STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of	
RACINE EDUCATION ASSOCIATION	Case XLVII No. 24255 MED/ARB-340
To Initiate Mediation-Arbitration Between Said Petitioner and	Decision No. 17022
RACINE UNIFIED SCHOOL DISTRICT	

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER DISMISSING PETITION FOR MEDIATION-ARBITRATION

The Racine Education Association, herein the Association, having on February 12, 1979 filed a petition with the Wisconsin Employment Relations Commission wherein it alleged that an impasse existed between it and the Racine Unified School District, herein the District, in their collective bargaining, and wherein it further requested the Commission to initiate mediation-arbitration pursuant to Section 111.70(4)(cm)6 of the Municipal Employment Relations Act; and the District having on March 15, 1979 moved that said petition be dismissed by the Commission; and the Association having filed its response to said motion on April 10, 1979, and both parties having waived hearing on said motion; and the Commission having considered the evidence and arguments of the parties; makes and files the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. That the Racine Education Association, herein the Association, is a labor organization maintaining offices at 701 Grand Avenue, Racine, Wisconsin.

2. That the Racine Unified School District, herein the District, is a municipal employer maintaining offices at 2220 Northwestern Avenue, Racine, Wisconsin.

3. That, at all times material herein, the Association has been, and is, the certified exclusive collective bargaining representative of certain employes of the District consisting of "all regular full-time and regular part-time certified teaching personnel employed by the Racine Unified School District, but excluding on-call substitute teachers; interns, supervisors, administrators and directors;" and that the Association and the District are, at all times material herein, parties to a 1977-1979 collective bargaining agreement covering said teaching personnel, which agreement provides for final and binding arbitration of unresolved grievances regarding the interpretation or application of the agreement, and further, said agreement also contains the following provision:

Calendar ARTICLE XI

2.a. The school year shall not be extended beyond the school calendar year, except by written agreement between both parties with salaries increased as pro rated on the regular yearly salary of the contract. This does not preclude the making up without pay of days school is closed due to emergencies, acts

of God or inclement weather, if those closings put the District's attendance days below the state requirements.

b. Three (3) week days circled in the school calendar immediately following the last day of the regular school year are contingent school days which the Superintendent of Schools shall schedule as make-up days without additional pay in the event schools are closed due to emergencies, acts of God, or inclement weather.

4. That on or about January 26, 1979 the Association submitted a bargaining proposal to the District regarding the date on which the District would reschedule a one-half school day missed earlier in the school year due to snow; that said proposal also set forth the Association's position as to the additional compensation to be received by those staff persons required to attend the make-up day; that no agreement with respect to the issues raised by the Association's proposal was reached by the parties; that on February 12, 1979 the Association filed a petition with the Wisconsin Employment Relations Commission, herein Commission, requesting the Commission to initiate mediation-arbitration pursuant to Section 111.70(4)(cm)6, Wis. Stats., to resolve said "snow day" dispute; and that said petition was accompanied by a letter from James J. Ennis, the Association's Executive Director, which indicated that the petition was "intended to deal with a single item contained in the existing collective bargaining agreement" which ". . . came into force with the recent snow emergency."

5. That on March 7, 1979 the parties engaged in mediation with a representative of the Commission in an unsuccessful effort to resolve their differences with respect to the "snow day" issue; that the parties agreed to participate in said mediation effort with the express understanding that they were not thereby waiving their right to raise any legal position they may choose with respect to their respective statutory or contractual rights; that on or about March 7, 1979 Ennis sent a letter to the District's Coordinator of Employee Services, W. Thatcher Peterson, which stated inter alia:

> REA and the Unified School District agreed to meet on 7 March for the purpose of mediation of the "snow day issue" with WERC Staff Director Byron Yaffe present.
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> This issue, "Snow Day", is mediated under the existing contract language (Article XI, Section 2.a., b., and c.), an issue on which the Board refused to agree to even the fact that the District was at least 1/2 (one-half) day short of the State required 175 school days and an issue because of the pressing problems caused by the rapid approach of the end of the 1978-79 school year which mandate rapid decisions because of the problems of implementation.,

that at the conclusion of said unsuccessful mediation effort, Peterson indicated to the Commission's representative that the District intended to pursue certain objections to the Association's petition for mediation-arbitration; that on March 15, 1979, the District, pursuant to Commission's request, formalized its objections by filing a motion to dismiss said petition; and that on April 10, 1979 the Association filed its arguments in opposition to said motion.

