

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of	:	
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CITY OF BELOIT, a Municipal Corporation, by the BELOIT CITY SCHOOL BOARD, its Agent	:	Case V
	:	No. 16732 DR(M)-43
	:	Decision No. 11831-C
Requesting a Declaratory Ruling Pursuant to Section 111.70(4)(b) Wis. Stats., Involving a Dispute between Said Petitioner and	:	
	:	
BELOIT EDUCATION ASSOCIATION	:	
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Appearances:

Foley & Lardner, Attorneys at Law, by Herbert P. Wiedemann, appearing on behalf of the City of Beloit, a Municipal Corporation, by the Beloit City School Board, its Agent, the Petitioner.

Lawton & Cates, Attorneys at Law, by John C. Carlson and John P. McCrory, General Counsel, Wisconsin Education Association, on behalf of the Beloit Education Association.

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

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

DECLARATORY RULING

The Petitioner named above, having on April 25, 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 Beloit Education Association on certain enumerated subjects; and prior to hearing thereon, the Beloit 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 13, 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 Beloit 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.

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1/ Decision No. 11831.

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 Intervenors filed no briefs.

## FINDINGS OF FACT

1. That City of Beloit, and its agent the Beloit City School Board, hereinafter referred to as the School Board, has its offices at 220 West Grand Avenue, Beloit, Wisconsin.

2. That the Beloit Education Association, hereinafter referred to as the BEA, is a labor organization and has its offices at 1225 Fourth Street, Beloit, Wisconsin.

3. That at all times material herein, the BEA has been the exclusive collective bargaining representative of all elementary and secondary teachers in the employ of the School Board, including substitute teachers, and all non-supervisory personnel on a classroom teaching schedule; that in said relationship, the BEA and the School Board have been parties to collective bargaining agreements covering the wages, hours and working conditions of the teachers included in the aforementioned appropriate collective bargaining agreements covering the wages, hours and working conditions of the teachers included in the aforementioned appropriate collective bargaining unit; that further, in said relationship, and from February 5, 1973 to at least April 25, 1973, the BEA and the School Board engaged in negotiations with respect to a collective bargaining agreement covering said teachers for the 1973-1974 school year; that during the course of said negotiations, the BEA 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 collective bargaining within the meaning of the Municipal Employment Relations Act (MERA); and that on April 25, 1973, the School Board 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 said dispute, specifically as to the duty of the School Board to bargain with the BEA on the following enumerated subjects:

- (a) the manner in which supervision and evaluation of teachers will be conducted,
- (b) the structure and maintenance and availability to teachers of school district files and records,
- (c) right of representation prior to reprimand, warning or discipline,
- (d) whether or not "just cause" shall be the standard applied in limitation of the Board's actions with respect to renewal of individual teacher contracts,
- (e) the procedure and order of preference to be utilized in event of teacher layoffs,
- (f) the treatment and disposition of problem students,
- (g) class size,
- (h) type and extent of in-service training to be conducted,
- (i) the type and extent of reading program to be utilized,
- (j) the establishment and structure of summer programs,
- (k) the school calendar.

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

## Teacher Supervision and Evaluation

"The parties recognize the importance and value of a procedure for assisting and evaluating the progress and success of both newly employed and experienced personnel for the purpose of improving instruction. Therefore, to this end, the following procedure has been agreed to in an effort to accomplish the goals.

A. During the first three (3) weeks of school, the Superintendent shall orient all new teachers regarding evaluative procedures and instruments.

B. Evaluation shall only be conducted by a qualified building principal or Assistant Principal or other qualified administrator. Each observation shall be made in person for a minimum of thirty consecutive minutes. All monitoring or observation of the performance of a teacher shall be conducted openly and with the full knowledge of the teacher.

C. New teachers shall be observed for the purposes of evaluation at least three (3) times during the school year. These observations shall occur prior to February 15 of each year and be scheduled so that no more than one (1) observation is made in any thirty (30) day period. Experienced teachers shall be observed for the purposes of evaluation at least once every year.

D. 1. Each teacher shall receive a copy of the classroom observation report at least two (2) school days prior to a conference between teacher and evaluator. This conference shall occur within five (5) school days after the classroom observation. A copy signed by the teacher and principal shall be submitted to the superintendent within two (2) days after the conference. No teacher shall be required to sign a blank or incomplete evaluation form.

2. In the event that the teacher feels his evaluation was incomplete or unjust, he may put his objections in writing and have them attached to the evaluation report to be placed in his personal file.

E. 1. Definite positive assistance shall be immediately provided to teachers upon recognition of 'professional difficulties.' For the purpose of this article the term 'professional difficulty' shall apply to deficiencies observed in classroom management, instructional skill, and/or professional preparation.

2. Beginning immediately with the conference after the classroom observation, specific appropriate (sic) direction shall be offered to guide the individual toward the solution of his particular professional problem. Suggested actions shall include at least three of the following:

- (a) Demonstration in an actual classroom situation
- (b) Direction of the teacher toward a model for emulation, allowing opportunities for observation
- (c) initiation of conferences with evaluator, teacher and area coordinator or department chairmen to plan positive moves toward improvement of professional classroom performance.
- (d) Guidance for the teacher toward professional growth workshops

(e) Observation, continued and sustained, by the evaluator to note the day-to-day lessons and their interrelationships.

(f) Maintenance and expansion of the collection of professional literature with assigned reading, designed to suggest possible solutions to identified problems.

F. Any complaints regarding a teacher, which may have an effect on his evaluation or his continued employment, that are made to the administration by any parent, student or other person shall be in writing and shall be promptly called to the teacher's attention. Said teacher shall have the right to answer any complaints and his answer shall be reviewed by the administrator and attached to the filed complaint."

#### Teacher Files and Records

"G. 1. A teacher shall have the right, upon request, to review the contents of his personal file and to receive copies at District expense of any documents contained therein. A teacher shall be entitled to have a representative of the Association accompany him during such review. At least once every two (2) years, a teacher shall have the right to indicate those documents and/or other materials in his file which he believes to be obsolete or otherwise inappropriate to retain. Said documents shall be reviewed by the superintendent or his designee and if, in fact, they are obsolete or otherwise inappropriate to retain, they shall be destroyed.

