jurisdiction and authority to address the issue raised in the petition for declaratory ruling and that it is appropriate for us to exercise that jurisdiction. Therefore, we deny the County's motion that the petition be dismissed.

Dated at Madison, Wisconsin this 22nd day of June, 2000.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner