

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

LISA M. GRIBBLE

Requesting a Declaratory Ruling Pursuant to Sec. 227.41, Stats.
Involving a Dispute Between the Petitioner and

**FLORENCE COUNTY and
LABOR ASSOCIATION OF WISCONSIN, INC.**

Case 56
No. 67770
DR(M)-681

Decision No. 32403

Appearances:

Nicholas E. Fairweather, Cullen, Weston, Pines & Bach, Attorneys at Law, 122 West Washington Avenue, Suite 900, Madison, Wisconsin 53703, appearing on behalf of Lisa M. Gribble.

Robert W. Burns, Davis & Kuelthau, S.C. Attorneys at Law, 318 South Washington Street, Suite 300, Green Bay, Wisconsin 54301, appearing on behalf of Florence County.

Benjamin M. Barth, Labor Consultant, Inc. N116 W16033 Main Street, Germantown, Wisconsin 53022 and **Thomas A. Bauer**, Labor Consultant, 206 South Arlington, Appleton, Wisconsin 54915, appearing on behalf of the Labor Association of Wisconsin, Inc.

ORDER DISMISSING PETITION FOR DECLARATORY RULING

On February 12, 2008, Lisa M. Gribble filed a petition with the Wisconsin Employment Relations Commission seeking a declaratory ruling pursuant to Sec. 227.41, Stats. as to whether Florence County (County) violated a collective bargaining agreement between the County and the Labor Association of Wisconsin, Inc. (LAW).

On February 29, 2008 and March 17, 2008, the County and LAW, respectively, filed written argument urging the Commission not to take jurisdiction over the petition.

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On March 20, 2008, Gribble filed a response.

Having considered the matter and being fully advised in the premises, 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 15th day of April, 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

FLORENCE COUNTY

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

Gribble asserts in her petition that the County violated a collective bargaining agreement between it and LAW and that LAW will not process her grievance.

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); BROWN COUNTY, DEC. NO. 32367 (2/08).

Through her petition, Gribble asks that we exercise our statutory authority under Sec. 111.70(3)(a) 5, Stats. to determine whether the County violated a collective bargaining agreement. However, where, as here, the collective bargaining agreement in question contains a grievance arbitration provision, we generally will not exercise our statutory jurisdiction to resolve violation of contract disputes because the contractual grievance arbitration provision is presumed to be the exclusive mechanism for resolution of such disputes. MAHNKE V. WERC, 66 Wis. 2d 524, 529-30 (1974); UNITED STATES MOTORS CORP., DEC. NO. 2067-A (WERB, 5/49); HARNISCHFEGGER CORP., DEC. NO. 3899-B (WERB, 5/55); CITY OF MENASHA, DEC. NO. 13283-A (WERC, 2/77); MONONA GROVE SCHOOLS, DEC. NO. 22414 (WERC, 3/85). One of the limited exceptions to our general refusal to exercise our statutory jurisdiction over violation of contract claims is where an employee establishes in a Commission complaint proceeding that the grieving employee's collective bargaining representative has breached its duty of fair representation by refusing to process the grievance. MAHNKE, *supra*; MILWAUKEE BOARD OF SCHOOL DIRECTORS, DEC. NO. 31602-C (WERC, 1/07). Where such a breach of the duty of fair representation can be established, the Commission will then exercise its jurisdiction to decide whether the collective bargaining agreement has been violated. MILWAUKEE BOARD OF SCHOOL DIRECTORS, *supra*.

Given the foregoing, if we exercised our jurisdiction over Gribble's petition, we would act in a manner totally at odds with our general refusal to assert jurisdiction over statutory breach of contract claims where, as here, there is a presumptively exclusive contractual grievance arbitration procedure for the resolution of such disputes. We would also be denigrating our duty of fair representation/violation of contract complaint forum which provides the parties with a mechanism which could produce a resolution of breach of contract dispute. ¹ Therefore, we will not exercise our Sec 227.41, Stats., jurisdiction and have dismissed the petition. ²

Dated at Madison, Wisconsin, this 15th day of April, 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

¹ In fact, Gribble has filed such a complaint with the Commission.

² Gribble asserts that issuance of a declaratory ruling would provide state-wide guidance as to the contractual rights of employees who hold a portion of their job duties pursuant to appointment from an elected official. We disagree. Because the interpretation of a collective bargaining agreement is so dependent on the specific contractual language (and any applicable past practice and bargaining history) and the specific facts, it is unlikely state-wide guidance would be provided.

