

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

LABOR ASSOCIATION OF WISCONSIN, INC.

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

VILLAGE OF GRAFTON

Case 35
No. 65250
DR(M)-665

Decision No. 31579

Appearances:

Benjamin M. Barth, Labor Consultant, Labor Association of Wisconsin, Inc., N116 W 16033 Main Street, Germantown, Wisconsin 53022, appearing on behalf of the Labor Association of Wisconsin, Inc.

Daniel J. Chanen and **Mary Hubacher**, Attorneys at Law, Davis & Kuelthau, S.C., Suite 1400, 111 East Kilbourn Avenue, Milwaukee, Wisconsin 53202-6613, appearing on behalf of the Village of Grafton.

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

On October 21, 2005, the Labor Association of Wisconsin, Inc. (LAW) filed a petition with the Wisconsin Employment Relations Commission seeking a declaratory ruling pursuant to Sec. 111.70(4)(b), Stats., as to whether the Village of Grafton was obligated to bargain with LAW over the terms of a calendar year 2006 contract for certain law enforcement employees of the Village. The Village then filed a motion to dismiss the petition which prompted LAW to withdraw the October 21, 2005 petition and file a new petition on November 11, 2005. The Village then withdrew its motion to dismiss.

Hearing on the November 11, 2005 petition was held on December 8, 2005 in Grafton, Wisconsin before Commission Examiner Peter Davis. The parties filed written argument until December 27, 2005.

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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 Grafton, herein the Village, is a municipal employer.

2. The Labor Association of Wisconsin, Inc., herein LAW, is the collective bargaining representative of certain law enforcement employees of the Village.

3. The 2004-2005 contract between the Village and LAW provides that:

The Village and the Association hereto agree that if either party desires to amend and modify this Agreement for the period commencing January 1, 2006, the party who desires the amendment shall notify the other in writing on or before September 1, 2005. The parties shall thereafter and within thirty (30) days of receipt of such notification meet and confer in an attempt to reach a solution on the matter to which the amendment is sought.

4. By letter dated July 1, 2005, the Commission advised the Village and LAW that the Wisconsin Professional Police Association/LEER Division (WPPA) had filed an election petition seeking to replace LAW as the collective bargaining representative of the Village's law enforcement employees. On August 4, 2005, the Commission advised the Village, LAW and WPPA that the election sought by WPPA would be conducted with ballots being placed in the mail on August 16, 2005 and counted on September 6, 2005.

5. On September 6, 2005, the Commission advised the Village, LAW and WPPA that LAW had received a majority of the valid ballots counted.

6. During the pendency of the election proceeding, LAW understood that it continued to be the collective bargaining representative of the Village's law enforcement employees.

7. By letter dated September 13, 2005, LAW advised the Village that it wished to commence bargaining for a successor to the 2004-2005 agreement.

8. By letter dated September 20, 2005, the Village advised LAW that it would not bargain for the period commencing January 1, 2006 because LAW had not notified the Village of its interest in commencing bargaining on or before September 1, 2005. The Village further advised LAW that it would honor the terms of the expired contract for calendar year 2006 and would be willing to commence bargaining for the period commencing January 1, 2007.

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

CONCLUSION OF LAW

Under the terms of the parties' 2004-2005 contract and the factual circumstances present here, LAW's failure to notify the Village on or before September 1, 2005, that it wished to bargain a successor to said contract did not terminate LAW's statutory right to bargain over the wages, hours and conditions of employment of employees represented by LAW for the period beginning January 1, 2006.

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 Grafton has a duty to bargain within the meaning of Secs. 111.70(1)(a) and (3)(a)4, Stats., with the Labor Association of Wisconsin, Inc. over the wages, hours and conditions of employment of employees represented by LAW for the period beginning January 1, 2006.

Given under our hands and seal at the City of Madison, Wisconsin, this 11th day of January, 2006.

