STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of MILWAUKEE BOARD OF SCHOOL DIRECTORS Requesting a Declaratory Ruling Pursuant to Section 111.70(4)(b) Wis. Stats., Involving a Dispute Between Said Petitioner and MILWAUKEE TEACHERS EDUCATION ASSOCIATION	Case CXXXVII No. 30319 DR(M)-241 Decision No. 20093-A

Appearances:

Mr. James B. Brennan, City Attorney, by Mr. Grant F. Langley and Ms. Susan D. Bickert, Assistant City Attorneys, 800 City Hall, 200 East Wells Street, Milwaukee, WI 53202, for Milwaukee Board of School Directors.

Perry, First, Reither, Lerner & Quindel, S.C., Attorneys at Law, by Mr. Richard Perry and Ms. Elizabeth Wright, Attorneys at Law, 220 East Mason Street, Milwaukee, Wisconsin, 53202, for Milwaukee Teachers Education Association.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECLARATORY RULING

Milwaukee Board of School Directors having, on September 1, 1982 filed a petition, and having on October 24, 1982 and on November 29, 1982, filed amended petitions, requesting the Wisconsin Employment Relations Commission to determine, by a Declaratory Ruling issued pursuant to Sec. 111.70(4)(b) of the Municipal Employment Relations Act, whether numerous provisions, or portions thereof, proposed by the Milwaukee Teachers Education Association, to be included in a new collective bargaining agreement covering wages, hours and working conditions affecting teachers and other professional personnel in the employ of said Board, and represented by said Association for the purposes of collective bargaining, relate to mandatory or permissive subjects of collective bargaining; and Counsel for said Board and said Association having filed pre-hearing briefs in the matter; and hearing in the matter having been conducted by the full Commission on November 29 and 30, 1982 at Madison, Wisconsin; and Counsel for the parties having filed post hearing briefs by January 24, 1983; and the Commission, having reviewed the entire record, and the briefs of the parties, being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That Milwaukee Board of School Directors, hereinafter referred to as the Board or the District, is a municipal employer operating a K through 12 public school system in Milwaukee, Wisconsin; and that the Board maintains its principal offices at 5225 West Vliet Street, P.O. Box Drawer 10K, Milwaukee, Wisconsin 53208.

2. That Milwaukee Teachers Education Association, hereinafter referred to as the MTEA or the Union, is a labor organization, which represents municipal employes for the purposes of collective bargaining; and that MTEA maintains in principal offices at 5130 West Vliet Street, Milwaukee, Wisconsin 53208.

3. That at all times material herein MTEA has been, and presently is, the exclusive collective bargaining representative of employes of the Board who are included in an appropriate collective bargaining unit, hereinafter characterized as "teachers," but which unit is fully described as follows:

> . . . all regular teaching personnel (hereinafter referred to as teachers) teaching at least fifty percent (50%) of a full teaching schedule or presently on leave (including guidance

counselors, school social workers, teacher-librarians, traveling music teachers and teacher therapists, including speech pathologists, occupational therapists and physical therapists, community recreation specialists, activity specialists, music teachers 550N who are otherwise regularly employed in the bargaining unit, team managers, speech pathologist, itinerant teachers, diagnostic teachers, vocational work evaluators, community human relations coordinators, human relations curriculum developers, mobility and orientation specialists, community resource teachers, program implementors, curriculum coordinators and Montessori coordinator, excluding substitute per diem teachers, office and clerical employes, and other employes, supervisors and executives).

4. That for the past number of years the Board and MTEA have been parties to successive collective bargaining agreements covering the wages, hours and conditions of employment of the "teachers" in the employ of the Board; that the last of such agreements, by its terms, expired on June 30, 1982; that on March 1, 1982 the parties exchanged their initial proposals with respect to provisions desired to be included by them in their new collective bargaining agreement; that thereafter representatives of the parties met in negotiation on the new agreement on April 19 and 27, May 3 and 26, June 1, July 21, and August 19, 1982, during which meetings MTEA proposed to included in the new agreement various provisions which had been included in the recently expired agreement; that during the course of said negotiations the representatives of the Board contended that a number of said provisions pertain to permissive, rather than to mandatory, subjects of collective bargaining; that the parties have been unable to reach an accord with respect to said proposals; and that in the latter regard the Board initiated the instant proceeding by filing a petition, and amended petitions, requesting that the Wisconsin Employment Relations Commission issue a declaratory ruling determining whether the following provisions, or portions thereof, proposed by the MTEA to be included in the new collective bargaining agreement covering "teachers," relate to either permissive or mandatory subjects of collective bargaining: 1/

(1) PART I

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F. AGREEMENT, RULES, POLICIES AND PROCEDURES

1. AGREEMENT AND EXISTING RULES. This contract shall, wherever the same may be applicable, including (sic) existing rules of the Board at the time the agreement is entered into. Where the contract requires changes in rules, "existing rules" shall mean the rules as amended as required by the contract.

(2) 2. AMENDMENTS TO RULES OR BOARD POLICIES. Where any rule or Board policy is in conflict with any specific provision of the contract, the contract shall govern. Where there is any new rule or Board policy or amendment to any rule or Board policy which will have a major effect on wages, hours, and working conditions of the members of the bargaining unit and the contract is silent, no such rule or Board policy shall be effective until after negotiations with the META. If, after a reasonable period of negotiations with the Board or its representative, no agreement has been reached, the MTEA may immediately proceed to mediation prior to the implementation of such rule or Board policy. The MTEA may proceed to advisory fact finding if the matter is not resolved in mediation. In an emergency situation which would interfere with the orderly operations of the schools, the administration may temporarily implement emergency action prior to mediation.

1/ The numbers in parentheses to the left of the contractual language are for identification purposes and will be referred to in the remainder of this decision.

(4) 4. NEGOTIATIONS PRIOR TO COMMITTEE ACTION. Any item having an impact on wages, hours and conditions of employment which is to be received by a committee of the Board will be referred to the Superintendent or Secretary-Business Manager for transmission to the Chief Negotiator and MTEA so that negotiations, as required elsewhere in the contract, shall take place beginning at least thirty (30) working days and continuing at reasonable times prior to the committee meeting. If the item is scheduled for a Board meeting prior to the completion of negotiations, the Board may approve it in principle subject to negotiations.

(5) 3. ADMINISTRATIVE PROCEDURES.

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c. If, during the term of the contract, any administrative procedure is changed by amendment or by a new procedure, on which the contract is silent, which has a major effect on wages, hours and working conditions of the members of the bargaining unit, no such procedure shall be effective until after negotiation with the MTEA. If, after a reasonable period of negotiation, no agreement has been reached, the MTEA may proceed to mediation prior to the implementation of such procedure. The MTEA may proceed to advisory fact finding if the matter is not resolved in mediation. In an emergency situation which would interfere with the orderly operations of the schools, the administration may temporarily implement emergency action prior to mediation.

(5) 5. NEGOTIATIONS OF WAGES, HOURS AND CONDITIONS OF EMPLOYMENT RELATED TO PROGRAMS. Where possible, the Board shall reserve consideration until April of those aspects of programs dealing with wages, hours and working conditions where the intended implementation is for September of the school year. Exceptions to the above might be state and federal programs.

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(6) J. POSSIBLE NEGOTIATIONS OF CERTAIN CONTRACT PROVISIONS

The following contract provisions continue to remain in the contract:

1. Class size provisions Part IV, Section C (1 through 13), Section C(16) (Mainstreaming) and Appendix "L" (Exceptional Education Class Sizes).

2. Park IV, Section C(15 through paragraph 1) (Elementary Multi-Unit Schools).

3. Part IV, Section F (Specialty Teachers).

4. Part IV, Section J (Interim Classes and/or Programs).

5. Appendix "G" (Counselors) paragraph #2 (Guidance Ratio).

6. Appendix "G" (Counselors) paragraph #7 (Secretarial Assistance).

If during the term of the contract, the Board proposes any changes in the above provisions, the proposals shall be negotiated as mandatory subjects of bargaining under the provisions of Chapter 111.70(4)(cm) Wisconsin Statutes. In the event the

provisions of Chapter 111.70(4)(cm) expire during the term of the contract, the provisions of Chapter 111.70(4)(cm) as they existed will nevertheless be utilized as a voluntary impasse procedure between the parties.

PART II

(7) A. RECOGNITION

1. The Board of School Directors (hereinafter referred to as the Board) recognizes the Milwaukee Teachers' Education Association (herinafter referred to as the MTEA) as the duly certified exclusive collective bargaining representative for all regular teaching personnel (hereinafter referred to as teachers) teaching at least fifty percent (50%) of a full teaching schedule or presently on leave (including guidance counselors, school social workers, teacher-librarians, traveling music teachers and teacher therapists, including speech pathologists, occupational therapists and physical therapists, community recreation specialists, activity specialists, music teachers 550N who are otherwise regularly employed in the bargaining unit, team managers, speech pathologists, itinerant teachers, diagnostic teachers, vocational work evaluators, community human relations coordinators, human relations curriculum developers, mobility and orientation specialists, community resource teachers, program implementors, curriculum coordinators and Montessori coordinator, excluding substitute per diem teachers, office and clerical employes, and other employes, supervisors and executives). There is a general recognition of the vital importance of involving the ability, the experience, and the judgment of the members of the teaching, supervisory, and administrative staffs in the development of basic education policies and long range educational goals. The MTEA recognizes its responsibility to cooperate with the Board to provide the best possible educational opportunity to pupils enrolled in the schools of the Milwaukee Public Schools system.

