

CITY OF BROOKFIELD,

Petitioner,

DECISION

Case No. 34582

-vs-

WISCONSIN EMPLOYMENT RELATIONS  
COMMISSION,Decision Nos. 11489-B  
11500-B

Respondent.

This is a petition for review of an order of the WERC ordering the petitioner to bargain over the necessity of layoffs of fire fighters and ordering the reinstatement and payment of back wages to those persons laid off.

Petitioner contends that the order of the WERC is without reason in that it fails to take into account the petitioner's right to determine the level of public service to be provided by the petitioner.

The scope of review of the Circuit Court is limited to the determination of whether there was a rational basis in law for the WERC's application of the appropriate statutes to the facts found. The Court will not substitute its judgment for that of the WERC, and the findings of fact and conclusions of law of the WERC are entitled to great weight. The Court is not concerned with the findings of fact, but is concerned with the conclusions of law which state that the City is under a duty to bargain as to the necessity of any layoffs. The Court feels that this is not a correct or rational statement of the law, and must be reversed.

The hearing examiner's memorandum concludes that the legislature, in adopting Section 111.70(1)(d) of the Statutes, meant to modify Libby, McNeil & Libby, 48 Wis. (2d) 272, as it might be applied to municipalities. In Libby our Supreme Court held that decisions of management which lie at the core of entrepreneurial control are not subject to collective bargaining. The results of such decisions, however, are Section 111.70(1)(d) requires a municipality by statute to do what the Court directed Libby to do by decision. The City must bargain merely over the effects of changes in municipal direction. Public policy considerations similar to those that occupied our Supreme Court in Libby are present here; namely, the necessity to preserve the freedom of municipal government, representing its citizens, to determine the level of public services to be provided, contrasted with the purposes of the Municipal Employers Relations Act in promoting the peaceful settlement of municipal labor disputes. Our Supreme Court has taken a middle ground. The employer may make the decision, but must bargain over its effect on the wages, hours, and working conditions of the employee. The Court follows that lead: The City may, in its sole capacity, determine the level of service it will provide, even though this will affect the wages, hours, and working conditions of its employees. The City must, however, bargain with the Union over the effect of its decision.

It is therefore ordered that:

- 1) The order of the WERC dated October 30, 1973 is vacated in its entirety.
- 2) The City enter into collective bargaining with the Fire Fighters Union on the implementation of its decision to lay off the 5 firemen concerned.

Dated this 25th day of March, 1976.

BY THE COURT:

William E. Gramling /s/  
CIRCUIT JUDGE

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