

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of

**EAU CLAIRE COUNTY**

Requesting a Declaratory Ruling Pursuant to Section 111.70(4)(b),  
Wis. Stats., Involving a Dispute Between Said Petitioner and

**GENERAL TEAMSTERS UNION LOCAL NO. 662**

Case 203  
No. 59166  
DR(M)-617

**Decision No. 30027**

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**Appearances:**

**Attorney Keith R. Zehms**, Corporation Counsel, Eau Claire County, Eau Claire County Courthouse, 721 Oxford Avenue, P.O. Box 1526, Eau Claire, Wisconsin 54702-1526, appearing on behalf of Eau Claire County.

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., by **Attorney Naomi E. Soldon**, 1555 North Rivercenter Drive, Suite 202, P.O. Box 12993, Milwaukee, Wisconsin 53212, appearing on behalf of General Teamsters Union Local No. 662.

**FINDINGS OF FACT, CONCLUSION OF LAW  
AND DECLARATORY RULING**

On August 25, 2000, Eau Claire County filed a petition with the Wisconsin Employment Relations Commission pursuant to Sec. 111.70(4)(b), Stats., seeking a declaratory ruling as to the County's duty to bargain with General Teamsters Union Local No. 662 over certain matters.

The parties waived hearing and filed written argument, the last of which was received December 11, 2000.

Having reviewed the record and being fully advised in the premises, the Commission makes and issues the following

**FINDINGS OF FACT**

1. Eau Claire County, herein the County, is a municipal employer having its principal offices at 721 Oxford Avenue, Eau Claire, Wisconsin 54703. The County provides law enforcement services to its citizens.

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2. General Teamsters Union Local No. 662, herein Teamsters, is a labor organization functioning as the exclusive collective bargaining representative for all full-time and part-time non-supervisory Deputy Sheriffs of the Eau Claire County Sheriff's Office.

3. The 1998-1999 collective bargaining agreement between the County and the Teamsters contains the following provision that the Teamsters propose be included in the parties' successor agreement.

17.09 Thirty six (36) non-supervisory protective service positions are guaranteed, and shall include: Huber Officer, Patrol Officer, Jailer, Process Server/Bailiff and Detective.

4. The proposal set forth in Finding of Fact 3 primarily relates to the management and direction of the County and the formulation of public policy.

Based on the above and foregoing Findings of Fact, the Commission makes and issues the following

#### **CONCLUSION OF LAW**

The proposal set forth in Findings of Fact 3 is a permissive subject of bargaining.

Based on the above and foregoing Findings of Fact and Conclusion of Law, the Commission makes and issues the following

#### **DECLARATORY RULING**

Eau Claire County does not have an obligation to bargain within the meaning of Sec. 111.70(1)(a), Stats., with General Teamsters Union Local No. 662 over inclusion of the proposal set forth in Finding of Fact 3 in a successor collective bargaining agreement.

Given under our hands and seal at the City of Madison, Wisconsin this 5<sup>th</sup> day of January, 2001.

#### **WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

James R. Meier /s/

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James R. Meier, Chairperson

A. Henry Hempe /s/

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A. Henry Hempe, Commissioner

Paul A. Hahn /s/

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Paul A. Hahn, Commissioner

Eau Claire County

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSION OF LAW AND DECLARATORY RULING**

Before considering the specific proposal at issue herein, it is useful to set out the general framework within which we determine whether a matter is a mandatory or permissive subject of bargaining.

Section 111.70(1)(a), Stats., provides:

“Collective bargaining” means the performance of the mutual obligation of a municipal employer, through its officers and agents, and the representative of its municipal employees in a collective bargaining unit, to meet and confer at reasonable times, in good faith, with the intention of reaching an agreement, or to resolve questions arising under such an agreement, with respect to wages, hours and conditions of employment, and with respect to a requirement of the municipal employer for a municipal employee to perform law enforcement and fire fighting services under s. 61.66, except as provided in sub. (4)(m) and s. 40.81(3) and except that a municipal employer shall not meet and confer with respect to any proposal to diminish or abridge the rights guaranteed to municipal employees under ch. 164. The duty to bargain, however, does not compel either party to agree to a proposal or require the making of a concession. Collective bargaining includes the reduction of any agreement reached to a written and signed document. The municipal employer shall not be required to bargain on subjects reserved to management and direction of the governmental unit except insofar as the manner of exercise of such functions affects the wages, hours and conditions of employment of the municipal employees in a collective bargaining unit. In creating this subchapter the legislature recognizes that the municipal employer must exercise its powers and responsibilities to act for the government and good order of the jurisdiction which it serves, its commercial benefit and the health, safety and welfare of the public to assure orderly operations and functions within its jurisdiction, subject to those rights secured to municipal employees by the constitutions of this state and of the United States and by this subchapter.