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(8) D. MTEA RESPONSIBILITIES

As the certified collective bargaining representative, the MTEA will represent all persons in the bargaining unit. No MTEA activity shall interfere with the regular instructional program of the school, except as otherwise specified in this contract. The MTEA, as a professional organization, is involved in providing its professional input in areas beyond the required wages, hours, and working conditions. Because of its concern the MTEA may appoint one or more members to each of the study committees on which the results are publicly announced.

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(9) PART IV

TEACHING CONDITIONS AND EDUCATIONAL IMPROVEMENTS

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B. TEACHING DAY

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2. TEACHER DAY.

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e. The program for learning disabilities and behavioral disabilities teachers, as presently constituted, has one

less hour of pupil contact time than the regular elementary program. This time is to be used for individualization of plans, consultation with regular class teachers, parental visitation, student supervision when the transportation pickup is late, and preparation. Any change in the teacher or pupil day from the above will be negotiated with the MTEA.

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(10) 5. ADDITIONAL PAID ASSIGNMENTS.

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b. Teachers who are asked to teach all or a part of a class, when the regular teacher is absent and a substitute teacher is not immediately available, shall be paid on the basis of the established part-time certificated rate properly prorated. Such compensation shall also be paid to teachers who substitute for the following: department chairperson when they are absent for necessary attendance at central office meetings, teachers taking required physical examinations, teachers attending required central office meetings, and teachers absent for the music festival. Teachers in middle and high schools shall be authorized the part-time certificate rate when taking classes for others who are on field trips. This payment is authorized for assuming classes during the preparation period in addition to the teacher's normal class load. This provision shall be limited to a total of two thousand five hundred (2,500) secondary field trips each year.

c. In the event a teacher is absent in a middle or high school and a substitute does not arrive on time or no substitute is available, a teacher will be asked to cover the absent teacher's class from a list of volunteers which is kept in the office. In the event that the volunteer list is exhausted, teachers will be asked to cover classes on a rotating basis within subject area or on a general rotating basis if no teacher is available in a subject area.

d. In the event a substitute teacher does not arrive on time at an elementary school, one of the following shall be done to provide supervision until the substitute arrives:

1) The principal may assign a regular classroom teacher near the classroom to be responsible for both classes, in which case the teacher would receive the appropriate additional compensation provided for in paragraph (b) above. An aide may be assigned to the teacher to assist the teacher in this duty.

2) The principal may divide the class among regular classroom teachers, and the teachers shall be compensated in accordance with paragraph (b) above.

3) If neither (1) or (2) above is practical or advisable, the specialty teacher may be assigned to cover the class until the substitute arrives, but in no case will the assignment extend beyond one-half hour into the regular pupil day. If the substitute has not arrived by then, the class shall be divided in accordance with paragraph (2) above.

e. If, after every effort has been made to provide a substitute, a substitute teacher cannot be provided to cover a class, the class will be divided among regular classroom teachers; and the teachers will be compensated in accordance with the provisions of paragraph (b) above.

f. In the event a teacher is absent from an elementary school for a portion of time during the day and if every effort has been made to provide a substitute and no substitute can be provided, the principal may assign a regular classroom teacher near the class or divide the class among the regular teachers, if he/she does not choose to supervise the class administratively. Teachers assigned to such supervision shall receive appropriate compensation as provided in paragraph (b) above.

(11) 6. LUNCH PERIOD

a. . . . <u>In the secondary school, teachers assigned to lunchroom duty shall be assigned in lieu of a class.</u>

b. School social workers, human relations community coordinators, human relations curriculum developers, PPRC speech pathologists and team managers shall have a duty free lunch period of one hour at the elementary, middle and high school levels and in special program assignments.

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(12) 10. NUMBER OF PREPARATIONS FOR SECONDARY TEACHERS. In developing secondary teachers' programs, principals shall attempt, where possible to limit the number of different preparations to three (3). However, it is recognized that certain subject areas make the attainment of this more difficult.

(13) 11. PREPARATION PERIOD. The utilization of the preparation period shall normally be determined by the teachers. It is recognized that the preparation period may be the most convenient and practical time for the teacher, principal or supervisor to arrange an occasional conference on matters of professional concern. If an unexpected parent conference is requested during the preparation period, the teacher shall attend the conference unless the conference would prevent the teacher from having representation of his/her choice. Attempts will be made to avoid a pattern of scheduling parent conferences during regular instructional time.

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(14) B. TEACHING DAY

HIGH SCHOOLS

1. Teachers in the high school, operating on the seven (7)-period day, shall be assigned not more than twenty-five (25) teaching periods, five (5) homeroom periods and five (5) preparation periods per week.

Teachers in the high schools operating on the eight (8)-period day, shall be assigned to not more than twenty-five (25) teaching periods, five (5) homeroom periods and not less than five (5) preparation periods per week, except in Industrial Education. All high schools will operate under the Guidelines for Schools Operating on an Eight Period Day, as set forth below:

a. Periods released from assignment under Schedule B for duties shall be subtracted from the normal load of five (5) classes not from equivalency assignments and those periods of released assignment shall not exceed the equivalent of 1.4 teachers in the high school with the exception that a teacher equivalency of 2/10's will be provided for each regularly scheduled lunch period at the school.

These periods of released time to the maximums cited above shall be authorized from among the activities cited below:

AVA	.4
Newspaper	.2
Business Manager	.2
Special Activities	.2
Special Events	.2
Student Council	.2
Annual	.2

A high school having a full range of activities may select two (2) from among the special activities, special events, and student council. Provisions for guidance activities and department chairperson will be provided elsewhere in the contract.

b. The teacher "in charge" and any additional teachers assigned lunchroom duties each lunch period shall have such duty in lieu of a class. Any additional necessary supervision will be carried out by school aides.

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e. To the extent possible, a first semester teacher will not be assigned to study hall, lunchroom duty, hall supervision, or attendance counseling, but will be involved in in-service activities, such as long range planning for his/her specific classes, work on curriculum in his/her area, or observing classes of experienced teachers.

(15) f. High schools, except those operating under a certificate of overload or experiencing difficulty in programming students into Industrial Education classes, shall continue to operate on the seven (7)-period day, unless the principal and staff, following careful study and understanding of all factors involved, agree that they would wish to request the high school they serve be authorized to plan their schedule on an eight (8)-period day or modular flexible schedule. Such written request should include documentation of the advantages to be gained by adopting such a schedule.

High schools operating on an eight (8)-period day shall revert back to a seven (7)-period day when they are no longer operating under a certificate of overload or experiencing difficulty in programming students into Industrial Education classes, unless the principal and staff, following careful study and understanding of all factors involved, agree that they would wish to remain on an eight (8)-period day. Such written request should include documentation of the advantages to be gained by remaining on such a schedule.

In the high schools where an eight (8)-period day is necessary to facilitate the implementation of specialty programs related to the desegregation effort, it shall be established. Previous to the establishment of such eight (8)-period day, the teacher involvement section of this contract shall be implemented.

(16) MIDDLE SCHOOLS

1. Basic team, modified team, and self contained teachers in the middle school shall be assigned not more than two hundred eighty (280) minutes of student contact time including not more than two hundred thirty-five (235) minutes of instructional time (for not more than five (5) administratively assigned classes per day); fifteen (15) minutes of homebase and thirty (30) minutes of lunch supervision/special help. In addition, the basic team teacher will receive not less than forty-eight (48) minutes of individual planning, forty-eight (48) minutes of common planning, and a duty free lunch of not less than fifty (50) minutes. The basic team teacher may also have advisory, special help, preparation, or supervision time not to exceed twenty (20) minutes on a rotational basis.

2. Fine Arts/Vocational Education (FAVE) teachers shall be assigned no more than two hundred sixty-five (265) minutes of instruction time for not more than five (5) administratively assigned classes per day; forty-eight (48) minutes of assignment time which could include instructional planning, curriculum development, attendance counseling, or supervision assigned on a rotational basis. In addition, FAVE teachers shall be assigned not less than forty-eight (48) minutes of individual planning, a duty free lunch of not less than fifty (50) minutes, fifteen (15) minutes of instructional readiness and twenty (20) minutes of special help or supervision assigned on a rotational basis.

If a basic team teacher is assigned AVA duties it is understood that one FAVE teacher could be assigned homebase on a yearly rotation, in lieu of the twenty minutes special help or supervision assignment in order to release the basic team teacher from homebase.

If two basic team teachers are each assigned an AVA release period, only one will be released from homebase. Basic team teachers released from homebase will do so alternately on a yearly basis.

If a FAVE teacher is assigned AVA duties, the FAVE teacher would be released from the twenty minutes special help or supervision assignment.

3. Middle schools shall be allocated .6 (six tenths) teachers for the following activities:

AVA	.2 of instruction time (schools with an enrollment greater than 700 students will receive an additional .2 of instructional time for AVA)
Bookstore/Finance	.2
Student Council	.2

5. If a middle school(s) continues to operate a program and organizational structure similar to the existing junior high program and organizational structure, teachers on a seven period day will be programmed to not more than twenty-five teaching periods, five homeroom periods and five preparation periods per week.

If a middle school(s) continues to operate a program and organizational structure, similar to the existing junior high program and organizational structure, teachers on an eight period day will be programmed to not more than twenty-five teaching periods, five periods in supervision, study hall, attendance counseling or curriculum improvement projects; five homeroom periods and five preparation periods per week.

ELEMENTARY SCHOOLS

Teachers in elementary schools shall be assigned to twenty-five (25) teaching hours including recess and five (5) forty-five (45)-minute periods of available special help time per week. It is recognized that elementary teachers assume an obligation for all teaching functions related to a quality educational program including preparation.

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(17) C. CLASS SIZE

1. GENERAL PROVISIONS. Effective September, 1975, and for the remainder of the term of this contract, the following staffing formulas shall be used:

a. In senior high and six (6)-year schools, the teaching staff shall be determined by dividing the total daily pupil periods by one hundred forty (140).

b. In middle schools, the teaching staff shall be determined by dividing the total daily pupil periods by one hundred forty (140) in Title I participating schools and those Title I eligible schools determined by the Board and by one hundred forty-five (145) in all other middle schools.

c. In elementary schools, the following staffing formulas shall be used:

1) Four (4)-year old kindergarten classes shall be organized, as nearly as practicable, on the basis of twenty-three (23) pupils per half-day session. It is understood that a lower staff level may be implemented. To the extent possible, classes shall be established in the afternoon on a daily basis and be taught by the teacher who teaches the five (5)-year old kindergarten class in the morning.

2) Five (5)-year old kindergarten classes shall be organized, as nearly as practicable, on a basis of twenty-three (23) pupils for each half-day session in Title I participating schools and Title I eligible schools determined by the Board and on a basis of twenty-five (25) pupils for each half-day session in all other elementary schools.

3) In Title I participating schools and Title I eligible schools determined by the Board, the teaching staff shall be determined by dividing the total enrollment (LP - grade top) by twenty-six (26), the quotient being rounded off to the nearest whole number.

4) In non-Title I schools, the teaching staff shall be determined by dividing the total enrollment (LP - grade top) by thirty (30), the quotient being rounded off to the nearest whole number.

5) The staffing formulas in (1), (2), (3), and (4) shall be effective in September, 1975, and shall not be cause for more bussed classes due to overcrowding than would have been necessary under the formulas in effect in the 1973-74 MBSD-MTEA contract. In elementary schools where space and facilities do not permit every teacher allowed under staffing formulas to be assigned to a classroom, such teachers without classrooms shall be designated as floating primary, intermediate, or upper grade teachers. The determination of the type of such personnel shall be made by the building principal and the staff. The Superintendent shall designate persons at the central office to assist the principal and staff in determining the manner in which such personnel shall be used.

6) When organizing classes, the principal and the teaching staff in elementary schools with adequate space and facilities may not deviate from the applicable staffing ratio by more than six (6) pupils in any class unless a written rationale for such deviation is approved by the Division of Administrative and Pupil Personnel Services.

d. Where extenuating circumstances prevail, the staffing formulas may need to be revised downward to protect the interest of the individual pupil and the total school program.

e. Schools presently on Title I funding will be maintained at the lower staffing level for the term of the contract.

2. CLASSES FOR THE VISUALLY IMPAIRED. Not more than ten (10) pupils shall be apportioned to each teacher.

3. CLASSES FOR THE DEAF. Not more than ten (10) deaf or hard-of-hearing pupils shall be apportioned to each teacher.

4. CLASSES FOR THE MULTIPLY-HANDICAPPED DEAF. Not more than five (5) multiply-handicapped deaf pupils shall be apportioned to each teacher.

5. SPECIAL B CLASSES. The apportionment shall be not fewer than fifteen (15) nor more than twenty-five (25) pupils per teacher.

6. EDUCABLE MENTALLY RETARDED. The following general guidelines shall be applied in differential age groups: early elementary - 10 to 12; older elementary - 10 to 15; junior high - 10 to 17; senior high - 10 to 20. The above numbers will be ideal enrollment size, and the figures above are flexible in that any figure can be increased by two (2).

7. TRAINABLE MENTALLY RETARDED. The following class sizes shall be applied in differential levels: Readiness Level, 5-7 students; Lower Primary Level, 6-8 students; Primary Level, 7-9 students; Intermediate Level, 8-10 students; Advanced Level, 10-12 students; with flexibility to increase by one student. A child's placement within a class level shall be determined by the child's ability to function at that level.

(18) 8. MULTIPLY-HANDICAPPED TRAINABLE MENTALLY RETARDED. Clases for the multiply-handicapped TMR shall be organized with a class size of between six (6) and eight (8) students. An aide shall be assigned to each class.

9. DAY CARE CENTERS FOR PROFOUNDLY RETARDED. Classes for profoundly retarded TMR students shall be organized with class sizes between eight (8) and ten (10) students. An aide shall be assigned to each class.

10. The Board shall provide a child care attendant for TMR student facilities where TMR students are not toilet trained.

11. BEHAVIORAL DISABILITIES CLASSES. Classes shall be provided at the primary, ages 6-9, and intermediate, ages 9-12 years. Not more than eight (8) pupils shall be apportioned to each teacher.

12. LEARNING DISABILITIES CLASSES. Classes shall be provided at the preprimary, ages 4-6; primary, ages 6-9; and intermediate, ages 9-12. Not more than eight (8) pupils shall be apportioned to each teacher.

13. PHYSICAL EDUCATION CLASSES. When class sizes exceed fifty (50) in the physical education classes at the secondary level, a school aide shall be assigned to assist in the operation of the physical education program, as directed by the classroom teacher, where requested.

(19) 14. EXPERIMENTAL AND INNOVATIVE PROGRAMS. It is recognized that, as a professional organization, the MTEA is interested in experimentation to improve the services to children. The MTEA will cooperate in administration proposals for experimentation and will propose programs which the administration will consider for experimentation. It is understood that experimental and innovative programs may be introduced within schools during the term of this contract. However, the MTEA shall be involved in planning where it involves persons in the bargaining unit at the earliest possible time. Any proposed experimental program shall be reduced to writing and submitted to the MTEA for negotiations at least one month before intended implementation. In no case will such programs involve greater pupil-teacher ratios, greater expenditures of teacher time, or changes in the rate of compensation unless agreed to by the MTEA. Participation in any experimental program shall be on a voluntary basis unless the experimental program complies with the other terms of the contract and does not make major changes in working conditions. Proposals received from any source will be handled in the manner set forth in this section. Experimental or innovative programs shall be assessed periodically and evaluated at the completion of the experiment. The strengths and weaknesses of the programs, as shown in the assessments and evaluations, shall be considered prior to the expansion, continuation, or modification of the program. Prior to such continuation, modification or expansion, the Board shall consult with the MTEA. If the program ceases to be experimental and becomes part of the regular program, it shall comply with all aspects of the contract.

(20) 15. ELEMENTARY MULTI-UNIT SCHOOLS. The elementary multi-unit school organization can be approached in several ways. It is recognized that implementation and operation of a unitized program requires staffing in excess of that presently provided in the traditional program and that the following provisions will apply to the multi-unit approach to organization:

(21) a. Pupil-teacher ratio for the school level organization of the unit shall be consistent with class size provisions in the contract. Specialty teachers shall not be included in computing pupil-teacher ratio.

(22) b. At least two (2) school aides, two (2) para-professional or one of each shall be provided for each unit.

(23) c. Each unit shall have a unit leader, whether on an individual or rotated basis, who teaches children at least fifty percent (50%) of the normal school day and such nonteaching time shall be in addition to the pupil-teacher class size ratio.

(24) d. Teachers in each unit shall be provided two (2) hours of released time per week for the purpose of planning during the school day. Such planning time is in addition to the special help and preparation time provided for in the contract. Specialty teachers may be used to provide a part or all of the released time.

(25) e. Each multi-unit school shall be provided at least one well-supplied instructional resource center to serve all children.

(26) f. In-service courses shall be offered for teachers interested in the multi-unit school organization. Teachers assigned to a multi-unit school for the first time shall be provided forty (40) hours of in-depth orientation on a voluntary basis to the multi-unit organization either before or during the first semester of teaching. Teachers will be compensated at the part-time certificated rate. On-going in-service may be provided, where necessary, to teachers in multi-unit schools. Teachers interested in transferring to a multi-unit school should have knowledge of the program and may be given released time to make onsite observations and discuss the program with the staff.

(27) g. Units shall be composed from no more than what traditionally is referred to as three (3) grade levels and shall be organized in a manner which should be less than one hundred fifty (150) pupils, except in unusual circumstance.

(28) h. Facilities shall be provided for teachers in each unit to meet.

(29) i. A committee composed of an equal number of principals and central office staff and teachers selected by the MTEA who teach in multi-unit schools shall study the present record keeping forms used in the multi-unit schools to recommend changes, when needed.

(30) 16. MAINSTREAMING

a. A staffing allowance for exceptional education students who are presently not counted as regular students for staffing purposes shall be established at both the secondary and elementary levels.

In the establishment of an exceptional education class with mainstreamed students in the secondary school an initial staffing allowance shall be made to reflect the time spent by exceptional education students in regular classes. After the initial year the staffing factor will reflect the average number of classes taken by mainstreamed exceptional education students.