2. No material derogatory to a teacher's conduct, service, character or personality shall be placed in his personal file unless the teacher has had an opportunity to review the material. The teacher shall acknowledge that he has had the opportunity to review such material by affixing his signature to the copy to be filed with the express understanding that such signature in no way indicates agreement with the contents thereof. The teacher shall also have the right to submit a written answer to such material and his answer shall be reviewed by the superintendent or his designee and attached to the file copy.

3. Final evaluation of a teacher upon termination of his employment shall be concluded prior to severance and no documents and/or other material shall be placed in the personal file of a teacher after severance, after receipt of a letter of resignation or 'consideration of non-renewal notice' has been sent to said teacher.

4. Although the District agrees to protect the confidentiality of personal references, academic credentials and other similar documents received prior to the teachers (sic) initial employment, it shall not establish any separate personal file which is not available for the teacher's inspection.

H. The Board, in recognition of the concept of progressive correction, shall notify a teacher in writing of any alleged delinquencies, indicate expected correction, and indicate a reasonable period for correction. Alleged breaches of discipline shall be promptly reported to the offending teacher. In the event said breach or breaches of discipline may or could result in termination of employment, copies of any notice to the teacher shall be promptly forwarded to the Association."

## Right of Representation Prior to Reprimand Warning or Discipline

"I. A teacher shall at all times be entitled to have present a representative of the Association when he is being reprimanded, warned or disciplined for any infraction of rules or delinquency in professional performance. When a request for such representation is made, no action shall be taken with respect to the teacher until such representative of the Association is present."

## Just Cause Standard

"J. No teacher shall be discharged, non-renewed, suspended, disciplined, reprimanded, reduced in rank or compensation or deprived of any professional advantage without just cause. Any such action, including adverse evaluation of teacher performance asserted by the Board or representative thereof, shall be subject to the grievance procedure set forth herein. All information forming the basis for disciplinary action will be made available to the teacher and the Association.

K. 1. When, in the judgment of the superintendent, a condition or situation warrants, the superintendent may suspend a staff member with pay, pending action by the board.

2. Because such action could only follow the most grave situation, the superintendent shall file written charges with the Board of Education and shall forward copies of said charges to the suspended staff member, the president of the Association and the chairman of the grievance committee by certified mail.

3. The Board shall schedule a hearing to act upon the charges. Said hearing shall satisfy the requirements of level three of the grievance procedure contained herein. All other provisions of the grievance procedure shall apply, including the right of the staff member to appeal the Board's decision to level four if he is not satisfied with the decision."

## Teacher Layoffs

"If necessary to decrease the number of teachers by reason of a substantial decrease of pupil population within the school district, the governing body of the school system or school may lay off the necessary number of teachers, but only in the inverse order of the appointment of such teachers. No teacher may be prevented from securing other employment during the period he is laid off under this subsection. Such teacher shall be reinstated in inverse order of their being laid off, if qualified to fill the vacancies (sic). Such reinstatement shall not result in a loss of credit for previous years of service. No new or substitute appointments may be made while there are laid off teachers available who are qualified to fill the vacancies."

## Problem Students

"A. The Board recognizes its responsibility to give all reasonable support and assistance to teachers with respect to the maintenance of control and discipline in the classroom. Whenever it appears that a particular pupil requires the attention of special counselors, special teachers, social workers, law enforcement personnel, physicians or other professional persons, such students shall be referred to that particular person.

B. Whenever it appears that the presence of a particular student in the class will impede the education of the balance of the class because of disruptions caused by said student, the board will relieve the teacher of responsibilities with respect to said student. Any transfers of students for disciplinary reasons shall be with the consent of the teacher to whom the student is transferred.

C. A teacher may exclude a pupil from one class when the grossness of the offense, the persistence (sic) of the misbehavior, or the disruptive effect of the violation makes the continued presence of the student in the classroom intolerable. In such cases, the teacher will furnish the principal, as promptly as his teaching duties allow, full particulars of the incident or incidents in writing. The pupil shall not be returned to the class until after consultation by the principal with the teacher and said student.

D. A teacher may, at all times, use such force as is necessary to protect himself, a fellow teacher or administrator, or a student, from attack, physical abuse, or injury. All teachers shall report in writing to the school principal all cases of assault or assault and battery in which they are involved during the course of their employment. Said report shall be filed no later than 24 hours after the close of the day in which said event took place.

E. The written reports above referred to shall be delivered to the Superintendent of Schools and said Superintendent or his authorized representative shall cooperate with the teacher submitting the report or with the Association in supplying whatever information is available to him.

F. The Board of Education shall maintain and keep in full force and effect the liability policies now existing and shall furnish to the Association a copy of said policy at the request of the Association. The Board shall compensate teachers who are absent from duty due to injury(s) resulting from performance of duties at a rate equal to their regular sick leave compensation. Such compensation or days so missed shall not be deducted from their accumulated sick leave."

### Class Size

"Because the pupil-teacher ratio is an important aspect of an effective educational program, the Board agrees that class size should be lowered wherever possible to meet the optimum standards of one (1) to twenty-five (25). Exceptions may be allowed in traditional large group instruction or experimental classes where the Association has agreed in writing to exceed this standard."

### In-Service Training

"The afternoon of the third Thursday of each month will be designated as 'in-service day'. If the third Thursday of any given month falls on a holiday or during a vacation, another appropriate day will be substituted. The calendar for in-service days will be structured jointly by representatives of the Association and the central administration. Although the in-service program will be planned to make maximum use of staff talents, outside consultants may be required. In such cases, the Board agrees to pay the reasonable costs of said consultants provided that the cost does not exceed \$1,000 (one thousand dollars). The time of in-service will be 12:00 - 4:00. Adequate time for lunch will be provided."

