

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

RACINE EDUCATION ASSOCIATION

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

RACINE UNIFIED SCHOOL DISTRICT

Case 196
No. 58900
DR(M)-613

Decision No. 30285

Appearances:

Melli, Walker, Pease & Ruhly, S.C., by **Attorney Dana J. Erlandsen**, P.O. Box 1664, Madison, Wisconsin 53701-1664, appearing on behalf of Racine Unified School District.

Kelly & Petranec, by **Attorney Brett Petranec**, 122 East Olin Avenue, Suite 195, Madison, Wisconsin 53713, appearing on behalf of the Racine Education Association.

ORDER DISMISSING PETITION FOR DECLARATORY RULING

On May 23, 2000, the Racine Education Association filed a petition with the Wisconsin Employment Relations Commission seeking a declaratory ruling pursuant to Sec. 111.70(4)(b), Stats., to resolve a duty to bargain dispute between the Association and the Racine Unified School District.

At the time the petition was filed, the parties were bargaining over a successor to their 1997-1999 bargaining agreement and a dispute had arisen between the District and the Association over the Association's right to bargain over inclusion of a provision from the 1997-1999 agreement in the successor 1999-2001 collective bargaining agreement.

Hearing was held on the petition but on August 8, 2001, before the Commission issued its decision, the Association advised the Commission that it wished to withdraw the petition for declaratory ruling because the parties had reached agreement on 1999-2001 and 2001-2003 contracts that included the disputed provision.

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On August 10, 2001, the District filed an objection to the Association's withdrawal request asserting that the Commission should proceed to issue a decision based on the existing record and that the matter was not moot because the language in question was included in the 2001-2003 contract.

On August 14, 2001, the Association filed a response arguing that the matter is moot because there is no present controversy between the parties.

Having considered the matter, the Commission makes and issues the following

ORDER

The petition for declaratory ruling is dismissed.

Given under our hands and seal at the City of Madison, Wisconsin, this 8th day of March, 2002.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

Racine Unified School District

**MEMORANDUM ACCOMPANYING
ORDER DISMISSING PETITION FOR DECLARATORY RULING**

The Association's petition for declaratory ruling was filed under Sec. 111.70(4)(b), Stats., that provides in pertinent part:

(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.

We have consistently held that there must first be a dispute concerning the present duty to bargain over a subject before we have jurisdiction to issue a declaratory ruling under Sec. 111.70(4)(b), Stats. MILWAUKEE BOARD OF SCHOOL DIRECTORS, DEC. NO. 17504 (WERC, 12/79); CITY OF GLENDALE, DEC. NO. 19720 (WERC, 6/82); MENOMONEE FALLS SCHOOL DISTRICT, DEC. NO. 21199 (WERC, 11/83).

In the instant matter the parties are in the midst of their 2001-2003 labor agreement. Under that circumstance, neither party has the current duty to bargain with the other. Since neither party has the duty to bargain with the other, there can be no present "dispute" concerning the duty to bargain within the meaning of Sec. 111.70(4)(b), Stats.

We have, therefore, granted the Association's request that its petition be dismissed.

Dated at Madison, Wisconsin, this 8th day of March, 2002.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner