

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

VILLAGE OF WILLIAMS BAY

Requesting a Declaratory Ruling Pursuant to Section 111.70(4)(b), Wis. Stats.,
Involving a Dispute Between Said Petitioner and

**WILLIAMS BAY POLICE OFFICERS'
ASSOCIATION/WISCONSIN PROFESSIONAL POLICE ASSOCIATION/
LAW ENFORCEMENT EMPLOYEE RELATIONS DIVISION**

Case 10
No. 59208
DR(M)-618

Decision No. 30161

Appearances:

Consigny, Andrews, Hemming & Grant, S.C., by **Attorney Richard R. Grant**, 303 Elm Court Street, P.O. Box 1449, Janesville, Wisconsin 53547-1449, appearing on behalf of the Village of Williams Bay.

Attorney Mark R. Hollinger, Staff Attorney, Wisconsin Professional Police Association/LEER Division, 9730 West Bluemound Road, Suite 21, Wauwatosa, Wisconsin 53226, appearing on behalf of Williams Bay Police Officers' Association/Wisconsin Professional Police Association/Law Enforcement Employee Relations Division.

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DECLARATORY RULING**

On September 20, 2000, the Village of Williams Bay filed a petition with the Wisconsin Employment Relations Commission pursuant to Sec. 227.41, Stats., seeking a declaratory ruling as to statutory and contractual options available to the Village and the Williams Bay Police Officers' Association/Wisconsin Professional Police Association/Law Enforcement Employee Relations Division if they are unable to voluntarily reach an agreement on a successor to their 1999 bargaining agreement.

The parties waived hearing and filed written argument, the last of which was received on February 14, 2001.

Dec. No. 30161

Having reviewed the record and being fully advised in the premises, the Commission makes and issues the following

FINDINGS OF FACT

1. The Village of Williams Bay, herein the Village, is a municipal employer having its principal offices at Williams Bay, Wisconsin. The Village has a population of under 2,500.

2. The Williams Bay Police Officers' Association/Wisconsin Professional Police Association/Law Enforcement Employee Relations Division, herein the Association, is a labor organization serving as the exclusive collective bargaining representative of all full-time law enforcement employees of the Village.

3. The 1999 collective bargaining agreement between the Village and Association provides as follows:

ARTICLE 1 - VILLAGE RECOGNITION

The Village of Williams Bay recognizes all full-time sworn law enforcement officers having arrest powers employed by the Village of Williams Bay (hereinafter referred to as EMPLOYEES OR EMPLOYEE), of the Williams Bay Police Department, excluding the Chief of Police and Lieutenant, as a collective bargaining unit, as defined in Wisconsin Statute 111.70 and agree to comply with all provisions of said statute in bargaining with said EMPLOYEES.

...

ARTICLE XXI - COMPULSORY ARBITRATION

The State Mediation/Arbitration Law (Wisconsin Statute Section 111.77) shall not apply to the EMPLOYER, the ASSOCIATION or the EMPLOYEES for the life of this Agreement. If the parties cannot reach agreement on a new contract to succeed this Agreement, and an impasse has been reached regarding the new succeeding contract, then the provisions of Wisconsin State Statute 111.77 shall apply to the disposition of the dispute regarding the terms of the new contract to succeed this contract.

...

ARTICLE XXVII - DURATION

This Agreement shall become effective January 1, 1999, and shall continue in full force and effect up to and including December 31, 1999, and shall continue in full force and effect thereafter from year to year, unless written notice is given by either party at least 180 days prior to a termination date.

Each party gave the other the 180 day notice specified in Article XXVII and the contract expired on January 1, 2000.

Based on the above and foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSIONS OF LAW AND DECLARATORY RULING

1. Because the Village of Williams Bay has a population of under 2500, neither the Village nor the Association has the statutory right to use the interest arbitration procedures contained in Sec. 111.77, Stats., to resolve any impasse as to the terms of a successor to their 1999 collective bargaining agreement.

2. Through the terms of their 1999 collective bargaining agreement, the Village and the Association have the contractual right to use the interest arbitration procedures contained in Sec. 111.77, Stats., to resolve any impasse as to the terms of a successor to their 1999 collective bargaining agreement.

3. Because the parties' 1999 collective bargaining agreement provides a procedure for final and binding resolution of the terms of a successor agreement, fact finding pursuant to Sec. 111.70(4)(c)3, Stats., is not an available method to resolve a dispute over the terms of a successor agreement.

