

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
VILLAGE OF WEST SALEM

and

**WISCONSIN PROFESSIONAL POLICE ASSOCIATION/
LAW ENFORCEMENT EMPLOYEE RELATIONS DIVISION
on behalf of the WEST SALEM POLICE ASSOCIATION**

Requesting a Declaratory Ruling Pursuant to Sec. 111.70(4)(b), Stats.

Case 16
No. 65029
DR(M)-660

Decision No. 31436

Appearances:

Jerome J. Klos, Klos, Flynn & Papenfuss, Chtd., Attorneys at Law, 800 Lynne Tower Building, 318 Main Street, P.O. Box 487, LaCrosse, Wisconsin 54602-0487, appearing on behalf of the Village of West Salem.

Robert E. West, Consultant, Wisconsin Professional Police Association, 340 Coyier Lane, Madison, Wisconsin 53713, appearing on behalf of the Wisconsin Professional Police Association/ LEER Division.

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

On August 4, 2005, the Village of West Salem and the Wisconsin Professional Police Association/Law Enforcement Employee Relations Division jointly filed a stipulation of facts and requested that the Wisconsin Employment Relations Commission issue a declaratory ruling pursuant to Sec. 111.70(4)(b), Stats. regarding the obligation of the Village and the right of the Association to bargain over wages, hours and conditions of employment applicable to calendar year 2004.

No. 31436

On August 22, 2005, the parties filed written argument in support of and in opposition to their respective positions.

Having reviewed the record and being fully advised in the premises, the Commission makes and issues the following Findings of Fact as stipulated to by the parties.

FINDINGS OF FACT

1. For many years, the WPPA/LEER and the Village have been parties to a collective bargaining relationship involving police officers employed by the Village and represented for purposes of collective bargaining by the WPPA/LEER and each of such labor contracts contain a provision:

22.01 This Agreement shall be in full force and effect from January 1 [year beginning contract], to and including December 31, [year ending contract], and shall remain in full force and effect thereafter until a successor agreement is executed. If there is not notice given by either the Village or the WPPA prior to August 15th, to amend, add or delete any item in this Agreement, then this Agreement shall automatically be renewed for another calendar year. If notice to amend, add to or delete any item in this Agreement is made by either party prior to August 15th, a date for the first negotiating meeting shall be set by mutual agreement, so that said meeting will be held prior to September 15th, if possible. Every effort shall be made to complete negotiations prior to the Village Final Budget Meeting.

2. During negotiations for a successor to their 2002 Collective Bargaining Agreement, the parties reached impasse and on January 15, 2004, the matter was submitted to interest arbitration pursuant to Wis. Stats. §111.77.

3. The Village's final offer for a successor agreement contained a proposed duration of one calendar year (2003).

4. The Association's final offer for a successor agreement contained a proposed duration of two calendar years (2003-04).

5. An interest arbitration hearing was conducted, briefs were exchanged, and, on June 8, 2004, an award issued selecting the final offer of the Village to be incorporated into a successor to the parties' 2002 agreement.

6. As a result of the Arbitrator's Award – issued on June 8, 2004 – the parties' successor agreement included the following duration language:

22.01 This Agreement shall be in full force and effect from January 1, 2003 to and including December 31, 2003, and shall remain in full force and effect thereafter until a successor agreement is executed. If there is not notice given by either the Village or the WPPA prior to August 15th, to amend, add or delete any item in this Agreement, then this Agreement shall automatically be renewed for another calendar year. If notice to amend, add to or delete any item in this Agreement is made by either party prior to August 15th, a date for the first negotiating meeting shall be set by mutual agreement, so that said meeting will be held prior to September 15th, if possible. Every effort shall be made to complete negotiations prior to the Village Final Budget Meeting.

7. No notice of reopening was provided during the pendency of the interest arbitration. The Association's initial notice was filed on June 24, 2004, to which the Village responded that it concluded it to be a request to negotiate a 2005 contract. A second Association notice of reopening was given on October 18, 2004, after the initial October 13, 2004 negotiation, wherein the Village asserted it was negotiating a 2005-06 contract as the Association had failed to file the contract-required notice to open negotiations for a 2004 contract, and thus the 2003 contract automatically renewed for 2004 pursuant to the terms of the continuing contract.

8. That in all prior contract negotiations, the Association provided a timely notice of reopening no matter the status of negotiations (whether or not contract negotiations for a prior contract were concluded, either by voluntary settlement or by arbitration award by such August 15 date). The instant matter represents the only time the duration of a successor agreement was in dispute, with the Village proposing a one-year agreement and the Association proposing a two-year agreement. The Association reserves the right to contest the relevance of number 8.

9. The WPPA/LEER filed a petition to initiate grievance arbitration and, on May 24, 2005, the parties met for the purpose of an investigation conducted by WERC staff member Coleen Burns to determine whether an impasse existed and the parties' contract should be submitted to binding arbitration pursuant to Wis. Stats. §111.77.

