

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

EAU CLAIRE CITY EMPLOYEES, LOCAL 284, AFSCME, AFL-CIO, Complainant,

vs.

CITY OF EAU CLAIRE, Respondent.

Case 275
No. 67008
MP-4351

Decision No. 32159-C

Appearances:

Bruce F. Ehlke, Hawks, Quindel, Ehlke & Perry, S.C., Madison, Wisconsin 53701-2155, appearing on behalf of the Eau Claire City Employees, Local 284, AFSCME, AFL-CIO.

Stephen L. Weld, Weld, Riley, Prenn & Ricci, S.C., 3624 Oakwood Hills Parkway, Eau Claire, Wisconsin 54702, appearing on behalf of the City of Eau Claire.

ORDER DISMISSING INTERLOCUTORY APPEAL

On August 13, 2007, Commission Examiner Steve Morrison issued Examiner's Order Deferring in Part and Retaining Jurisdiction in Part in the above matter, wherein he deferred further processing of Secs. 111.70(3)(a)4, 5 and (derivatively) 1, Stats. allegations until a grievance arbitration award is issued and wherein he further determined that he would hold litigation of an independent Sec. 111.70(3)(a)1, Stats. allegation in abeyance pending issuance of the grievance arbitration award.

On August 15, 2007, Complainant filed a petition with the Commission seeking review of that portion of the Examiner's Order that deferred further processing of the Sec. 111.70 (3)(a)4, Stats. allegation but suggesting that the petition be held in abeyance pending the issuance of the grievance arbitration award.

The parties thereafter expressed their views by e-mail and during a September 11, 2007 conference call.

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

ORDER

The petition for review is dismissed.

Given under our hands and seal at the City of Madison, Wisconsin, this 18th day of September, 2007.

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

CITY OF EAU CLAIRE

MEMORANDUM ACCOMPANYING ORDER
DISMISSING INTERLOCUTORY APPEAL

The Examiner's Order is not a "final" disposition of the complaint and thus it is discretionary as to whether we should review the merits of the interlocutory appeal. G & H PRODUCTS, INC., DEC. NO. 17630-B (WERC, 1/82); JEFFERSON BOARD OF EDUCATION, DEC. NO. 13648-B (WERC, 1/76). While we have reviewed the merits of an appeal of an interlocutory Examiner order where the legal issue involved was of general significance – CLINTON SCHOOLS, DEC. NO. 20081-C (WERC, 7/84) involving the statutory authority of an Examiner to grant interlocutory relief – we have generally declined to exercise our discretionary jurisdiction. STATE OF WISCONSIN, DEC. NO. 30124-B (WERC, 7/01); VILLAGE OF KIMBERLY, DEC. NO. 28759-B (WERC, 12/96); WAUKESHA COUNTY, DEC. NO. 28726-B (WERC, 11/96); BROWN COUNTY, DEC. NO. 27553-C (WERC, 1/94); CITY OF BELOIT, DEC. NO. 25917-C (WERC, 10/89). We decline to do so here as well because we are satisfied that the legal issue is not one of general significance. Thus, we have dismissed the appeal.

When the Examiner issues a final order in this matter, Complainant can then file a petition for review which can address the deferral issue presented in the instant interlocutory appeal as well as any other issues presented by the Examiner's interlocutory and/or final decisions.

Dated at Madison, Wisconsin, this 18th day of September, 2007.

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

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