
WEST BEND EDUCATION ASSOCIATION,

Petitioner,

vs.

Case No. 81-CV-294

WISCONSIN EMPLOYMENT RELATIONS
COMMISSION,

DECISION

Respondent.

Decision No. 18512

This is an appeal from the ruling of the Wisconsin Employment Relations Commission (WERC). West Bend Joint School District #1 was the petitioner in this matter. It sought a declaratory ruling regarding certain portions of a "Staff Reduction" bargaining proposal that was submitted by the West Bend Education Association during the course of municipal labor negotiations with the School District.

The basic problem presented to the Court is whether the Commission was correct in concluding that the staff reduction language as proposed by the Union is not a mandatory subject of bargaining.

The wording at issue under the Union's contract proposal is that portion that is underlined as follows:

ARTICLE XXVII. STAFF REDUCTION

1. If a reduction in the number of teachers for the forthcoming school year is necessary, the provisions set forth in this Article shall apply. The Board may layoff teachers only where such layoffs are made necessary for valid and unlawful reasons of educational policy and/or school system management and operation. The Board agrees that layoffs will be made only for the reasons stated by it, as provided in this paragraph and in paragraph 3, and not to circumvent the other job security provisions contained in this collective bargaining agreement.

The Board will notify the WBEA of the position(s) which it considers necessary to reduce, together with all of the reasons and the supporting facts relied upon by the Board for the contemplated reduction, prior to the implementation of any layoffs. Such notice shall be sufficiently timely to enable the WBEA, at its option, to discuss with the Board the necessity of the proposed reduction in teaching positions and to bargain concerning the impact of any necessary reduction.

Necessary layoffs of teachers shall be accomplished in accordance with the time frame and provisions of Section 118.22, Wis. Stats. The Board shall inform the teacher(s) by preliminary notice in writing that the Board is considering nonrenewal of the teacher's contract for reasons of layoff and shall provide

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such teacher(s) with the right to a private conference, as provided in Section 118.22, Wis. Stats. Employees nonrenewed under this Article shall have the rights to reemployment set forth in paragraphs 5, 6 and 7 of this Article.

4. The layoff of each teacher shall commence on the date that he or she completes the teaching contract for the current school year, and such teacher shall be paid for services performed under that contract to the date of such layoff in accordance with this Agreement. Also, if and only if such teacher exercises the conversion privilege under the District's group hospital-surgical insurance program, the District will continue to pay the single family premium cost for the coverage of the personal medical insurance policy to which such teacher converts through the month of August immediately following the date of such teacher's layoff. Except as provided by this paragraph, such teacher's compensation and other economic benefits from the District shall cease as of the date of such teacher's layoff. The teacher shall not be precluded from securing other employment during such teacher's reemployment rights period.

There are two basic issues presented to the Court for review in this case;

1. Is the Petitioner's proposal requiring the District to provide the Petitioner with an opportunity to discuss (as opposed to bargain) the necessity of a proposed reduction in teaching positions prior to the implementation of any such reduction, a mandatory subject of bargaining within the meaning of Section 111.70(1)(d), Stats.?

2. Is the Petitioner's proposal requiring the District to implement necessary layoffs of teachers in accordance with the procedural requirements of Section 118.22, Wis. Stats., and providing that the layoff of a teacher will commence on the date that he or she completes the teaching contract for the current school year a mandatory subject of bargaining within the meaning of Section 111.70(1)(d), Stats.?

Section 227.20 of the Wis. Stats. defines the scope of review in this type of a matter. The scope of the Circuit Court's review of an agency decision must be confined to the record and must separately consider questions of law, fact and procedure. The Court is not bound by the agency's interpretation, but some deference must be given to the agency in the areas in which it has special knowledge and expertise (90 Wis. 2d, 408).

In this case, the problem presented is the interpretation of Section 111.70(1)(d), Stats. as it might apply to the problem of teachers being laid off, but this cannot be done without considering the effects of Sections 118.21 and 118.22 Stats. It is a problem of legal interpretation. This is not a matter which is peculiarly within the agency's area of expertise. The construction of 111.70(1)(d) may be independently determined by the Court. Whether or not a matter is a mandatory bargaining subject is clearly a matter of law (48 Wis. 2d, 272, 278).

With respect to issue #1 - "Discuss" proposed reductions:

There are three ways to terminate a teacher's employment:

1. Layoff (budgetary adjustment);
2. Dismiss before the end of contract for gross and sufficient cause (Millar, 2 Wis. 2d, 303 at 312; Richards, 58 Wis. 2d, 444; Hortonville Education Association, 66 Wis. 2d, 469 and Mack, 92 Wis. 2d, at 487);
3. Refuse to renew provided the Board complies with the provisions of Section 118.22 (Faust, 88 Wis. 2d, 525; Mack, 92 Wis. 2d, 485 at 492.)

