

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

**WISCONSIN PROFESSIONAL POLICE ASSOCIATION/
LAW ENFORCEMENT EMPLOYEE RELATIONS DIVISION**

To Initiate Arbitration
Between Said Petitioner and

THE TOWN AND VILLAGE OF COTTAGE GROVE

Case 2
No. 54462
MIA-2082

Decision No. 29207

Appearances:

Mr. Richard Thal, General Counsel, Wisconsin Professional Police Association,
7 North Pinckney Street, Suite 220, Madison, Wisconsin 53703, for the
Association.

Axley, Brynelson, by **Mr. Sabin S. Peterson** and **Mr. Michael J. Westcott**, P.O.
Box 1767, Madison, Wisconsin 53701-1767, for the Town and Village of
Cottage Grove.

ORDER DENYING MOTION TO DISMISS

On September 27, 1996, the Wisconsin Professional Police Association/Law Enforcement Employee Relations Division, herein WPPA, filed a petition with the Wisconsin Employment Relations Commission seeking to initiate final and binding arbitration pursuant to Sec. 111.77, Stats. over the initial contract to cover the wages, hours and conditions of employment of certain law enforcement employees of the Town and Village of Cottage Grove, herein Cottage Grove.

On October 29, 1996, Cottage Grove filed a Motion to Dismiss the petition for arbitration asserting that the bargaining unit in question does not have the statutory right to use the interest arbitration provisions of Sec. 111.77, Stats.

The parties thereafter filed briefs in support of and in opposition to the Motion, the last of which was received on May 13, 1997.

No. 29207

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

ORDER

The Motion to Dismiss is denied.

Given under our hands and seal at the City of Madison, Wisconsin, this 9th day of October, 1997.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

THE TOWN AND VILLAGE OF COTTAGE GROVE

MEMORANDUM ACCOMPANYING ORDER
DENYING MOTION TO DISMISS

BACKGROUND

For the purposes of this Motion, the parties have agreed that the Village of Cottage Grove and the Town of Cottage Grove employ the law enforcement personnel who are covered by the petition for interest arbitration.

DISCUSSION

Cottage Grove asserts: Sec. 111.77, Stats., clearly does not cover law enforcement personnel employed by villages and/or towns and resort to extrinsic interpretive aids is inappropriate and unnecessary; past voluntary use of Sec. 111.77, Stats., interest-arbitration by villages and/or towns does not create a legislative mandate for use of the statute; if it is wrongly concluded that resort to evidence of legislative history is appropriate, there is legislative history which supports Cottage Grove's position; and Cottage Grove's interpretation of the statute does not produce an absurd result.

The Association contends: Sec. 111.77, Stats., is ambiguous so resort to interpretive aids is appropriate; legislative history demonstrates that Sec. 111.77, Stats. does cover law enforcement personnel employed by villages and/or towns with a population exceeding 2,500; the Legislature should be presumed to have acquiesced to the Commission's long-standing application of Sec. 111.77, Stats. to village and town police department employees; and Cottage Grove's interpretation produces an absurd result.

In TOWN OF SALEM, DEC. NO. 20714 (WERC, 6/83), the Commission addressed the issue these parties are litigating as follows:

When resolving the issues presented by the parties' dispute herein, the initial question to be resolved is whether the statutory provision at issue (Sec. 111.77, Stats.) clearly defines its coverage or whether the statute is ambiguous, thus requiring an effort to discern the legislative intent. Given the arguably conflicting provision of the preamble to Sec. 111.77, Stats., and the exclusionary language set forth in Sec. 111.77(8), Stats., the Commission concludes that the statute is capable of being reasonably interpreted to either include or exclude the law enforcement personnel of a town of more than 2,500 people. Thus, the statute is found to be ambiguous and the Commission must resort to the tools of statutory construction to discover the legislative intent.

