

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
RACINE EDUCATION ASSOCIATION

Requesting a Declaratory Ruling,
Pursuant to Section 111.70(4)(b)
of the Municipal Employment
Relations Act, Involving a
Dispute Between

Case LVI
No. 27564 DR(M)-168
Decision No. 18848-A

RACINE EDUCATION ASSOCIATION
and
RACINE UNIFIED SCHOOL DISTRICT

Appearances:

Schwartz, Weber & Tofte, Attorneys at Law, by Mr. Robert K. Weber, 704 Park Avenue, Racine, Wisconsin 53403, for the Racine Education Association.
Melli, Shiels, Walker & Pease, S.C., Attorneys at Law, by Mr. Jack D. Walker, and Mr. Thomas R. Crone, 119 Monona Avenue, P.O. Box 1664, Madison, Wisconsin 53701, for the Racine Unified School District.

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND DECLARATORY RULING

Racine Education Association having, on February 26, 1981, filed an "Amended Petition for Declaratory Ruling" requesting the Wisconsin Employment Relations Commission to issue a Declaratory Ruling, pursuant to Section 111.70(4)(b) of the Municipal Employment Relations Act, to determine whether the Racine Unified School District had the duty to bargain collectively with the Association on the impact of a reorganization plan, alleged to have been adopted by the District, on the wages, hours and working conditions of teachers represented by the Association, and whether the District was required to produce its records for inspection by the Association pertaining thereto; and hearing in the matter having been conducted by Examiner Amedeo Greco on April 28, 1981 and September 28, 1981, at Racine, Wisconsin, and briefs having been received by the Commission by December 2, 1981; and the Commission, having considered the entire record and briefs of Counsel, being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That Racine Education Association, hereinafter referred to as the Association, is a labor organization having its offices at 701 Grand Avenue, Racine, Wisconsin, and that at all times material herein James Ennis has been, and is, the Executive Director of the Association, and has acted on its behalf.

2. That Racine Unified School District, hereinafter referred to as the District, is a municipal employer operating a K through twelve school district in and about the Racine, Wisconsin area, having its principal offices at 2220 Northwestern Avenue, Racine, Wisconsin, and that at all times material herein Richard C. Nelson and Delbert Fritchen were the District's Superintendent, and Assistant Superintendent for Personnel Services, respectively, and that in said capacities acted as agents for the District.

3. That for the past number of years, at all times material herein, the Association has been, and is, the certified collective bargaining representative of all regular full-time and regular part-time certificated teaching personnel in the employ of the District, excluding on-call substitute teachers, interns, supervisors, administrators, and all other employees of the District; and that in

said relationship the Association and the District have been parties to various collective bargaining agreements covering the wages, hours and working conditions of the certificated teaching personnel in said collective bargaining unit.

4. That since 1973 student enrollment in the District has been declining at a rate of approximately 1000 per year; that said decline has been a continuing concern to the Association and the District; that early in 1975, the District implemented a reorganization plan to achieve racial balance in its schools; that, as a consequence, the use of three elementary schools changed substantially and approximately sixty teachers were transferred from schools in which they taught to other schools, pursuant to the provisions in the collective bargaining agreement then existing between the parties; that, subsequently, in their negotiation leading to the 1977-1979 collective bargaining agreement the parties reached an accord on changes in provisions with respect thereto; and that said collective bargaining agreement, which by its terms was in effect from March 16, 1977 through August 24, 1979, contained, among its provisions, the following material herein:

Article III
TEACHER RIGHTS

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- 6. The Association shall be informed in writing of any contemplated change in policy affecting working conditions in order that the Association may present its views to the Board.
- 7. The Superintendent of Schools or his/her designee will meet with representatives of the Association to hear them express the Association's views before the Board makes a change in policy that has a substantial effect on the wages, hours or conditions of employment of teachers.

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Article VIII
STAFF UTILIZATION AND WORKING CONDITIONS

- 1. a. The parties recognize that optimum facilities for both the student and teacher are desirable to insure the high quality of education that is the goal of both the Association and the Board.
- b. Reasonable efforts will be made to maintain academic subject class sizes as follows:

Elementary			
K - 3	Recommended	25	
	Maximum	30	
4 - 6	Recommended	25	
	Maximum	32	
Secondary			
7 - 12	Recommended	30	
	Maximum	35	

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- 7. The Board will make every effort to properly equip and maintain the educational facilities of the District. Staff requests for facility improvements shall be channeled to the Board through the building principal. Teachers shall be provided with the supplies necessary to meet daily instructional needs, and the Board shall make every reasonable effort to provide an adequate place in which to teach.

Article IX
TEACHER EMPLOYMENT AND INDIVIDUAL CONTRACTS

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8. In the event the number of teachers is reduced, the Personnel Department will select teachers who shall be laid off without compensation according to the following:
- a. Teachers who have attained tenure and who are certified and qualified will be laid off in inverse order of their length of employment with the Board, with the teacher with the least length of employment being laid off first. Where teachers have the same length of employment, the Personnel Department will decide which teacher is to be laid off.
 - b. As to teachers who have not attained tenure, the Personnel Department shall select which non-tenured teacher shall be laid off. As between certified and qualified tenured and non-tenured teachers at any elementary grade level or secondary subject area, non-tenured teachers shall be laid off first.
 - c. Consideration will be given to minority teachers so that the ratio of minority teachers to white teachers shall be maintained at least at the same ratio that existed on March 16, 1977. In the event that laid-off teachers are later recalled, the same consideration for the above ratio will be given.
 - d. The Personnel Department will make reasonable efforts to give two (2) weeks' notice to teachers who are to be laid off.
 - e. The Personnel Department will recall teachers who are laid off in the inverse order of their lay off, if the Personnel Department determines the teacher is qualified for the position. If such teacher refuses the position, his/her employment shall thereupon terminate immediately. Such recall shall be to the level and step the teacher would be at had the lay off not occurred. No new or substitute (long-term) appointments shall be made while there are teachers on lay off status available who the Personnel Department determines are qualified to fill the vacancies.
 - f. A teacher who is laid off may participate in the group hospitalization and surgical/medical benefit plan and group life insurance plan provided he/she pays the full premium cost.
 - g. The employment of a teacher shall terminate two (2) years from his/her date of being laid off, if he/she is not otherwise recalled.
 - h. No new or substitute appointments may be made while there are laid off teachers available who are qualified to fill the vacancies.

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Article X
TEACHER ASSIGNMENT, TRANSFER AND PROMOTIONS

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4. a. The Personnel Department will review transfer requests of teachers and grant them where it is considered to be in the best interests of the District's entire educational program after considering the following:

- 1) The teacher's length of service with the District
 - 2) The welfare of students
 - 3) The program of the District
 - 4) A balance of experience and specialized competence between the schools
 - 5) The applicant's educational preparation, qualifications, and evaluations
- b. A transfer action will be taken only after the individual concerned has been consulted.
 - c. If the Personnel Department does not grant a teacher's first three (3) requests for transfer to a vacant position, the Personnel Department will offer a transfer to any one of three other vacant positions as designated by the Personnel Department.
5.
 - a. If the Board closes a school, facility, transfers students from it, or otherwise changes its use, the Personnel Department will give consideration for reassignment to teachers in such school or facility before teachers in schools not so affected, as follows:
 - b. Within twenty (20) working days after the Board decides to close a school or facility, transfer students from it, or otherwise changes its use, the Personnel Department will distribute Reassignment Forms to all teachers in such school or facility.
 - c. Teachers will indicate on the Reassignment form their first, second, and third choice of schools and grade(s) or subject area they desire to be reassigned to.
 - d. The Personnel Department will process Reassignment Forms of teachers in the order of their length of service with the District.
 - e. The Personnel Department will carefully review a teacher's desire for reassignment and will make the reassignment according to the criteria set forth in Article X, section 4.
 - f. The Personnel Department will give first consideration to teachers in such schools until the third Monday in July, at which time their reassignment shall become permanent. The Personnel Department shall reassign any teachers not otherwise reassigned as of this time.
 - g. Any vacancy in the teaching staff that occurs after the date the Board decides to close a school or facility, transfer students from it, or otherwise changes its use, will be filled temporarily for the balance of the school year. Thereafter, vacant positions will be filled temporarily until all such teachers' reassignment requests are processed through this procedure.
 - h. A teacher who is reassigned into a school not included among his/her first three choices according to this procedure will receive consideration for transfer effective at the beginning of the two school years following his/her reassignment before the transfer requests of teachers not so reassigned, if the teacher still desires assignment to one of the three schools he/she originally requested.