It should be noted here that a decision not to renew a contract is distinct and separate from a decision to dismiss a teacher.

The Commission has developed what is known as the primary relationship test as a result of its construction of Section 111.70(1)(d). Under the primary relationship test, collective bargaining is required with regard to subjects primarily ("fundamentally or basically or essentially") related to wages, hours, or conditions of employment. Bargaining is not required with regard to subjects primarily related to management and direction of governmental unit (Beloit, 73, Wis. 2d, at 54; Unified, 81 Wis. 2d, at 95-96, 102; City of Brookfield, 87 Wis. 2d, 819). Under the primary relationship test, collective bargaining is required when it relates primarily to wages, hours, or conditions of employment, but it is not required with regard to subjects primarily related to management and direction of governmental unit. The "meet and discuss" proposal of the Union demands that the School District discuss the necessity of any proposed reduction of teaching staff.

In municipal employment relations, the bargaining table is not the appropriate forum for the formulation or management of public policy. Where a decision is essentially concerned with public policy choices, no group should act as an exclusive representative; discussions should be open; and public policy should be shaped through the regular political process. Essential control over the management of a school district's affairs are to be left with the School Board, the body elected to be responsible for those affairs under State law (87 Wis. 2d, at 832 and cases cited therein). To decide whether layoffs are or are not necessary to be a mandatory subject of bargaining would destroy the balance of power that insures the collective bargaining rights of the Union and protects the rights of the general public to determine the quality and level of municipal services that they consider vital. The legislature has made it clear that a budgetary layoff decision is not a subject of mandatory bargaining. If it were, the right of the public to voice its opinion would be restricted to matters fundamentally relating to the community's safety, general welfare and budgetary management. Our Supreme Court has stated, "We hold that economically motivated layoffs of public employees resulting from budgetary restraints is a matter primarily related to the exercise of municipal powers and responsibilities and integrity of the political process of municipal government." (87 Wis. 2d, at 833.)

It would appear that the term "discuss" contained in the Union's proposal connotes "negotiation" just as though that term had been used instead. Since the employer has no obligation to collectively bargain regarding the necessity for layoffs, it likewise has no legal obligation to discuss the necessity for such layoffs with the Union. The impact of the Board's decision as it relates to working conditions, etc., is a mandatory subject of bargaining, but that is not the proposal made.

Issue #2 relates to the Petitioner's proposal that the District implement layoffs of teachers in accordance and within the time frame and provisions of Sec. 118.22 Wis. Stats. and that employees laid

off would have the rights to reemployment as set forth in the Union's contract proposal.

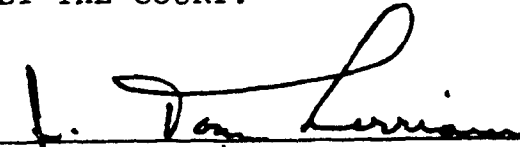
The term "layoff" does not appear in Sec. 118.22 Wis. Stats. The Supreme Court has determined that just as the terms "dismiss" and "refuse to renew" (as used in 118.22) have distinct meanings, so do the terms "refuse to renew" and "layoff" (Mack, 99 Wis. 2d, at 487). Because of this interpretation, this Court must conclude that Sec. 118.22 Wis. Stats. does not include the matter of the termination of a teacher's employment resulting from a layoff.

The contract proposals also include a proposal of the time at which the layoff would commence, that is, the date that the teacher completes the teaching contract for the current school year (the implementation of the effective date of layoff), and a proposal of the laid off teacher's rights to reemployment. Attention then must focus back upon the interpretation of Sec. 111.70(1)(d) Stats. which directs that subject matters primarily related to wages or hours or conditions of employment are mandatorily bargainable; which has been further defined as "what is fundamentally or basically or essentially a matter involving 'wages, hours, or conditions of employment.'" (Beloit Education Association, 73 Wis. 2d, 43 at 54.) There are no broad or sweeping rules that may be applied across the board to all situations. It is necessary to apply the "primarily so" test to each subject area claimed to be appropriate subjects for required bargaining. (These proposals as to implementation of the layoffs and the rights to reemployment are not proposals that invade the School Board's right to determine curriculum.) The results necessitated by the change of circumstance during the contract year affecting the financial job security of the teacher is fundamentally and basically a matter involving the wages, hours, and conditions of employment. Insofar as the implementation of the results of the layoff decision and the teacher's right to reemployment are concerned, they are bargainable under Sec. 117.70 Wis. Stats.

Counsel for the West Bend Education Association is directed to draft the necessary Order in accordance with this Decision.

Dated: JUL 14 1982

BY THE COURT:



J. Tom Merriam
Circuit Judge

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cc: Atty. Michael Stoll
Atty. Michael Wherry

✓ Assn't Atty. Gen. John Niemisto
Atty. Kenneth Axe