10. Following that investigation meeting, the Village maintained its position that it was not obligated to bargain with the WPPA/LEER over a successor to an agreement for 2004 and thereafter, and has, to date, declined to negotiate with the WPPA/LEER over a 2004 agreement.

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

CONCLUSION OF LAW

The absence of a notice of reopening prior to August 15, 2003 did not renew the parties' 2003 contract for calendar year 2004.

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

DECLARATORY RULING

The Village of West Salem has a duty to bargain within the meaning of Sec. 111.70(3)(a)4, Stats., over the wages, hours and conditions of employment of the employees represented by the WPPA for calendar year 2004.

Given under our hands and seal at the City of Madison, Wisconsin, this 1st day of September, 2005.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

VILLAGE OF WEST SALEM (POLICE DEPARTMENT)

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

The issue before us is whether the Village has a duty to bargain with the WPPA over the calendar year 2004 wages, hours and conditions of employment applicable to the Village employees the WPPA represents for the purposes of collective bargaining. To resolve that issue, we must decide whether the parties' calendar year 2003 contract (established by a June 8, 2004 Sec. 111.77, Stats. interest arbitration award) was automatically renewed pursuant to the following contract language for calendar year 2004 because the WPPA did not provide a notice of reopening before August 15, 2003:

22.01 This Agreement shall be in full force and effect from January 1, 2003 to and including December 31, 2003, and shall remain in full force and effect thereafter until a successor agreement is executed. If there is not notice given by either the Village or the WPPA prior to August 15th, to amend, add or delete any item in this Agreement, then this Agreement shall automatically be renewed for another calendar year.

As reflected in the parties' stipulation of fact, they reached impasse in their negotiations over a successor to the calendar year 2002 contract and in January 2004 proceeded to Sec. 111.77, Stats. interest arbitration to resolve that impasse. The WPPA proposed a two-year, 2003-2004, contract while the Village proposed a one year 2003 contract. In June 2004, the interest arbitrator selected the Village's one year offer and the 2003 contract was created. Later in June, 2004, the WPPA gave the Village notice that it wished to begin bargaining a successor contract and the instant dispute subsequently arose.

The Village argues that the 2003 contract was automatically renewed by its terms for calendar year 2004 because no timely notice was provided by the WPPA. The Village contends that the parties' past practice supports the result it seeks. The WPPA asserts that it had no obligation to provide such notice in August 2003 because: (1) the 2003 contract did not exist until created by the June 2004 interest arbitration award; and (2) if the WPPA had prevailed in the June 2004 award, a two year 2003-2004 contract would have been created in which case the notice would not have been contractually due until August 14, 2004.

We conclude that the 2003 contract was not automatically renewed for 2004 and thus that the Village has an obligation to bargain with WPPA for 2004 wages, hours and conditions of employment

The Village may be correct that, read in isolation from the relevant facts, the 2003 contract language in question has the effect of automatically renewing the 2003 contract if timely notice of reopening is not given by August 14, 2003. However, where, as here, the parties had not reached agreement on a 2003 contract by August 14, 2003, it can well be

argued that there was no obligation to provide such notice. The Village counters by asserting that the WPPA has provided such notice in past situations where the contract had not been settled by the August 14 reopening date and thus understood that it was the contractual intent of the parties that notice be provided even in circumstances such as those present here. However, the stipulated facts establish that this is the only instance in which the duration of the contract remained in dispute between the parties at the time of the reopening deadline. Therefore, the evidence of past practice is not dispositive of the present dispute.

For the Village to prevail in this litigation, we must conclude it was the parties' contractual intent that, even where the duration of the successor contract is in dispute and thus the reopening deadline to be contained in the successor is not certain, a party must nonetheless provide notice at the earliest possible reopener deadline under any of the proposed contract durations or run the risk that a successor contract will automatically be created.¹ Had the parties' intended such a complex and significant² result, we conclude they would have specifically expressed same. Because they did not do so, we conclude that it was not the parties' intent that notice be provided in the circumstances present here.

In summary, because it was unknown on August 14, 2003 whether the reopening deadline was August 14, 2003 or August, 14, 2004, we conclude that that the language of the 2003 contract created by the June 2004 arbitration award cannot reasonably be interpreted as renewing the 2003 contract for calendar year 2004 unless notice was given by August 14, 2003. Therefore, we conclude that the absence of reopening notice by August 14, 2003 did not create a 2004 contract and the Village must bargain over 2004 wages, hours and conditions of employment with WPPA.

Dated at Madison, Wisconsin, this 1st day of September, 2005.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

¹ Obviously, if the WPPA's offer for a 2003-2004 contract had been selected by the interest arbitrator, the arbitrator's award would have established the wages, hours and conditions of employment applicable to both calendar years 2003 and 2004, rendering an August 2003 notice to reopen meaningless.

² The loss of the statutory right to bargain a successor contract is obviously a significant matter. While the parties have expressly provided for this loss in certain circumstances (i.e. at least where a contract exists at the time the reopening deadline arrives and no party provides a timely reopening notice), they did not do so in the circumstances before us.

Susan J. M. Bauman, Commissioner