

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

**Case III**  
**No. 16717 DR(M)-42**  
**Decision No. 11827-D**

Mulcahy & Wherry, Attorneys at Law, by Mr. John C. Coughlin, appearing on behalf of Oak Creek - Franklin Joint School District No. 1, the Petitioner.

Lawton & Cates, Attorneys at Law, by Mr. John C. Carlson and Mr. John P. McCrory, General Counsel, Wisconsin Education Association, appearing on behalf of Oak Creek Education Association.

Perry & First, Attorneys at Law, by Mr. Richard Perry, appearing on behalf of Milwaukee Teachers' Education Association, Intervenor.

Mr. Robert C. Kelly, Attorney at Law, appearing on behalf of Madison Teachers, Inc. and Green Bay Education Association, Intervenor.

The Petitioner named above, having, on April 20, 1973, filed a petition with the Wisconsin Employment Relations Commission requesting the Commission to issue a Declaratory Ruling, pursuant to Section 111.70(4)(b) of the Municipal Employment Relations Act, with respect to a dispute arising as to the duty of said Municipal Employer to bargain with the Oak Creek Education Association on certain enumerated subjects; and prior to hearing thereon, the Oak Creek Education Association having filed motions with the Commission requesting the Commission to dismiss the petition, or to require the Petitioner to amend its petition; and on May 8, 1973, the Commission having issued an Order denying such motions; 1/ and prior to and during the hearing on the petition, held on June 11 and 12, 1973, the Commission having permitted the Wisconsin Association of School Boards, Inc., the League of Wisconsin Municipalities, the Milwaukee Teachers' Education Association, Madison Teachers, Inc., and Green Bay Teachers Education Association to intervene in the matter; and the Commission having considered the record, the briefs filed by the Petitioner, the Oak Creek Education Association, and the briefs amicus filed by the Wisconsin Association of School Boards, Inc., and the League of Wisconsin Municipalities; 2/ and being fully advised in the premises, makes and issues the following Findings of Fact, Conclusions of Law and Declaratory Ruling.

1. That Oak Creek - Franklin Joint City School District No. 1, hereinafter referred to as the District, operates a school system, and has its offices at Oak Creek, Wisconsin.

1/ Decision No. 11827.

2/ Final briefs were received in October, 1973. Prior thereto the parties advised that they had reached an agreement for the school year involved. The remaining Intervenor filed no briefs.

2. That Oak Creek Education Association, hereinafter referred to as the Association, is a labor organization, and has its mailing address at 8411 South Verden Drive, Oak Creek, Wisconsin.

3. That at all times material herein, the Association has been and is the exclusive collective bargaining representative for full-time certified teachers in the employ of the District, including classroom teachers, librarians, and guidance counselors; and that as such representative, the Association and the District have entered into collective bargaining agreements relating to wages, hours and working conditions for the employees in said unit; that at the time of the hearing in the instant matter, the parties were engaged in negotiations, the Association made several proposals which it desired to be included in the 1973-1974 collective bargaining agreement; that a difference of opinion arose between the parties as to whether certain of said proposals were mandatory subjects of bargaining within the meaning of the Municipal Employment Relations Act (MERA); and that on April 19, 1973, the District filed a petition with the Wisconsin Employment Relations Commission, requesting the Commission to issue a Declaratory Ruling, pursuant to Section 111.70(4)(b) of MERA with respect to such dispute as to the duty of the District to collectively bargain with the Association on the following enumerated subjects:

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|--|--|
| (a) Class Sizes                                      | (g) Maintenance of Standards of Students |
| (b) Contact Hours                                    | (h) Regulation of Other Staff            |
| (c) Committee on Resource Centers                    | (i) In-Service Programs                  |
| (d) Additional Librarians                            | (j) Job Description of Unit Chairmen     |
| (e) Pilot Program for Emotionally Disturbed Students | (k) Clerical Aides                       |
| (f) Curriculum                                       | (l) Department Heads                     |

4. That said subjects were more specifically set forth in the Association's proposals for changes to be included in the 1973-1974 collective bargaining agreement as follows:

Class Sizes

- "Section 21.1 Regular kindergarten through grade 6 classes shall not exceed a maximum of 25 pupils per teacher.
- Section 21.2 Junior and Senior High School classes shall not exceed 25 pupils per teacher in average and high achievement classes and shall not exceed 15 pupils in basic sections; heterogeneous classes shall not exceed 25 pupils per class.
- Section 21.3 All the pupil - teacher ratios are desirable goals that the Board will strive to obtain. They may, however, be revised if unforeseen population changes, transportation, and physical plant limitations dictate. In the event that any teacher is required to teach a class that exceeds those guidelines that teacher shall be compensated at a rate of \$10.00 per week per pupil."