6. Placement of all newly hired personnel shall be considered tentative until all requests for transfers of existing staff have been considered.
7. Transfer requests made before May 25 will be considered for new vacancies that occur after the posting.
8. Whenever vacancies in school administrative personnel, consultant and supervisory positions or positions with extra functions different from normal classroom duties occur during the school year (excluding coaching positions), these positions shall be posted in each school. Teachers who desire to be considered for such positions shall submit their applications in writing to the Superintendent. Applications shall be kept on file in the Superintendent's office for consideration of appointment for vacancies occurring during the summer. The final selection in the filling of the foregoing positions remains the responsibility of the Board.

Article XII PROFESSIONAL COMPENSATION

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6. Teachers who satisfactorily perform assigned extra-duty responsibilities which are in addition to their regular classroom duties and regularly assigned extra-curricular work will be paid additional compensation above the basic salary schedule as set forth in the schedule "Compensable Extra-Duty Responsibilities."

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12. Extra Duty Position Contract

- a. Teachers who are appointed to extra-duty responsibility positions, excluding intern supervisors, will be covered by the supplemental contract with respect to such position. The terms of the supplemental contract are subject to the terms of the Agreement.

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Article XXII ENTIRE AGREEMENT

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2. The parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject as provided by Wisconsin Statute 111.70 and that the understandings arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement.

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5. That sometime prior to September, 1979 the parties commenced negotiating on a successor to the agreement which would expire in August, 1979; that, while the parties reached an accord on a substantial number of proposals which would be included in the successor agreement, they could not reach agreement on a number of proposals during their bargaining; that on September 25, 1979 the Association filed a petition with the Wisconsin Employment Relations Commission requesting the Commission to initiate a mediation-arbitration proceeding, pursuant to Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act (MERA), to resolve said alleged impasse in their collective bargaining; that the Commission processed said petition, and pursuant to the procedures in said statutory provision the Commission, on January 18, 1980, appointed Frank P. Zeidler, of Milwaukee, Wisconsin, as the mediator-arbitrator, to conduct hearing in the matter, and if necessary to issue a final and binding award, by selecting the final offer of either the Association or the District; that in the proceeding before Arbitrator

Zeidler, the Association in its final offer included among its proposals the following:

- a. The Association would delete Section 7. of Article III, TEACHER RIGHTS, and substitute therefore the following new Article:

Article XXII

MAINTENANCE OF STANDARDS

1. All conditions of employment, including teaching hours, relief periods, leaves, and general teaching conditions shall be maintained at not less than the highest minimum standards existing during the 1977-1979 Agreement, provided that such conditions shall be improved for the benefit of teachers as required by the express provisions of this Agreement. This Agreement shall not be interpreted or applied to deprive teachers of professional advantages heretofore enjoyed unless expressly stated herein.

2. All existing Board policies which have an impact on wages, hours, and/or conditions of employment as of the execution of this Agreement shall be deemed to be incorporated herein by reference.

3. To the extent that any existing Board policy which has an impact on wages, hours, and/or conditions of employment is in conflict with any provision of this Agreement, it shall be deemed amended to comply with the provision of this Agreement. The Board shall promptly take the necessary action to amend such policies to conform with the provisions of this Agreement.