In the elementary school mainstreamed exceptional education students not already counted in the regular student enrollment shall be counted in such enrollment for staffing purposes.

The following programs are examples of those which would not justify an allowance in either elementary or secondary staffing.

1) Exceptional education students whose program is physically located in a building which also houses a regular education program but whose exceptional education population cannot be expected to participate in mainstreaming.

2) Exceptional education students enrolled in the home and hospital or who qualify for the school aged parent program.

3) Exceptional education students who are assigned to a building for administrative purposes, but are physically located elsewhere on an active detached status. The Liberty program would be an example.

4) No exceptional education student counted in the regular ratio count shall be counted again in computing the number of exceptional education students in a given building.

b. In deriving a school's student enrollment for purposes of determining the number of nonexceptional education teachers to be assigned to that school in accordance with existing provisions of the contract, the school administration shall:

1) Estimate the number of exceptional education students that will be mainstreamed in that school not including those presently included in the count of student enrollment used in arriving at that school's non-exceptional education teacher complement.

2) In arriving at the number of non-exceptional education techers to be assigned to that school the number of students derived in accordance with (b)(1) shall be included in the school's total enrollment figure for staffing purposes.

c. The intent of paragraph b, is to reduce class size for non-exceptional education teachers by the proportion that the number of students added to regular student enrollment by implementation of (b) is to the number of non-exceptional education students in the building. Application of paragraph (b) is subject to a budgetary limitation of one and one-half million dollars ($1,500,000) per school year. If its full application would result in expenditures in excess of one and one half million dollars ($1,500,000) per school year the addition of teachers will be reduced proportionately among schools affected so as to conform to the budgetary limitation.

d. All exceptional education class sizes shall not exceed the DPI maximums and those minimums and maximums shall be printed in the contract. See Appendix "K" (attached).

(31) D. EXCEPTIONAL EDUCATION

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3. The Board shall provide child care matrons for TR and Orthopedically Handicapped classes, where needed.

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(32) 8. When it becomes necessary to release the regular teacher or diagnostic teacher to meet with the multi-disciplinary team during the regular school day, provision shall be made to relieve such teacher from classroom responsibilities in accordance with Part IV, Section B(5).

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(33) 11. If an exceptional education teacher and his/her immediate supervisor agree that behavioral intervention techniques should be used in his/her classroom, an amount will be appropriated from the program budget of that exceptional education program.

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(34) 14. Itinerant exceptional education teachers and English as a second language teachers have the same preparation time as provided in the contract for all teachers.

(35) E. BASAL READING PROGRAM, AND REMEDIAL READING

1. Board funds, presently available in elementary schools through location budgets, may be used to purchase basal reading programs in those schools desiring such a program.

. . .

(36) F. SPECIALTY TEACHERS

1. Elementary teachers in art, music, or physical education shall be hired to the extent possible within the budgeted limits. Such teachers will not be figured in the staffing formula of the school.

3. Commencing January 1, 1971, every effort will be made to recruit and hire fifteen (15) qualified elementary, specialist teachers in art, physical education and music, to service those schools not presently served, including exceptional education classes. This additional staffing shall commence in February, 1971, and shall be fully implemented by September, 1971. This additional staffing shall be budgeted up to an annualized (calendar year) level of one hundred fifty thousand dollars ($150,000), provided that the 1971 implementation shall not exceed one hundred thirty-five thousand dollars ($135,000).

4. In addition, previous to September of 1971, efforts will be made to recruit and hire ten (10) additional qualified elementary specialist teachers in art, music and physical education to serve elementary school pupils including exceptional education pupils, at an annualized (calendar year) level of one hundred thousand dollars ($100,000), provided that the 1971 implementation shall not exceed forty thousand dollars ($40,000).

(37) 2. When possible, exceptional education classes shall be scheduled for art, music and physical education classes, where specialists conduct a regular program in the school.

(38) 5. When a specialty teacher is absent, a substitute will be dispatched if a qualified substitute is available.

(39) G. BUILDING SECURITY

1. PRINCIPAL RESPONSIBILITY. The principal of each school shall be responsible for the general management, instruction, and discipline, shall direct and assist the teachers, and see that the Rules of the Board and directions of the Superintendent are properly carried out in the school(s) over which he/she has administrative responsibilities.

(40) 2. ADMINISTRATIVE REINFORCEMENT. When the regular resources of the school are inadequate to accomplish this responsibility, principals are expected to call the central office for additional assistance, or if the nature of the problem so indicates, call upon the Milwaukee Police Department. Where additional personnel are assigned, they shall assist with administrative duties, such as handling of any suspensions and/or reassignments.

. . .

8. In schools having persistent problems with unauthorized people in the halls, assigned lay personnel shall be used.

. . .

(41) H. DISCIPLINE

1. When a pupil is referred to the administrator by a teacher for disciplinary purposes, he/she shall not be returned to the area under that teacher's jurisdiction in which the infraction occurred until he/she has been seen by an administrator and that administrator has communicated the disposition of the case to the teacher on the form 72. To the extent possible teachers should supply necessary background information to assist the administrator in making the decision concerning the referral.

2. When the teacher recommends a particular disciplinary action and the administrator processing the referral does not concur, the administrator shall communicate with the teacher in writing on the 72 card why he/she did not follow the recommendation. It is understood that a conference elaborating on the remarks on the 72 card may often be helpful and appropriate.

4. Students who are or have been suspended from school shall be excluded from the building and prohibited from attending all classes and all other activities held at school. The student shall remain under immediate administrative supervision until the parent is contacted and the student can be sent home or until the end of the school day (whichever comes first). In all suspension cases, the suspended student shall be escorted out of the building. If the student refuses to leave the school and/or grounds, and administrative means, exclusive of the use of teacher(s), or aide(s) proves inadequate to remove the student, other appropriate assistance shall be utilized. Prior to the reinstatement of the student, the teacher and the administrator handling the matter shall confer with regard thereto.

5. Where necessary, appropriate personnel shall be available to escort students referred for disciplinary action to the office.

6. The administrator shall exclude from a particular class any pupil who has proved to be a constant disciplinary

problem and whose conduct has not been corrected through previous referrals, until a conference can be conducted with the pupil, teacher, the principal or other administrator under his/her direction and any other specialists dealing with problem pupils. He/She shall be retained by the office or removed from the building.

7. If the problem is not resolved by the previous steps, the matter shall be referred to the Superintendent's Office for appropriate disposition.

. . .

9. When a school has continuous discipline problems, every effort will be made to provide released or compensated time for teachers. The principal and the teachers shall use such time to develop appropriate programs to reduce the causes of the problems.

10. Form #72 cards shall be printed in triplicate with the code of student offenses and teacher recommendations printed on the back of the hard copy.

(42) 3. Physical assaults by students on teachers shall call for the student's suspension from a school until a parent conference is conducted within three (3) days of the suspension unless, because of the nature of the assault, the teacher and the school administrator agree not to suspend. A parent conference in this paragraph shall be defined to mean a conference at school as opposed to reinstate following a parent telephone conversation to arrange for a conference unless the principal and teacher agree that a parent conference at school is not necessary. If it is not possible for a parent to appear at school, the student will not be reinstated until after three (3) days. If the assault has resulted in bodily injury, a field counselor shall be present at the reinstatement conference or at a subsequent conference within five (5) days of the reinstatement conference. Pupils guilty of assault on teachers shall be considered for alternate placement if appropriate and/or disciplinary reassignment. Consideration should be given to the pupil's ability to continue in a school atmosphere.

(43) I. INTERIM CLASSES AND/OR PROGRAMS

Special classes and/or programs shall be expanded as the need arises to deal with socially-maladjusted pupils, as funds, teachers and facilities permit.

During the period of this contract, interim classes and/or programs shall be implemented and those classes started maintained in elementary and secondary schools for the purpose of meeting the needs of students demonstrating a lack of reasonable self-control and whose behavior is seriously interfering with their own education, as well as the education of other children in the regular school program. These interim clases and/or programs shall be budgeted at an annualized (calendar year) level of seven hundred sixty-five thousand dollars ($765,000). Such classes and/or programs will adhere to the same general guidelines and procedures currently being used with the Social Adjustment Centers.

Specific aspects of the program will reflect local school and/or cluster needs. The principal and staff in each building may plan for and propose the establishment of such classes and/or programs and transmit such proposals to the Division of Curriculum and Instruction, where such proposals shall be reviewed and approved by the Superintendent within the budgeted amounts. These programs shall be reviewed and acted upon within one month after presentation and need not go through the program improvement route. The

principal and staff, when planning for classes and/or programs, shall take into consideration the facilities necessary to implement such classes and/or programs.

Where teachers are needed for interim classes and/or programs, the Division of Personnel shall recruit either new teachers or experienced teachers from within the system to staff such classes and/or programs. The MTEA will also help to acquaint teachers with such classes and/or programs.

1. The administration will provide the MTEA and each school library with an updated listing of all existing interim classes and/or programs, as well as a brief description of each program.

2. A listing of other programs designed to meet the "special needs of pupils" will be added to the above list (i.e. work-study programs, returnees, emotionally disturbed, DVR, Job Corps, community agencies, S.A.P.).