## Contact Hours

"Section 21.5 No teacher load should exceed 25 contact hours. A contact shall be defined as any classroom contact, and any other supervision such as passing time, study hall, noon hour supervision, or other assigned duty. In the Junior and Senior High Schools, a contact hour shall be defined further as equal to one class period plus passing time as per the 1972-73 schedule.

. . .

Section 21.7 This 25 contact hours may be averaged out over the entire school year. In the 1972-73 school year, no teacher in the Senior High School shall be obligated to teach more than five classes each semester. No 7-12 school teacher shall be required to teach more than three different preparations or ability levels. If a teacher agrees to more than three different preparations, said teacher shall be freed from all other supervisory duties such as study hall, lunchrooms, etc. They shall be guaranteed 2 preparation periods per day. If the teacher wishes, he or she may agree to take other supervisory duties as study hall."

## Committee on Resource Centers

"Section 21.14 A committee of three high school teachers, one Association representative and one or two administrators shall be set up to study the feasibility of setting up 'resource centers' in the High School. This committee shall present its recommendations to the Board before Feb. 1st, 1974."

## Additional Librarians

"Section 21.15 Each teacher of the elementary grades shall have access within their building to a school library staffed with a full-time professional librarian unless there are fewer than 10 teachers in their school. In the event that there are fewer than 10 elementary teachers in one school, each teacher in that school shall have access within their building to a 1/2 time professional librarian.

Each teacher in the junior and senior high school shall have access within their building to a school library staffed with a full-time professional librarian for every 500 students or major fraction thereof."

## Pilot Program for Emotionally Disturbed Students

"Section 21.16 A pilot program shall be set up in the Oak Creek Elementary Schools to try to solve the problem of emotionally disturbed students. A committee shall be started to find the best way to implement such a program. The OCEA will appoint 4 teachers and the Board will appoint as many other staff other than teachers as they see fit. Released time shall be provided to work on said committee."

## Curriculum

- "Section 21.18
1. Teachers shall be involved in curriculum studies and planning each summer. Participation in such activities shall be voluntary. Payment shall be at the rate of 1/1387 of teacher's salary per hour.
  2. A minimum of 3 such committees shall work each summer, except as provided below. Each committee shall consist of at least 5 teachers and 1 administrator except as provided below.
  3. A steering committee of not more than 3 administrators and not more than 5 teachers shall direct the actions of the curriculum committee's responsibility to:
    - a. determine the number and names of teachers to be involved in curriculum studies each summer.
    - b. determine the number of curriculum committees to work each summer.
    - c. provide for communication to and feedback from administrators and teachers to assist in determining the studies for each summer.
    - d. duration of the particular study and the responsibilities of the committee.
  4. The steering committee shall meet during the school year in preparation for the summer work. These meetings shall be held either during the school day, in which case, the Board shall provide substitutes for said teachers or on after school hours, and/or on Saturdays for which the teachers shall be compensated at a rate provided in Article XV.
  5. The steering committee shall consist of at least one member of the Elementary, Junior and Senior High levels.
  6. The Board shall provide secretarial services for this curriculum work.
  7. This committee shall make periodic presentations to the Board for their recommendations.
  8. The decision relative to the number and names of the curriculum studies shall meet with the steering committee."

## Maintenance of Standards of Students

- "Section 21.19 No existing services to students shall be reduced, curtailed, or eliminated below the level of the 1972-73 student program."

## Regulation of Other Staff

- "Section 21.20 The use of practice teachers, intern teachers, and paraprofessionals can constitute a significant

contribution to the improvement of the education of the students in Oak Creek.

In order to continue, insure and promote quality education; a committee shall be established of equal parts teachers, Association and Administrators /and/ or Board members to set standards and guidelines for the use, hiring, training, and qualifications of paraprofessionals.

No teacher shall be assigned the responsibility of working with intern or practice teachers without (sic) the expressed permission of the teacher in writing. Intern and practice teachers shall be assigned only to teachers who have expressed a desire, in writing, to participate in the program.

Practice teachers, intern teachers, and paraprofessionals shall not be used to replace or substitute for absent teachers to increase the teacher-pupil ratio, or to increase teacher class loads."

#### In-Service Programs

"Section 21.21 A committee of teachers and administrators shall be formed to investigate and sponsor Inservice Programs. Inservice Programs may be from colleges, extension divisions, and/or district planned and originated. Teachers participating in an Inservice program shall be entitled to graduate credit for advancement on the salary schedule. Attendance in an Inservice Program shall be voluntary and the credit value shall be determined and set, prior to enrollment by the Inservice Committee. This committee shall sponsor at least 3 credits of Inservice per year. Cost, if any, shall be provided by the Board."

#### Job Description of Unit Chairmen

"Section 21.23 A committee shall be formed to define and/or re-define the job description, responsibilities, selection, methods, etc., of Unit Chairmen.

The recommendations, if any, of this committee shall be brought to the Board for their action, and placed in Board policy if that is the desire of the parties concerned. This committee shall consist of at least three teachers named by OCEA plus other members to be named by the Board."

#### Clerical Aides

"Section 21.24 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."

#### Department Heads

"Section 1 In order to establish continuity within the many disciplines and liaison between them as well, the Board and Association recognizes the need for Department Chairmen.

## Section 2.

Department Chairman shall function in the following manner and assume the specified responsibilities:

- a) Gather budget needs information for the Superintendent of Schools.
- b) Assist in the selection of educational materials related to the department.
- c) Furnish members of the department with information regarding related new materials of instruction and encourage innovative programs within the department and plan the necessary in-service training for the teacher or teachers involved.
- d) Actively provide leadership in curriculum evaluation and revision. To effectively evaluate and be aware of needed revisions within their departments, the Department Chairman shall be permitted to enter the classrooms of teachers in his department at least once a month in order to assist the progress of on-going programs. Substitutes shall be provided to release the Department Chairman to do this.
- e) The Association (Bargaining Unit) shall be involved in the screening and the hiring of qualified applicants for positions within departments. The final decision for hiring shall be with the Board. The Association shall attempt to designate Department Chairman for the purpose of making recommendations on behalf of the Association.
- f) The Department Chairman shall arrange for departmental meetings as needed or as called for the teachers within his department, principals, or central office personnel.
- g) Shall act as a communication link between the Administration and the staff when needed.
- h) Shall assist principals with equipment and textbook inventories and assist in the locating of books and supplies when called upon to do so.
- i) Shall be granted one hour of floating released time per day in addition to teaching preparation time in which to carry out the above described duties.
- j) The Department Chairman shall be available to sit in any class being observed by the Administration to interpret the Department's program as actively carried out by the teacher.

## Section 3

Department Chairman shall be paid in addition to their (sic) teaching salary as follows:

- a) Department Chairman under five (5) teachers shall receive \$300.00.
- b) Department Chairman of five or more teachers shall receive \$500.00.

Section 4           The Department Chairman shall be selected on the basis of seniority and professional preparation within their (sic) department."

5. That prior to the hearing herein the Association withdrew proposal 21.19 (Maintenance of Standards of Students).

6. That the Association's proposal that teachers shall not be required to type and duplicate classroom materials constitutes a portion of their workload, which has a minimal effect on educational policy, and is a matter which primarily relates to wages, hours and conditions of employment of teachers in the employ of the District; that, therefore, such workload has an impact on wages, hours and working conditions of the teachers in the employ of the District; and that, however, the proposal of the Association that the District employ and provide clerical aides in its various schools relates to the District's management function.

7. That the Association's proposal with regard to a committee to establish a "Job Description for Unit Chairman" also relates to the District's management function; that, however, if teachers participate on such a committee, such participation has an impact on their wages, hours and working conditions.

8. That Sections 2(a), (e), (f), (g), (h) and (i), and 4 of the Association's proposal relating to "Department Heads" relate to the District's management function; that Sections 2(b), (c), (d) and (j) of the "Department Heads" proposal relate to basic educational policy; that Section 3 of said proposal relates directly to wages to be paid to department heads and that should the District establish department head positions and assign duties, which are neither managerial supervisory nor confidential in nature, to said department heads, such duties will have an impact on wages, hours, and working conditions of bargaining unit personnel.

9. That all of the remaining proposals of the Association relate to basic educational policy, however, should the matters contained in such proposals be implemented, such matters will have an impact on wages, hours and working conditions of teachers in the employ of the District.

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

#### CONCLUSIONS OF LAW

1. That functions relating to the management of the school system of the Oak Creek - Franklin Joint City School District No. 1 are reserved to the management and direction of said District within the meaning of Section 111.70(1)(d) of the Municipal Employment Relations Act, and, therefore, said District is not required to engage in collective bargaining, as defined in said section of the Act, with the Oak Creek Education Association, regarding such managerial functions, except insofar as the implementation thereof affects wages, hours and conditions of employment of teachers in the employ of said District.

2. That matters relating to basic educational policy are subjects reserved to the management and direction of the school system of the Oak Creek - Franklin Joint City School District No. 1 within the meaning of Section 111.70(1)(d) of the Municipal Employment Relations Act, and, therefore, said District is not required to engage in collective bargaining, as defined in said section of the Act, with the Oak Creek Education Association regarding matters relating to basic educational policy, except insofar as the establishment of educational policy affects the wages, hours and conditions of employment of teachers in the employ of said District.

