

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

BROWN COUNTY

Requesting a Wis. Stats. 227.41(2)
Declaratory Ruling Involving a
Dispute Between the Petitioner and

**BROWN COUNTY SHERIFF'S DEPARTMENT
NON-SUPERVISORY LABOR ASSOCIATION**

Case 764
No. 67705
DR(M)-680

Decision No. 32367

Appearances:

Frederick J. Mohr, Attorney at Law, 414 East Walnut Street, Suite 261, P. O. Box 1015, Green Bay, Wisconsin 54305.

Jon Cermele, Cermele & Associates, S.C., 6310 West Bluemound Road, Suite 200, Milwaukee, Wisconsin 53213.

ORDER DISMISSING PETITION FOR DECLARATORY RULING

On January 17, 2008, Brown County filed a petition with the Wisconsin Employment Relations Commission seeking a declaratory ruling pursuant to Sec. 227.41, Stats. regarding the County's right to discipline an employee during a bargaining session "when the employee becomes unruly or disorderly."

On January 23, 2008, the Brown County Sheriff's Department Non-Supervisory Labor Association filed a response arguing that the Commission ought not assert its discretionary jurisdiction over the petition. ¹

¹ In its response, the Association erroneously asserts that the Commission affirmed Examiner Emery's decision in BROWN COUNTY, DEC. NO. 31367-E (Emery, 3/07). In BROWN COUNTY, DEC. NO. 31367-F (WERC, 11/07), the Commission set aside the Examiner's decision as part of a settlement agreement.

On February 6, 2008, the County replied to the Association's position statement.

Having considered the matter and being fully advised in the premises, we conclude that we will not exercise our jurisdiction over the petition.

NOW, THEREFORE, it is

ORDERED

The petition for declaratory ruling is dismissed.

Given under our hands and seal at the City of Madison, Wisconsin, this 27th day of February, 2008.

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

BROWN COUNTY (SHERIFF'S DEPARTMENT)

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

Section 227.41, Stats., provides in pertinent part:

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.

When determining whether to utilize its limited resources by exercising its discretionary jurisdiction over such petitions, the Commission considers the guidance, if any, which a decision might provide to parties around the State of Wisconsin as to matters of general applicability and the degree to which exercise of jurisdiction will denigrate other procedures available to the parties for resolution of their dispute. ASHWAUBENON SCHOOLS, DEC. NO. 14474-A (WERC, 10/77); MILWAUKEE BOARD OF SCHOOL DIRECTORS, DEC. NOS. 17505-17508 (WERC, 12/79); GREEN LAKE COUNTY, DEC. NO. 22820 (WERC, 8/85); CITY OF MILWAUKEE, DEC. NO. 27111 (WERC, 12/91); UNIVERSITY OF WISCONSIN HOSPITAL AND CLINICS AUTHORITY, DEC. NO. 29889 (WERC, 5/00).

The issue which the County ask us to consider is one as to which the law is well-settled.

Concerted activity by its nature often occurs in tense, confrontational, or chilly atmospheres, and some intemperance is to be expected in those situations. . . . Thus, unless concerted activity is marked by flagrant misconduct, it does not lose its protection. In addition, what constitutes "flagrant misconduct," will depend on the nature of the workplace and the effect on the employer's authority. VILLAGE OF STURTEVANT, DEC. NO. 30378-B (WERC, 11/03) at p. 25.

Thus, exercise of our jurisdiction will not provide guidance as to matters of general applicability.

In addition, because these parties do not have a pending dispute, exercise of our jurisdiction will neither denigrate nor enhance other dispute resolution procedures. Under these circumstances, we conclude that we should not exercise our discretionary jurisdiction over the petition. Therefore, we have dismissed same.

Dated at Madison, Wisconsin, this 27th day of February, 2008.

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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