(44) J. PROCEDURE FOR SCHOOLS WITH SPECIAL PROBLEMS

When conditions in any school evidence a potential interference with the education process, the following procedure shall apply:

1. MTEA INVOLVEMENT

a. When the MTEA is informed by teachers or other sources that such conditions exist within any school, the MTEA shall immediately investigate the situation and notify the Division of Administrative and Pupil Personnel Services that they are going to be in the building. Such investigation shall include meeting with the principal and with members of the faculty and any other persons that may have information pertaining to the investigation. Within thirty (30) working days of the notification of the investigation, the MTEA shall inform the administration of its findings in writing.

b. If after such investigation, the MTEA feels that the teachers' concerns are justified and required consideration to prevent a potential interference with the educational process, they shall file a written statement of the results of their investigation within five (5) working days to the Office of the Superintendent.

2. ADMINISTRATIVE VERIFICATION

a. Within two (2) working days after the receipt of the MTEA's investigation report, a three (3)-person administrative task force appointed by the Superintendent shall investigate the conditions in the building. The administration shall notify the MTEA that they are going to conduct such investigation. Within three (3) days thereafter, the administrative task force shall report in writing to the Superintendent the conditions which exist.

b. The administrative task force shall be authorized to call upon any division or department for advice and counsel and upon representatives of the MTEA in making such investigation.

3. CONFERENCE WITH SUPERINTENDENT

a. Within two (2) working days, upon the request of the MTEA, the Superintendent or Deputy Superintendent shall hold a conference with the administration and the Executive Director of the MTEA; and both parties shall share the information obtained from their respective

investigation and reports. The administration shall verbally share those conditions that they found to exist independent of what the MTEA found. The parties will make every effort to resolve the matter informally.

b. Within three (3) working days following the close of the conference, the Superintendent shall notify all parties of his/her decision and the manner in which it shall be affected in writing.

4. FUNDS. Funds needed to implement Section J shall be made available from the contingency fund. The Board shall allocate the necessary funds. Upon recommendation by the Superintendent, approval of the Board shall be required to use monies from the fund to meet the problems. Such approval shall be by the voice approval of a majority of the Board.

5. BOARD CONSIDERATION. Where the matter is not resolved by the action of the Superintendent, it shall be reported to the appropriate Board committee at its next regular meeting by the Superintendent, at which time the MTEA will be given an opportunity to be heard.

. . .

(45) L. INSERVICE, EXCEPTIONAL EDUCATION, READING TRAINING AND HEALTH TUITION

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3. READING TRAINING. All newly hired elementary classroom teachers shall be required to have six (6) college hours in reading. The Board shall provide tuition reimbursement within budgeted limits for elementary teachers who do not have six (6) hours in reading and who wish to take such hours, subject to the following conditions:

a. Courses are to be taken on the teacher's own time.

b. Teachers may be given tuition for the appropriate courses not exceeding six (6) hours.

c. Teaches (sic) must earn acceptable grades in the courses.

d. Hours earned will be counted toward salary adjustments.

. . .

(46) M. NEW TEACHERS AND SCHOOL SOCIAL WORKERS ORIENTATION

1. A program shall be conducted for the introduction of new teachers into the school system, providing a minimum of three (3) days of orientation prior to the beginning of the school year. New teachers assigned to central city schools will be provided a minimum of five (5) days of orientation. The faculty and principal may develop an orientation program for new teachers in any school. On recommendation of the Superintendent and approval of the Board, such programs will be implemented. Under such programs, two (2) of the three (3) days of orientation for new teachers may be in the school to which the teacher is assigned. In a central city school, three (3) of the five (5) days of orientation for new teachers may be in the school to which the teacher is assigned.

2. Each new teacher shall be assigned to an experienced member of the staff of his/her school to whom the new techer may turn for advice and guidance during the school year. Teachers volunteering for such assignments shall be so

assigned. If no teacher volunteers, then the principal shall make the assignment. All such assignments shall be in writing.

. . .

5.a. The department chairperson, as directed by the principal, will be employed one day early at his/her regular daily rate of pay to orient new teachers when two (2) or more teachers new to the system are assigned to a department of a secondary school in September. Exception to the above would be when one or more teachers new to the system are assigned to foreign language laboratories, industrial educational departments, and instrumental music departments. In that event, the chairperson would be employed to orient the new teacher.

5.b. When two (2) or more teachers new to the system are assigned to a department of an elementary school, an experienced elementary teacher will be employed one day early at his/her regular daily rate of pay when requested by the principal.

. . .

7. As prescribed by the administration, not more than five (5) days before the opening day of school shall be used for the orientation of new school social workers and necessary orientation of experienced school social workers.

. . .

(47) O. CURRICULUM

Representatives of the school administration shall meet with representatives of the MTEA, upon request, to hear recommendations for curricular change at all levels. Proposed changes, as developed by teacher committees, shall be transmitted in writing by the MTEA to the administration. Meetings will be held as necessary. After a reasonable time, the administration will respond in writing to proposed changes.

. . .

(48) Q. TEACHER AND SCHOOL SOCIAL WORKER EVALUATIONS

1. The name of the administrative evaluator shall be made known to the employe in writing within thirty (30) days of the commencement of the school year. Bargaining unit employes shall not evaluate other bargaining unit employes.

. . .

4. Four (4) evaluation cards, bearing the form numbers 280, 281, 281T and 282 on easily distinguishable colored cards, are to be used when evaluating teachers. The evaluator, when making his/her report, shall select the form which most nearly characterizes the teacher for whom the evaluation is being made; and a complete written statement shall be submitted in support of his/her appraisal. Any change in forms shall be negotiated. This evaluation should be based upon and should include the following:

a. a sufficient number of classroom visitations, observations and personal conferences;

b. an analysis of points of strength and weakness, with specific examples;

c. definite suggestions for ways in which improvement may be made, if such be necessary; and

d. a statement of what has been done by the teacher and the evaluator to strengthen classroom instruction.

. . .

(49) R. ALLEGATIONS OF MISCONDUCT

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1.b. If the principal or supervisor decides on further action, he/she shall specify the charges in writing with the aid of the Division of Administrative and Pupil Personnel Services, and then furnish them to the teacher and the MTEA and attempt to resolve the matter. The teacher and the MTEA shall have a reasonable opportunity to investigate and to prepare a response.

. . .

2. EMERGENCY SITUATIONS. When an allegation of serious misconduct, which is related to his/her employment is made, the administration may conduct an administrative inquiry which would include ordering the teacher to the central office or authorize him/her to go home for a period not to exceed three (3) days. Authority to order an employee to absent himself or herself from work shall be vested in the Assistant Superintendent, Division of Administrative and Pupil Personnel Services, or his/her executive director. The MTEA shall be notified previous to the decision. No teacher shall be temporarily suspended prior to the administrative inquiry, nor without the opportunity to respond to the charges and have representation of his/her choice as set forth above. No teacher may be suspended unless a delay beyond the period of the administrative inquiry is necessary for one of the following reasons:

a. the delay is requested by the teacher;

b. the delay is necessitated by criminal proceedings involving the teacher; or

c. where, after the administrative inquiry, probable cause is found to believe that the teacher may have engaged in serious misconduct.

In the event the teacher suspended is cleared of the charges, he/she shall be compensated in full for all salary lost during the period of suspension, minus any interim earnings. At the conclusion of the administration's inquiry, hearings of the resultant charges, if any, shall be conducted in accordance with Part IV, Section R(1)(b).

. . .

(50) T. SCHOOL AIDES AND PARAPROFESSIONALS

1. SCHOOL AIDES AND PARAPROFESSIONALS. School aides and paraprofessionals shall be employed to the extent possible within the budgeted limits. An additional ten (10) hours of aide time per week shall be made available to all elementary schools other than state emergency funded schools. An additional forty (40) hours of aide time per week will be made available to all secondary schools other than state emergency funded schools. Where needed, the principal, after staff involvement, may use part of this additional aide time to meet the needs of teachers with special duties, such as

school librarians. An additional total of two hundred (200) hours per week will be made available to EMR classes. Such time is to be assigned in response to need in elementary and secondary EMR classs (sic) and the Binner divisions. The above allocations are in addition to present aide hour allocations of eighty (80) hours per week per school. It is recognized and agreed that school aides are employed to supplement and assist teachers in the performance of their professional duties. It is further recognized that a school aide shall not be used to replace or supplant the teacher as the instructional leader.

(51) 2. CONTRACT PROVISION SUBJECT TO NEGOTIATIONS. Provision concerning school aide formula found at Part IV, Section T(1) are included in this contract. Should the board during the term of the contract desire to change the policy as stated herein, not the last two sentences, in a manner that has a major impact on wages, hours or working conditions, it shall first notify the MTEA concerning its intention to change the policy. The MTEA shall have an opportunity to introduce proposals related to the impact of such changes. Negotiations pursuant to such proposals will be subject to the provision of 111.70(4)(cm).

If during the term of the contract, the administration will recommend changing the policy with respect to the school aide formula, to the board, the MTEA will be notified of the recommendation at least ten (10) working days prior to committee consideration and the MTEA will be provided a copy of the recommendation.

. . .

(52) V. MTEA AND TEACHER REPRESENTATION

. . .