In *WEST BEND EDUCATION ASS'N V. WERC*, 121 Wis.2d 1, 7-9 (1984), the Wisconsin Supreme Court concluded the following as to how Sec. 111.70(1)(a), Stats., (then Sec. 111.70(1)(d), Stats.), should be interpreted when determining whether a subject of bargaining is mandatory or permissive.

Section 111.70(1)(d) sets forth the legislative delineation between mandatory and nonmandatory subjects of bargaining. It requires municipal employers, a term defined as including school districts, sec. 111.70(1)(a), to bargain “with respect to wages, hours and conditions of employment.” At the same time it provides that a municipal employer “shall not be required to bargain on subjects reserved to management and direction of the governmental

unit except insofar as the manner of exercise of such functions affects the wages, hours and conditions of employment of the employees.” Furthermore, sec. 111.70(a)(d) recognizes the municipal employer’s duty to act for the government, good order and commercial benefit of the municipality and for the health, safety and welfare of the public, subject to the constitutional statutory rights of the public employees.

Section 111.70(1)(d) thus recognizes that the municipal employer has a dual role. It is both an employer in charge of personnel and operations and a governmental unit, which is a political entity responsible for determining public policy and implementing the will of the people. Since the integrity of managerial decision making and of the political process requires that certain issues not be mandatory subjects of collective bargaining, *UNIFIED SCHOOL DISTRICT NO. 1 OF RACINE COUNTY V. WERC*, 81 Wis.2d 89, 259 N.W.2d 724 (1977), sec. 111.70(1)(d) provides an accommodation between the bargaining rights of public employees and the rights of the public through its elected representatives.

In recognizing the interests of the employees and the interests of the municipal employer as manager and political entity, the statute necessarily presents certain tensions and difficulties in its application. Such tensions arise principally when a proposal touches simultaneously upon wages, hours, and conditions of employment and upon managerial decision making or public policy. To resolve these conflict situations, this court has interpreted sec. 111.70(1)(d) as setting forth a “primarily related” standard. Applied to the case at bar, the standard requires WERC in the first instance (and a court on review thereafter) to determine whether the proposals are “primarily related” to “wages, hours and conditions of employment,” to “educational policy and school management and operation,” to “management and direction’ of the school system” or to “formulation or management of public policy.” *UNIFIED SCHOOL DISTRICT NO. 1 OF RACINE COUNTY V. WERC*, 81 Wis.2d 89, 95-96, 102, 259 N.W.2d 724 (1977). This court has construed “primarily” to mean “fundamentally,” “basically,” or “essentially,” *BELOIT EDUCATION ASSO. V. WERC*, 73 Wis.2d 43, 54, 242 N.W.2d 231 (1976).

As applied on a case-by-case basis, this primarily related standard is a balancing test which recognizes that the municipal employer, the employees, and the public have significant interests at stake and that their competing interests should be weighted to determine whether a proposed subject for bargaining should be characterized as mandatory. If the employees’ legitimate interests in wages, hours, and conditions of employment outweighs the employer’s concerns about the restriction on managerial prerogatives or public policy, the proposal is a mandatory subject of bargaining. In contrast, where the management and direction of the school system or the formulation of public policy predominates, the matter is not a mandatory subject of bargaining. In such cases, the professional association may be heard at the bargaining table if the parties agree to bargain or may be heard along with other concerned groups and individuals

the public forum. UNIFIED SCHOOL DISTRICT NO. 1 OF RACINE CO. V. WERC, SUPRA, 81 WIS.2D AT 102; BELOIT EDUCATION ASSO., SUPRA, 73 WIS.2D AT 50-51. Stating the balancing test, as we have just done, it easier than isolating the applicable competing interests in a specific situation and evaluating them. (footnotes omitted)

### DISCUSSION

The parties agree that Article 17.09 came into existence in 1990 when they settled their dispute over the County's decision to staff the jail with civilian correctional officers instead of protective service employees represented by Teamsters. However, the parties disagree over the meaning of Article 17.09.

