

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

THE ASSOCIATION OF MENTAL HEALTH SPECIALISTS

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

ROCK COUNTY

Case 353
No. 63153
DR(M)-646

Decision No. 30805

Appearances:

John S. Williamson, Jr., Attorney at Law, 103 West College Avenue, Suite 1203, Appleton, Wisconsin 54911, appearing on behalf of the Association of Mental Health Specialists.

Eugene R. Dumas, Deputy Corporation Counsel, Rock County, Courthouse, 51 South Main Street, Janesville, Wisconsin 53545, appearing on behalf of Rock County.

ORDER DENYING MOTION TO DISMISS

On December 26, 2003, the Association of Mental Health Specialists filed a petition with the Wisconsin Employment Relations Commission seeking a declaratory ruling pursuant to Sec. 111.70(4)(b), Stats., as to whether the Association has a duty to bargain with Rock County over certain matters. The Association asserts in its petition that it would be illegal for it to so bargain and relies in part on federal constitutional law.

On January 12, 2004, the County filed a motion to dismiss the petition because: (1) resolution of the issue raised by the Association will inappropriately require the Commission to interpret and apply federal constitutional law; and (2) the Association's legal position is unclear.

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On January 16, 2004, the Association filed written argument in opposition to the motion to dismiss.

We have considered the matter and conclude that the motion to dismiss should be denied. It is clear that if we need to consider and interpret federal constitutional law when determining whether a matter is a prohibited subject of bargaining, it is appropriate for us to do so. *MILWAUKEE BOARD OF SCHOOL DIRECTORS V. WERC*, 163 Wis.2d 739 (Ct. App. 1991). Further, any lack of clarity in the Association's position does not provide a basis for dismissing the petition. We are confident that any lack of clarity will be eliminated as this matter proceeds.

Given all of the foregoing, we make and issue the following

ORDER

The motion to dismiss is denied.

Given under our hands and seal at the City of Madison, Wisconsin, this 20th day of February, 2004.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner