STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LOCAL 152, SERVICE EMPLOYEES affiliated with SERVICE EMPLOYEES INTERNATIONAL, AFL-CIO, Complainant, vs. UNIFIED SCHOOL DISTRICT NO. 1 OF RACINE COUNTY, Respondent.	Case XXIII No. 17030 MP-265 Decision No. 12055-B

Appearances:

Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. John S. Williamson, Jr., for the Complainant.

Mr. W. Thatcher Peterson, Coordinator of Employee Services, for the Respondent.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

Complaint of prohibited practices having been filed with the Wisconsin Employment Relations Commission in the above-entitled matter; and the Commission having appointed Howard S. Bellman, then a member of the Commission's staff, to act as Examiner in the matter; and hearing having been held at Racine, Wisconsin, on August 10, 1973 before said Examiner; and the Commission on November 12, 1973 having issued an Order Setting Aside Appointment of Examiner and Transferring Case to Commission in the matter on the basis of the appointment of Mr. Bellman to the Commission; and the Commission having considered the evidence and arguments and being fully advised in the premises makes and files the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. That Unified School District No. 1 of Racine County, referred to herein as the Respondent, is a municipal employer within the meaning of the Municipal Employment Relations Act, engaged in the operation of a public school system, having its principal offices at 2230 Northwestern Avenue, Racine, Wisconsin; that the governing body of Respondent is its Board of School Directors, referred to herein as the Board; and that the Board, at times, acts through certain committees of its members, including a Finance committee.

2. That Local 152, Service Employees affiliated with Service Employees International, AFL-CIO, referred to herein as the Complainant, is a labor organization having offices at 2100 Layard Avenue, Racine, Wisconsin; and that Complainant, at all times material herein, has been the collective bargaining representative of all custodial, maintenance and cafeteria employes of the Respondent.

3. That Complainant and Respondent were parties to a collective bargaining agreement covering the aforesaid unit of employes, the term of which agreement commenced on approximately September 1, 1972 and continued until at the earliest, August 31, 1973; that said agreement contained a provision stating that it "shall automatically be renewed unless either party, prior to March 15, notifies the other party in writing of a desire to negotiate a changed agreement"; that pursuant to said renewal provision Complainant notified Respondent by a letter dated February 28,

1973, of its desire to open negotiations to change said agreement, and on approximately July 6, 1973, delivered to Respondent certain demands for the terms of a subsequent agreement.

4. That among the proposals so made by the Complainant was a demand for a contract provision stating, "No work presently preformed [sic] by bargaining unit employees shall be performed by nonunit employees, whether of this employer or of another employer"; that such a provision was also proposed by the Complainant in the negotiations for the aforementioned 1972-1973 contract and, although the Respondent accepted said proposal as bargainable, the Complainant withdrew it prior to the completion of said negotiations for the 1972-1973 contract.

5. That on July 11, 1973, representatives of Complainant and Respondent met to commence negotiations for a successor to the aforesaid 1972-1973 contract; that during said meeting the parties discussed each of the Complainant's aforesaid proposals and it was evident that some of said proposals related exclusively to cafeteria employes in the bargaining unit who were employed in Respondent's food service program; that in commenting on proposals that related to such cafeteria employes, the representatives of the Respondent did not indicate in any manner that the employment of such cafeteria employes was currently subject to any considerations involving the performance of their duties by nonunit personnel; that at the termination of this meeting, it was agreed that further meetings would be arranged later, and Respondent's representatives were informed that the Complainant's President and Spokesman, Robert Tighe, was going to temporarily leave the City.

6. That during January or February, 1973, the Respondent determined to expand its food service program, to an extent that required an approximately $150,000 capital expenditure, in order to comply with certain requirements of a program of the Federal Government in which the Respondent desired to participate; that during late May, 1973, the Respondent began to study and consider various aspects of its food service program and authorized one of its Administrators to contact private enterprises regarding taking over the management of said program.

7. That ARA Services, Inc., a Delaware corporation, having its principal place of business at Independence Square, West 6th and Walnut Streets, Philadelphia, Pennsylvania, referred to herein as ARA, is also engaged in business in Racine, Wisconsin, including the business of providing various food services on the premises of other enterprises.

8. That on approximately July 12, 1973, while the aforesaid negotiations with Complainant were under way, the Respondent's Finance Committee met with a representative of ARA pursuant to arrangements made in late June, 1973, and received a proposal from ARA for the provision of certain lunch services by said company at certain elementary schools which proposal involved the management by ARA personnel of Respondent's food service employes; that as an immediate response to said proposal, the said Finance Committee invited the ARA representative to return and continue such discussions on July 16, 1973, and to be prepared at that time to submit a proposal for the complete operation by ARA of the Respondent's food service program; that no notification of this conference or its subject was transmitted to the Complainant on the theory that it did not involve any possible notification of any arrangement subject to collective bargaining.

9. That following the aforementioned July 16, 1973 meeting of the said Finance Committee, said committee issued the following report of its deliberations:

"As part of its work in preparing a budget for the 1973-1974 fiscal year, your Committee instructed Mr. George Milicka, director of special services, to seek information on alternative ways to handle the expanding food service operation,

especially in light of the unanticipated retirement of the cafeteria supervisor. In turn, your Committee discussed a number of alternatives, ranging from complete use of frozen meals, to having a professional food service management firm assume responsibility for managing the food service operation, to asking a professional food service management firm to assume complete responsibility for providing food service for the School District's students.

Your Committee faced these problems:

1. Because of the existing inflation in food prices and the decreasing amounts of government food commodities that are available, we expect to see the price of unprepared food increase by 10% to 25%.

2. In accordance with Federal regulations, the Board earlier decided to expand its hot lunch program into every school in the District.

3. The expansion of the lunch program demands an investment of approximately $150,000 in capital equipment and the addition of approximately 40 employees, most of whom will be part time.

4. Unless we find ways to reduce costs, it will be necessary to increase the prices of lunches for students, raising the ultimate possibility that we would have to eliminate the entire food service program because it would price itself out of the market.

Your Committee heard representatives from A.R.A. Services, Inc. (A.R.A.) make a proposal for assuming complete responsibility for food service operations. A.R.A. is a large, nationwide organization that specializes in providing food services to institutions. Because of volume buying, A.R.A. can buy food less expensively than the School District can, and thereby create savings of approximately $50,000 annually. A.R.A. can make available its large support staff and other resources in adjusting to the increasing complexities of a food service program.

In order to meet our objective of providing the best possible school lunch at the lowest possible cost to the students, their parents, and the taxpayers, your Committee recommends:

> that the School District negotiate a contract with A.R.A. to have it assume complete responsibility for providing food services for the 1973-74 school year.

Due to the short time before the school year opening and the desire to expand the lunch program to all schools as soon as possible, your Committee does not find it practical to seek bids at this time for the 1973-74 food service operation.

Your Committee discussed the implications of this recommendation for food service employees. We believe the School District should acknowledge their dedicated service in the past and assure equity during the transition.

Therefore, your Committee will insist that any agreement with A.R.A provide that:

1. Assuming they are otherwise qualified (e.g., they are medically able to work), all existing food service employees will be hired by A.R.A. In other words, employees will not lose their jobs.

2. The seniority of existing food service employees will be respected.

3. The wages of existing food service employees shall be maintained, at least, at their existing levels.

Your Committee asked the Board president to call a special Board meeting as soon as possible to consider these recommendations."

10. That on July 20, 1973, when Tighe returned to Racine, he found a request that he call W. Thatcher Peterson, respondent's Coordinator of Employee Services, and his agent, that Peterson, in turn, informed Tighe of the aforesaid decision by the said Finance Committee involving the duties performed by the cafeteria employes, and handed to Tighe a letter covering that same subject matter; that said letter stated as follows:

"I want to let you know about some developments that have just occurred. I didn't think it necessary to call you in Madison, and feel bad at the timing, because I know you are scheduled to begin your vacation. Anyway, please read the attached report of the Finance Committee and give me a call (at home, if necessary, 632-4271) so we can talk about it.

Basically, the Finance Committee is recommending that the School District negotiate an agreement with A.R.A. Services, Inc., a food services organization, for it to take over the entire operation of the School District's lunch program. This means that effective with the 1973-74 school year, the School District would withdraw completely from providing cafeteria service itself.

Obviously, this has implications for food service employees. Notice the Finance Committee's position. In short, the Finance Committee insists that:

1. No food service employee will lose her job.
2. Seniority rights will be respected.
3. No employee will take a cut in her hourly wage.

All of us want to protect food service employees during the transition. That is only fair.

So far, this is only a recommendation. This Monday, 23 July, the School Board will hold a special meeting in order to get the recommendation on the agenda of the Committee-of-the-Whole meeting scheduled for 6 August 1973. As you know, the public may speak at that meeting. Then the Committee-of-the-Whole will make a recommendation to the School Board at its meeting on 13

I am also taking the liberty of sending copies of this letter and the Finance Committee report to the other members of Local 152's bargaining committee. All of us should share the same information.

Finally, I would ask you to wait until after the Monday meeting before you spread word of this issue to your members. It is an important issue and no one is trying to keep it a secret. And, because of its importance, I think it vital that everyone understand what the recommendation means, so the amount of misinformation and misunderstandings is reduced.

Again, I'd appreciate your giving me a telephone call so I can explain more fully what this recommendation is all about, and answer any questions you might have."

That nothing contained in this letter was the result of, or based upon, any proposals of, or negotiations with, the Complainant; and that enclosed with said letter was also a copy of the above-quoted report of the Finance Committee's July 18, 1973 meeting.

11. That on July 23, 1973, representatives of the Complainant and Respondent met, and the Complainant asserted that the Respondent must bargain with Complainant over the matter of its arrangements with ARA, and that the Complainant would file a complaint of prohibited practices under the Municipal Employment Relations Act if the Respondent did not so bargain; that the representatives of Respondent replied that they did not agree that the Respondent had such a duty to bargain and that they would meet with the entire board later that day and formulate a position of which the Complainant would be notified; and that it was arranged that Complainant and Respondent would meet with representatives of ARA on August 3, 1973.

12. That on approximately July 24, 1973, Peterson directed the following letter to Tighe:

"As I told you over the telephone earlier today, at its meeting last evening, the School Board decided that it did not believe the recommendation of the Finance Committee to have another organization assume complete responsibility for the food service operation was a mandatory subject of collective bargaining, but that, of course, the impact of that recommendation on members of the bargaining unit was a mandatory subject of bargaining. Consequently, the School District stands ready to return to negotiations with Local 152.

At last evening's special Board meeting, the Finance Committee's recommendation was referred to the August 6, 1973 Committee-of-the-whole meeting. It is important that you realize that, so far, the Finance Committee has made only a recommendation. The School Board will not make a decision either way on this issue until August 13, 1973.

Regardless of its merits, this recommendation raises some very practical problems. Given the Finance Committee's insistence that the interests of our employees be protected, and given that this is a new issue for all of us, I would like to suggest that two or three representatives from the School District and from Local 152 meet soon to analyze the issue so we can see where our interests conflict and, importantly, where they are mutual.

I understand that you will have to talk over this suggestion with the union and with its lawyer. When you do this, perhaps you could give me a call so we can talk further about it."

13. That on July 25, 1973, the Complainant submitted to Respondent a list of questions pertaining to the matter of the aforesaid discussion of arrangements with ARA and the effect upon the wages, hours and terms and conditions of employment of the cafeteria employes might be obtained by the advent of contemplated ARA takeover.

14. That on August 1, 1973, the Complainant and Respondent met and Peterson, on behalf of Respondent, replied to certain of said questions and others stating, inter alia, that, if the Complainant so requested, ARA would voluntarily recognize Complainant, and that it would be appropriate to put certain of the aforesaid questions to ARA at the meeting arranged for August 3, 1973; that Complainant's representatives asked what benefits and protections to the employes, other than those set forth in the Finance Committee's July 16, 1973 report, quoted above, would be provided for the employes by the Respondent; that the Respondent replied that there would be no others; that the Complainant's representatives stated that at a meeting scheduled for August 3, 1973, to be attended by representatives of Complainant, Respondent and ARA, the Complainant's representatives would attempt to negotiate a possible settlement to be submitted to Complainant's members for evaluation; but that Peterson stated that except for such provisions as were extended to the employes in the aforesaid July 16, 1973 report, the Complainant, in seeking further provisions for said employes was limited to whatever it could achieve in negotiations with ARA.

15. That on August 3, 1973, a meeting was held by representatives of Complainant, Respondent and ARA, that the representatives of ARA stated that they would not negotiate with the Complainant until the Respondent and ARA had completed their negotiations and entered a contract.