3. That matters primarily relating to wages, hours and conditions of employment of teachers are not reserved to the management and direction of the Oak Creek - Franklin Joint City School District No. 1 within the meaning of Section 111.70(1)(d) of the Municipal Employment Relations Act, and, therefore, the Oak Creek - Franklin Joint City School District No. 1 is required to engage in collective bargaining, as defined in said section of the Act, on such matters with the Oak Creek Education Association.

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

DECLARATORY RULING

1. That the Oak Creek Education Association does not have the right to bargain and the Oak Creek - Franklin Joint City School District No. 1 does not have the duty to bargain, within the meaning of Sections 111.70(1)(d) and (2) of the Municipal Employment Relations Act, with respect to decisions relating to the proposals of the Oak Creek Education Association as set forth in paragraphs 7, 8 and 9 of the Findings of Fact, except, however, that such a right and duty exist to bargain on the impact of such decisions on the wages, hours and conditions of employment of teachers in the employ of said District.

2. That the Oak Creek Education Association does not have the right to bargain and the Oak Creek - Franklin Joint City School District No. 1 does not have the duty to bargain, within the meaning of Sections 111.70(1)(d) and (2) of the Municipal Employment Relations Act, with respect to decisions relating to that portion of the "Clerical Aides" proposal pertaining to the demand that clerical aides be provided in each school, but that, however, the Oak Creek Education Association has the right to bargain and the Oak Creek - Franklin Joint City School District No. 1 has the mandatory duty to bargain, within the meaning of Section 111.70(1)(d) and (2) of the Municipal Employment Relations Act, relating to that portion of the "Clerical Aides" proposal pertaining to the performance of typing and duplicating duties by teachers, as well as the impact thereof on wages, hours and conditions of employment of teachers in the employ of said District.

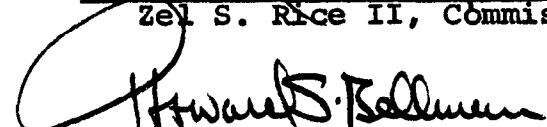
Given under our hands and seal at the  
City of Madison, Wisconsin this 11<sup>th</sup>  
day of September, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Zel S. Rice II, Commissioner

  
Howard S. Bellman, Commissioner



MEMORANDUM ACCOMPANYING DECLARATORY RULING

THE DISTRICT'S BASIC CONTENTION

The District directs the Commission's attention to Section 111.70 (1) (d), which provision defines the term "collective bargaining" <sup>3/</sup> and specifically emphasizes that portion of the provision relating to "subjects reserved to management and direction of the governmental unit . . . ." In that regard the District argues that municipal employers must be allowed to use their discretion when making crucial decisions thereon. In support of this argument the District cites the decision rendered by our Supreme Court in Libby, McNeill & Libby (48 Wis 2d 272 (1970)) at page 280, wherein the Court stated:

"In deciding what should or should not be included in mandatory bargaining the court must weigh the relative value of two very significant but conflicting public policies. On the one hand, it is necessary to preserve the freedom of private enterprise to manage its business as it sees fit. At the same time though the court is bound to effectuate the purposes of the Employment Peace Act. The act declares that industrial peace, regular and adequate income for employees and uninterrupted production of goods and services are goals to be achieved in employment relations. Sec. 111.01(2), Stats."

and the Court's language at page 281 - "Any management decision may affect terms and conditions of employment. Not all management decisions are bargainable."

The District contends, generally, that the rights of municipal employers and employees have been "firmly established but exquisitely fashioned by both statutes and case law. To be compelled to bargain over the Association's demands would debauch that balance."

The District avers that decisions involving basic educational policy are analogous to those involving entrepreneurial control and

3/ " 'Collective bargaining' means the performance of the mutual obligation of a municipal employer, through its officers and agents, and the representatives of its employees, to meet and confer at reasonable times, in good faith, with respect to wages, hours and conditions of employment with the intention of reaching an agreement, or to resolve questions arising under such an agreement. 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 employer shall not be required to bargain on the 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. In creating this subchapter the legislature recognizes that the public employer must exercise its powers and responsibilities to act for the government and good order of the municipality, 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 public employees by the constitutions of this state and of the United States and by this subchapter."

that, therefore, the scope of negotiations involving educational policy is restricted to matters not concerned with the existence, direction and operation of the school system. 4/

Further, the District argues that, since there is no specific provision in MERA requiring a school board to surrender any of its legislative discretion at the bargaining table, the subject matters involved in the instant proceeding cannot be considered mandatory subjects of collective bargaining. In support of this argument, the District directs the Commission's attention to Chapter 120, Wisconsin Statutes, affecting the duties and responsibilities of school boards, as well as various legal authorities and decisions of our Supreme Court 5/ indicating that legislative and discretionary power vested in municipal employers cannot be delegated "unless a statute specifically provides otherwise."