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 Grafton

**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 LAW for the period beginning January 1, 2006, over the wages, hours and conditions of employment applicable to the Village employees that LAW represents for the purposes of collective bargaining.

We begin our analysis of this issue by acknowledging that because LAW is the collective bargaining representative of the Village employees in question, the Village and LAW generally have a mutual statutory obligation to bargain over the wages, hours and conditions of employment of said employees.¹ While parties to a collective bargaining relationship often choose to create a contractual timetable for the commencement of bargaining over a successor agreement, they have no statutory obligation to do so. Thus the existence of the statutory obligation to bargain does not depend upon the existence of a contractual timetable. On the other hand, if the parties have created contract language that sets forth a timetable, and if that contract language clearly and unequivocally reveals a mutual intent to waive the statutory right to bargain if the timetable is not met under the pertinent factual circumstances, such a waiver is enforceable. See VILLAGE OF WEST SALEM, DEC. NO. 31436 (WERC, 9/05).

Here, the parties have created a contractual timetable for the commencement of bargaining which states:

The Village and the Association hereto agree that if either party desires to amend and modify this Agreement for the period commencing January 1, 2006, the party who desires the amendment shall notify the other in writing on or before September 1, 2005. The parties shall thereafter and within thirty (30) days of receipt of such notification meet and confer in an attempt to reach a solution on the matter to which the amendment is sought.

To resolve the issue before us, we must determine whether it is these parties' contractual intent in the factual circumstances recited in the Findings of Fact that LAW's failure to meet the September 1, 2005 deadline extinguished the parties' statutory obligation to bargain a successor agreement for the period beginning January 1, 2006.

For the following reasons, we conclude that these parties did not intend such a result and thus that there is a duty to bargain for the period beginning January 1, 2006.

First, as is evident from the above-quoted language, the contract does not expressly state a consequence for the failure to meet the September 1 deadline. While parties can

¹ Section 111.70(1)(a), Stats., provides in pertinent part:

(a) "Collective bargaining" means the performance of the mutual obligation of a municipal employer, through its officers and agents, and the representative of its municipal employees in a collective bargaining unit, to meet and confer at reasonable times, in good faith, with the intention of reaching an agreement, . . . with respect to wages, hours and conditions of employment, . . .

reasonably be presumed to have intended some consequence for failing to meet an agreed-upon deadline, less significant consequences than a surrender of bargaining rights could be implied. For example, one consequence of a tardy notification is delay in the commencement of the bargaining process.² Nothing in this record requires the conclusion that the parties intended the relatively drastic consequence of an automatic renewal without negotiations.

Second, at the time of the September 1 deadline (and indeed since early July when LAW and the Village were advised that an election petition had been filed by WPPA), it was not known whether LAW would continue to be the collective bargaining representative for the purposes of bargaining a successor agreement. While the Village correctly notes that LAW continued to be the bargaining representative on September 1, 2005, if the employees had selected WPPA as their collective bargaining representative (or had voted to have no collective bargaining representative), LAW could not have bargained a successor agreement. Thus, as of September 1, a cloud of uncertainty prevailed over the efficacy of any attempt by LAW to open negotiations, and laws notice on that date could have been a meaningless act. See VILLAGE OF WEST SALEM, SUPRA, at 6 n.1. In this regard, it is worth noting that LAW promptly demanded to reopen negotiations as soon as its status as bargaining agent was resolved..

These circumstances combine to persuade us that, under the facts present here, the parties did not intend their contract language to provide a loss of the right to bargain for the period beginning January 1, 2006, if the September 1 deadline was not met. Therefore, we have concluded that the Village has a duty to bargain with LAW over the wages, hours and conditions of employment of LAW represented employees for the period beginning January 1, 2006.

Dated at Madison, Wisconsin, this 11th day of January, 2006.

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

² The language could also be read to require that the consequence of failing to meet the deadline would be an indefinite extension of the terms of the 2004-2005 contract. We note that the Village has not suggested that interpretation, but rather takes the position that the contract's terms have been extended for one year.