Given under our hands and seal at the City of Madison, Wisconsin this 21st day of June, 2001.

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

Village of Williams Bay

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND DECLARATORY RULING**

BACKGROUND

This declaratory ruling proceeding reflects the parties' disagreement over the procedures available to them if they are unable to voluntarily reach agreement on the terms of a successor to their 1999 contract. The disagreement is summarized in a letter from Commission General Counsel to the parties that states in pertinent part:

As I understand it, the Union has filed an interest arbitration petition pursuant to Sec. 111.77, Stats., and a request that the Village arbitrate a grievance which contends that the Village has contractually agreed to proceed to interest arbitration under Sec. 111.77, Stats. The Village does not believe that the Union is statutorily or contractually entitled to interest arbitration to establish the terms of the successor contract.

As I further understand it, the Village has filed a fact finding petition pursuant to Sec. 111.70(4)(c)3, Stats., and the union does not believe that fact finding is an available procedure for resolving the parties' dispute over the terms of the successor contract.

The parties agreed that the issue to be litigated in this declaratory ruling is:

Under the contract and Wisconsin law, what are the available dispute resolution mechanisms?

POSITIONS OF THE PARTIES

The Village

The Village argues that the plain meaning of the 1999 contract gives the parties access to fact finding under Sec. 111.70(4)(c)3, Stats., but not to interest arbitration under Sec. 111.77, Stats.

The Village contends that the contractual language in Article I and Article XXI must be harmonized with existing law that makes interest arbitration unavailable to law enforcement employees of villages (like Williams Bay) with populations under 2,500 but which allows access to fact finding under Sec. 111.70 (4)(c)3, Stats. Citing that portion of Article I which states:

. . . . as a Collective Bargaining Unit, as defined in Section 111.70 of the Wisconsin Statutes and agree to comply with all provisions of said statute in bargaining with said EMPLOYEES. . . .

the Village argues that because the parties have agreed to comply with Sec. 111.70, Stats., and because Sec. 111.70, Stats., does not provide for interest arbitration of this dispute, therefore the contract does not provide for access to interest arbitration.

The Village further contends that the authority of the Wisconsin Employment Relations Commission would be unlawfully usurped if an arbitrator is allowed to interest arbitrate the terms of the successor contract. The Village asserts that the Article XXI interpretation argued by the Association allows the arbitrator to determine whether the parties are at impasse and does not contain standards to be used when establishing the terms of the parties' successor agreement. The Village argues that such an interpretation undermines and subverts the power and responsibility that Wisconsin law gives to the Commission.

Lastly, the Village asserts that persuasive federal precedent makes clear that even if interest arbitration is found to be available to resolve this dispute, the Association cannot use that process to seek continued inclusion of contractual interest arbitration in the successor agreement.

Given all of the foregoing, the Village asks that the Commission declare that fact finding is the only method available to the parties for resolution of this dispute.

The Association

Citing Secs. 111.70(4)(cm)5 and 111.77(3), Stats., the Association argues that the Municipal Employment Relations Act allows the parties to voluntarily agree that interest arbitration is an available mechanism to establish the terms of a successor agreement. The Association contends that the parties to the 1999 contract did just that.

The Association asserts that Article XXI should most reasonably be interpreted as giving parties access to Sec. 111.77, Stats., interest arbitration if they cannot voluntarily reach agreement on a successor contract. The Association points out that the title of Article XXI is "Compulsory Arbitration" and that the text of Article XXI provides that "the provisions of Wisconsin State Statute 111.77 shall apply to the disposition of the dispute regarding the terms of the new contract to succeed this contract." The Association contends that this quoted language is rendered a nullity by the interpretation proposed by the Village. The Association further argues that there is no reason to believe the parties meant Article XXI to simply reiterate the statutory unavailability of interest arbitration.

Given the foregoing, the Association asks that the Commission declare interest arbitration to be a contractual option for resolution of the terms of the successor agreement.

DISCUSSION

Both parties agree that because the Village has a population of less than 2,500, statutory interest arbitration under Sec. 111.77, Stats., is not available to resolve any impasse over the terms of a successor to the 1999 contract. The parties disagree over whether the 1999 contract incorporates Sec. 111. 77, Stats., interest arbitration as a contractually agreed-upon option to resolve any impasse over the terms of a successor to the 1999 contract.

The parties have identified Article I and Article XXI as containing the relevant contract language that should be considered when resolving this disagreement.