2. HOMEROOM COMMITTEE. The results of the Homeroom Study Committee shall be provided to the principal and staff of each secondary school. If the principal, after involving his/her staff, wishes to propose the elimination, modification, or replacement of the present homeroom, such proposals shall be submitted to the Superintendent for approval with a copy to the MTEA. Before implementation, any proposal change which would affect wages, hours, or conditions of employment would be submitted to the MTEA for negotiations.

(53) 4. VOLUNTEER PROGRAMS. Any new volunteer programs and the significant expansion of present volunteer programs shall be subject to negotiations with the MTEA before they may be implemented in the Milwaukee Public Schools.

(54) 5. INTERN PROGRAM. The Board and the MTEA agree with the policy of an intern program that meets the needs in areas where specially qualified teachers are needed. The program shall not be expanded to other areas and shall be limited up to twenty-five (25) first and second semester interns. The administration and the MTEA agree to meet annually to analyze the program.

. . .

(55) X. OTHER TEACHING CONDITIONS AND EDUCATIONAL IMPROVEMENTS

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4. PHYSICAL EDUCATION.

a. When homeroom is scheduled before first period, at least one physical education teacher shall be released

from a homeroom assignment to prepare the facilities for the day's program.

(56) b. Students with medical excuses shall be excused from physical education classes and shall be sent to study halls where seats are available.

. . .

(57) 3. SPEECH, MUSIC AND ART SPECIALISTS, GUIDANCE COUNSELORS ROOMS. When room is available, the aforementioned will be programmed into regular classrooms or suitable rooms designed for smaller groups. If rooms other than regular classrooms are used, possible inadequacy of the rooms should be made known to the principal, the Superintendent, and the Board of School Directors. Where repairs are needed, they shall be made within budgetary limitations of the repair budget.

(58) PART V

TEACHER ASSIGNMENTS AND REASSIGNMENTS

. . .

M. FILLING VACANCIES

Teacher vacancies occurring after November 15 and March 15 may be filled by long-term substitutes for the duration of the first and second semester, respectively. These substitutes are to be paid in accordance with the regular teacher salary schedule and are to receive full fringe benefits except for pensions.

. . .

(59) PART VI

SUMMER SCHOOL

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C. ORIENTATION

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2. Orientation for summer school shall be conducted either on the day following the regular school term or on the day preceding commencement of summer school.

. . .

(60) PART VII

GRIEVANCE AND COMPLAINT PROCEDURE

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B. DEFINITIONS

1. A grievance is defined to be an issue concerning the interpretation or application of provisions of this contract or compliance therewith, provided, however, that it shall not be deemed to apply to any order, action or directive of the Superintendent or anyone acting or his/her behalf, or to any action of the Board which relates or pertains to their respective duties or obligations under the provisions of the state statutes which have not been set forth in this contract.

2. A complaint is any matter of dissatisfaction of a teacher with any aspect of his/her employment which does not involve any grievance as defined above. It may be processed through the application of the third step of the grievance procedure.

3. A continuing grievance or complaint is a situation where the time limits have been exceeded, but the condition continues to exist. Each day may constitute a new grievance or complaint. However, there shall be no retroactivity prior to the date of the filing of the written grievance or complaint, except that in the case of errors having a monetary impact not occurring as a result of teacher negligence, corrected payment shall be made retroactive for a period not to exceed one year.

C. RESOLUTION OF GRIEVANCE OR COMPLAINT

If the grievance or complaint is not processed by the MTEA or the grievant within the time limits at any step of the grievance or complaint procedure, it shall be considered to have been resolved by previous disposition. Failure by the administration or the Board to communicate their disposition in writing within the specified time limit shall permit the MTEA to appeal the grievance or complaint to the next step of the grievance procedure or arbitration. Any time limits in the procedure may be extended or shortened by mutual consent.

D. STEPS OF GRIEVANCE OR COMPLAINT PROCEDURE

Grievances or complaints shall be processed as follows:

FIRST STEP - Where a complaint is involved, a teacher shall, within five (5) working days after he/she knew or should have known of the incident, submit the same to the principal orally. Where a grievance is involved, the teacher shall promptly, but in no case longer than thirty (30) working days after he/she knew or should have known of the incident, submit the same to the principal orally. The principal shall orally respond to the grievance or complaint within five (5) days. If the grievance or complaint is not adjusted in a satisfactory manner orally, the grievant or complainant shall, within two (2) working days, submit the same in writing to the principal. The principal shall advise the grievant or complainant of his/her disposition in writing within five (5) working days after receipt of the written grievance or complaint. A copy of the disposition shall be sent to the MTEA, the grievant or complainant, and the Office of the Superintendent.

. . .

E. PRESENCE OF COMPLAINANT OR GRIEVANT

1. The person taking the action may be present at every step of the procedure and shall be present at the request of the MTEA, the Assistant Superintendent or his/her designee, the Superintendent, or the Committee, as the case may be.

2. Grievances or complaints at the second step and grievances at the third step may be processed during the day at the grievant's school. If impossible to schedule a meeting at the grievant's school, the teacher may be released without loss of pay or sick leave to meet with the appropriate party. Every effort shall be made not to absent a teacher from a class assignment.

. . .

(61) APPENDIX "B" - INTERSCHOLASTIC ATHLETICS

APPLICATION FOR APPENDIX "B" 1980 AND 1981

. . .

11. Where assistant coaches are designated, the number who may be assigned in any high school shall be determined by the coaching load as shown by participation figures for the previous season. A ratio of thirty (30) squad members, or major fraction thereof, per assigned coach, shall be the basis for such assignments. The Superintendent, through his/her designated representatives, shall prescribe the policies and procedures for determining the number of coaches who may be assigned within the limitations of Appendix "B". (A minimum of four coaches shall be scheduled for football.)

(62 & 63) APPENDIX "C" - EXTRACURRICULAR ACTIVITIES

. . .

APPLICATION

SCHEDULE E - APPENDIX "C" FOR 1980, 1981

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3. Any event where admission is charged, the teachers who work as ticket takers, hall or room supervisors, etc., shall be paid out of the money collected by admission to the event or out of the hours allowed each school per year.

. . .

9.**The amount of service in each of these two (2) areas authorized for each at the middle and high schools shall not exceed five (5) days at the individual's regular daily rate.

10.***Limited to: 40 hours per school of 1,500 enrollment or less
64 hours per school of 1,501 to 2,200 enrollment
80 hours per school of 2,201 enrollment and above

. . .

11.****Vocational counselors coordinating the work experience program will be allowed ten (10) days above the school year at their daily rate of pay.

. . .

(64) APPENDIX "G"

SUPPLEMENTARY PROVISIONS FOR SPECIAL GROUPS

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DRIVER EDUCATION INSTRUCTORS

. . .

10. Driver education classes in summer school shall be organized as nearly as possible at twenty-five (25) students per teacher.

. . .

(65) GUIDANCE COUNSELORS

1. Full-time counselors shall continue to be granted a preparation period.

(66) 2. Guidance counselors shall be staffed in the middle and high schools at a pupil-counselor ratio of 1 to 500 and in the seventh and eighth grades in K-8 elementary schools at a pupil-counselor ratio of 1 to 500, effective September, 1975.

. . .

(67) 6. Each secondary school guidance department shall be provided one-half time secretarial service, except that schools with one thousand eight hundred (1,800) or more students shall be provided one full-time secretary.

(68) VOCATIONAL COUNSELORS

. . .

3. Where space is available, a vocational materials resource center shall be provided in each high school to facilitate access to students to explore materials and permit pupils to meet with various occupational representatives or employment interviewers.

. . .

(69) SCHOOL LIBRARIANS

1. School librarians shall be considered as department chairpersons for the purpose of taking part in department chairpersons meeting. In high schools and six year highs, this shall not require release time under Schedule B; however, in the middle schools, the librarian shall be released once per month to attend meetings held during the last period.

While librarians are in attendance at these meetings, the library shall be staffed by a certificated person who shall be paid the additional hourly substitute rate or the library will be closed for that hour.

2. Where the principal finds it feasible and necessary, up to one period a day may be allocated for the school librarian to train and work with students and lay aides.

3. Middle school librarians may work two (2) days between the end of the school year and the beginning of summer school at full pay if they so request.

(70) COORDINATING TEACHERS OF COOPERATIVE PROGRAMS

1. A fund of ten thousand dollars ($10,000) shall be established annually for coordinating teachers of cooperative programs to use for expenses while attending in-service activities to promote professional development. These funds shall be applied for by the teachers involved and shall be subject to the approval of the administration.

. . .

(71) COACHES

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3. PROCEDURES FOR ASSIGNMENT AND TERMINATION OF COACHES FOR INTERSCHOLASTIC ATHLETICS

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c. CHANGE FROM COACHING ASSIGNMENTS

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3) A principal may remove a teacher from his/her coaching assignment at any time for just cause with the approval of the Superintendent. The action of removal during the season by the principal shall be reviewable through the third step of the grievance procedure. Upon request by the coach, the principal shall notify the coach in writing of the reasons for his/her removal. A teacher reassigned from a school in which he/she is teaching shall be considered released from his/her coaching assignment unless the coach is notified otherwise.

. . .

(72) 5. Every effort shall be made to provide equitable scheduling of available facilities and available prime time between boys' and girls' athletics.