The County views Article 17.09 as part of an agreement that none of the 18 protective service jail employees employed at the time of the 1990 settlement would be replaced by a civilian correctional officer. With the retirement of the last of these 18 employees anticipated in early 2001, the County believes that Article 17.09 then becomes no more than an infringement on its management/public policy right to determine the level of protective employee services it wishes to provide. In these circumstances, the County contends Article 17.09 has become a permissive subject of bargaining.

Teamsters agree that Article 17.09 would be a permissive subject of bargaining if the contract language restricted the County's right to determine law enforcement service levels. However, when viewed in the context of the County's contractual right to lay off employees, Teamsters argue that Article 17.09 only requires maintenance of 36 bargaining unit positions if the County determines that there is sufficient work available. Teamsters thus contend that Article 17.09 is intended only to protect bargaining unit work from being performed by individuals not represented by Teamsters for the purposes of collective bargaining. Because the Commission and the Wisconsin courts have consistently held that the protection of bargaining unit work is a mandatory subject of bargaining, Teamsters assert that Article 17.09 is a mandatory subject of bargaining.

Although the parties have a pending grievance arbitration case in which the interpretation of Article 17.09 is at issue, they ask that we nonetheless proceed to resolve their duty to bargain dispute. We conclude that we can generically do so by advising the parties as to: (1) whether is a duty to bargain over a proposal which would allow the County to make whatever service choices it deems appropriate but protects Teamsters' bargaining unit work once that service choice has been determined; and (2) whether the language of Article 17.09 on its face expresses the intent of such a proposal. By taking this approach, we avoid intruding into the arbitrator's determination as to the meaning of Article 17.09 under the old agreement in a specific factual context while at the same time resolving the dispute before us regarding the duty to bargain over a proposal for a successor agreement. This approach is consistent with that taken in CITY OF RIVER FALLS, DEC. NO. 28384 (WERC, 5/95)-footnote 2.

Teamsters correctly argue that proposals which protect bargaining unit work while

bargaining. UNIFIED SCHOOL DISTRICT NO. 1 OF RACINE COUNTY v. WERC, 81 Wis.2d 89 (1977); BROWN COUNTY v. WERC, 86-0731, unpublished, (CTAPP III, 3/87); CITY OF OCONOMOWOC, DEC. NO. 18724 (WERC, 6/81); NORTHLAND PINES SCHOOL DISTRICT, DEC. NO. 20140 (WERC, 12/82); SCHOOL DISTRICT OF MARINETTE, DEC. NO. 20406 (WERC, 3/83); CITY OF GREEN BAY, DEC. NO. 18731-B (WERC, 6/83); MILWAUKEE BOARD OF SCHOOL DIRECTORS, DEC. NO. 20093-A (WERC 2/83) AND DEC. NO. 20093-B (WERC, 8/83); MILWAUKEE METROPOLITAN SEWERAGE DISTRICT, DEC. NO. 21268 (WERC, 12/83); RACINE UNIFIED SCHOOL DISTRICT, DEC. NOS. 20652-A AND 20653-A (WERC, 1/84); SCHOOL DISTRICT OF JANESVILLE, DEC. NO. 21466 (WERC, 3/84); SCHOOL DISTRICT OF FRANKLIN, DEC. NO. 21846 (WERC, 7/84); and MILWAUKEE BOARD OF SCHOOL DIRECTORS, DEC. NO. 21893-B (WERC, 10/86)

Both parties also accurately argue that existing precedent holds that proposals which prevent the municipal employer from making service level choices are permissive subjects of bargaining. CITY OF BROOKFIELD v. WERC, 87 Wis.2d 819 (1979); CITY OF MILWAUKEE, DEC. NO. 27997 (WERC, 3/97); CRAWFORD COUNTY, DEC. NO. 20016 (WERC, 12/82).

Teamsters argue that its proposal is a mandatory subject of bargaining under the foregoing precedent because when read in conjunction with the County's contractual right to lay off, the proposal should be understood to guarantee 36 positions only if sufficient work is available. However, on its face, particularly in light of the word "guaranteed," the Teamsters' proposal does not allow the County to make service level choices which require fewer than 36 protective service positions. On that basis, we find the proposal as presently written to be a permissive subject of bargaining.

Dated at Madison, Wisconsin this 5<sup>th</sup> day of January, 2001.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

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James R. Meier, Chairperson

A. Henry Hempe /s/

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A. Henry Hempe, Commissioner

Paul A. Hahn /s/

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Paul A. Hahn, Commissioner

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