

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

CITY OF BELOIT

Requesting a Declaratory Ruling Involving a Dispute
Between Said Petitioner and

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS LOCAL 583

Case ID: 304.0003

Case Type: DR_M

DECISION NO. 35784

Appearances:

Mark L. Olson and Robert H. Buikema, Buelow Vetter Buikema Olson & Vliet, LLC, 20855 Watertown Road, Suite 200, Waukesha, Wisconsin, appearing on behalf of the City of Beloit.

John B. Kiel, The Law Office of John B. Kiel, LLC, P.O. Box 147, Salem, Wisconsin, appearing on behalf of the International Association of Fire Fighters Local 583.

ORDER DISMISSING PETITION FOR DECLARATORY RULING

On July 9, 2015, the City of Beloit filed a petition for declaratory ruling with the Wisconsin Employment Relations Commission pursuant to §§ 111.70(4)(b) and 227.41, Stats., seeking to resolve a dispute between the City and the International Association of Fire Fighters Local 583.

The petition was filed in response to a request by Local 583 that the City arbitrate a vacation carryover grievance. The City seeks a ruling that the grievance is not arbitrable.

On July 30, 2015, Local 583 filed a response to the petition and a motion to dismiss. On August 17, 2015, the City filed a reply to the motion.

Having considered the matter, we conclude that there is no duty to bargain dispute within the meaning of § 111.70(4)(b), Stats., and that it is not appropriate for us to exercise our discretionary jurisdiction pursuant to § 227.41, Stats. Therefore, we issue the following:

ORDER

The petition for declaratory ruling is dismissed.

Signed at the City of Madison, Wisconsin, this 14th day of September 2015.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

James J. Daley, Commissioner

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

The City has cited both §§ 111.70(4)(b) and 227.41(1), Stats., as the jurisdictional basis for its petition.

Section 111.70(4)(b), Stats., provides in pertinent part:

Failure to bargain. 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 a declaratory ruling. ...

Here, the dispute between the parties is whether a grievance is arbitrable under the terms of an existing contract. There is no current demand by either party to bargain over a subject and thus no duty to bargain dispute. Therefore, § 111.70(4)(b), Stats., does not provide us with jurisdiction over the City's petition.

Section 227.41(1), 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. ...

We do enforce statutory provision § 111.70(3)(a)5, Stats., which makes it a prohibited practice for a municipal employer:

To violate any collective bargaining agreement previously agreed upon by the parties with respect to wages, hours and conditions of employment affecting public safety employees or transit employees, **including an agreement to arbitrate questions arising as to the meaning or application of the terms of a collective bargaining agreement** (emphasis added).

Thus, it can be argued that the City is, in effect, asking us to decide whether it would violate § 111.70(3)(a)5, Stats., if it were to refuse to arbitrate the vacation grievance.

As reflected by the statutory use of the word "may," it is clear that issuance of a declaratory ruling under § 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); *School District of Holmen*, Dec. No. 33889 (WERC, 6/12).

Here, because the dispute is over how to interpret provisions of a specific collective bargaining agreement, we conclude that issuance of a § 227.41, Stats., declaratory ruling would not provide guidance to parties around Wisconsin on matters of general applicability.¹ In addition, as Local 583 points out, the collective bargaining agreement in question provides that:

On grievances where the subject matter raises a question of arbitrability, the arbitrator shall first hear and decide the question of arbitrability unless mutually agreed otherwise.

Local 583 has not “agreed otherwise.” In light of this contractual agreement it is clear that, if we were to exercise § 227.41 Stats., jurisdiction over the City’s petition, we would be denigrating the very procedure these parties have agreed should be part of the process for resolving arbitrability disputes.

Given all of the foregoing, we have dismissed the City’s petition.

Signed at the City of Madison, Wisconsin, this 14th day of September 2015.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

James J. Daley, Commissioner

¹ We also note that the law in Wisconsin as to resolution of arbitrability disputes is well established. *See Jefferson Jt. School District No. 10 v. Jefferson Education Association*, 78 Wis.2d 94, 253 N.W.2d 536 (1977).