6. The formula used to determine the allocation of funds for boys' athletics shall be used to determine the funds for girls' athletics.

. . .

8. Every effort will be made to arrange equity between the girls' and boys' interscholastic athletics regarding awards recognition for tournament success and participation in athletic banquets.

. . .

(73) AUDIOVISUAL BUILDING DIRECTORS IN MIDDLE AND HIGH SCHOOLS

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2. Audiovisual directors shall not be assigned homerooms in the high schools. In the middle school, audiovisual directors will not be assigned homebase in accordance with Part IV, Section B.

. . .

(74) BAND DIRECTORS

. . .

3. Where musical instruments are not provided for in the regular school budget and funds are available in local funds, purchases can be made from the local school fund, if approved by the principal whose responsibility it is to follow regular procedures.

. . .

(75) INDUSTRIAL EDUCATION TEACHERS

1. Wherever possible within the present staffing formula, industrial education teachers shall not be assigned homerooms or other equivalent assignments during the homeroom period. The time so released shall be used for shop maintenance.

. . .

(76) SCHOOL SOCIAL WORKERS

1. M.S.W. social worker substitutes shall be provided beginning with the sixth day of absence of the regular worker. It is recognized that there may be occasions when a substitute may not be available; however, the administration shall make efforts to obtain and maintain an available list of substitute social workers to be used in the same manner as is made to obtain teacher substitutes.

. . .

(77) 3. The annual statistical report of school social workers shall be compiled by the central office.

. . .

(78) KINDERGARTEN TEACHERS

1. If the criteria of the Department of Public Instruction allows, parent-teacher conferences for kindergarten shall continue to be conducted during the A.M. session the day prior to the regular conference day and the P.M. session after the full conference day.

. . .

(79) ELEMENTARY SPECIALTY TEACHERS

1. Elementary specialty teachers in art, music, and physical education shall receive one half day of planning time at the beginning of the school year during the first week of student attendance which central office supervisors may use for meetings.

. . .

(80) APPENDIX "K" CHART

(Attached hereto as Appendix K.)

(81) SCHOOL CALENDAR

Particularly that portion thereof establishing the dates on which:

Parent conference dates are held.

(82) Dates on which reports cards shall be issued.

(83) PART II

. . .

E. BULLETIN BOARDS AND MAILBOXES

The MTEA shall be free to use teacher mailboxes for the distribution of its communications. Materials for posting on bulletin boards shall be submitted to the principal and then posted by the MTEA, and, provided they are professional in approach and do not deal with a personal attack or constitute a political endorsement or rejection of a candidate, no interference will be made with the posting. Such items should not occupy more than one-quarter of the board and be not more than 16" x 20" in size. If the principal feels that the above standards for posting on bulletin boards have been violated, he/she shall, within two (2) working days, ask the appropriate assistant superintendent for clarification. If the assistant superintendent feels that the

material is inappropriate, he/she shall arrange a conference with the representatives of the MTEA within three (3) working days. The material, if favorably ruled upon by the assistant superintendent, will be reposted. Persistent violation of the above procedure in any building may result in the revocation by the Superintendent of the use of the bulletin boards in that building.

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(84) APPENDIX "G"

SUPPLEMENTARY PROVISIONS FOR SPECIAL GROUPS

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COACHES

. . .

3. PROCEDURES FOR ASSIGNMENT AND TERMINATION OF COACHES FOR INTERSCHOLASTIC ATHLETICS

. . .

b. VACANCIES. In the event a head coaching vacancy exists:

1) Except as provided in (2) below, such vacancy shall be advertised in the Staff Bulletin. The principal shall give first consideration to the applications of teachers on his/her teaching staff.

2) A head coaching vacancy occurring for emergency reasons ten (10) days or less prior to the beginning of or at any time during the WIAA season shall be filled by the principal with a teacher from within the system for the remainder of the WIAA season. In such emergency cases; the principal shall give first consideration to teachers on his/her teaching staff.

. . .

(85) PART I

. . .

G. NEGOTIATIONS OF POSITION DESCRIPTIONS

During the term of this contract, the Board shall retain the right to establish or change position descriptions. Where new position descriptions or changes in existing position descriptions have a major effect on the wages, hours and conditions of employment of members of the bargaining unit, said changes or aspects of new descriptions dealing with wages, hours or working conditions shall be negotiated.

(86) PART V

. . .

G. REASSIGNMENT

Once assigned to a building, teachers will not be involuntarily reassigned, except in cases of reduction in enrollment, voluntary transfers, assignment of relatives, conduct or evaluation, as defined below:

1. REDUCTION IN ENROLLMENT. When a reduction in the number of teachers is necessary, qualified volunteers shall be first reassigned. Then reassignment shall be made on

the basis of years of service in the Milwaukee system with those teachers most recently appointed to the school system being reassigned first, except where departmental, necessary extra-curricular, kindergarten, primary, intermediate, or upper grade level needs prevail.

2. VOLUNTARY TRANSFERS. Applications from teachers seeking transfers shall be listed in terms of majors and minors or in terms of grades taught. In the interest of expediting assignments, reassignments are to be processed on the basis of applications on file by June 1 of each year in vacancies known up until July 1 of each year. Where schools are restaffed at midyear, reassignments will be processed on the basis of applications on file by December 15 of each year to vacancies known up until December 15.

Wherever two (2) or more teachers who have requested transfers are qualified to fill the open position, preference shall be given to the teacher or teachers with the greatest system-wide seniority, except as provided below. Once a transfer has been granted, the person may not exercise this seniority provision for three (3) years.

Exceptions to the above will be made in the following cases:

a. Transfers will be allowed from an individual school's staff, provided that no more than twenty-five precent (25%) of an individual school's staff need be allowed to leave the school in any one year through transfer.

b. Schools which have or are beginning special modes of instruction shall be listed and advertised separately. Applicants will be selected from among those interested and qualified for such assignment in order of seniority except for ten percent (10%) of the positions. Applications for special programs do not preclude a teacher from also filing a regular transfer request. This provision shall not apply to program improvement programs.

c. When opening a new school, department chairpersons and counselors will be identified from among those requesting transfer a semester in advance of the opening of the school. Department chairpersons will be identified from among teachers who had requested a transfer and who should have had sufficient seniority to transfer into the building if the entire school would have been opened a semester in advance.

. . .

J. ASSIGNMENT TO A PARTICULAR SCHOOL

1. Teachers shall be assigned to a particular building where a vacancy exists, as long as the teachers are qualified within their teaching certificates issued by the Department of Public Instruction or their major or minor field of certification and special skills and training needed. 1/ Where teachers have left an assignment, pursuant to a specific provision of this contract, they shall be reassigned in accordance with the following order of priorities.

1/ For example, a physical education teacher position in one particular school may require the services of a teacher with life guard training and water safety skills. Qualified applicants for this position must express interest in this vacancy by filing an application, have the basic DPI physical education certification for the secondary level, and must

either have acquired life guard training and water safety skills or will have acquired the above skills before actually beginning said assignment.

a. Teachers displaced from a particular building due to a reduction in enrollment in accordance with Part V, Section G(1), teachers requesting reassignment in accordance with Part V, Section G(3), teachers returning from a leave of absence, and teachers being reassigned in connection with the section on evaluation. Exceptions to this section may be made to provide meaningful assignments to those teachers being transferred as a result of evaluation.

b. Unassigned teachers as a result of premature curtailment of leave and unassigned teachers as a result of overhiring.

c. New teachers in the system who have not as yet taught in the Milwaukee Public Schools system.

2. Whenever there are two (2) or more qualified teachers to fill a vacancy in any one of the above categories, preference shall be given to the teacher or teachers with the greatest system-wide seniority. The MTEA recognizes that there may be an occasion where departmental, extracurricular, kindergarten, primary, intermediate, upper grade level or counseling needs cannot be met in a specific instance through the provisions of this section. In such instance, the administration will give the teacher, upon request, reasons for the departure from these provisions. If the teacher requests, such reasons shall be reduced to writing.

K. STAFFING OF SPECIALTY SCHOOLS

1. EXISTING TOTALLY SPECIALIZED BUILDINGS. In any school which has a program in a special mode of instruction such as but not limited to open education, fundamental education, continuous progress, multi-unit Individually Guided Education, Teacher Pupil Learning Center, gifted and talented, and creative arts, vacant positions will be filled from a list of qualified applicants.

A qualified applicant is a teacher who has expressed an interest in the vacancy by filing an application, has the basic DPI certification required, and who meets at least one of the following conditions:

a. Previous experience in the particular specialty.

b. Has taken, or completes before the beginning of the next semester, college courses in the specialty, or vocational-technical courses where applicable, or in-service training in the particular specialty. When the necessary college courses, vocational-technical courses or inservice training are not reasonably available to the teachers wishing to participate, the school administration will establish inservice programs that fulfill the training requirements.

For elementary specialities or modes of instruction, a qualified applicant is a teacher who has the applicable qualifications set forth above. For secondary specialties, the applicant must also have the applicable qualifications set forth in the paragraph above, but in particular instances may also be required to have specific training or a specific skill.

Teachers assigned to a specialty school during the 1976-77 school year are qualified for that specialty in terms of the above criteria. One inservice program

designed for that specialty and offered for the teachers in the specialty, may be required. Said programs shall not exceed sixty (60) hours over the three years of the contract, the dates of said programs to be negotiated with MTEA.

