

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

- - - - -  
In the Matter of the Petition of :  
WISCONSIN PROFESSIONAL POLICE :  
ASSOCIATION/LEER DIVISION : Case 2  
Involving Certain Employees of : No. 34402 MIA-966  
CITY OF AMERY : Decision No. 22849  
(POLICE DEPARTMENT) :  
- - - - -

Appearances:

Mr. Dennis A. Pedersen, Representative, Wisconsin Professional Police Association, LEER Division, Route 1, Box 288, Tomah, Wisconsin 54660, on behalf of the Association.  
Mr. Robert Rasmussen, Attorney at Law, 111 Maple Street West, P.O. Box 203, Amery, Wisconsin 54001, on behalf of the City.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND  
ORDER DENYING MOTION TO DISMISS PETITION

Wisconsin Professional Police Association/LEER Division having filed on January 7, 1985, a petition with the Wisconsin Employment Relations Commission requesting that the Commission conduct an investigation and certify the results thereof to determine whether final and binding arbitration should be initiated pursuant to Sec. 111.77, Stats., and the City having moved to dismiss said petition; and hearing having been held on March 22, 1985, before Examiner Mary Jo Schiavoni in Amery, Wisconsin; and the transcript of said hearing having been received on April 18, 1985, and the briefing schedule of the parties having been completed on May 28, 1985; and the Commission, having considered the entire record, the arguments of the parties, and being fully advised in the premises herein, hereby issues the following

FINDINGS OF FACT

1. That the City of Amery, hereinafter referred to as the City, is a municipal employer engaged in the operation of a police department maintaining its principal offices at Amery, Wisconsin.

2. That Wisconsin Professional Police Association/LEER Division, hereinafter referred to as the Association, is a labor organization and has its offices at Route 1, Box 288, Tomah, Wisconsin 54660.

3. That Sec. 111.77(8), Stats., provides that Sec. 111.77, Stats., under which the instant petition for interest arbitration has been filed, "shall not apply . . . to cities, villages or towns having a population of less than 2,500."

4. That Sec. 990.01, Stats., provides as follows:

in the construction of Wisconsin laws the words and

estimates on the most recent regular or special census, adjusted on a complex formula based on state, county and municipal figures relating to motor vehicle application filings, tax return filings, value of tax return exemptions claimed, and in- and out-migrations, and state and county data relating to births, deaths and school enrollments; that, when compared with the results of special federal censuses, the DOA estimates show average absolute error margins of 6.23 percent for municipalities with a population between 1,500 to 2,499 and of 7.33 percent for municipalities with a population between 2,500 and 4,999; but that because it has the post office for a number of surrounding communities, the estimate is likely to somewhat overrepresent the population for the City of Amery because of misidentification of home community by members of the public in completing motor vehicle applications and tax returns.

7. That the DOA's estimates of January 1 population for the City of Amery, issued between July and October of the year involved, have been as follows:

Year	Estimated Population
1979	2,430 (based on DOA estimating techniques)
1980	2,342 (based on preliminary 1980 Federal Census figures)
1984	2,741 (based on DOA estimating techniques)

and that the U.S. Bureau of Census also issues population estimates for purpose of federal revenue sharing; and that the latest such estimate for the City of Amery was issued on July 1, 1982, showing a population of 2,503.

8. That since the 1980 federal census was taken, the City of Amery annexed territory populated by 79 persons at the time the annexation was under active consideration, and there were new construction permits issued for 61 residential housing units.

9. That the 1984 DOA estimate above, the general trend in estimates over time represented in Finding of Fact 7, the average margins of error of the DOA's estimates, the evidence noted in Finding of Fact 8 and the absence of evidence suggesting a contrary conclusion, constitute compelling demographic evidence that, notwithstanding the most recent federal census population figure, the actual population of the City of Amery was not less than 2,500 as of the date of the filing of the instant petition.

10. That the City requests an order dismissing the instant petition on the grounds that Sec. 111.77(8), Stats., does not apply because the latest federal census shows the City's population to be less than 2,500; and that the Association argues that the petition should be processed because there is reliable evidence to the effect that the population of the City presently exceeds 2,500.

