

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 2, 2001

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See Wis. Stat. § 808.10 and RULE 809.62.

No. 01-0166

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

JASON AMUNDSON,

PLAINTIFF-APPELLANT,

V.

VILLAGE OF FAIRCHILD,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Eau Claire County: WILLIAM M. GABLER, Judge. *Affirmed.*

Before Vergeront, P.J., Deininger and Lundsten, JJ.

¶1 PER CURIAM. Jason Amundson appeals a judgment dismissing his breach of contract and wrongful termination claims against the Village of Fairchild. Amundson commenced the action after the village board terminated his employment as the Village Police Chief without giving notice or reason. The issue is whether the termination violated Amundson's employment contract and

his claimed right to a due process hearing under WIS. STAT. § 61.65(1)(am) (1999-2000).¹ We conclude that it violated neither, and therefore affirm.

¶2 The facts were stipulated. The Village hired Amundson on March 22, 1999. The agreed terms of his employment provided “[H]is starting date will be April 1, 1999 with a 90 day probation period and he obtain his State certification (sic).” The “certification” referred to is the state’s training and certification requirement for police officers set forth in WIS. STAT. § 165.85(4)(b)(1), without which an officer can serve only on a “temporary” or “probationary” basis. Section 165.85(4)(b)(1).

¶3 As of June 28, 1999, the day before his probation period expired, Amundson had not completed his certification program. The village board met in closed session that day and extended his probation another ninety days. Amundson completed his certification training on July 16. The village board fired him on July 20 without providing him notice and a hearing, or giving him any reason for the termination. He subsequently received his state law enforcement certification.

¶4 Amundson’s argument can be summarized as follows. He concedes that under well-established law probationary police officers may be fired at will. *See Kaiser v. Board of Police & Fire Comm’rs*, 104 Wis.2d 498, 506, 311 N.W.2d 646 (1981). However, he contends that the village board had no right to unilaterally extend his probation beyond June 29, 1999, because doing so violated the employment contract limiting his probation to ninety days. Because he was

¹ All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

not yet certified for permanent employment, and the board could not extend his probation under the contract, he maintains that he became, by default, a “temporary” officer after June 29, and as such was entitled to the due process protections accorded non-probationary village police officers by WIS. STAT. § 61.65(1)(am).

¶5 The application of a statute to stipulated facts is a question of law. *See Secor v. LIRC*, 232 Wis. 2d 519, 527, 606 N.W.2d 175 (Ct. App. 2000). So is the interpretation of a contract. *See Chase Lumber & Fuel Co., Inc. v. Chase*, 228 Wis. 2d 179, 191, 596 N.W.2d 840 (Ct. App. 1999).

¶6 The village board neither breached the employment contract nor violated WIS. STAT. § 61.65(1)(am). On June 28 the board had only two choices: fire Amundson or extend his probation. The latter option is expressly authorized by WIS. STAT. § 165.85(4)(b)(1), for an officer who has yet to complete certification, but changing the officer’s status is not. “The period of temporary or probationary employment *established at the time of initial employment* [may] be extended” (emphasis added). *Id.* Because this section expressly authorized the board’s action, Amundson’s contract could not prevent it. *See Milwaukee Police Ass’n v. City of Milwaukee*, 113 Wis. 2d 192, 196, 335 N.W.2d 417 (1983). (When police collective bargaining agreement directly conflicts with WIS. STAT. § 165.85(4)(b), the statute governs.). Consequently, Amundson continued as a probationary officer beyond June 29, and remained subject to at-will termination.

By the Court.—Judgment affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)5.

