

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

ERIN SCHOOL DISTRICT

Requesting a Declaratory Ruling Pursuant to Sections 111.70(4)(b) and 227.41,
Wis. Stats., Involving a Dispute Between Said Petitioner and

ERIN TEACHERS ASSOCIATION

Case 10
No. 59841
DR(M)-620

Decision No. 30245

Appearances:

Quarles & Brady, by **Attorney Gary M. Ruesch**, 411 East Wisconsin Avenue, Milwaukee, Wisconsin 53202-4497, appearing on behalf of Erin School District.

Attorney Anthony L. Sheehan, Staff Counsel, Wisconsin Education Association Council, P.O. Box 8003, Madison, Wisconsin 53708-8003, appearing on behalf of Erin Teachers Association.

ORDER DENYING MOTION TO DISMISS OR DEFER

On April 3, 2001, the Erin School District filed a petition with the Wisconsin Employment Relations Commission seeking a declaratory ruling pursuant to Secs. 111.70(4)(b) and 227.41, Stats., as to whether the Erin Teachers Association has a duty to bargain with the District over the terms of a 1999-2001 contract. The District asserts in the petition that such a duty exists because the parties do not have a collective bargaining agreement and that the Association believes the parties have a contract and thus that no duty to bargain exists.

On April 13, 2001, the Association filed a motion to dismiss the petition or, in the alternative, to defer the dispute to grievance arbitration. On May 21, 2001, the District filed written argument in opposition to the motion.

Dec. No. 30245

Having reviewed the record and being fully advised in the premises, the Commission makes and issues the following

ORDER

The motion to dismiss or defer is denied.

Given under our hands and seal at the City of Madison, Wisconsin this 30th day of November, 2001.

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

Erin School District

MEMORANDUM ACCOMPANYING
ORDER DENYING MOTION TO DISMISS OR DEFER

The Association argues the petition should be dismissed because the petition itself establishes that the parties have a contract and thus that there is no duty to bargain over same. However, this Association argument presumes the very fact (the existence of a contract) which is the essence of the dispute between the parties. Thus, we deny the motion to dismiss.

In the alternative, the Association contends that this is the type of dispute over which the Commission has historically not exercised jurisdiction and that the parties' dispute is essentially one of contract interpretation which can and should be deferred to the grievance arbitration process.

The instant petition was filed under Sec. 111.70(4)(b), Stats., and Sec. 227.41, Stats. Although the Association correctly argues that exercise of jurisdiction over a Sec. 227.41, Stats., petition is discretionary 1/ and that the availability of other dispute resolution forums is a factor the Commission considers when exercising its discretion, 2/ exercise of jurisdiction over a Sec. 111.70(4)(b), Stats., petition is not discretionary so long as a duty to bargain dispute exists. 3/

1/ Section 227.41(1), Stats., provides:

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

2/ See WINNEBAGO COUNTY, DEC. NO. 27669 (WERC, 5/93).

3/ Section 111.70(4)(b), Stats., provides that:

(b) Failure to bargain. Whenever a dispute arises between a municipal employer and a union of its employees concerning the duty to bargain on any subject, the dispute shall be resolved by the commission on petition for declaratory ruling. . . . (Emphasis added)

Here, it is clear that the parties have a dispute over the duty to bargain and thus it is clear under Sec. 111.70(4)(b), Stats., that we “shall” resolve the dispute. Thus, we have denied the Association’s motion.

Dated at Madison, Wisconsin this 30th day of November, 2001.

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