4. In the event the Board wishes to modify, amend or create any new Board policy which has an impact on wages, hours and/or conditions of employment, it shall notify the Association of its proposed amendment, modification or new policy. The parties shall, through their representatives, promptly meet to negotiate in good faith concerning such proposed modification, amendment or new Board policy. No such modification, amendment or new Board policy shall be instituted or implemented until there has been good faith negotiations--as provided in Wisconsin Statute 111.70--which leads to an agreement or a binding arbitration decision concerning such proposed modification, amendment or new Board policy.

- b. With respect to Article XII, PROFESSIONAL COMPENSATION, Section 6, the Association would include said section as it appears in the 1977-79 agreement, and would add the following additional new paragraph numbered 7, which would cause a renumbering of the subsequent provisions in said article:

7. Teachers who satisfactorily perform extra-curricular or extra-duty responsibilities in addition to their regular classroom duties not listed in the schedule "Compensable Extra-Duty Responsibilities" regardless of the frequency of occurrence or duration of the extra-curricular or extra-duty responsibility shall be compensated at the rate of \$12.50 per hour.

- c. Also with respect to Article XII, the Association would include the present Section 12, a. and include a new section b., which also would cause a renumbering of subsequent paragraphs in said Section. The Association thus proposed:

12. Extra Duty Position Contract

- a. Teachers who are appointed to extra-duty responsibility positions referred to in Article XII, Section 6 above, except as set forth below, will be covered by a supplemental contract with respect to such position. The terms of the supplemental contract are subject to the terms of the Agreement.

b. These positions are not covered by extra-duty position supplemental contracts.

- 1) Intern Supervisory
- 2) Summer Drivers Education Teachers
- 3) School Social Workers (Certified)

d. The Association in Article XXI, DURATION, proposed that the collective bargaining agreement be in effect from August 25, 1979 to August 24, 1980.

6. That with respect to the Association's proposals recited above, the District, as part of its final offer submitted to Arbitrator Zeidler, responded as follows:

<u>Association Proposals</u>	<u>District Proposals</u>
Article XXII MAINTENANCE OF STANDARDS	Retain both Sections 6 and 7 as set forth in Article III, TEACHER RIGHTS in 1977-79 Agreement.
Article XII PROFESSIONAL COMPENSATION New para 7.	Leave para. 6 as in 1977-79 Agreement. No new para. 7
Para. 12., a. - Revised 12., b. - New	Leave para. 12., a. as in 1977-79 Agreement. No new para. 12., b.
Article XXVII DURATION One year Agreement	Three year Agreement.

7. That neither party proposed changes in the wording of para. 8, Article IX, of paras. 4, 5, 6, 7, and 8 of Article X; and that during the course of the proceeding before Arbitrator Zeidler, the Association, in its brief, in support of its proposal for a one year term of the agreement, argued as follows:

While high interest rates and soaring energy costs are factors which all Americans have focused upon in recent months, there are also other factors which make a multi-year contract inequitable in Racine. As with many school districts, Racine faces the reality of declining student enrollments. This factor, coupled with public resentment against higher property taxes, for schools and other essential services, raises the spector of possible layoffs and unemployment among the teachers of Racine in the coming months and years. Certainly this has been the experience in many other school districts in southeastern Wisconsin. There is no reason to assume that the Racine School District is immune from these pressures. The reality of layoffs and their impact upon the members of the bargaining unit, must be faced in the context of the circumstances in which they arise. Thus facted (sic) with immediately impending layoffs, the District and the teachers can negotiate equitable solutions which will at least ease the burden upon those members of the bargaining unit who were affected by layoffs.

If the school district's proposal is accepted, the teachers will be unable to negotiate concerning this essential subject for a period of several years. In the meantime, if the present contractual provisions are found to be inadequate simply because there had never been any experience relating to layoff in the school district, there will be no opportunity to insist upon negotiating more equitable provisions to deal with the harsh reality of layoff.