The District acknowledges the language of our Supreme Court expressed in Muskego-Norway Consolidated Schools et al v. WERB: 6/

"Construction of statutes should be done in a way which harmonizes the whole system of law, which they are a part and any conflicts should be reconciled if possible."

However, the District contends that while MERA imposes new and additional duties on school boards, such duties must be interpreted so as not to exclude the school board's legislative powers under Chapter 120.

In addition, the District reminds the Commission that if it were required to collectively bargain over matters relating to basic educational policy, the decisions thereon would be removed from the electorate, "government would be by employees", and such a result could be contrary to statutes relating to school district governance, and to the recommendations of the State Superintendent of Public Instruction.

The District summarizes its basic position as follows:

"The problem placed before the WERC is to determine whether the delicate balance expressed both by statute and case law has been disturbed by the Association's demands that the Board be required to bargain over class size, hiring and staffing, establishment of a pilot program and curriculum studies and development.

The balance involved herein is the Association's right to demand that the Board bargain about matters relating to wages, hours and conditions of employment except if those demands fall within the ambit of the following categories:

(1) Matters relating to the Employer's right to manage its operations (entrepreneurial control) even though those matters

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4/ Citing Madison Joint School District No. 8 v. WERB, 37 Wis 2d 483 (1967).

5/ Richards v. Board of Education, Joint School District No. 1, City of Sheboygan, 58 Wis 2d 444 (1973).

6/ 35 Wis 2d 540 (1970).

may directly or indirectly affect wages, hours and conditions of employment.

(2) The Employer's right to make decisions involving capital investment even though those decisions may indirectly or directly affect wages, hours and conditions of employment.

(3) The Employer's right to control the basic direction of the municipal corporation even though this too may directly or indirectly affect an employee's conditions of employment.

As was stated in Libby, supra, every management decision is not bargainable. The test that must be utilized is not whether a given matter affects an employee's conditions of employment (it is acknowledged that nearly all management decisions either directly or indirectly do so) but whether the Association proposals fall within the ambit or penumbra of one of the three categories listed above wherein there exists no Employer obligation to bargain.

It is the Board's contention that each of the Association's proposals fall within one of the above noted categories and that therefore the WERC must rule that said proposals are not mandatory subjects of collective bargaining."

#### THE ASSOCIATION'S BASIC POSITION

In its brief, the Association sets forth its basic position, which is identical to the basic position taken by the Beloit Education Association, as discussed in the Memorandum Accompanying the Declaratory Ruling issued today involving the Beloit City School Board. That portion of our Memorandum is incorporated herein by reference.

The League of Wisconsin Municipalities filed a brief amicus herein. It too is identical to its brief filed in the Beloit case and our discussion therein with regard to the League's brief is also incorporated herein by reference.

#### DISCUSSION WITH RESPECT TO THE CONTENTIONS OF THE PARTIES

Our discussion in the companion case 7/ issued today succinctly presents the Commission's view with regard to the basic contentions of the parties herein, and therefore our remarks in the Beloit decision, specifically pages 16 through 19 are included herein by reference.

#### THE POSITION OF THE PARTIES ON THE SPECIFIC ISSUES

##### Class Size - Sec. 21.1, 21.2, 21.3, 21.5 and 21.7

The District contends that the determinations of maximum class size can affect every economic decision of the District, e.g., size of teaching staff, size and number of classrooms, equipment and furniture, thus affecting its statutory duty to properly manage the District, which has a fixed budget. Therefore, the duty to bargain on class size would significantly impair its long-range planning decisions and increase the property tax burden on the community. The District contends that the determination of class size is a subject reserved to management and direction of the governmental unit.

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7/ Beloit Jt. School Dist. No. 1 (11831-C).

The Association argues that the thrust of its proposals with regard to class size is "more pay for more work," contending that a teacher's work load increases in direct proportion to the number of students in the class.

#### Hiring and Staffing - Secs. 21.24, 21.15, 21.14, 21.20, 21.23

While recognizing that the legislature and the courts have stated that a balance must be achieved between rights granted to employees and the District's inherent right and responsibility to direct its operations, the District argues that, if it were required to bargain on the "Hiring and Staffing" proposals of the Association, such a requirement would shift such balance in favor of the employees, and therefore would constitute an infringement upon its statutory power and obligations.

