

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

CITY OF JANESVILLE

Requesting a §§ 111.70(4)(b), 227.41(2), Stats. Declaratory Ruling
Involving a Dispute Between Said Petitioner and the

CITY OF JANESVILLE FIREFIGHTERS' LOCAL NO. 580 OF THE
INTERNATIONAL ASSOCIATION OF FIREFIGHTERS

Case ID: 474.0001

Case Type: DR_M

DECISION NO. 37480

Appearances:

James R. Korom, von Briesen & Roper, S.C., 411 E. Wisconsin Avenue, Suite 1000, Milwaukee, Wisconsin, appearing on behalf of the City of Janesville.

John B. Kiel, The Law Office of John B. Kiel, LLC, 3300 – 252nd Avenue, P.O. Box 147, Salem, Wisconsin, appearing on behalf of the City of Janesville Firefighters' Local No. 580 of the International Association of Firefighters.

ORDER DISMISSING PETITION FOR DECLARATORY RULING

On May 25, 2018, the City of Janesville (City) filed a petition with the Wisconsin Employment Relations Commission seeking a declaratory ruling pursuant to §§ 111.70(4)(b) and 227.41(2), Stats., as to whether employees represented by the City of Janesville Firefighters' Local No. 580 of the International Association of Firefighters (Union) have a contractual right to wash personal vehicles on City property. The petition is filed in the context of a Union demand to arbitrate a grievance asserting the City violated the following provision in the parties' 2016-2018 collective bargaining agreement when the City ended such a practice:

Personal amenities known by the City and currently practiced by bargaining unit personnel which primarily relate to mandatory subjects of bargaining shall not be changed except by written agreement of the parties.

On June 5, 2018, the Union filed a motion to dismiss the petition. The parties thereafter filed written argument, the last of which was received July 27, 2018.

Having considered the matter, the Commission concludes that the petition should be dismissed.

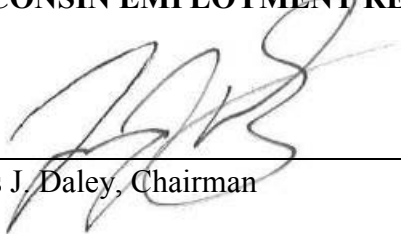
NOW, THEREFORE, it is:

ORDERED

The petition for declaratory ruling is dismissed.

Signed at the City of Madison, Wisconsin, this 9th day of August, 2018.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION



James J. Daley, Chairman

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

The City's petition asks the Commission to assert jurisdiction under either §§ 111.70(4)(b) or 227.41, Stats. The Union contends it is not appropriate for the Commission to assert jurisdiction under either statutory provision.

Section 111.70(4)(b), Stats., requires that the Commission issue a declaratory ruling upon request:

Whenever a dispute arises between a municipal employer and a union of its employees concerning the duty to bargain on any subject

...

Here, the parties have already bargained a 2016-2018 collective bargaining agreement but have a dispute as to the contract's meaning. There is no current demand from the Union to bargain over a continuation of the car washing practice in a successor agreement. Thus, there is no current duty to bargain dispute within the meaning of § 111.70(4)(b), Stats., as to which the Commission must issue a ruling.

Section 227.41(1), Stats., provides the Commission with the discretion to 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 assert its discretionary jurisdiction, the Commission considers whether a ruling would (1) provide statewide guidance on a matter of general applicability and/or (2) denigrate other procedures available to the parties for resolution of the dispute. *City of Beloit*, Dec. No. 35784 (WERC, 9/2015). Here, it is not clear whether the car wash practice is sufficiently wide-spread around Wisconsin so that a ruling would provide statewide guidance. It is also true that the potential for state-wide guidance may be further limited because whether such a practice is a mandatory or permissive subject of bargaining may turn on the facts present in a specific locale. *City of Oshkosh*, Dec. No. 29971 (WERC, 10/2000) Furthermore, it is apparent that the parties' contractual grievance arbitration procedure will be denigrated if the Commission now were to intrude into the parties' contractual dispute by asserting jurisdiction. Therefore, the Commission declines to do so.

Given the forgoing, the City's petition has been dismissed.

Signed at the City of Madison, Wisconsin, this 9th day of August, 2018.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION



James J. Daley, Chairman