8. That Arbitrator Zeidler issued his award in the matter on July 11, 1980, and therein adopted the final offer of the District; and that on August 20, 1980 representatives of the Association and the District executed the resulting collective bargaining agreement, which, by its terms became effective August 25, 1979, and was to continue in effect to at least August 24, 1982.

9. That in the summer or fall of 1980, the Association was advised of the possibility of school closings and staff reductions; that a joint committee was established to study and make recommendations regarding a District-wide reorganization plan; that the Association's representative on said committee was a Mrs. Byrd; that Byrd thereafter was aware of the ultimate reorganization plan recommended by the committee; that she received a copy of said plan; that Ennis, by letter dated September 15, 1980, to the District, requested that the parties "enter into immediate negotiations" over any proposed reorganization; that by letter dated September 25, 1980, the District's Director of Employee Relations, Frank Johnson, advised Ennis that the "District has fulfilled its duty to bargain on this subject during the last round of contract negotiations"; and that Association representatives on January 12, 1981 met with District representatives to discuss the proposed reorganization plan.

10. That on January 23, 1981 the following letter over the signature of Superintendent Nelson was hand delivered to Ennis:

Article III, sections 6 and 7 of the Professional Agreement states that the Association shall be informed in writing and given the opportunity to meet with the Superintendent of Schools before the Board makes a change in policy that has a substantial effect on wages, hours, or conditions of employment.

As you know, the Board will meet Monday night, January 26, 1981, to consider the proposals under the Feeder Reorganization plan. (These proposals have been made available to you and are in your possession. It is possible that the Board will make decisions at that time.

Please be advised that I will make myself available prior to Monday evening in the event the Association wishes to meet with me in regard to their position on the various proposals. Please advise.

11. That because of its declining enrollment and related budgetary concerns the District, at a Board meeting held on January 26, 1981, adopted a major reorganization plan, which was to be implemented in phases, with the first phase involving the closing of eight schools, and the relocation of at least 170 teachers, resulting in the elimination of several teaching positions, or the reduction in hours for many teachers, and having an impact on other working conditions of the teachers represented by the Association.

12. That Ennis, who did not contact Superintendent Nelson prior to the Board meeting of January 26, as invited, on February 5, 1981 directed the following letter to Nelson:

The District's recent decision to close schools and lay off, transfer and reassign members of our bargaining unit, will obviously cause major, system-wide changes in working conditions of teachers in the Racine Unified School System. Before the School Board makes unilateral changes without regard to the effects of those changes, we wish to bring to your attention the necessity of immediate impact bargaining.

Of course, the initiative to undertake good faith bargaining should have been the District's, inasmuch as it was the District that implemented the new plan -- if there really is a plan. Lacking any formal offer from the District to engage in impact bargaining from the District, the REA hereby requests the immediate commencement of negotiations on the myriad problems raised by the District's action.

In order to intelligently bargain the impact of the budgetary lay-offs caused by the District's decision to close various Unified Schools, the Racine Education Association hereby demands the immediate disclosure of the following information:

1. A financial accounting demonstrating the savings attributable to the closings and lay-offs. The accounting should attempt to categorize the savings: e.g., savings on equipment, facilities, salaries, etc.

2. The District's proposed reorganization and implementation plan.

3. The District's proposed reassignment of all administrators in the system.

4. The District's proposed busing plan.

Please be prepared to furnish this information by Friday, February 6, 1981, so that we can immediately begin our meetings to negotiate the impact of the District's layoffs.

13. That in reply, Nelson by letter dated February 9, 1981, advised Ennis:

This is in response to your letter of February 5, 1981, in which you request immediate commencement of negotiations in order to bargain the impact of the School Board's recent decision to close some schools.

First, it is my position that such action is not a change in policy effecting (sic) working conditions that would require impact bargaining since such matters are already covered by the Professional Agreement. I call your attention to Art. X, sec. 5(1), which states the procedure to be followed when transferring teachers after a school closing. Also, please note Art. IX, sec. 8, which states the procedure to be followed upon layoff.

Second, for the sake of argument, in the event the District was required to bargain the impact of such action, it is my understanding that such has already been undertaken and is still continuing as of this date. The Assistant Superintendent for Staff Personnel, Delbert Fritchen, and the Director of Employee Relations, Frank Johnson, have met with you and your associates for many hours on these exact topics.

Third, if you have specific suggestions not already put forth concerning the implementation of the school closings and subsequent transfers and layoffs, please forward them to Del Fritchen for review and proper consideration.

Finally, it is difficult from your letter to determine what specific documentation you are requesting but, as allowed by the open records law, you are welcome to come into the office and review and copy whatever you feel you need.

14. That also on February 11, 1981 Johnson directed the following letter to Ennis:

Mr. Fritchen has indicated to me that it has been awhile since you and he discussed the transfer and layoff possibilities that potentially could result from the Board's decision to close schools.

I urge you to again make yourself available and continue such talks with Mr. Fritchen. If you feel such would be beneficial, I will make myself available to sit in on as many

sessions as possible. As you know, I agree with Superintendent Nelson's position that impact bargaining is not necessary on these particular matters but, nevertheless, I believe such talks may be helpful in the interest of mutual cooperation and the furthering of a harmonious relationship between the parties.

Please let me know if I can help arrange a meeting.

15. That following the above exchange of letters, representatives of the Association and the District met on approximately nineteen occasions for the purpose of discussing aspects of the reorganization plan; that Ennis visited the District's offices for the purpose of examining records pertaining to certain requested information; that during the discussions in said meetings, disputes arose over the availability of certain information requested by the Association; that one such dispute centered on the availability of a complete seniority list, since the list furnished by the District did not contain all the information requested by the Association; that however the District made a bona fide attempt to supply the Association with whatever information it had with respect to said list; and that although the Association requested that it be immediately supplied with a list of school principals and a list of all classroom assignments, the District was unable to meet such request since it did not have such information immediately available; and that, in any event, it subsequently supplied said information to the Association, when it did become available.

16. That, during the course of their collective bargaining on the terms to be included in their 1979-82 collective bargaining agreement, representatives of the Association and the District bargained and reached an accord on contractual provisions relating to teachers who suffer a layoff during the term of the agreement, and also relating specifically to the impact of such layoff on their compensation, insurance continuation, order of layoff, order of recall, reassignment of teachers retained, filling of teacher vacancies, class size, and extra duty.

17. That also during the course of their negotiations on the 1979-82 agreement the parties reached an impasse, after a period of good faith bargaining as established in the investigation leading to the Order directing the parties to proceed to mediation-arbitration with respect to such impasse, and leading to the ultimate issuance of the final and binding arbitration award by Arbitrator Zeidler; and that such impasse included a proposal of the Association which would require the District to collectively bargain and either reach an agreement or proceed to final and binding arbitration with respect to the change or the creation of any District policy which impacted on wages, hours and working conditions of the teachers represented by the Association.

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

CONCLUSIONS OF LAW

1. That Racine Unified School District has no duty to bargain collectively with the Racine Education Association, within the meaning of Section 111.70(1)(d) of the Municipal Employment Relations Act, with respect to the impact of its decision to close certain schools on the wages, hours and working conditions of the teachers in its employ who are represented by the Racine Education Association, since provisions relating to the impact of such a decision are included in the 1979-82 collective bargaining agreement existing between the parties.

2. That the Racine Unified School District has complied with any duty it may have had within the meaning of Section 111.70(1)(d) of the Municipal Employment Relations Act, to make its records available to the Racine Education Association for the purpose of negotiating changes in the provisions of the 1979-82 collective bargaining agreement existing between them relating to the impact of the decision to close certain schools on the wages, hours and working conditions of said teachers.