Upon the basis of the above and foregoing Findings of Fact, the Commission makes and issues the following

#### CONCLUSIONS OF LAW

1. That in the instant circumstances, construing "population" in Sec. 111.77(8) to mean "the population shown in the latest regular or special federal census" would produce a result inconsistent with the manifest intent of the legislature.

2. That to be consistent with the manifest intent of the legislature, the term "population" as used in Sec. 111.77(8), Stats., must be interpreted to mean the population shown in the latest regular or special federal census unless compelling demographic evidence is presented which warrants a conclusion contrary to the latest federal census concerning whether population of the city, village or town in question is less than 2,500 at the time of the filing of the petition for interest arbitration.

3. That Sec. 111.77, Stats., is applicable to the City of Amery as regards the petition for interest arbitration filed in this matter on January 7, 1985.

Upon the basis of the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following

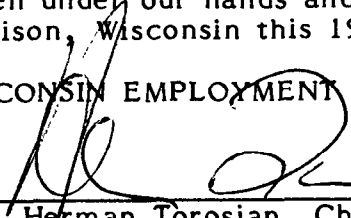
ORDER

That the City's Motion to Dismiss the instant petition shall be and hereby is denied.

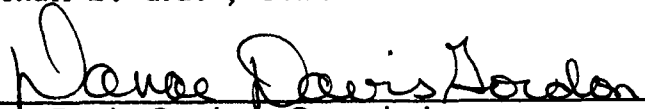
Given under our hands and seal at the City of  
Madison, Wisconsin this 19th day of August, 1985.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Herman Torosian, Chairman

  
Marshall L. Gratz, Commissioner

  
Danae Davis Gordon, Commissioner

CITY OF AMERY (POLICE DEPARTMENT)

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND ORDER DENYING MOTION TO DISMISS PETITION

The City has moved for dismissal of the Union's instant petition for Sec. 111.77, Stats., interest arbitration on the grounds that, by the express terms of Secs. 111.77(8) and 990.01(29), Stats., Sec. 111.77, Stats., does not apply to the City by reason of its most recent federal census showing of less than 2,500 population. The Union opposes the motion.

The statutory language central to the dispute and the essential factual background are set forth in the Findings of Fact and need not be repeated.

POSITIONS OF THE PARTIES

City's Position

The City stresses that the statutes for all purposes except revenue sharing, adopt the last federal census as the appropriate determination of population. Citing Sec. 990.01(29), Stats., the City maintains that where the legislature utilizes a specifically defined term, the term has the specific definition as provided by statute unless clearly set forth to the contrary.

Almost all statutes, according to the City, which specifically concern the population of cities, towns and villages adopt the last federal census as the determination of population as does, for example, the statute concerning the issuance of liquor licenses based upon population.

The City argues that the population data relied upon by the Association are mere estimates and projections which run about ten months behind the actual fact.

The City argues that annual review of the applicability of Sec. 111.77(8) to the City, especially where it is based upon an estimate is contrary to the legislature's intent. The federal census is the most accurate and reliable means of determining population and will result in greater stability for municipal employers and employees in planning and negotiating collective bargaining agreements.

Association's Position

The Association disagrees with the City's position that Sec. 111.77(8), Stats., must be read in conjunction with Sec. 990.01(29), Stats. It argues that the intent of the legislature as it relates to the Municipal Employment Relations Act is not served by such a strict construction as that set forth in Sec. 990.01(29), Stats. Citing Sec. 111.70(6), Stats., the Association argues that the legislature intended the impasse resolution procedures of the Act to be utilized for a fair, speedy, effective and above all, peaceful procedure for settlement. Such a policy, it argues, clearly establishes that the Act should be construed liberally to make the impasse resolution procedures contained therein applicable to as many municipal employees as reasonably possible.

According to the Association, if "population" as specified in Sec. 111.77(8), Stats., can be more reliably determined by the use of a means other than the last federal census, such means should be given weight in determining the applicability of the impasse resolution procedures provided for in Sec. 111.77. This is especially the case, because a cardinal rule in interpreting statutes is to favor a construction which will fulfill the purpose of the statute over a construction which defeats the manifest object of the Act.