## Reading Program

"The Board and the Association agree that each child shall have the opportunity to enhance and expand reading skills necessary to allow a child to reach his optimum reading expectancy level. Therefore the Board agrees to assess the reading achievement and the native ability of each child annually. These figures shall be made available to the Association. The necessary staff, materials, and programs shall be furnished for the child found to be one or more years below his optimum reading expectancy level, to remedy his reading deficit."

## Summer Programs

"The Beloit Education Association recognizes the importance of providing adequate opportunity for teachers to work toward the improvement of learning designs and curriculum in order to assure the continuous improvement of the Beloit Public Schools.

The Association further recognizes the importance of providing learning opportunities for the youth of Beloit during the summer months. We hereby recommend the following:

- (1) That a summer program be initiated that will involve Beloit teachers and Beloit students in the areas of reading, special education, human relations, and curriculum.
- (2) That a maximum of 10 teachers be employed for a period of 1 month at a total salary cost of \$10,000.
- (3) That all other teachers involved receive six (6) credits on the salary schedule.
- (4) All students participating do so free of charge.
- (5) That when and if possible federal grants or aid be applied for.
- (6) That this program be under the direction of the Director of Curriculum.
- (7) That the summer workshop be for 1 month with the hours of 8-12 and 1-4.
- (8) Teachers applying for participation in the summer workshop must submit a proposal to a joint committee of the teachers and administration who would evaluate and select the proposals and teachers that qualify. This must be done by October 1.
- (9) The Committee would be made of equal numbers of members from administration and staff.
- (10) In programs with students, teachers will have 1/2 day in-service and 1/2 day with the students. Students will be in the program for 1/2 days only, during the term of the program.
- (11) The Director of Curriculum may make suggestions regarding the plans submitted by teachers and he may offer assistance. However, final authority for their design and implementation shall rest with the participating teacher.
- (12) The Director of Curriculum will have the right to substitute participants if subsequent events require an earlier participant to withdraw. Also, in the event that the total

cost of the program as originally designed is greater than that permitted under the agreed upon formula, the Director of Curriculum with consent of the Board will have authority to expand the program in order to accommodate applicants on an equitable basis.

(13) The Director of Curriculum will place the proposed summer programs(s) (sic) on the agenda of the Board for their first regular meeting of November. During that meeting he shall present the combined plans of the teachers, which have been submitted by the joint selection committee."

5. That, although the parties reached an agreement on the school calendar for the school year involved prior to the filing of the instant petition, the School Board desired a ruling as to whether the calendar was subject to mandatory bargaining; and that the agreed upon calendar is attached hereto as Appendix "A".

6. That the following aspects of the following proposals of the BEA relate to the management of the instant school district and to the supervision of teaching personnel in its employ and do not significantly involve wages, hours and working conditions of the teachers:

A. Teacher Supervision and Evaluation

- (1) Selection and qualifications of evaluators, and
- (2) Assistance to teachers having professional difficulties or any techniques relating to such assistance.

7. That the following proposals of the BEA relate to basic educational policy, however, the implementation of matters covered by such proposals also has an impact on wages, hours and working conditions of teachers in the employ of the instant School District:

- A. Class Size,
- B. Reading Program, and
- C. Summer Program.

8. That the following proposals of the BEA primarily relate to wages, hours and working conditions of teachers in the employ of the instant School District:

A. Teacher Supervision and Evaluation

- (1) Orientation of new teachers as to evaluative procedures and techniques,
- (2) Length of observation period and openness of observation,
- (3) Number and frequency of observations,
- (4) Copies of observation reports and conferences regarding same, and teachers' objections to evaluations, and
- (5) Notification of complaints made by parents, students and others.

B. Teacher Files and Records

- (1) Review of personal files and copies of contents therein,
- (2) Identification of obsolete matters in teacher files,



- (3) Prior review of derogatory material and right to submit written answer thereto, the latter to be included in personal file,
- (4) Conclusion of final evaluation prior to severance, and exclusion of material, received after severance or following receipt of notice or resignation or notice of "consideration of non-renewal" from teacher files,
- (5) Limitation on establishment of more than one file per teacher, and
- (6) Notification, in writing, to teacher of alleged delinquencies, indication of expected correction, and time period therefore, as well as notification of breaches of discipline, and, where possibility of termination exists, notification thereof to Beloit Education Association.

C. Right of Representation Prior to Reprimand, Warning or Discipline

- (1) Right of representation, prior to such contemplated action, when a request is made therefore by the teacher involved.

D. Just Cause Standard

- (1) A just cause basis prior to discharge, non-renewal, suspension, discipline, reprimand, reduction in rank or compensation, or deprivation of any professional advantage,
- (2) Permissible suspension with pay,
- (3) Charges forwarded to School Board, and copies thereof to suspended teacher, Association president, and chairman of Grievance Committee, by certified mail, and
- (4) Hearing on charges, together with appeal procedures.

E. Teacher Layoffs

- (1) The basis for layoffs,
- (2) Order of recall,
- (3) Qualification for recall,
- (4) Non-loss of previous service credits, and
- (5) No new or substitute appointments while qualified teachers are in layoff status.

F. Problem Students 3/

- (1) Referral of problem students to specialized personnel and others,
- (2) Relief of teacher responsibility with respect to problem students,

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3/ The finding assumes the instant proposal to cover student misbehavior involving physical threats as discussed in the attached memorandum.

- (3) Consent of teacher to whom problem student is assigned,
- (4) Exclusion of problem student from classroom, report thereof, and consultation prior to return to classroom,
- (5) Teacher self-protection and report of action taken, and
- (6) Liability insurance coverage and compensation resulting in absence from duty from injuries in performance of teaching and related duties, with no deduction from accumulated sick leave.

G. In-Service Training

- (1) The number of in-service days during the school year, and the day of the week such days will fall.

H. School Calendar

- (1) All aspects of the school calendar.