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

DECLARATORY RULING 1/

1. That since the implementation of the reorganization plan adopted by the Racine School District has, and continues to have, an impact on the wages, hours and working conditions of teachers in its employ, who are represented for the purposes of collective bargaining by Racine Education Association, matters primarily relating to such impact constitute mandatory subjects of collective bargaining within the meaning of the Municipal Employment Relations Act, and that in said regard the Racine Unified School District, prior to the execution of the 1979-82 collective bargaining agreement existing between it and the Racine Education Association, engaged in good faith collective bargaining with the Racine Education Association on matters primarily relating to said impact, and further, since said collective bargaining agreement contains provisions relating to the impact of such reorganization plan on teacher wages, hours and working conditions, the Racine Unified School District has no duty to further bargain collectively with the Racine Education Association on proposals which would, during the term of the 1979-82 collective bargaining agreement, delete, amend, add to or otherwise change provisions relating to the impact of such reorganization plan on teacher wages, hours and working conditions.

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- 1/ Pursuant to Sec. 227.11(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.12(1) and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.16(1)(a), Stats.

227.12 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.


227.16 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.15 shall be entitled to judicial review thereof as provided in this chapter.

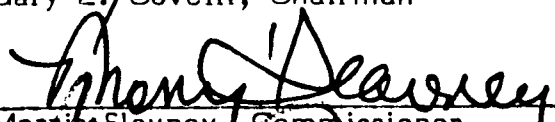
(a) Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.12, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.11. If a rehearing is requested under s. 227.12, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

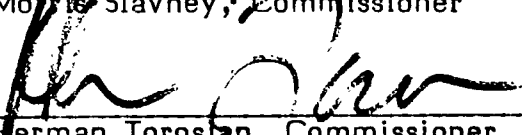
2. That, Racine Unified School District has complied with any duty it may have, pursuant to the provisions of the Municipal Employment Relations Act, to bargain collectively with the Racine Education Association with respect to the impact of its reorganization plan on teacher wages, hours and working conditions during the term of the 1979-82 collective bargaining agreement by making its records available to the Racine Education Association for the latter's use in collective bargaining with respect to the decision of the District to adopt and implement the reorganization plan, and/or for the purpose of negotiating changes in any of the provisions of the 1979-82 collective bargaining agreement which relate to the impact of said reorganization plan on the wages, hours and conditions of employment of teachers.

Given under our hands and seal at the City of
Madison, Wisconsin this 16th day of June, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Gary L. Covelli, Chairman


Morris Slavney, Commissioner


Herman Torosian, Commissioner

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

The Pleadings

On February 12, 1981 the Association filed a document with the Commission entitled "Complaint and Petition for Declaratory Ruling", and thereafter, and on February 26, 1981, at the suggestion of the Commission that the complaint and the petition for declaratory ruling be considered in bifurcated proceedings, the Association filed an "Amended Petition for Declaratory Ruling", wherein it alleged, in material part, as follows:

3. That the District 2/ has made a budgetary layoff decision directly affecting the transfer of more than 100 teachers whose schools are being permanently closed in June, 1981, and affecting the duties, careers, wages and working conditions of another 600 teachers into whose schools said teachers are being transferred. Virtually every school and every department in every school in the District are affected by the District's action. A labor agreement between the parties extends from August 25, 1979 through August 24, 1982.

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Further, that said language did not anticipate the types of transfers alluded to above. The Association 3/ has demanded immediate negotiations with the Respondent on the impact of the effects of the Respondent's cost-control decision. The District has failed to engage in meaningful impact bargaining and has failed to provide the Association with the necessary information to make such bargaining fruitful.

The great number of teachers involved in an actual transfer and reassignment of duties, and the extensive effect of the transfers on the working conditions and wages of all unit members affected, makes immediate impact bargaining necessary. Impact bargaining is also mandated to assure the District's compliance with the provisions of Article IX, Section 8c of the existing labor agreement.

4. That the labor agreement provides that "optimum facilities for both the student and teacher are desirable to insure the high quality of education," and in recognition of that goal assures efforts to maintain certain class sizes, equipment, offices and classrooms (Art. VIII, secs. 1. a., b., 7.) A shutdown of schools and a transfer of personnel of the magnitude scheduled by the District without impact bargaining would constitute a violation of the District's duty to comply in good faith with the provisions of the contract, in violation of Wis. Stats. 111.70(3)(a)4 and 5.