The Village points to the language in Article I to the effect that parties agree to comply with all provisions of Sec. 111.70, Stats., and then argues that because Sec. 111.70, Stats., (the Municipal Employment Relations Act) does not give the Association the right to use interest arbitration, it follows that the parties have contractually agreed that interest arbitration is not a contractual option either. The Village notes that the Municipal Employment Relations Act makes fact-finding under Sec. 111.70(4)(c)3, Stats., available as a matter of right and contends that by virtue of the generic contractual reference to “Sec. 111.70,” fact-finding is also the only contractually recognized dispute resolution option.

The first sentence of Article XXI is partially supportive of the Village’s view to the extent it provides that Section 111.77, Stats., does not apply. However, it is important to note that the first sentence also indicates that this lack of application is only “for the life of this Agreement.” Most importantly, Article XXI then goes on to provide:

If the parties cannot reach Agreement on a new contract to succeed this Agreement and an impasse has been reached regarding the new succeeding contract, then the provision of Wisconsin State Statute 111.77 shall apply to the disposition of the dispute regarding the terms of the new contract to succeed this contract.

It is a cardinal rule of contract interpretation that specific language governs over general language. Here, the specific language clearly provides access to Sec. 111.77, Stats., as a contractually agreed upon option for resolving an impasse over the terms of the successor agreement. Thus, we conclude that the 1999 contract establishes the parties’ intent and agreement to use Sec. 111.77, Stats., interest arbitration to establish the terms of the successor agreement if they reach an impasse in their efforts to voluntarily reach such an agreement.

The Village correctly argues that another cardinal rule of contract interpretation is to attempt to give meaning to all provisions of the contract. Our conclusion honors that obligation. The Article I contract language continues to have meaning as to the parties' general obligation to honor Sec. 111.70, Stats., during their bargaining. The first sentence of Article XXI continues to have meaning as to the unavailability of interest arbitration during the life of the contract. Upon the expiration of the contract, the second sentence of Article XXI makes interest arbitration available.

The Village argues that if we erroneously conclude that the parties have agreed to interest arbitration as a contractual option, such a contract is unenforceable as a usurpation of our statutory authority. We disagree.

The Legislature's decision not to make interest arbitration available as a statutory right to the Village and the Association cannot persuasively be equated with a legislative choice these parties are prohibited from bargaining such an option. There is no prohibition against such agreements in the Municipal Employment Relations Act. Indeed, the Declaration of Policy in Sec. 111.70(6), Stats., encourages the existence of "fair, speedy, effective, and, above all, peaceful" procedures for settling contracts where collective bargaining does not produce such a result. Further, the existence of such a contractual agreement does not usurp our authority under Sec. 111.77, Stats. The parties here have simply elected to incorporate an existing statutory process into their contract as a means of resolving a dispute.

As noted earlier, the Village has argued that the statutory fact-finding procedure should be available to the parties and, consistent with its view, the Village has filed a fact-finding petition. It is the case that where Sec. 111.77, Stats., is unavailable, Sec. 111.70(4)(c)3, Stats., is generally a statutory option. SEE SECS. 111.77(9) and 111.70(4)(c)4, STATS. However, the statutory fact-finding procedure provides in pertinent part at Sec. 111.70(4)(c)3, Stats., as follows:

4. **'Fact-finding.'** **If a dispute has not been settled after a reasonable period of negotiation and after the settlement procedures, if any, established by the parties have been exhausted,** and the parties are deadlocked with respect to any dispute between them arising in the collective bargaining process, either party, or the parties jointly, may petition the commission, in writing, to initiate fact-finding . . . (emphasis added)

Here, we have concluded that the parties have established their own settlement procedure. The settlement procedure will settle the dispute if the parties cannot do so voluntarily. Therefore, pursuant to the above-emphasized language of Sec. 111.70(4)(c)3, Stats., fact-finding is not available to the Village and the Association.

In summary, we have concluded that contractual interest arbitration is available to the Village and the Association but that statutory interest arbitration and fact-finding are not.

Because such matters are outside the scope of the issue to be decided through this declaratory ruling, we express no opinion as to whether the parties are at "impasse" -- the contractual prerequisite to use of contractual interest arbitration -- or whether the contractual interest arbitration process allows either party to seek continuation of an interest arbitration provision in the successor agreement -- a question which can be raised through a Sec. 111.70(4)(b), Stats., declaratory ruling petition. We hope that our declaration of the parties' rights will assist the parties in voluntarily reaching agreement on a new contract.

Dated at Madison, Wisconsin this 21st day of June, 2001.

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