

STATE OF WISCONSIN

:

CIRCUIT COURT

:

MILWAUKEE COUNTY

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CITY OF WAUWATOSA, a municipal  
corporation,

Petitioner,

No. 433-051

-vs-

Decision No. 13109-A

WISCONSIN EMPLOYMENT RELATIONS  
COMMISSION,

Respondent.  
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MEMORANDUM DECISION ON  
PETITION FOR JUDICIAL REVIEW

This action involves a petition by the City of Wauwatosa for a review of a declaratory ruling by the Wisconsin Employment Relations Commission (WERC) declaring that the assignment of switchboard duties to members of Wauwatosa Fire Fighters Local 1923, IAFF (Union), is a mandatory subject of bargaining between the Union and the City. In view of the facts of this case, this Court is compelled to affirm the WERC ruling.

The Union in this case is the recognized collective bargaining representative for certain firefighters employed by the City. These employees primarily perform firefighting duties, but are also assigned switchboard duties in the alarm room, which duties include answering telephone calls and receiving fire alarms. Each firefighter performs switchboard duties on Sundays for approximately four hours every three months and also in emergency situations. The Union also has in the past proposed that these employees be relieved of these switchboard duties, but the City has refused to bargain as to the assignment of the duties.

The Union contends that the assignment of a switchboard duties is a mandatory subject of bargaining under Wisconsin Statutes, Section 111.70 (1) (d) (1973). The City contends that the assignment of such duties is a management decision which is not bargainable under Section 111.70 (1) (d). The sole issue before the WERC was whether the assignment of these switchboard duties is a mandatory subject of bargaining within the meaning of Section 111.70 (1) (d).

When receiving the decision of an administrative agency, the Court should give due deference to the agency's judgment.

"The construction and interpretation of a statute adopted by the administrative agency charged with the duty of applying the law is entitled to great weight." Cock v. Industrial Comm., 31 Wis. 2d 232, 240, 142 N.W. 2d 827 (1966).

The city relies upon cases in which the management made policy decisions which affected conditions of employment. The leading case in this area is Libby, McNeill & Libby v. WERC, 48 Wis. 2d 272, 179 N.W. 2d 805 (1970), in which the employer decided to mechanize, causing the loss of jobs to certain employees.

In Libby the Wisconsin Supreme Court held that the employer had no duty to bargain concerning its decision to mechanize because such a decision was one of management changing the basic direction of the company's activities. The court stated:

"The test is not whether the change affects conditions of employment, but whether the decision was one which changed the basic direction of the company's activities." Libby, McNeill & Libby v. WERC, supra.

In applying this test, if it were to be found that the decision in question was one which changed the basic direction of the company's activities, that decision would not be negotiable, although its "effects" may be. See Libby, McNeill & Libby v. WERC, supra, p. 284.

The City's contention that the assignment of switchboard duties is a management decision and therefore not a mandatory subject of bargaining is simply not tenable. The decision to assign these duties is not a fundamental management policy decision which merely affects secondarily working conditions, as in the cases upon which the City bases its contention. This assignment directly imposes working conditions. This assignment of duties is a mandatory subject of bargaining and thus the WERC decision will not be overruled.

The petition is denied and the action is hereby dismissed. Counsel for the respondent to prepare and submit an order accordingly.

Dated at Milwaukee, Wisconsin, March 29, 1976.

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Harvey L. Neelen /s/  
Circuit Judge