16. That on August 6, 1973 the Respondent's board met as a committee-of-the-whole and, according to its report of said meeting,

> ". . . reviewed a proposal to contract with A.R.A. Services, Inc. for a complete food management program for district schools for the 1973-74 school year. Supt. Nelson reviewed progress to date in developing further plans with A.R.A., and the results of preliminary discussions with Local 152 representing food service employees."

and that on August 13, 1973 Respondent's board met and authorized its Finance Committee to negotiate an agreement with ARA.

17. That on August 16, 1973, Respondent and ARA entered an agreement relating to the furnishing of food services during the 1973-1974 school year at certain schools operated by Respondent; that according to this agreement, and the general arrangement accepted by ARA and Respondent, ARA assumed the responsibilities of operating the food service program, including employing all personnel necessary to such services, managing all menu considerations, participating in determinations regarding the purchase by the Respondent of capital equipment necessary to the aforementioned expansion of the service, purchasing certain supplies and food required by the operation, and the collection of money from students; that said contract and arrangement, at least at its inception, was contemplated by Respondent as resulting in substantially the same food service program as it had operated, except that it would be operated by ARA and its personnel rather than Respondent and its personnel; that the only significant anticipated modifications to the operation involved the collection of money from students which was formerly performed by principals, secretaries and teachers who were not members of the bargaining unit pertinent herein, and certain managerial tasks that also were never performed by members of the pertinent bargaining unit.

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

CONCLUSION OF LAW

That Respondent had and has a duty to bargain collectively with Complainant concerning its determination to enter the above-described arrangement with ARA prior to entering said arrangement, as well as a duty to bargain collectively with Complainant concerning the effects of said determination upon the wages, hours and conditions of employment of the employes in the bargaining unit; that by failing and refusing to engage in such collective bargaining, including by its aforesaid letter of July 24, 1973, and by its refusal at the aforesaid meeting of August 1, 1973 to consider modifications of the provisions made for the employes in the aforesaid report of July 18, 1973, Respondent has committed, and is committing, prohibited practices in violation of Sections 111.70(3)(a) 1 and 4 of the Municipal Employment Relations Act; and that inasmuch as there is no evidence that the decision of the Respondent to enter the aforesaid arrangement with ARA was in any part motivated by a desire to evade said Respondent's duty to engage in collective bargaining, or by hostility toward any activities of its employes that are protected by the Municipal Employment Relations Act, Respondent has not, and is not, committing any prohibited practices within the meaning of Section 111.70 (3)(a)3 of the Municipal Employment Relations Act.

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

ORDER

IT IS ORDERED that Respondent Unified School District No. 1 of Racine County, its officers and agents, shall immediately:

1. Cease and desist from:

   (a) Refusing to bargain collectively with Complainant, Local 152, Service Employees, regarding its decision to contract with ARA, or any other enterprise, for the provision of such food service programs as have been operated by the Respondent, or regarding the effects upon the wages, hours and conditions of employment of the employes represented by Complainant of any such decision; or making any unilateral change of conditions of employment without first bargaining collectively.

   (b) Maintaining its food service program, which was formerly staffed by the employes represented by the Complainant, pursuant to any arrangement or contract entered with ARA, or any other enterprise.

2. Take the following affirmative action designed to effectuate the policies of the Municipal Employment Relations Act:

   (a) Institute a food service program, to be operated by the Respondent, in which the employes employed by Respondent in its food service program prior to the aforesaid contract with ARA may be reemployed in identical or substantially identical positions to those in which they were employed previous to such contract with ARA.

   (b) Offer to all employes formerly employed by Respondent in its food service program, but terminated from such employment on the basis of the aforesaid arrangement with ARA, immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights or privileges, and make them whole for any

loss of pay they may have suffered by reason of Respondent's violations of the MERA cited herein, by payment to each of them of the respective sum of money equivalent to that which each would have normally earned as an employe, from the date of his termination to the date of the unconditional offer of reinstatement, less any earnings from employment or self-employment each may have received, (which he would not otherwise have received) during said period, and in the event that each or any received Unemployment Compensation Benefits, reimburse the Unemployment Compensation Division of the Wisconsin Department of Industry, Labor and Human Relations in such amount.

(c) Upon request, Bargain collectively with Complainant with respect to the contracting out of its food service program.

(d) Notify all food service employes including those of ARA, by posting, in conspicuous places on the premises, where notices to all such employes are usually posted, copies of the notice attached hereto and marked "Appendix A". Appendix A shall be signed by the President of the Board of School Directors.

