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DECISION
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OCT 26 1983

OCT 25 1983

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

A party may file with the Supreme Court
a petition to review an adverse decision by
the Court of Appeals pursuant to s. 808.10
within 30 days hereof, pursuant to Rule
809.62 (1).

No. 82-1824

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT II

NOTICE

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

WEST BEND EDUCATION
ASSOCIATION,

Petitioner-Respondent,

v.

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION,

Respondent-Appellant,

WEST BEND JOINT SCHOOL
DISTRICT NO. 1,

Co-Appellant.

Decision No.
18512

APPEAL from a judgment of the circuit court for
Washington county: J. TOM MERRIAM, Judge. Affirmed.

Before Foley, P.J., Dean and Cane, JJ.

FOLEY, P.J. The Wisconsin Employment Relations
Commission and West Bend Joint School District No. 1 appeal a
judgment reversing in part a WERC declaratory ruling and holding
that the district had to bargain a teacher layoff proposal made
by the West Bend Education Association. The association
proposed that the district comply with sec. 118.22, Stats.,¹ in
laying off teachers and that layoff occur when the teaching

contract ends. We conclude that affirmance of the judgment is mandated by Mack v. Joint School District No. 3, 92 Wis.3d 476, 285 N.W.2d 604 (1979).

In areas in which the WERC has special knowledge and expertise, a court will give deference to its conclusions unless they are without reason or are inconsistent with the purpose of the law. City of Milwaukee v. WERC, 43 Wis.2d 596, 602, 168 N.W.2d 809, 812 (1969). Although a court should give great weight to the WERC's interpretation of statutes, it is not bound by them. Village of Whitefish Bay v. WERC, 103 Wis.2d 443, 448, 309 N.W.2d 17, 20 (Ct. App. 1981).

Here we may not defer to the WERC's interpretation because it is contrary to Mack. Once a layoff clause was included in prior collective bargaining agreements between the West Bend School District and the teachers, such a clause became a mandatory subject of bargaining. See Mack, 92 Wis.2d at 488-92, 285 N.W.2d at 610-11. Without a bargained provision regulating the timing and implementation of layoffs, the district would be bound by the refusal to renew provision of sec. 118.22.² See id.

By the Court.--Judgment affirmed.

Not recommended for publication in the official reports.

A P P E N D I X

1 Sections 118.22(2), (3), and (4), Stats., provide:

(2) On or before March 15 of the school year during which a teacher holds a contract, the board by which the teacher is employed or an employe at the direction of the board shall give the teacher written notice of renewal or refusal to renew his contract for the ensuing school year. If no such notice is given on or before March 15, the contract then in force shall continue for the ensuing school year. A teacher who receives a notice of renewal of contract for the ensuing school year, or a teacher who does not receive a notice of renewal or refusal to renew his contract for the ensuing school year on or before March 15, shall accept or reject in writing such contract not later than the following April 15. No teacher may be employed or dismissed except by a majority vote of the full membership of the board. Nothing in this section prevents the modification or termination of a contract by mutual agreement of the teacher and the board. No such board may enter into a contract of employment with a teacher for any period of time as to which the teacher is then under a contract of employment with another board.

(3) At least 15 days prior to giving written notice of refusal to renew a teacher's contract for the ensuing school year, the employing board shall inform the teacher by preliminary notice in writing that the board is considering nonrenewal of the teacher's contract and that, if the teacher files a request therefor with the board within 5 days after receiving the preliminary notice, the teacher has the right to a private conference with the board prior to being given written notice of refusal to renew his contract.

(4) A collective bargaining agreement may modify, waive or replace any of the provisions of this section as they apply to teachers in the collective bargaining unit, but neither the employer nor the bargaining agent for the employees is required to bargain such modification, waiver or replacement.

- 2 Following the decision in Mack, subsection (4) was added to § 118.22. Because that provision was not argued by the parties, we do not determine its effect on their case.