Prior to the close of the hearing herein conducted by Examiner Greco, the Association consented to the dismissal of the complaint filed by it, and it is being dismissed by the Commission as of this date.

2/ Also identified as "Respondent" in the petition.

3/ Identified as the "Complainant-Petitioner" in the petition.

The Association contends that the District has a duty to bargain with it concerning the impact of the extensive reorganization plan implemented by the District. It argues that the impact of the reorganization is of a far greater magnitude than that contemplated in the provisions of the present labor agreement and that, as a result, certain aspects of the impact are not addressed by said agreement. The Association also alleges that the District has improperly refused to provide it with certain relevant information.

The District, in turn, maintains that it has no duty to bargain with the Association because: (1) the Association explicitly waived its rights to bargain over the impact of the reorganization by virtue of Article III, sections 6 and 7, and Article XXII, section 1, of the contract; and (2) each of the areas of impact noted by the Association is covered by specific provisions of the labor agreement and that therefore the District has fulfilled any duty to bargain it may have on this issue. Furthermore, the District maintains that it has supplied the Association with whatever relevant information it was entitled to receive.

While the Association in its petition did not allege that the District had a duty to collectively bargain on the reorganization plan itself, it should be noted that, during the negotiations leading to the 1979-82 collective bargaining agreement, and in its final offer submitted to the Mediator-Arbitrator, it proposed that a "Maintenance of Standards" provision be included in said agreement, which provision would require the District to negotiate in good faith on various wages, hours and working conditions reflected in District policies, and specifically on any proposed modification, amendment or new policies.

The proposed "Maintenance of Standards" provision also required that no such modification, amendment or new policy could be instituted or implemented until the parties had reached an agreement thereon, and lacking same, a determination thereof made by an arbitrator. 4/ This proposal was included in the Association's final offer submitted in the mediation-arbitration proceeding leading to the 1979-82 agreement. It is not included in said agreement since Arbitrator Zeidler did not select the Association's final offer, but that of the District. The inclusion of said proposal in the Association's final offer established that the parties had bargained in good faith to impasse thereon.

Generally, a municipal employer has a duty to bargain collectively with the representative of its employees with respect to mandatory subjects of bargaining during the term of an existing collective bargaining agreement, except as to those matters which are embodied in the provisions of said agreement, or bargaining on such matters had been clearly and unmistakably waived. 5/ The issue, herein as it relates to the impact of the reorganization plan on teacher wages, hours and working conditions, concerns itself with whether the Association has waived its right to bargain thereon, by virtue of any of the provisions existing in the 1979-82 collective bargaining agreement.

During the course of this proceeding the Association has failed to establish any particular "impact item" which is not included in the existing collective bargaining agreement. As set forth in the Findings of Fact, various provisions relate to layoff, recall, transfers, and assignments of teachers and the impact thereof on wages, hours and working conditions. The fact that the Association, when such provisions were being negotiated, and/or the District were not aware that a particular managerial decision might have a greater impact than anticipated at the time, does not, in our opinion, constitute a valid basis for permitting the renegotiation of such provisions during the term of the agreement. We have concluded that under the circumstances herein, the District has no enforceable duty to collectively bargain on proposals relating to matters already included in the agreement, which matters pertain to the impact of the reorganization plan on wages, hours and working conditions of teachers.

4/ Findings of Fact, para. 5.

5/ City of Brookfield vs. WERC, 87 Wis. 2d 819 (1979).

The Association has alleged that the District also has the enforceable obligation to furnish, upon the Association's request, pertinent records relating to the impact of the reorganization plan. We find that the District complied with any duty it may have had in this regard.

Dated at Madison, Wisconsin this 16th day of June, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Gary L. Covelli
Gary L. Covelli, Chairman

Morris Slavney
Morris Slavney, Commissioner

Herman Torosian
Herman Torosian, Commissioner