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 City of Beloit, by its agent, the Beloit City School Board, and the supervision of personnel in the employ of said school system, which functions do not significantly affect wages, hours and conditions of employment of teachers in the employ of said system, are matters reserved to the management and direction of said school system, by its duly elected officials and other agents, within the meaning of Section 111.70(1)(d) of the Municipal Employment Relations Act, and, therefore, the City of Beloit, by its agent, (the) Beloit City School Board, and other agents, is not required to engage in collective bargaining, as defined in said section of the Act, with the Beloit Education Association regarding matters relating to such functions,

2. [That matters relating to basic educational policy are subjects reserved to the management and direction of the school system of the City of Beloit, by its duly elected officials and other agents, within the meaning of Section 111.70(1)(d) of the Municipal Employment Relations Act, and, therefore, the City of Beloit, by its agent, (the) Beloit City School Board, and other agents, is not required to engage in collective bargaining as defined in said section of the Act, with the Beloit Education Association, regarding matters relating to 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 Municipal Employer.]

3. [That matters primarily relating to wages, hours and conditions of employment of teachers are not reserved to the management and direction of the school system of the City of Beloit, by its duly elected officials and other agents, within the meaning of Section 111.70(1)(d) of the Municipal Employment Relations Act, and, therefore, the City of Beloit, and its agent, (the) Beloit City School Board, and other agents, are required to engage in collective bargaining, as defined in said section of the Act, on such matters, with the Beloit 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

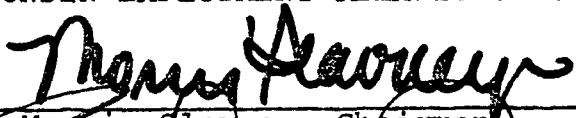
1. That the Beloit Education Association does not have the right to bargain, and the City of Beloit, and its agent, the Beloit City School Board, and its other agents, do not have the duty to bargain, within the meaning of Sections 111.70(1)(d) and 111.70(2) of the Municipal Employment Relations Act, with respect to the decision of said Municipal Employer relating to those proposals of the Beloit Education Association set forth in paragraph six of the Findings of Fact.

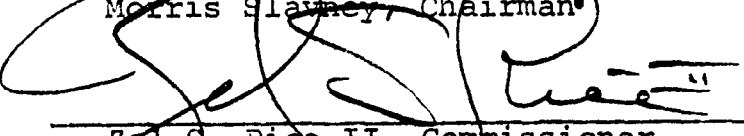
2. That the Beloit Education Association does not have the right to bargain and the City of Beloit, and its agent, the Beloit City School Board, and its other agents, do not have the duty to bargain within the meaning of Sections 111.70(1)(d) and 111.70(2) of the Municipal Employment Relations Act, with respect to decisions relating to the proposals of the Beloit Education Association set forth in paragraph seven of the Findings of Fact, except, however, that such a right and duty exist to bargain on the impact of such established policy matters on wages, hours and conditions of employment of teachers in the employ of said Municipal Employer.

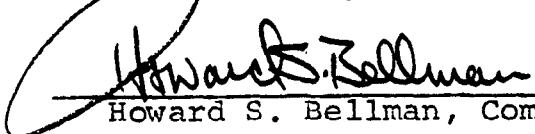
3. That the Beloit Education Association has the right to bargain collectively, and the City of Beloit, and its agent, the Beloit City School Board, and its other agents, have the mandatory duty to bargain collectively within the meaning of Sections 111.70(1)(d) and 111.70(2) of the Municipal Employment Relations Act, with respect to the proposals of the Beloit Education Association as set forth in paragraph eight of the Findings of Fact, as well as the impact thereof on wages, hours and conditions of employment of teachers in the employ of said Municipal Employer.

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 Slawney, Chairman



  
Zel S. Rice II, Commissioner

  
Howard S. Bellman, Commissioner

APPENDIX "A"

JULY							JANUARY							
S	M	T	W	T	F	S	S	M	T	W	T	F	S	
1	2	3	4	5	6	7			1	2	3	4	5	
8	9	10	11	12	13	14	6	7	8	9	10	(11)	12	
15	16	17	18	19	20	21	13	14	15	16	17	(18)	19	
22	23	24	25	26	27	28	20	21	22	23	24	(25)	26	
29	30	31					27	28	29	30	31			
AUGUST							FEBRUARY							
			1	2	3	4						1	2	
5	6	7	8	9	10	11	3	4	5	6	7	(8)	9	
12	13	14	15	16	17	18	10	11	12	13	14	15	16	
19	20	21	22	23	24	25	17	18	19	20	(21)	(22)	23	
26	(27)	(28)	(29)	30	31	2	24	25	26	27	28			
SEPTEMBER							MARCH							
						1						1	2	
2	(3)	4	5	6	(17)	8	3	4	5	6	7	(8)	9	
9	10	11	12	13	(14)	15	10	11	12	13	14	15	16	
16	17	18	19	20	(21)	22	17	18	19	20	21	(22)	23	
23	24	25	26	27	28	29	24	25	26	27	28	29	30	
30						19	31							
OCTOBER							APRIL							
					(35)	6			1	2	3	4	(5)	6
7	8	9	10	11	12	13	7	(8)	(9)	(10)	(11)	(12)	13	
14	15	16	17	18	(19)	20	14	15	16	17	18	(19)	20	
21	22	23	24	25	26	27	21	22	23	24	25	26	27	
28	29	30	(31)			23	28	29	30					
NOVEMBER							MAY							
				(1)		3				1	2	(3)	4	
4	5	6	7	8	9	10	5	6	7	8	9	10	11	
11	12	13	14	15	(16)	17	12	13	14	15	16	(17)	18	
18	19	20	21	(22)	(23)	24	19	20	21	22	23	24	25	
25	26	27	28	29	(30)	18	26	(27)	28	29	30	(31)		
DECEMBER							JUNE							
						1							1	
2	3	4	5	6	7	8	2	3	4	5	(6)	8		
9	10	11	12	13	(14)	15	9	10	11	12	13	(14)	15	
16	17	18	19	20	21	22	16	17	18	19	20	21	22	
23	(24)	(25)	(26)	(27)	(28)	29	23	24	25	26	27	28	29	
30	(31)					15	30							