The Association contends that the population estimate prepared by the Department of Administration for purpose of revenue sharing is reliable and more reasonably reflects the present population of Amery than does the 1980 federal census. Therefore, given that it is a foregone conclusion that the results of a census will change following the actual taking of the census, the estimate technique is an attempt to more accurately reflect actual populations from year to year during the interim between federal censuses. The Association stresses that if a reliable means of establishing interim year populations is available, such a

means should be utilized in construing Sec. 111.77(8), Stats., because failure to do so excludes municipal employees in borderline communities (those near 2,500) from utilizing the impasse resolution procedures for a decade at a time. This, it urges could not reasonably be squared with the legislative intent of MERA. The Association requests the Commission to find that the impasse resolution procedures of Sec. 111.77 are applicable in the instant case and to proceed accordingly.

## DISCUSSION

Because Sec. 111.77, Stats., contains no specific definition of "population", the Sec. 990.01(29), Stats., definition controls "unless such construction would produce a result inconsistent with the manifest intent of the legislature."

The City is surely correct that its proposed construction would reduce uncertainty as to the applicability of Sec. 111.77, Stats., at any given point in time. However, the very stability and continuity thereby provided is the rigidity and unresponsiveness which the Union contends is inconsistent with the purposes of Sec. 111.77. Because of the expense and relative infrequency of special censuses, the once-a-decade federal census, which is finalized some two years after the year in which the count is taken, would control the applicability of the statute for a given municipality for in excess of 10 years.

In our view, the legislature intended that Sec. 111.77, Stats., apply to communities having 2,500 or more in population and to have it not apply to smaller communities. Under the City's construction, however, a community whose population is compellingly shown to have shrunk to less than 2,500 would be subjected to the application of the law until the next federal census is finalized--a period potentially in excess of 10 years. Similarly, the City's construction would result in communities whose population is compellingly shown to have grown well beyond 2,500 to remain outside the application of the statute until a federal census is finalized that confirms the growth in population to and beyond the 2,500 level.

We therefore conclude that the City's proposed construction of "population" is contrary to the manifest intent of the legislature in its enactment of Sec. 111.77. Instead, we have concluded that the manifest intent of the legislature requires a construction of "population" in Sec. 111.77(8), Stats., that permits a party to overcome the conclusion that would be drawn from the latest federal census if it is able to do so by compelling demographic evidence.

Our statutory construction set forth in Conclusion of Law 2 has been fashioned in such a way as to limit the instances in which the most recent federal census results will not control to those in which the evidence supporting a contrary conclusion as to the 2,500 population requirement is "compelling". To further reduce the potential "flip-flop" applicability of the law, we have focused on the status of population as of the date of the filing of the petition for arbitration as controlling for the dispute involved.

In the instant case, the Association presented the testimony of Donald Hall, Chief of the Demographic Service Center for the Wisconsin Department of Administration. He based his opinion that the population of the City of Amery was no longer less than 2,500 not only on the latest estimate of the City's population computed and issued by his department, but also on the trend in population estimates for the City and corroborating outside evidence regarding housing starts and annexation. While the City's cross-examination pointed out a number of shortcomings in the estimate-making process, it did not present evidence which meaningfully undercut the compelling evidence presented by the Association.

We find the evidence of record to constitute the sort of compelling showing necessary to overcome the presumption that basing the applicability of Sec. 111.77 exclusively on the population shown in the most recent federal census would not be accurate.

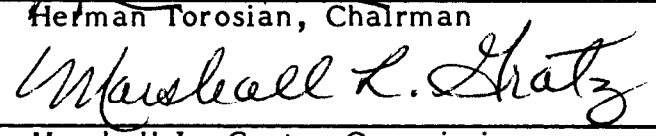
Accordingly, we have denied the City's Motion to Dismiss the instant petition.


Dated at Madison, Wisconsin this 19th day of August, 1985.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Herman Torosian, Chairman

  
Marshall L. Gratz, Commissioner

  
Danae Davis Gordon, Commissioner