

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

**WISCONSIN PROFESSIONAL POLICE ASSOCIATION/
LAW ENFORCEMENT EMPLOYEE RELATIONS DIVISION/
WAUSAU PROFESSIONAL POLICE ASSOCIATION**

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

CITY OF WAUSAU

Case 141
No. 69628
DR(M)-700

Decision No. 33040

Appearances:

Roger W. Palek, Staff Counsel, Wisconsin Professional Police Association/LEER Division, 660 John Nolen Drive, Suite 300, Madison, Wisconsin 53713, appearing on behalf of the Wisconsin Professional Police Association/Law Enforcement Employee Relations Division/Wausau Professional Police Association.

James R. Korom, vonBriesen & Roper, S.C., Attorneys at Law, 411 East Wisconsin Avenue, Suite 700, Milwaukee, Wisconsin 53202-3262, appearing on behalf of the City of Wausau.

ORDER DISMISSING PETITION FOR DECLARATORY RULING

On March 1, 2010, Wisconsin Professional Police Association/Law Enforcement Employee Relations Division/Wausau Professional Police Association (WPPA) filed a petition with the Wisconsin Employment Relations Commission seeking a declaratory ruling pursuant to Sec. 227.41, Stats. as to whether a collective bargaining agreement between WPPA and the City of Wausau conflicts with Sec. 62.13, Stats. in a manner that would prevent grievance arbitration of certain types of disciplinary action.

On March 17, 2010, the City filed a motion to dismiss the petition. The parties thereafter filed written argument in support of and in opposition to the motion-the last of which was received April 7, 2010.

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Having considered the matter and being fully advised in the premises, the Commission concludes that it will not exercise its discretionary jurisdiction over the petition.

NOW, THEREFORE, 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 26th day of May, 2010.

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 WAUSAU

MEMORANDUM ACCOMPANYING ORDER
DISMISSING PETITION FOR DECLARATORY RULING

Section 227.41(1), Stats, provides in pertinent part:

- (1) 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. . .

As reflected by the statutory use of the word “may,” it is clear that issuance of a declaratory ruling under Sec. 227.41, Stats., is discretionary. We have exercised that discretion by declining to issue declaratory rulings which (1) would not provide guidance to parties around Wisconsin on matters of general applicability and/or (2) would denigrate other procedures available to the parties for resolution of the dispute. SEE GREEN LAKE COUNTY, DEC. NO. 22820 (WERC, 8/85); CITY OF MILWAUKEE, DEC. NO. 27111 (WERC, 12/91); UW HOSPITAL AND CLINICS AUTHORITY, DEC. NO. 29889 (WERC, 5/00).

Here, among other matters, the City argues that we ought not exercise our discretionary jurisdiction because the issue of the interplay between the contract and Sec. 62.13, Stats. can and should be resolved by a grievance arbitrator. In addition, we note that if the City refuses to arbitrate a grievance, our prohibited practice proceedings under Sec. 111.70(3)(a)5, Stats.,¹ will allow for litigation of these same issues.

Given the foregoing, it is clear that exercise of our discretionary Sec. 227.41, Stats., jurisdiction will denigrate other procedures available to the parties for resolution of the dispute. In addition, because the issue to be resolved will turn in part on facts and contract language

¹ Section 111.70(3)(a) 5, Stats. provides in pertinent part:

- (a) It is a prohibited practice for a municipal employer individually or in concert with others:

. . .

5. To violate any collective bargaining agreement previously agreed upon by the parties with respect to wages, hours and conditions of employment affecting municipal employees, including an agreement to arbitrate questions arising as to the meaning or application of the terms of a collective bargaining agreement. . . .

specific to these parties, a declaratory ruling in this matter would not provide state-wide guidance. Therefore, we conclude that we will not exercise our discretionary jurisdiction over the petition and have ordered the petition dismissed.

Dated at Madison, Wisconsin, this 26th day of May, 2010.

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