 Non-Teaching  
 Vacation

 Pay Days  
 Holidays

MEMORANDUM ACCOMPANYING DECLARATORY RULING

THE SCHOOL BOARD'S BASIC CONTENTIONS:

The School Board argues that the Constitution and Statutes of the State of Wisconsin require an accommodation between bargaining rights of teacher organizations "and the right of the public in school system government by elected officials," and that "in striking the balance, the preservation of representative school government should have priority." While it concedes that the statutory concept set forth in Section 111.70(1)(d) 4/ of the Municipal Employment Relations Act, hereinafter referred to as MERA, sets forth three distinct categories, namely, (1) wages, hours and conditions of employment, (2) management and direction of the governmental unit, and (3) the responsibilities of government, i.e., matters of public policy, it contends that it would constitute an unconstitutional delegation of legislative authority, as set forth in Article X, Section 1, of the State Constitution, if Section 111.70(1)(d) were construed to require bargaining on matters essentially pertaining to educational policy. 5/ Further, the School Board contends that as a matter of statutory construction the specific school statutes, e.g., Section 120.12, 120.13 and 120.49, prevail over the provisions of MERA in those instances where both cannot be given effect, or where they cannot be harmonized. 6/

Thirdly, the School Board proposes that the experience in administering the National Labor Relations Act establishes "three different classifications into which subjects may fall for bargaining purposes: (a) mandatory subjects, about which they are compelled to bargain; (b) permissive subjects, about which the employer may bargain voluntarily

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4/ Section 111.70(1)(d) provides as follows:

"'Collective bargaining' means the performance of the mutual obligation of a municipal employer, through its officers and agents, and the representatives of its employes, 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 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 employes. 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 employes by the constitutions of this state and of the United States and by this subchapter."

5/ Jt. School Dist. No. 8 v. WERB (37 Wis 2d 483, 1967).

6/ Bd. of Ed. v. WERC (52 Wis 2d 625, 1971).

but cannot be compelled to do so; and (c) prohibited subjects about which the employer is precluded by law from bargaining." <sup>7/</sup> With respect thereto, the School Board contends that Section 111.70(1)(d) limits the mandatory subjects of bargaining, but not the permissive ones, and, therefore, the School Board would have the Commission conclude that where a matter is excluded from bargaining under said statutory provision "does not proscribe teacher union input in the decision making process," and in that regard the School Board states "the union can still propose, but it cannot insist."

The School Board directs the Commission's attention to decisions rendered in other state jurisdictions in support of its position that the traditional powers of school boards should be construed broadly and should not be required to bargain on matters which are predominantly matters of educational policy, management prerogatives, or matters relating to their statutory duties. <sup>8/</sup>

THE BASIC POSITION OF THE WISCONSIN ASSOCIATION OF SCHOOL BOARDS:

The Wisconsin Association of School Boards, Inc., hereinafter referred to as the WASB, filed a brief amicus in support of the position of the School Board, and therein succinctly stated the primary issue herein as follows:

"The broad issue presented in this proceeding is whether there are decisions to be made by the school board with regard to these subjects which, although affecting to a degree the working conditions of teachers, are so fundamental and essential to the governmental function of the school board that the school board can make such decisions without a duty to bargain collectively with the representative of the teachers."

WASB contends that the duty to bargain on wages, hours and conditions of employment does not apply to matters affecting basic educational policy, since the legislature, in defining the term "collective bargaining" in MERA, expressly limited the scope of bargaining so as to exclude subjects reserved to management and direction of the School District; and that, by such a restriction, the legislature expressed a strong public policy in favor "of preserving representative government responsive to the changing need of its citizenry."; and further "that there are decisions to be made by public employers which may affect the wages, hours and working conditions of public employes, but which are so essential to the governmental function that public employers as governmental bodies are constitutionally and legislatively precluded from bargaining away their power to act in these areas."

WASB further argues that school boards should not be forced to forego their right to make final decisions by bargaining with a limited interest group respecting that which affects the vital educational needs of the district; and that subjecting educational policy determinations to the collective bargaining process "would not only prevent effective considerations of the concerns and interests of other groups but would preclude the school board from consulting and conferring with its professional employes on the merits of the various alternatives involved in such policy determinations."

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<sup>7/</sup> NLRB v. Borg Warner Corp. (356 U.S. 342, 1958).

<sup>8/</sup> State College Ed. Assn. v. Penn. Labor Rel. Bd. (306 A. 2d 404, PA. 1973); N.E.A. of Shawnee Mis. V. Bd. of Ed. (512 P. 2d 426, Kan. 1973); Seward Ed. Assn. v. School Bd. (199 N.W. 2d 752, Neb. 1972).

The WASB argues, respecting those subjects which directly or indirectly affect wages, hours and conditions of employment, if the subject is one reserved to the management and direction of the school system, the school board has no duty to bargain on such subject "except to the extent that it must bargain the impact that its decisions have on the wages, hours and working conditions."

THE BASIC POSITION OF THE LEAGUE OF WISCONSIN MUNICIPALITIES:

The League of Wisconsin Municipalities was also permitted to file a brief amicus, wherein it sets forth its general position as follows:

"As to specific proposals in dispute, it is the position of amicus that each contains elements of mandatorily bargainable items but that read en (sic) toto each attempts to go beyond the scope of the required subjects of bargaining either because, as in the case of the proposals relating to 'type and extent of reading programs' and 'establishment and structure of summer programs,' they do not relate to wages, hours or conditions of employment of the employes or because, as in the case of the proposals relating to 'manner in which supervision and evaluation of teachers will be conducted,' 'structure, maintenance and availability to teachers of school district files and records,' 'class size,' 'type and extent of in-service training to be conducted,' they attempt to determine the management and direction of the governmental unit.

. . .