When construing an ambiguous statute, the paramount purpose is to ascertain legislative intent. When seeking legislative intent, the statute in question may be analyzed by reference to its scope, history, purpose or object and subject

matter. The statute's title or the analysis of the Legislative Reference Bureau may be useful indicies of legislative intent. With these factors in mind, the Commission proceeds to a resolution of the ambiguity before it.

Prior to November of 1971, the definition of "municipal employe" found in Sec. 111.70(1)(b), Stats. specifically excluded "city and village" policemen, sheriff's deputies and county traffic officers." Towns were specifically included in the definition of a "municipal employer" set forth in Sec. 111.70(1)(a), Stats. Section 111.70(4)(j), Stats., gave "members of a police or sheriff or county traffic officer department" access to fact finding as a procedure to resolve deadlocks in negotiations.

While the absence of "town policemen" from the specific exclusion found in Sec. 111.70(1)(b), Stats. allows one to argue that prior to November, 1971 the legislature intended that town law enforcement employes were "municipal employes," such a conclusion flies in the face of an apparent intent to exclude law enforcement personnel of all municipal employers from the statutes' protection. One can conceive of no rational basis for a legislative purpose to treat town policemen different from their city or village brethren. Indeed, the availability of fact finding to members of any police department, presumably including a town police department, gives evidence of a legislative desire to treat all law enforcement personnel consistently. Fact finding also evidences a legislative sensitivity to the need to provide a mechanism for resolving deadlocks in negotiations involving employes who provide protective services. In sum, one must conclude that town policemen were on equal footing with their village and city counterparts prior to 1971.

With the passage of Chapter 124, Laws of 1971, published November 10, 1971, the definition of "municipal employe" was modified as follows:

"Municipal employe" means any employe of a municipal employer except city and village policemen, sheriff's deputies, and county traffic officers. Individual employed by a municipal employer other than an independent contractor, supervisor, or confidential, managerial or executive employe.

Thus, law enforcement personnel were now included within the definition of "municipal employe".

In April 1972, Chapter 247, Laws of 1971, which originated from Assembly Bill 614, established binding arbitration as a mechanism to resolve potential impasses in negotiations involving certain law enforcement personnel and firefighters. The analysis by the Legislative Reference Bureau included in AB 614 was as follows:

Analysis by the Legislative Reference Bureau

This bill includes law enforcement personnel and firefighters under the definition of "municipal employe" in the laws governing municipal employment relations. Under the bill, the parties to labor disputes involving law enforcement personnel or firefighters would have the duty to bargain in good faith. Fact-finding would not be a method used to resolve such disputes. But there would be specific notice procedures and possible binding arbitration. Binding arbitration under the bill could take one of 2 forms: 1) the arbitrator or board of arbitration could determine all issues regardless of the parties' proposals or 2) the proposal of one side would be adopted.

This bill would not apply to the Milwaukee police department.

The portions of AB 614 pertinent herein are the following:

AN ACT to repeal 111.70(4)(j); to amend 111.70(1)(b) and (4)(b); and to creat 111.77 of the statutes, relating to settlement of municipal labor disputes involving certain law enforcement personnel and firefighters.

...

SECTION 3. 111.77 of the statutes is created to read:

111.77 SETTLEMENT OF DISPUTES IN COLLECTIVE BARGAINING UNITS COMPOSED OF LAW ENFORCEMENT PERSONNEL AND FIREFIGHTERS. In fire departments and city and county law enforcement agencies municipal employers and employes have the duty to bargain collectively in good faith including the duty to refrain from strikes or lockouts and to comply with the procedures set forth below:

...

(6) This section shall not apply to police departments in cities having a population of 500,000 or more.

...

As ultimately passed, Chapter 247 retained the Sec. 111.77 Stats. title and preamble set forth above. However, the exclusionary language set forth in AB 614 as Sec. 111.77(6), Stats. was modified and became then Sec. 111.77(8), Stats. as follows:

(8) This section shall not apply to police departments in cities having a population of 500,000 or more or municipalities having a population of 5,000 or less.

Sec. 990.01(22), Stats. defined "municipality" as follows:

"Municipality" includes city and villages; it may be construed to include towns.