With regard to the proposal relating to Clerical Aides (Sec. 21.24) the District indicates a willingness to negotiate with regard to clerical duties required of the teachers, however, it contends that it has the "exclusive power" to unilaterally determine who, if anyone, is to perform such duties and determine whether additional personnel are to be hired. The District computes the Association's demand on Clerical Aides to necessitate a capital expenditure of \$25,000 during the first year of the agreement.

The Association counters with the argument that the matter of the person who performs clerical duties is not a major educational policy decision. It contends, and the record establishes that the teacher who performs clerical duties do so in a majority of instances outside regular school hours. The Association argues that the thrust of its proposal is "to lessen the work load of the teachers by freeing them of that portion of it which is least related to their professional training and professional responsibility", and that the fact that costs would increase as a result of hiring Clerical Aides does not, in itself, nullify the District's duty to bargain thereon. The Association further emphasizes that the clerical duties required of the teachers have a very substantial impact on their hours and working conditions.

The District contends that the Association's proposal concerning the Librarians (Sec. 21.15) seeks a direct input into the decision as to whether a library should be maintained in each school, as well as to participate in determining the qualifications of the Librarians. According to the District, if the proposals were accepted, the District would be required to employ six additional Librarians, which would require an annual expenditure of \$60,000 per year for salaries, supplies and equipment. The District contends that it has the obligation to determine the quality of education, and the unilateral right to "hire and staff" its schools as it sees fit and that for the District to bargain on such proposal would be an improper delegation of its duties and responsibilities.

On the other hand, the Association argues that the bargaining unit represented by it includes professional Librarians and that during the term of the last agreement the District reduced the Library staff resulting in requiring the remaining Librarians to spend more time traveling between schools and less time on library and administrative duties. It contends that its proposal resulted from the action of the District in unilaterally reducing the Librarian staff, and therefore, that the Association's proposal intends to establish "pre-existing levels" and does not constitute a change in the "basic direction of the School District's activities which would involve a change in capital investment." Further, the Association claims, as the record supports, that, where the Librarians are not now available, teachers assume certain library duties, and thus have less time to provide individual instruction to students; and also, in some instances,

teachers, as a result of increased work loads, must put in additional hours to complete their teaching and related duties, thus directly affecting the hours and working conditions of the teachers involved.

With respect to the Association's proposal with regard to Department Heads, the District contends that the portion thereof relating to "release time" would have an effect in the District's hiring and staffing powers and that if such a proposal were adopted, the District would be obligated to employ three additional teachers at a cost of \$30,000 per year, and therefore the "release time" proposal is not subject to mandatory bargaining.

The District also argues that the portion of the proposal relating to the screening and hiring of qualified applicants for such positions pertains to the basic right of management, and therefore is not subject to mandatory bargaining.

The District opposes the bargainability of the duties and work to be performed by the department heads, release time to perform such duties, extra compensation for extra duties, and seniority as a basis for promotion to the position of department head. In response, the Association contends that such proposals are attempts to define bargaining unit work. Further, the fact that such proposals might cause additional expenditures, does not mean that such proposals would change the direction of the District, nor involve a change in capital expenditures anymore than a salary increase or shorter hours. As for the screening and hiring of department heads the Association states that its proposal would not contemplate any change in the authority of the District to hire whomever its administration chooses, and that the proposal merely permits the teachers, who must work with the department heads to express their preferences; and that the final decision rests with the District. Further, it contends that its proposal to consider seniority as a basis for such a promotion is an obvious mandatory subject of bargaining.

With regard to the Association's proposal on Resource Centers (Sec. 21.14), the District argues that the proposal as such "is numerically stacked" in favor of the Association, and as a result, the recommendation of such committee would be subject to the grievance and arbitration provisions of the collective bargaining agreement, which "could amount to the Association actually deciding" whether such centers should be established. The District argues that this could possibly result in the need for additional personnel of the staffing of the new positions with existing personnel, thus affecting the District's statutory rights and obligation to manage its affairs.

The Association contends that its proposal with regard to "Resource Centers" is solely to establish a committee to study the feasibility and manner of developing such centers. It argues that the proposal does not affect "either the educational policy nor the budget" of the District, and that the primary function of the committee could possibly result in providing teachers "with more ready access to tools used in their job of teaching", and therefore the proposal is a mandatory subject of bargaining.