The consequences which will flow from the commission's determination cannot be lightly dismissed. Not only will the decision define the scope of bargaining for hundreds of municipal employes and employers not involved in this case, but matters determined to be subject to an absolute bargaining duty will be removed from free and open public debate, at least during the bargaining period [Madison Teachers, Inc. Dec. No. 11271, 9/13/72; Milwaukee Board of School Directors v. WERC (1968), 42 Wis. (2d) 637]."

The League further contends that the history and language of MERA Subchapter IV of Chapter 111, Wisconsin Statutes, "dictate a restrictive construction of mandatory subjects of bargaining," and that the difference in language in MERA, as reflected in Section 111.70(1)(d), when compared to the definition of the term "collective bargaining" as set forth in Section 8(d) of the National Labor Relations Act, and Section 111.05 of the Wisconsin Employment Peace Act, supports the conclusion that MERA should be viewed as a "legislative rejection of unrestrained transfer of private industrial bargaining duties and adoption of a more restrictive view of bargaining duties commensurate with other legal obligations and duties of municipal employers."

THE ASSOCIATION'S BASIC POSITION:

The Association contends that the failure to achieve peaceful settlements of labor disputes are partially due to "the narrow, inflexible attitudes of municipal employers as illustrated by the employer's position in this proceeding" and that if the Commission would adopt the position of the School Board herein, the Commission would "undo much that has already been accomplished by industry bargaining practices in other districts which have resulted in improved and stabilized relations between those districts and their employes."

The Association suggests that, in determining the issues herein, the Commission apply five tests:

"(a) the extent to which a decision on the subject matter would change the direction of the governmental enterprise, involving a change in capital investment; (b) the extent to which the subject matter of the proposal is 'within the scope of basic educational policy'; (c) the extent to which the subject matter of the proposal affects wages, hours and conditions of employment; (d) the extent to which negotiations on the subject would be consistent with 'industry practice'; (e) the extent to which negotiations on the subject matter would effectuate the purposes of the statutes involved."

With respect to the first suggested test, the Association contends that the School Board has not offered any proof that the proposals in issue herein, if found to be mandatory subjects of bargaining, would change the direction of the School Board's enterprise.

Regarding the second suggested test, the Association argues that to render a negotiation proposal not a mandatory subject because it is a major educational policy determination, it must also not relate to wages, hours and conditions of employment. The Association bases this argument on a negative implication of the decision of our Supreme Court in Joint School District No. 8 v. WERC.<sup>9/</sup> The Association also argues that the Court in said decision referred to basic or major educational policy determinations, and therefore any delegation problem must be limited to those matters of "basic educational policy and that Article X, Section 3 (of the State Constitution) cannot be parlayed into a blanket limitation on all subjects which may be alleged to be managerial policies or personnel policies."

In support of its third suggested test the Association summarizes its position in regard thereto by arguing that teachers' terms and conditions of employment include matters which relate to, affect and determine the character of the educational product, since teachers have not only a self-concern, but a professional concern as to the quality of education.

Fourthly, the Association argues that the Commission should look to "industry practice" in making its determination on the issues involved herein. In support thereof it cites a number of cases decided under the National Labor Relations Act by the U.S. Supreme Court. The Association contends that school boards have bargained on matters in issue herein and that such practice does not violate the discretion granted to school boards under Section 120.12, Wisconsin Statutes.

Finally, the Association asserts that Section 111.70 must be given a broad scope in order to foster exchange of information and airing of opinions which will advance the interests of the teachers, school boards and the public, and that to adopt a restrictive application would create conflicts and discourage the peaceful resolution of labor disputes.

#### DISCUSSION WITH REGARD TO SCHOOL BOARD'S BASIC CONTENTIONS:

We agree with the School Board that the provisions of the State Constitution and of the State Statutes with regard to schools, and the

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<sup>9/</sup> See Footnote 6.



provisions of the Municipal Employment Relations Act require an accommodation between bargaining rights of teacher organizations and the right of the public, through elected officials and administrative personnel, to govern school systems. However, we are wary of the School Board's conclusion that the "preservation of representative school government should have priority", for such a conclusion could effectively erode, or perhaps negate, the rights and procedures granted to municipal employes as set forth in the various provisions of MERA. For example, the establishment of a school district's budget is unquestionably a "governmental" function. Yet no one will dispute that teacher organizations have the right to bargain with respect to teachers' salaries, which item, along with salaries of other school employes, constitutes a major portion of a district's budget.

The School Board would have the Commission conclude that there exists no mandatory duty to bargain on "matters essentially pertaining to educational policy," and in support of said argument cites our Supreme Court's decision in Madison Jt. School Dist. No. 8. In that case the Court, in determining whether the school calendar was a proper subject of fact finding, compared the matter of the "school calendar" with the "contents of the curriculum", and in that regard 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." (Emphasis added).

We recognize that matters affecting basic educational policy lie at the core of a school district's governmental control, which is analogous to entrepreneurial control in the private sector, and therefore such matters are not subject to mandatory bargaining. However, where basic educational policy matters have an effect on wages, hours and conditions of employment, the impact of decisions on such matters is subject to mandatory bargaining.

With respect to the second argument of the School Board it is to be noted that in Board of Education v. WERC (52 Wis. 2d 625, 640, 1971), our Supreme Court was construing Sec. 111.70 as it existed prior to the adoption of MERA in November 1971, which statutory provision neither defined the term "collective bargaining", nor established any enforceable duty either upon a municipal employer or upon municipal employes or their representatives, to bargain in good faith with respect to wages, hours and conditions of employment. Furthermore, the statutes involved in that case pertaining to the operation and management of schools, were "renumbered and amended by the Legislature in 1967" prior to the adoption of MERA, and thus the Court in said case gave preference to the later amended school statutes. However in this matter, the situation is again reversed as a result of the later adoption of MERA.

It is apparent from the plain reading of Section 111.70(1)(d) that the Commission must attempt to harmonize the existing school statutes and the provisions of MERA, and also to recognize that certain matters are reserved to management. However, Section 111.70(1)(d) sets forth the obligation of municipal employers, and in this matter, school districts and their agents, to negotiate with their employes on wages, hours and conditions of employment, and further that municipal employers in exercising their powers and responsibilities must do so "subject to those rights secured to public employes . . . by this subchapter."