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

CONCLUSION OF LAW

That, inasmuch as the snow day dispute which is the subject of the Racine Education Association's petition for mediation-arbitration arises from a dispute as to the meaning of certain provisions of the current collective bargaining agreement existing between it and the Racine Unified School District and thus is not a dispute over wages, hours and conditions of employment to be included in a new collective bargaining agreement, mediation-arbitration under Section 111.70(4)(cm)6, Wis. Stats., is not an available procedure for the resolution of said dispute.

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

ORDER

That the instant petition for mediation-arbitration be, and the same hereby is, dismissed.

Given under our hands and seal at the City of Madison, Wisconsin this 17th day of May, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Morris Slavney, Chairman

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Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER DISMISSING PETITION FOR MEDIATION-ARBITRATION

The District has moved that the instant petition for mediation-arbitration should be dismissed by the Commission for three reasons. Initially the District contends that the parties' obligations regarding make-up days are already set forth in Article XI, Section 2.a. of the existing bargaining agreement and that the parties' contractual grievance procedure is the exclusive mechanism for the resolution of any dispute as to the District's compliance with the existing contractual responsibilities set forth therein. Secondly the District argues that the petition is untimely in that it is presently uncertain whether it will be necessary to schedule any make-up days. 1/ The final ground for dismissal set forth by the District is that the Association's proposal to modify the existing agreement is a permissive subject of bargaining which, absent the District's consent, cannot be pursued to mediation-arbitration.

The Association makes several arguments in opposition to the District's motion to dismiss. It contends that Article XI, Section 2.a. of the agreement constitutes an agreement by the parties to reopen negotiations if an issue arises regarding the extension of the school year and that mediation-arbitration is an appropriate and available procedure for the resolution of an impasse with respect to any unresolved issues raised under the terms of said reopener. It cites that portion of Section 111.70(4)(cm)1, Stats., which refers to "requests. . . to reopen negotiations . . ." as support for its position, and contends that the Association is left without a remedy if the Commission were to conclude that mediation-arbitration should not be provided. The Association contends that the parties' contractual grievance-arbitration procedure is unavailable because the agreement is silent on the matter in dispute, thus leaving a grievance arbitrator with no authority to proceed. The Association argues that its petition is timely because the parties have met and reached an impasse on the make-up day issues raised by its proposal. It also asserts that issues regarding the scheduling of additional work days, and the compensation to be received for those days, are clearly mandatory subjects of bargaining which are subject to mediation-arbitration procedures. Lastly the Association alleges that it has in no way waived its right to bargain over the issues raised by its make-up day proposal.

After having considered the respective arguments made by the parties in the instant matter, the Commission has concluded that the Association's petition for mediation-arbitration must be dismissed. The issue which the Association seeks to have resolved through the statutory mechanism provided by Section 111.70(4)(cm)6 arises out of a disagreement between the parties as to meaning of the existing contractual language found in Article XI, Section 2 of the 1977-1979 agreement. The Association contends that said language is simply a reopener which is silent as to the parties' respective rights regarding the extension of the school year. The District on the other hand asserts that Article XI is not a reopener and does indeed set forth the parties' agreement as to

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1/ On April 26, 1979 the District advised the Commission in writing that the Superintendent of Public Instruction had denied its application for a waiver of the state law requirement that it make up the 1/2 day in question, which action effectively moots this argument.

when, how, and under what circumstances the school year may be extended. The Commission finds that the District's view of the language is correct. Article XI, Section 2 does not constitute a contractual reopener. It affirmatively establishes the parties' substantive rights and responsibilities vis-a-vis extensions of the school year. While Article XI, Section 2.a. might arguably require the Association's agreement to such an extension in certain circumstances, the presence of such a requirement does not transform the disputed language into a reopener as contemplated in Section 111.70(4)(cm), since the proposal in issue does not relate to any provision intended to be included in a new collective bargaining agreement. As it is clear that the Legislature did not intend for mediation-arbitration under Section 111.70(4)(cm)6, Stats., to be required for the resolution of disagreements such as that between the instant parties as to the proper interpretation of existing contractual language, the Commission must dismiss the Association's petition. Having dismissed the petition on that basis, it has not been necessary for the Commission to address the remainder of the District's objections to the petition or the question of whether mediation-arbitration would be available if a reopener had existed.

The Commission deems it unnecessary to set forth its views as to the actual substantive meaning of Article XI, Section 2.a. or b. when applied to the instant fact situation. Such a determinations is best left to the contractual grievance-arbitration procedure which the parties have established for resolution of such issues,, and to which the Association may turn if it believes that the District has not lived up to its contractual obligation.

Dated at Madison, Wisconsin this 17th day of May, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Morris Slavney, Chairman

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Herman Torosian, Commissioner