(e) Notify the Wisconsin Employment Relations Commission, in writing, within twenty (20) days following the date of this Order, as to what steps have been taken to comply herewith.

Given under our hands and seal at the City of Madison, Wisconsin, this 17th day of October, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Zel S. Rice II, Commissioner

Howard S. Bellman
Howard S. Bellman

APPENDIX "A"

NOTICE TO ALL FOOD SERVICE EMPLOYES

Pursuant to an Order of the Wisconsin Employment Relations Commission, and in order to effectuate the policies of the Municipal Employment Relations Act, we hereby notify our employes that:

1. WE WILL institute a food service operation to be operated by Unified School District No. 1 of Racine County and offer to all employes employed by said School District prior to the contract for such operation with any immediate and full reinstatement to their former, or substantially equivalent positions, without prejudice to their seniority or other rights or privileges, and make said employes whole by payment to each of them of the respective sum of money equivalent to that which each would have normally earned as an employe, from the date of his termination to the date of the unconditional offer of reinstatement, less any earnings from employment or self-employment each may have received (which he would not otherwise have received) during said period, and in the event that each or any received Unemployment Compensation benefits, reimburse the Unemployment Compensation Division of the Wisconsin Department of Industry, Labor and Human Relations in such amount.

2. WE WILL NOT refuse to bargain collectively with Local 152, Service Employees, regarding the decision to contract for the provision of the food service operation, or regarding the effects upon the wages, hours and conditions of employment of the employes represented by Local 152, Service Employees, of any such decision.

3. WE WILL NOT, in any other manner, interfere with, restrain or coerce our employes in the exercise of the rights guaranteed by the Municipal Employment Relations Act.

Dated the _____ day of _____, 1974

UNIFIED SCHOOL DISTRICT NO. 1 OF RACINE COUNTY

By _____
President

THIS NOTICE MUST REMAIN POSTED FOR SIXTY (60) DAYS FROM THE DATE HEREOF AND MUST NOT BE ALTERED, DEFACED OR COVERED BY ANY MATERIAL.

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The instant complaint was filed on July 26, 1973. With the complaint, the Complainant moved for an interlocutory order restraining certain conduct by the Respondent and for a hearing of the matter before the entire Commission. The Commission did not grant said motions but appointed an Examiner to hear the case (Dec. No. 12055). Answer was filed on August 8, 1973. A hearing was held on August 10, 1973, at which the complaint was amended, and the transcript of such hearing issued on November 7, 1973. On November 12, 1973 the Commission set aside its appointment of the Examiner and transferred the case to the Commission (Dec. No. 12055-A). The post-hearing briefing period was closed and certain stipulations were submitted on November 19, 1973.

The complaint, as initially filed, alleged that the Respondent committed prohibited practices under Sections 111.70(3)(a)1, 3 and 4 "by threatening to and by subcontracting out the work performed by bargaining unit personnel," without having engaged in collective bargaining with Complainant before determining to do so. At the hearing, the complaint was amended to further allege that the Respondent's duty to engage in collective bargaining was also violated by Respondent's failure and refusal to engage in collective bargaining with Complainant over the effects of such decision upon said personnel. This amendment made particular reference to the Respondent's conduct at the meeting of August 1, 1973.

As indicated in the Findings of Fact, the Respondent's position as disclosed by its letter of July 24, 1973, regarding its decision to retain AEA in the described arrangement was that such a decision is not a "mandatory subject of collective bargaining, but that, of course, the impact of that (decision) on members of the bargaining unit was a mandatory subject of bargaining." 1/

The hub of the Complainant's position is that both the decision and the impact were mandatory subjects of collective bargaining and that, in fact, the Respondent failed and refused to engage in such bargaining on either of such levels. These contentions cause this case to closely parallel the Wisconsin Supreme Court's decision respecting the duty to bargain under the Employment Peace Act in Libby, McNeill & Libby v. WERC, 48 Wis 2d 272, 75 LRRM 2760 (1970).

The Court held in Libby that where the change desired by the employer involves a modification of the basic direction of the enterprise, only the effect upon the employes is a subject of mandatory bargaining. Thus, in that case, the mechanization of the employer's harvesting which had been done by manual labor was concluded to require bargaining only as to impact upon employes.