Section 111.70(2) of MERA sets forth the right of municipal employes, among other things, "to bargain collectively through representatives of their own choosing . . . ." Section 111.70(3)(a)4 provides that it is a prohibited practice for a municipal employer "to refuse to bargain collectively with a representative of a majority of its employes in an appropriate collective bargaining unit." Section 111.70(3)(b)3 establishes a corresponding duty upon municipal employes and their bargaining representatives. Further, Section 111.70(3)(a)5 sets forth that it is a prohibited practice for a municipal employer "to violate any collective bargaining agreement previously agreed upon by the parties with respect to wages, hours and conditions of employment affecting municipal employes . . . ." A corresponding prohibited practice involves such activity by municipal employes and their representatives. (Section 111.70(3)(b)4).

To accept the School Board's argument, that all the duties and responsibilities delegated to, and required of, school districts and their agents are not subject to mandatory collective bargaining, would emasculate the provisions of MERA as applied to employes of a school district, rather than harmonize MERA with the school statutes. [We hold that matters, not concerning basic educational policy, which primarily affect wages, hours and conditions of employment, are subject to mandatory bargaining. We further hold that matters, which do concern basic educational policy, but by their impact secondarily affect wages, hours and conditions of employment, are subject to mandatory bargaining as to said impact.] Such a conclusion effectuates the principle of statutory harmonization.

With respect to agency and court decisions rendered in other states regarding mandatory subjects of bargaining between school districts and teacher organizations, we are aware that said decisions are predicated on the interpretation of the various school statutes and collective bargaining statutes existing in those states, and therefore we consider decisions rendered in those jurisdictions interesting, but not generally persuasive upon the Commission.

DISCUSSION WITH RESPECT TO CONTENTIONS OF THE WISCONSIN ASSOCIATION OF SCHOOL BOARDS, INC.:

The arguments of the WASB that governmental bodies are precluded from bargaining on subjects reserved to management and direction of the school district has been discussed previously in this memorandum.

In regard to the second argument of the WASB, it is clear that the duty to bargain collectively as set forth in Section 111.70(1)(d) of MERA "does not compel either party to agree to a proposal or require the making of a concession . . . ." Further, as previously implied herein, MERA does not preclude a school board from conferring with individual teachers on matters which are non-mandatory subjects of bargaining, except where their impact may affect wages, hours and working conditions.

DISCUSSION WITH RESPECT TO THE CONTENTIONS OF THE LEAGUE OF WISCONSIN MUNICIPALITIES:

The Commission agrees that our decision herein will extend to school boards and teachers' organizations throughout the State. Our conclusions will be based upon the provisions of MERA as they read, and not on any other labor relations statutes.

DISCUSSION WITH RESPECT TO THE ASSOCIATION'S CONTENTIONS:

One of the tests suggested by the Association to determine the issues herein would require the Commission to ascertain "the extent

to which a decision on the subject matter would change the direction of the governmental enterprise involving a change in capital investment". This suggested test emanates from the decision of our Supreme Court, enunciated in Libby, McNeill & Libby v. WERC, 48 Wis. 2d 272, 283 (1970), in determining bargainable matter involving private employes. Since municipal employers are not engaged in operating a business for profit, and since school districts, in general, cannot go out of business or change the direction of their enterprise (providing education), although they may add or eliminate programs, e.g. food service, recreation programs, such a test has limited applicability in determining the issues herein.

We agree that we must consider the extent to which the various proposals involved herein are within the scope of basic educational policy, and the extent to which the proposals affect wages, hours and the working conditions of the teachers.

As for "industry practice" the Commission is aware, and so are the parties, that, prior to the adoption of MERA, when there existed no enforceable duty to bargain, and as a result no "purely mandatory subjects of bargaining", numerous teacher organizations and school boards entered into collective bargaining agreements, covering wages, hours and conditions of employment, as well as including provisions relating to matters, which would not, under MERA, be considered mandatory subjects of bargaining. Following the effective date of MERA, similar matters have been, and are, included in collective bargaining agreements executed by teacher organizations and school boards. However such practice, in itself, is not, in our opinion, determinative as to whether a particular proposal involves a matter which is subject to a mandatory bargaining duty, but rather may involve a permissive subject of bargaining. In such agreements the school boards involved may have agreed to bargain on such permissive matters in order to obtain some concessions from teacher organizations on items relating to some mandatory subjects, i.e., salaries and other monetary fringe benefits.

Further, while industry practice has been recognized in determining some mandatory subjects of bargaining in private employment labor relations, where management rights are considered to be inherent, and not created by statute, some management rights in public sector bargaining are "inherent", while others are created by the Legislature. In addition, some management rights created by the Legislature may very well be affected by subsequent legislation, and in resolving the issues herein we must consider whether the Legislature, in adopting MERA, has done so, and to what extent it has done so.

With regard to the final test proposed by the Association, the fact that conflicts may arise and be disruptive of the peaceful resolution of labor disputes in education, because of a conclusion by the Commission that a particular matter is not subject to mandatory bargaining, is not legal basis for any conclusion. For example, conflicts may arise, which may be disruptive of the peaceful resolution of disputes in collective bargaining, as a result of the personalities sitting at the bargaining table, yet neither party has the right to bargain as to the complement of the bargaining team of the other party involved in the negotiations.

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

We note that certain of the Association's proposals involved in this Declaratory Ruling are characterized by the Association as "improving instruction" (Teacher Evaluation and Discipline); "impede the education" (Teacher Protection); "aspect of an effective educational

program" (Class Size); "each child shall have the opportunity to enhance and expand reading skills" (Reading Proposal); and "learning opportunities for the youth of Beloit during summer months" (Research and Development).

We shall disregard the stated "motivation" in support of the noted proposals and make our determinations with respect to the bargainability of such proposals on the bases heretofore set forth. 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.

