

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of	:	
	:	
WAUWATOSA FIRE FIGHTERS LOCAL 1923,	:	
IAFF	:	
	:	Case XXXVI
Requesting a Declaratory Ruling	:	No. 18390 DR(M)-58
Pursuant to Section 111.70(4)(b)	:	Decision No. 13109-A
Wisconsin Statutes, Involving a	:	
Dispute between said Petitioner and	:	
	:	
CITY OF WAUWATOSA, WISCONSIN	:	
	:	

Appearances:

- Mr. Ed Durkin, Vice-President, International Association of Fire Fighters, appearing on behalf of Wauwatosa Fire Fighters Local 1923, IAFF.
- Mr. Harold D. Gehrke, Esq., City Attorney, appearing on behalf of the City of Wauwatosa.

DECLARATORY RULING

Wauwatosa Fire Fighters Local 1923, IAFF, having filed a petition with the Wisconsin Employment Relations Commission, herein Commission, requesting the Commission to issue a Declaratory Ruling pursuant to Section 111.70(4)(b) of the Municipal Employment Relations Act, herein MERA, to determine whether the City of Wauwatosa has a duty to bargain under Section 111.70 of MERA regarding Petitioner's request that firefighter personnel represented for the purposes of collective bargaining by Petitioner, be relieved of performing switchboard duties; and hearing on said petition having been conducted on December 10, 1974, at Milwaukee, Wisconsin before Hearing Officer Amedeo Greco; and the parties thereafter having filed briefs; and the Commission having considered the evidence and arguments of counsel, and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That the City of Wauwatosa, herein the Employer, is a Municipal Employer and operates a Fire Department and has its offices in Wauwatosa, Wisconsin.
2. That Wauwatosa Fire Fighters Local 1923, IAFF, herein Petitioner, is the recognized collective bargaining representative for certain firefighters employed by the City of Wauwatosa Fire Department.
3. That the Fire Department employes represented by Petitioner primarily perform firefighting duties; that at all times material herein the firefighters are also assigned switchboard duties in the alarm room, which duties include answering telephone calls and receiving fire alarms, dispatching fire equipment, etc.; that each firefighter is assigned to the switchboard on Sundays for approximately four hours every three months; that firefighters are also assigned such duty in emergency situations; that each firefighter performs said duty for a total of approximately 16 hours per year; and that firefighters have performed such switchboard duties for approximately the last 20 years.

4. That but for the exceptions noted above, said switchboard duties are regularly performed by full-time civilian switchboard operators, who work the switchboard at all times except Sundays, their day off; that such operators do not perform any firefighting duties; and that the said operators are not in the bargaining unit represented by Petitioner, and are in a separate unit, represented by an organization other than the Petitioner.

5. That Petitioner in the past has proposed to the Employer that the Employer relieve the firefighters of their switchboard duties; and that the Employer has refused to bargain with the Petitioner on such proposal, contending that the assignment of job duties to firefighters does not constitute a mandatory subject of bargaining.

Upon the basis of the above and foregoing Findings of Fact, the Commission makes the following

CONCLUSION OF LAW

That Petitioner's proposal to relieve firefighters of switchboard duties is a mandatory subject of bargaining within the meaning of Section 111.70(1) (d) of the Municipal Employment Relations Act, since the assignment of switchboard duties directly affects the working conditions of firefighters.

Upon the basis of the above and foregoing Findings of Fact and Conclusion of Law, the Commission makes the following

DECLARATORY RULING

That the City of Wauwatosa does have a duty to bargain collectively with Wauwatosa Fire Fighters Local 1923, IAFF, with respect to Petitioner's proposal that firefighters be relieved of performing switchboard duties.

Given under our hands and seal at the
City of Madison, Wisconsin this 6th
day of June, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Howard S. Bellman
Howard S. Bellman, Commissioner

Herman Torosian
Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING
DECLARATORY RULING

Petitioner primarily contends that the performance of switchboard duties by unit employes is a working condition and that, accordingly, its request that unit employes be relieved of these duties constitutes a mandatory subject of bargaining. The Employer, on the other hand, maintains that the assignment of job duties to unit employes is wholly within its managerial prerogatives under Section 111.70(1)(d) of MEPA and that, therefore, it has no duty to bargain with Petitioner over the requested removal of the switchboard duties.

In resolving this issue, the Commission notes that it has recently ruled on an analogous issue in Oak Creek - Franklin Jt. City School District No. 1 1/. There, the labor organization presented a proposal in collective bargaining negotiations which provided that:

"In order to achieve maximum utilization of teacher's planning time, all teachers shall not be required to type and duplicate classroom materials, clerical aides shall be provided for each school. One clerical aide shall be provided for each unit in a multi-unit school."

Commenting on this and other related issues, the Commission ruled, inter alia, that matters relating to the management of the school system and/or basic educational policy are subjects reserved to the management and direction of the municipal employer and that, therefore, a municipal employer is not required to bargain with respect to such matters, except insofar as the establishment and implementation of such matters affects the wages, hours and conditions of employment of municipal employes. The Commission also concluded that matters "primarily relating to wages, hours and conditions of employment" are not reserved to the municipal employer and that such matters constitute a mandatory subject of bargaining. Under this reasoning, the Commission in Oak Creek declared that:

"Typing and duplicating duties performed by teachers in carrying out their classroom responsibilities constitute a portion of their work load. We conclude that the nature of such work load has a minimal effect on educational policy, and, therefore, the matter of whether teachers should perform typing and duplicating duties is subject to mandatory bargaining. However, the District has no mandatory duty to bargain on that portion of the proposal relating to the demand that the District employ and provide Clerical Aides in schools, since such a demand relates to the District's management function." (Footnote omitted) (Emphasis added).

Applying the foregoing analysis to the instant facts, the Commission finds that there is no meaningful distinction between the desire of teachers to be free of clerical duties, and the desire of firefighters to be free of switchboard duties. As noted in the Findings of Fact, each firefighter performs switchboard duties on an occasional basis (about four hours every three months),

1/ Decision No. 11827-D (9/74), see also City of Beloit, Decision No. 11831-C (9/74).

and then only to relieve the full-time civilian, non-bargaining unit employes, who normally perform such duties on a full-time basis. Thus, the firefighters here perform duties which are supplemental to and supportive of their firefighting duties, just as the teachers in Oak Creek performed occasional clerical functions which were supplemental to and supportive of their teaching duties. Further, in both instances, the performance of the particular duty in issue is a matter which does not relate to either the management or the basic policy direction of the particular municipal employer. Accordingly, in such circumstances, and pursuant to our decision in Oak Creek, the Commission concludes, based upon the facts here presented, that Petitioner's request to remove the switchboard duties from bargaining unit personnel constitutes a mandatory subject of bargaining. 2/

Dated at Madison, Wisconsin this 6th day of June, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Howard S. Bellman
Howard S. Bellman, Commissioner

Herbert Torosian
Herbert Torosian, Commissioner

2/ In so finding, the Commission, of course, is not holding that the Employer must necessarily accede to Petitioner's bargaining demand. For, it is well established under Section 111.70(1)(d) of MERA, that the duty to bargain does not "compel either party to agree to a proposal or require the making of a concession."