Analysis of the foregoing vis-a-vis legislative intent yields the following conclusion. Since the title to Sec. 111.77, Stats. makes a general reference to "Settlement of disputes in collective bargaining units composed of law enforcement personnel and firefighters," one can find a legislative purpose of attempting to ensure peaceful resolution of all labor disputes involving the protective services given the potentially dramatic impact of a strike or lockout. It seems unlikely that the legislature would apply this policy only to cities and counties but not to villages and towns since the desirability of avoiding strike or lockout in any dispute involving law enforcement personnel is equally applicable. Reference to Sec. 111.77(8), Stats. supports this intent of equal treatment with its use of the term "municipality" which covers cities, villages and towns. Only population is utilized to distinguish among municipalities. 5/

5/ As to the then existing obligation of villages and towns to provide police and fire protection the statutes provided the following:

60.29 Town Boards; powers. The supervisors of each town shall constitute a board to be designated the "Town Board of . . ." any two of whom shall constitute a quorum, except when otherwise provided by law, and the chairman may administer oaths and affidavits in all matters pertaining to the affairs of the town. Meetings of the board shall be held in the town or in any village or city within or adjoining the town. Such board is empowered and required:

...

(7) VILLAGE POLICE. To appoint, when the public requires it, not exceeding three policemen, one superintendent of police and one night watchman, for service in the village.

(8) POLICE. To appoint policemen, a superintendent of police and a night watchman for service at any other place in the town when needed to protect persons or property or to preserve order at any assemblage for moral, religious or educational purposes.

(18) FIRE DEPARTMENT, FIRE LIMITS, EXPLOSIVES, FIREWORKS, FIRE WARDEN. (a) To establish fire departments in any town or any part of the town, or join the town or a part thereof with a neighboring town, group of towns, parts of towns, cities or villages in establishing joint fire departments, and to join the town or a part thereof with a group of towns, parts of towns, cities or villages in the joint acquisition and ownership of firefighting equipment and to appropriate the proportionate share of the town or parts of a town the cost of purchasing and maintaining such equipment, when authorized by resolution adopted at any town meeting; to appoint the officers and members thereof, and prescribe and regulate their duties; to provide such compensation for the members of the fire departments as the town board determines; to purchase workmen's compensation insurance covering such firemen; to provide protection from fire by the purchase, use and maintenance of fire engines and other necessary apparatus for the extinguishment of fire and by the erection and construction of cisterns and reservoirs; to erect fire engine houses; to enter into agreements with any town, group of towns, part of a town, city or village in which a fire department is established, or with any fire association, corporation or individual for the maintaining, housing and manning of the fire fighting equipment of such fire departments; and to levy tax upon all real and personal property in the town, or that part of the town receiving protection from the contract, or equipment or jointly owned equipment for the purpose of purchasing and maintaining or manning the same:

...

61.65 Police and fire departments; pension funds. (1) Every village having a population of 5,000 or more, according to the last federal census, shall have a police department, and every village having a population of 5,500 or more shall have a fire department, with chiefs and subordinates.

...

Chapter 64, Laws of 1973 brought the only other modification of Sec. 111.77(8), Stats. into being and left that statutory provision in its current form as follows:

(8) This section shall not apply to cities having a population of 500,000 or more nor to cities, villages or towns having a population of less than 2,500.

That change incorporated the first mention of towns in the Section.

Review of the foregoing persuades the Commission that the original and ongoing legislative intent was to provide law enforcement personnel employed by towns of more than the specified population level with the opportunity to utilize Sec. 111.77, Stats. to ensure peaceful resolution of bargaining disputes without risk of service interruption. While the statute can, as the Town argues, plausibly be interpreted to the contrary, the legislative purpose, statutory title, and analysis of the Legislative Reference Bureau all combine to yield a contrary and more persuasive result.

We continue to be persuaded by the above-quoted analysis and thus have denied Cottage Grove's Motion to Dismiss.

Dated at Madison, Wisconsin this 9th day of October, 1997.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