#### Teacher Supervision and Evaluation:

Inasmuch as the evaluation of a teacher may affect the retention or non-retention of that teacher, or the level of compensation received by that teacher, certain aspects of the Association's proposal regarding teacher evaluation and discipline are mandatory subjects of bargaining. On the other hand, other aspects of said proposal are not so subject to mandatory bargaining.

We hold that the matters of orientation of new teachers as to evaluative procedures and instruments is a mandatory subject of bargaining because it directly relates to the teacher's ability to perform as required by the employer, in that it involves informing the teacher of how such performance is measured, and thus to the teacher's ability to maintain employment.

Likewise, the matters of length of observation period, openness of observation, number of evaluations, and frequency of observations are also mandatory subjects of bargaining. It would indeed be specious to determine, as we do subsequently herein, that the Association's proposal of a "just cause" standard is a mandatory subject of bargaining, but not require bargaining over such techniques as comprise the procedural aspects of said standard.

Similarly, the matters of copies of observation reports and conferences regarding same, and teachers' objections to evaluations reflect the aspect of "just cause" which requires that, where appropriate, a teacher be allowed a fair opportunity to learn of his or her jeopardy, and possibly to defend his or her position. Thus, these matters are also held to be subjects of mandatory bargaining, as are matters concerning complaints made by parents, students and others.

On the other hand, the proposals involving the selection and qualifications of evaluators, assistance to teachers having professional difficulties, and the techniques to be employed in dealing with teachers found to be suffering professional difficulties, reflect efforts to determine management techniques rather than "conditions of employment." As such, they are not subjects of mandatory bargaining.

#### Teacher Files and Records:

For the same reasons as are set forth in the preceding paragraphs we conclude that the Association's proposals concerning teacher files and records, including notification of delinquencies and expected corrections, are mandatory subjects of bargaining. These proposals, as those pertaining to teacher evaluation and supervision, relate directly to the teacher's ability to respond to "threats" to continued employment.

### Right of Representation Prior to Reprimand, Warning or Discipline:

Since a reprimand, warning, or discipline given to a teacher may very well result in a more severe action affecting a teacher's employment status, and since the discipline of a teacher affects his employment status, we conclude that the Association's proposal regarding the right of representation, prior to the taking of such action by the School Board or its agents, is a mandatory subject of bargaining.

### Just Cause Standard:

The proposal of a "just cause" provision is, of course, an effort to protect the teachers' employment status and thus a "condition of employment" subject to mandatory bargaining. The "suspension with pay" proposal is a corollary of such action and also such a mandatory subject. Furthermore, this proposal pertains to wages received under certain circumstances. The proposals with regard to the furnishing of copies of charges, as well as a hearing on the charges, are likewise considered mandatory subjects of bargaining, for the reasons stated heretofore, as well as for the reason that the Association has a statutory duty to fairly represent all employes in the bargaining unit, and, in the performance of that duty, the Association has the right to bargain on proposals which will assist it in carrying out such responsibility.

### Teacher Layoffs:

The matter of teacher layoffs, and their right to recall to active teaching status, have a direct and intimate affect on a teacher's working conditions including employment status, and as such, the Commission concludes that the proposals relating to teacher layoffs and recall are mandatory subjects of bargaining, as are concomitants thereof, not limited to, but including such matters as the basis for layoffs, order of recall, qualifications for recall, and non-loss of previous service credits.

### Problem Students:

The behavior of students in a classroom, particularly to the extent that it presents a physical threat to the teacher's safety, is a condition of employment. Thus, proposals that go to such matters are mandatory subjects of bargaining. The instant proposal, unfortunately, is ambiguous as to whether it covers only such misbehavior; and the record herein does not clarify such ambiguity. Misbehavior of students that does not involve threats to physical safety is not a condition of employment and therefore, is a permissive subject of bargaining. Thus, for example, determining the appropriate response to students who are disruptive but not physically threatening, because they suffer a physical handicap, is a basic educational policy.

### Class Size:

The size of a class is a matter of basic educational policy because there is very strong evidence that the student-teacher ratio is a determinant of educational quality. 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 School Board 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. 10/

In-Service:

Since the Association's proposals with regard to in-service days is intimately related to the school calendar, we shall discuss the instant proposal subsequently herein.

Reading Program:

It is clear to the Commission that the Association's proposal on "reading" relates primarily to basic educational policy, and therefore concerns a matter subject to permissive, but not mandatory bargaining. The need for such a program is essentially a determination of whether the District should direct itself toward certain educational goals. If a reading program is established, which involves teachers, the impact of same upon their wages, hours, and working conditions, is a subject of mandatory bargaining.

Summer Programs:

The Association proposes that the School District initiate a summer school program. Such a proposal basically is a matter of the educational needs of the District and policy, and therefore subject to permissive but not mandatory bargaining. However, should the School District determine to implement a summer school session, matters relating to wages, hours and working conditions of teachers participating in a summer school session, are subject to mandatory bargaining.

School Calendar:

We conclude that the school calendar is a mandatory subject of bargaining, since it establishes the number of teaching days, in-service days, vacation periods, convention dates, and the length of the school year directly affecting "hours and conditions of employment."

With respect to the Association's proposal pertaining to In-Service Days, we determine that the number of such days and the day of the week on which such days will fall are mandatory subjects of bargaining because, with the teaching days, they comprise the teachers' work days. However, we conclude that the type of programs to be held on such days, and the participants therein are not subjects of mandatory bargaining, since we are satisfied that such programs and the participants therein have only a minor impact on working conditions, as compared to the impact on educational policy.

COMMENT:

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

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10/ We recognize that the non-mandatory aspect vis-a-vis the mandatory aspects 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.

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 teachers 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. 11/ 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, 12/ 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  
Morris Slavney, Chairman

Zel S. Rice II  
Zel S. Rice II, Commissioner

Howard S. Bellman  
Howard S. Bellman, Commissioner

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11/ 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.

12/ Except in police and firefighter negotiations.