1/ We have found that the Respondent failed to bargain on such impact when at the meeting of August 1, 1973 it asserted that the only arrangements it would agree to respecting the employes were those specified in its report of July 16, 1973, which report reflected deliberations of a committee of the Respondent and not any bilateral discussion. This finding recognizes that the August 1, 1973 meeting was never explicitly specified as a collective bargaining meeting. However, when the Respondent answered at this meeting that it would not alter its unilaterally determined commitment respecting the impact of the pending arrangement, it obviated any need to reconvene for "collective bargaining" and put the question again.

According to the Libby decision, the test to determine which level of bargaining is appropriate involves examination for "a change in capital investment," and in support of this proposition various Federal cases are cited. Thus, the court noted that decisions to totally liquidate an enterprise, 2/ or to "terminate a business and reinvest as part of a joint enterprise" 3/ involve a "managerial judgment lying at the core of entrepreneurial control, and in which the employer was not continuing the same work at the same plant under similar conditions of employment (and therefore) are not bargainable." (It is noted that the Court took care to indicate that even such basic changes might violate the duty to bargain when imposed unilaterally and based upon anti-union animus. 4/)

The Court further indicated that where, as here, an employer desires to implement a change in its operations which "merely substitutes outsiders doing the same work in the same manner," as distinguished from a rearrangement that may be said to have "changed the basic direction of the (employer's) activities," the employer has a duty to bargain regarding its decision to do so prior to implementation.

At the hearing, (transcript p. 40) the Examiner asked Mr. Peterson about the changes in the work formerly performed by bargaining unit personnel under the then forthcoming arrangement with AGA. Peterson's reply indicated that, with the possible exception of changes not as yet contemplated, this work would go on, possibly employing the same personnel, "pretty much the same." The most substantial changes, Peterson pointed out, would be in areas other than those in which the bargaining unit personnel had functioned such as collecting money, purchasing, bidding and invoicing. But the magnitude of even these changes lies essentially in that "the School District will not perform that function at all."

Thus, it is concluded that the facts herein describe the sort of change that the Supreme Court described in Libby as "outsiders doing the same work in the same manner." Therefore, the decision to enter the arrangement with AGA was a subject of mandatory bargaining unless there is a material distinction between the Employment Peace Act which Libby interpreted and the Municipal Employment Relations Act that governs the present matter.

In its opinion in City of Beloit (Dec. No. 11831-C) issued on September 11, 1974, this Commission distinguished the private enterprises covered by the Employment Peace Act from municipal employers, such as a school district, recognizing that the latter "are not engaged in operating a business for profit, and since school districts, in general, cannot go out of business the direction of their enterprise (providing education), although they may add or eliminate programs, e.g. food service, recreation programs." We then stated that in view of these distinctions the Libby decision was of "limited applicability" to municipal sector collective bargaining.

2/ Textile Workers Union v. Darlington Mfg. Co., 380 US 263, 58 LRRM 2657 (1965).

3/ NLRB v. Transmarine Navigation Corp., 380 F2d 933, 65 LRRM 2861 (9th Cir. 1967).

4/ We have found no evidence in the instant matter that such an attitude motivated the Respondent, and, on that ground have dismissed the complaint's allegation of discrimination under Sec. 111.70(3)(a)3.

However, the instant matter involves a unilateral decision and action by a municipal employer regarding a program, i.e. food service, that is not its essential enterprise (providing education), and we believe that the Supreme Court's holding in Libby should be applied herein. Furthermore, although we recognize that the relevant portions of the Employment Peace Act and the Municipal Employment Relations Act differ in their wording, we hold that such distinctions do not indicate any difference in the duty to bargain that is material herein. 5/

Dated at Madison, Wisconsin, this 17th day of October, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Morris Slavney, Chairman

_____
Zel S. Rice II, Commissioner

_____
Howard S. Bellman, Commissioner

5/ In its City of Beloit decision, cited above, the Commission explained its construction of the MERA's definition of "collective bargaining" at Sec. 111.70(1)(d), as well as certain statutes that govern public schools and constitutional restrictions... That construction recognizes that said definition withholds certain determinations from collective bargaining and leaves them with the municipal employer. As the Respondent contends herein, such explicit statutory "management rights" provisions distinguish the MERA from its State and Federal private sector counterparts. However, we also construe said definition, and the MERA as a whole, as requiring collective bargaining by School Districts respecting decisions which do not concern basic educational policy and directly affect wages, hours and conditions of employment.