

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

DOOR COUNTY

Involving Certain Employees of

DOOR COUNTY

Case 180
No. 70936
DR(M)-716

Decision No. 33595

Appearances:

Grant P. Thomas, Corporation Counsel, 421 Nebraska Street, Sturgeon Bay, Wisconsin 54235, appearing on behalf of Door County.

Mark DeLorme, Staff Representative, Wisconsin Council 40, AFSCME, 824 York Street, #2, Manitowoc, Wisconsin 54220, appearing on behalf of various Door County AFSCME Locals.

ORDER DISMISSING PETITION FOR DECLARATORY RULING

On September 20, 2011, Door County filed a petition with the Wisconsin Employment Relations Commission pursuant to Sec. 111.70(4)(b), Stats. seeking a declaratory ruling as to a dispute between the County and AFSCME Wisconsin Council 40.

On October 3, 2011, AFSCME filed a motion to dismiss the petition alleging that there is no current dispute within the meaning of Sec. 111.70(4)(b), Stats. over the duty to bargain between the parties. The County filed a response to the motion on October 14, 2011.

Having reviewed the pleadings and arguments of the parties and being fully advised in the premises, the Commission makes and issues the following

No. 33595

ORDER

The petition for declaratory ruling is dismissed.

Given under our hands and seal at the City of Madison, Wisconsin, this 2ND day of December, 2011.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott /s/

James R. Scott, Chairman

Judith Neumann /s/

Judith Neumann, Commissioner

Rodney G. Pasch /s/

Rodney G. Pasch, Commissioner

DOOR COUNTY

MEMORANDUM ACCOMPANYING ORDER
DISMISSING PETITION FOR DECLARATORY RULING

Section 111.70(4)(b), Stats. provides:

Whenever a dispute arises between a municipal employer and a union of its employees concerning the duty to bargain on any subject, the dispute shall be resolved by the commission on petition for declaratory ruling.

As AFSCME correctly argues, the Commission will only assert its jurisdiction under Sec. 111.70(4)(b), Stats. if there is a current duty to bargain over a subject and the parties have a dispute as to the scope of that duty. *MENOMONEE FALLS SCHOOL DISTRICT*, DEC. NO. 21199 (WERC, 11/83). Here, the parties have bargained 2011-2013 collective bargaining agreements and thus do not have a current duty to bargain as to the matters contained therein. However, the County correctly notes that as to matters not covered by the collective bargaining agreement, the duty to bargain can exist during the term of a contract. Thus, the County correctly argues that the existence of a bargaining agreement does not preclude the existence of a dispute over the duty to bargain. However, the County has not identified any current duty to bargain dispute between the parties as to matters not covered by the contract. Thus, Sec. 111.70(4)(b), Stats. does not give us jurisdiction to proceed and we have dismissed the petition.¹

Dated at Madison, Wisconsin, this 2nd day of December, 2011.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott /s/

James R. Scott, Chairman

Judith Neumann /s/

Judith Neumann, Commissioner

Rodney G. Pasch /s/

Rodney G. Pasch, Commissioner

¹ In its response to the motion to dismiss, the County asserts that it is willing to amend the jurisdictional basis for the petition to add Sec. 227.41, Stats. and correctly notes that when determining whether to exercise its discretionary jurisdiction over a Sec. 227.41, Stats. petition, the Commission considers its resources, the state-wide guidance that might be provided, and the extent to which exercise of jurisdiction would denigrate other dispute resolution procedures. *WINNEBAGO COUNTY*, DEC. NO. 27669 (WERC, 5/93). Here, no state-wide guidance would be provided by interpreting the specific terms of the contract bargained by these parties and exercise of jurisdiction would denigrate the grievance arbitration procedure in the contracts which will resolve such a dispute if the County acts and AFSCME concludes the action violates the contract. Thus, to the extent the County amended its petition, dismissal of the petition would also be warranted under Sec. 227.41, Stats. See *WINNEBAGO COUNTY*, *supra*.