#### Paraprofessionals (Sec. 21.20)

The Association's proposal with regard to the utilization of paraprofessionals, intern and practice teachers is, in the view of the District, not a mandatory subject of bargaining. The District argues that the proposal could result in an effective elimination of the use of all interns and practice teachers, and thus have a substantial effect on the hiring and staffing of personnel by the District and disrupt the operation of the entire school system. Further, the District contends that the fourth paragraph of the proposal attempts to unlawfully restrict the District's management right with regard to assignment of

such personnel as replacement or substitute teachers for absent teachers since such a practice "in no way effects teachers' wages, hours or conditions of employment."

The Association responds that its proposal regarding paraprofessionals, intern and practice teachers is no more than an attempt to establish some control over the performance of bargaining unit work by non-unit employees. It further argues that the proposal seeks to establish a committee to study the use, hiring and training qualifications of such paraprofessionals, since the assignment of a paraprofessional to a teacher affects that teacher's working conditions. The Association also argues that its instant proposal does not relate to major educational policy decisions, nor does it change the direction or the application of capital.

#### Pilot Program Concerning Emotionally Disturbed Students (Sec. 21.16)

The District objects to the bargainability of any "pilot program", on the ground that such a program would expand the number of personnel in the employ of the District, the extent of student services and of physical facilities, and thus infringe upon or erode the "entrepreneurial" direction of the District.

The Association alleges that the proposal does not change or seek to change the direction of the District's enterprise nor does it involve a change in capital investment, but it contends that it seeks to establish a committee to solve a problem "which has substantial ramifications" affecting the working conditions of teachers. It emphasizes that the proposal, if accepted, only requires a study of a problem rather than to implement any of the committee's findings. The Association acknowledges that the committee's recommendations which might bear on matters pertaining to managerial policies, however the proposal does not require the implementation of such possible recommendations. It claims that the problem of emotionally disturbed students has a clear relationship to wages, hours and working conditions and in that regard makes reference to the testimony of various teachers to the effect that such students hinder the ability of teachers to perform their duties, cause hardships in their daily working conditions, cause teachers to be injured, require additional work in preparation and cause a disruptive climate in the classroom.

#### Curriculum (Sec. 21.18)

The District contends it has no duty to bargain on the Association's proposal with respect to curriculum, contending that the control of the curriculum is a management decision that lies at the core of its entrepreneurial control, and that the scope and content of curriculum affects economic decisions of the District, e.g., changes in physical facilities, purchase of new books, qualified teachers to be employed, and the purchase of new equipment. The District cites the Wisconsin Supreme Court, in its decision in Madison Joint School District No. 8 v. WERB 37 Wis. 2d 483 (1967), wherein the Court stated:

"Subjects of study are within the scope of basic educational policy and additionally are not related to wages, hours and conditions of employment."

The Association argues that its proposal provides for teachers to participate in curriculum studies and planning on a voluntary basis, rather than, as in the previous collective bargaining agreement, wherein teachers were "expected to participate" in such activity. It contends that the proposal does not seek to change the District's policies regarding the adoption or approval of curriculum, but that the proposal seeks to designate that the work of the committee involved be performed during the summer months by a specified number of teachers and that the

teachers involved be paid for their participation in any curriculum studies.

#### Contact Hours (21.5 and 21.7) and In-Service Programs (21.21)

In their briefs, neither party specifically presented arguments with regard to these matters.

#### RATIONALE IN SUPPORT OF THE COMMISSION'S DETERMINATIONS

It is to be emphasized that our determination on each of the proposals involved herein is based on the specific proposal as presented for inclusion in the collective bargaining agreement which was being negotiated by the parties.

#### Class Size

The size of a class for the reason stated in our City of Beloit decision, supra, is a matter of basic educational policy, and therefore decisions on class size are permissive and not mandatory subjects of bargaining. On the other hand, the size of the class affects the conditions of employment of teachers. The larger the class, the greater the teacher's work load, e.g., more preparation, more papers to correct, more work projects to supervise, the probability of more disciplinary problems, etc. While the District has the right to unilaterally establish class size, it nevertheless has the duty to bargain the impact of the class size, as it affects hours, conditions of employment and salaries. 8/ Such a proposal regarding impact is reflected in Section 21.3 of the Association's proposals.

#### Contact Hours

We conclude that the Association's proposal with regard to teacher-pupil contact hours, and the number of preparations that may be required of a teacher concern matters of educational policy, and therefore are permissive and not mandatory subjects of bargaining. Such decisions directly articulate the District's determination of how quality education may be attained and whether to pursue same. However, the impact thereof, also as in the "class size" issue, have direct affects on a teacher's working conditions, and therefore, the impact thereof is subject to mandatory bargaining.

#### Committee on Resource Centers

The Association's proposal on the establishment of a Committee on Resource Centers concerns a matter of basic educational policy because it involves a question of whether a certain educational program should be pursued. Therefore, the District may bargain on such subjects but it has no mandatory duty to bargain with respect to said proposal, except to the extent that, if such a committee were to be established, the District would be obligated to bargain on the impact thereof, as such impact affects the wages, hours and conditions of employment of teachers serving on said committee.

