

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

CITY OF BROOKFIELD

Requesting a Sec. 227.41 (1), Stats. Declaratory Ruling
Involving a Dispute Between Said Petitioner and

LOCAL 2051, BROOKFIELD PROFESSIONAL POLICE ASSOCIATION

Case 135
No. 71539
DR(M)-723

Decision No. 33892

Appearances:

James R. Korom, von Briesen & Roper, S.C. 411 East Wisconsin Avenue, Suite 700, Milwaukee, Wisconsin 53202, appearing on behalf of the City of Brookfield.

Roger W. Palek, Staff Attorney, Wisconsin Professional Police Association, 660 John Nolen Drive, Suite 300, Madison, Wisconsin 53713, appearing on behalf of Local 2051, Brookfield Professional Police Association.

**ORDER DENYING MOTION TO DISMISS PETITION
FOR DECLARATORY RULING**

On February 22, 2012, the City of Brookfield filed a petition with the Wisconsin Employment Relations Commission seeking a declaratory ruling pursuant to Sec. 227.41(1), Stats., as to whether Sec. 40.05(1)(b) 1, Stats. created by 2011 Wisconsin Act 32 requires that City police officers hired on or after July 1, 2011 pay the employee contribution to the Wisconsin Retirement System despite a 2010-2012 collective bargaining agreement between the City and Local 2051, Brookfield Professional Police Association, which provides:

The City shall pay the entire contribution (Employer's and Employee's share) under the Retirement Program established under Chapter 40 of the Wisconsin Statutes.

No. 33892

On March 16, 2012, the Association filed a motion to dismiss arguing the petition does not raise an issue of state-wide significance and the issue presented can be resolved through the grievance arbitration process.

On March 21, 2012, the City filed a reply to the Association's motion.

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

ORDER

The motion to dismiss the petition for declaratory ruling is denied.

Given under our hands and seal at the City of Madison, Wisconsin, this 27th day of June, 2012.

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

CITY OF BROOKFIELD

**MEMORANDUM ACCOMPANYING ORDER DENYING MOTION
TO DISMISS 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, the Association asserts that we should dismiss the City’s petition because it would not provide state-wide guidance. The City argues otherwise. Given the general applicability of Act 32 to all public safety bargaining units in Wisconsin and the likelihood that public safety employees are being hired on or after July 1, 2011 but during the term of a collective bargaining agreement, we are persuaded that the exercise of jurisdiction over this petition will provide guidance to parties around Wisconsin on a matter of general applicability.

In the alternative, the Association argues that we should dismiss the petition because of a pending grievance arbitration over whether the City’s refusal to pay the disputed contributions violated the parties’ collective bargaining agreement. The Association correctly cites City of Wausau, Dec. No. 33040 (WERC, 5/10) and Taylor County, Dec. No. 30448 (WERC, 8/02) as cases where we have refused to exercise our discretionary jurisdiction when interpretation of a contractual provision is required because “it would denigrate other procedures available to the parties for resolution of the dispute.” In our view, those cases are distinguishable from the matter before us because, absent the presence of Act 32, the parties agree that the contributions in question would be contractually required. Thus, in this matter, if we exercise jurisdiction, we would not be “denigrating” the parties’

contractual grievance arbitration process because there is no contractual interpretation to be made by the arbitrator. Rather, the issue presented is strictly one of law. Therefore, we are satisfied it is appropriate to exercise our discretionary jurisdiction over this petition.

Dated at Madison, Wisconsin, this 27th day of June, 2012.

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