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8/ We recognize that the non-mandatory aspect vis-a-vis the mandatory aspect of the matter of class size may result in somewhat of a dilemma at the bargaining table. However, the possibility thereof does not constitute a basis for concluding otherwise.

### Additional Librarians

The proposal of the Association primarily relates to educational policy and is subject to permissive but not mandatory bargaining because it requires a determination of the extensiveness of an educational facility and program. However, the Association has the right to bargain with respect to the impact of the lack of such facilities and personnel where the absence thereof requires teachers to perform duties over and above those duties they would normally perform if such facilities and personnel were available.

### Pilot Program for Emotionally Disturbed Students

Said proposal of the Association relates directly to a basic educational policy matter in that it requires a decision to initiate an educational program, therefore, the establishment of a pilot program for emotionally disturbed students is a subject of permissive but not mandatory bargaining. However, should the District expect teachers to participate in a program of this nature, the Association has the right to bargain the impact of such a program on the wages, hours and conditions of employment of the teachers involved.

### Curriculum

The Association's proposal with respect to curriculum studies and planning obviously concerns itself with basic educational policy, and therefore, is a permissive and not a mandatory subject of collective bargaining. However, if teachers are expected to participate in curriculum development, the Association has the right to bargain over the impact of such participation as it affects wages, hours and conditions of employment.

### Regulation of Other Staff

The proposal of the Association with regard to practice and intern teachers, as well as to paraprofessionals primarily concerns itself with a basic educational policy decision concerning the affect upon the quality of the education provided by the use of such personnel, except the last paragraph of said proposal. Such paragraph relates to bargaining unit duties, and therefore should such personnel be employed by the District, the Association has the right to bargain with respect to the utilization or non-utilization of such personnel in duties normally performed by teachers. Therefore, with the exception of the last paragraph, this proposal is a matter of permissive, but not mandatory bargaining.

### In-Service Programs

We conclude that the portion of the Association's proposal which refers to the formation of a committee to investigate and sponsor in-service programs and the participants therein is a permissive but not a mandatory subject of bargaining. However, if teachers are required to participate or attend an in-service program, the impact of such participation or attendance is a condition of employment, and, therefore, is a mandatory subject of bargaining. The matter of credits for advancement on the salary schedule, as well as the number of credits earned in participating in in-service programs, is also deemed to be a mandatory subject of bargaining because of its relation to wages.

### Clerical Aides

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 bar-



gaining. 9/ 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.

#### Department Heads/Unit Chairmen

The Association's proposal regarding Department Chairmen and Unit Chairmen, for the most part, concerns and affects the managerial function of the District. The District has the unilateral right to establish such positions. If, however, the individuals who occupy said positions perform such duties as result in the inclusion of such positions in the bargaining unit, the District would have the duty to bargain with respect to the promotions to such a position, as well as wages, hours and working conditions of said position, consistent with the provisions of MERA and this Declaratory Ruling.

#### COMMENTS

We wish to note that with respect to those proposals which we have found are not subject to mandatory bargaining, they are nevertheless permissive subjects of bargaining. No one has contested the professionalism of teachers and their resultant interest in the education of the young people of this State. Throughout the years of mediating labor disputes involving teacher organizations and school boards, the members of this Commission have observed that rigid positions on both sides of the bargaining table, with respect to the bargainability of issues have resulted in a climate not conducive to an equitable and peaceful resolution of their differences. The duty to bargain in good faith, even on a particular proposal involving a mandatory subject of bargaining, does not require either party to agree or to make a concession. 10/ In a jurisdiction such as ours, where strikes in public employment are illegal, they have occurred (in a vast majority thereof the municipal employer involved has ignored the injunctive relief available), and where procedures for the final and binding resolution of impasses arising in negotiations are not statutorily imposed when bargaining breaks down 11/ it appears to the Commission that mutual discussions with respect to permissive subjects of bargaining would tend to promote the resolution of disputes between the parties.

Dated at Madison, Wisconsin this 11<sup>th</sup> day of September, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Zel S. Rice II, Commissioner

  
Howard S. Bellman, Commissioner

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- 9/ While class size also affects a teacher's work load, class size directly affects educational policy.
- 10/ Permissive subjects are those that may be proposed and regarding which bargaining may occur, even to final agreement; but upon which the proposing party may not insist to the point of bringing the entire negotiations to an impasse. Causing an impasse on such basis would violate the Act's duty to bargain.
- 11/ Except in police and firefighter negotiations.