In any school which has a Montessori program, vacant positions will be filled from a list of qualified applicants.

A qualified applicant is a teacher who has expressed an interest in the vacancy by filing an application, has both the basic DPI and AMS or AMI certifications requried and is willing to participate in inservcie programs designed for teachers in the specialty, if such inservice is deemed to be necessary.

In any elementary school which is a second language proficiency school, vacant positions will be filled from a list of qualified applicants. A qualified applicant is a teacher who has expressed an interest in the vacancy by filing an application, has the basic DPI certification required for the grade level and subject, and can speak, read and write the school's second language.

For paragraph (1), assignments will be made in accordance with system wide seniority to vacancies known by July 1, or by the date on which the general assignment of students to schools occurs, whichever date comes later.

2. EXISTING SPECIALTY PROGRAMS WITHIN BUILDING. In any school which has specialized courses, programs or modes of instruction in addition to the regular program, vacancies shall be filled in the following order:

a. Qualified currently at the school.

b. Other qualified applicants.

For elementary specialties or modes of instruction, a qualified applicant is a teacher that has the applicable qualifications set forth in paragraph (1). For secondary specialities, the applicant must also have the applicable qualifications set forth in paragraph (1), but in particular instances may also be required to have specific training or a specific skill.

In any school which has a bilingual program, vacant positions requiring the second language will be filled from a list of qualified applicants. A qualified applicant is a teacher who has expressed an interest in the vacancy by filing an application, has the basic DPI certification required for the grade level and subject, and can speak, read and write the school's second language.

Assignment of qualified applicants to vacancies will be made first, from applicants within the school in the order of system wide seniority, and, secondly from other applicants on the basis of system-wide seniority to vacancies known by July 1, or by the date on which the general assignment of students to schools occurs, whichever date comes later.

3. NEW SPECIALTY SCHOOLS AND PROGRAMS. When a new specialty school or program is created, notice of the program and teacher qualification criteria will be publicized at the earliest possible opportunity. Teacher positions shall be filled in the following order:

a. From qualified applicants currently at the school in order of system-wide seniority.

b. From other qualified applicants in order of system-wide seniority.

For an elementary program or school, a qualified applicant is a teacher that has the applicable qualifications set forth above in paragraph (1). For secondary programs or schools, the applicant must also have the applicable qualifications set forth in paragraph (1), but in particular instances may also be required to have specific training or a specific skill. In any school which has a bilingual program, a qualified applicant for vacant positions requiring a second language will be the same as that set forth in paragraph (2). The cut-off date for the use of the seniority provision is the same as that described in paragraph (2).

In the special case of Rufus King College Preparatory School to be opened for the 1978-79 school year, teacher qualifications (as defined in (1) with the exception of inservice training) based upon curricular needs, will be used. In all other respects paragraph (3) applies.

4. STAFF COMPATABILITY WITH A SPECIALIZED PROGRAM. If a teacher feels that he/she is incompatible with the mode of instruction to which he/she is assigned, that teacher shall at the earliest opportunity inform the principal so that the principal can confer with the teacher. If the principal perceives that a teacher is incompatible with a particular mode of instruction, the principal shall observe and evaluate in accordance with Part IV, Section Q. If after the result of either of these actions, the teachers and the principal concur in the recommendation to transfer, the transfer will be initiated without reflecting upon the permanent evaluation file of the teacher. If the principal initiates the action and the teacher does not concur, the procedures incorporated in Part IV, Section Q, shall be followed. In either case, the provisions of Part V, Section J(1)(a) which provide meaningful assignments for those transferred as a result of evaluation shall apply.

Nothing in this paragraph should be interpreted as preventing the principal from filing a regular evaluation.

5. QUALIFICATIONS IN REDUCTION. In the event there is a reduction in the MPS system's teacher complement, the special qualification standard established by paragraph (1), (2) and (3) shall not affect the order in which teachers are laid off.

5. That the proposals of the MTEA, as worded, and as objected to by the Board, set forth in proposal (62), Appendix C. 9. 10. and 11. and proposals (70) and (71) of Finding of Fact 4, primarily relate to wages, hours and working conditions of "teachers" in the employ of the District, and not primarily to the formulation or management of educational policy.

6. That as to proposals (78), (81), (82) and (84) set forth in Finding of Fact 4, the Commission lacks an adequate record to determine the status of said proposals.

7. That aside from the proposals referenced in Findings of Facts 5 and 6, all other proposals, or of the MTEA, as worded, and as objected to by the Board, set forth in Finding of Fact 4, primarily relate to the formulation or management of educational policy and not primarily to wages, hours and working conditions of "teachers" in the employ of the District represented by the MTEA.

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

CONCLUSIONS OF LAW

1. That the proposals of the MTEA identified in Finding of Fact 5 which have been found by the Commission to primarily relate to the formulation or management of educational policy do constitute mandatory subjects of collective bargaining within the meaning of Sections 111.70(1)(d) and 111.70(3)(a)4 of the Municipal Employment Relations Act.

2. That the proposals of the MTEA identified in Finding of Fact 7 which have been found by the Commission to primarily relate to wages, hours and working conditions of "teachers" in the employ of the District are permissive subjects of collective bargaining within the meaning of Sections 111.70(1)(d) and 111.70(3)(a)4 of the Municipal Employment Relations Act.

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/

1. That the Milwaukee Board of School Directors has no duty to bargain collectively with the Milwaukee Teachers Education Association with respect to the latter's proposals determined herein to primarily relate to the formulation or management of educational policy.

2. That the Milwaukee Board of School Directors has the mandatory duty to bargain collectively with the Milwaukee Teachers Education Association with respect to the latter's proposals determined herein to primarily relate to wages, hours and working conditions of "teachers" in the employ of the Milwaukee Board of School Directors.

Given under our hands and seal at the City of Madison, Wisconsin this 28th day of February, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Gary L. Covelli, Chairman

_____
Morris Slavney, Commissioner

I dissent as to proposals (1), (7), (11), (14) and (42). I separately concur as to proposal (13), and fully concur as to the remaining proposals.

_____
Herman Torosian, Commissioner

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. (Continued on Page 34)

1/ (Continued)

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.

APPENDIX "K"

MILD/BORDERLINE MENTALLY RETARDED

	Early Education	Primary	Inter-mediate	Elementary Wide Range	Middle/ Junior	Senior	Secondary Wide Range
Self-contained Complete (Min. 5)	7	7	7	7	7	7	7
Self-contained Modified (Min. 7)	9	9	9	9	9	9	9
Self-contained Integrated (Min. 9)	12	12	12	12	12	12	12
Resource (Min. 15)	17	17	17	17	17	17	17
Itinerant (Min. 15)	N/A	20	20	20	20	20	20

MODERATE/SEVERE MENTALLY RETARDED

	Early Education	Primary	Inter-mediate	Elementary Wide Range	Middle/ Junior	Senior	Secondary Wide Range
Self-contained Complete (Min. 5)	7	7	7	7	7	7	7
Self-contained Modified (Min. 7)	9	9	9	9	9	9	9
Self-contained Integrated (Min. 9)	12	12	12	12	12	12	12

PHYSICAL HANDICAPPED

	Early Education	Primary	Inter-mediate	Elementary Wide Range	Middle/ Junior	Senior	Secondary Wide Range
Self-contained Complete (Min. 5)	7	7	9	7	10	10	10
Self-contained Modified (Min. 7)	9	9	11	9	12	12	12
Self-contained Integrated (Min. 9)	11	11	13	11	14	14	14

EMOTIONALLY DISTURBED

	Early Education	Primary	Inter-mediate	Elementary Wide Range	Middle/ Junior	Senior	Secondary Wide Range
Self-contained Complete (Min. 5)	7	7	7	7	7	7	7
Self-contained Modified (Min. 7)	8	8	8	8	8	8	8
Self-contained Integrated (Min. 9)	12	12	12	12	12	12	12
Resource (Min. 15)	17	17	17	17	17	17	17
Itinerant (Min. 15)	N/A	20	20	20	20	20	20

LEARNING DISABILITIES

	Early Education	Primary	Inter-mediate	Elementary Wide Range	Middle/ Junior	Senior	Secondary Wide Range
Self-contained Complete (Min. 5)	7	7	7	7	7	7	7
Self-contained Modified (Min. 7)	9	9	9	9	9	9	9
Self-contained Integrated (Min. 9)	12	12	12	12	12	12	12
Resource (Min. 15)	17	17	17	17	17	17	17
Itinerant (Min. 15)	N/A	20	20	20	20	20	20

VISION

	Early Education	Primary	Inter-mediate	Elementary Wide Range	Middle/ Junior	Senior	Secondary Wide Range
Self-contained Complete (Min. 5)	5	5	6	7	8	8	7
Self-contained Modified (Min. 7)	7	7	9	8	8	8	10
Self-contained Integrated (Min. 9)	9	9	9	9	9	9	10
Resource (Min. 15)	—	15	15	15	15	15	15
Itinerant (Min. 15)	15	15	15	15	15	15	15

HEARING

	Early Education	Primary	Inter-mediate	Elementary Wide Range	Middle/ Junior	Senior	Secondary Wide Range
Self-contained Complete (Min. 5)	5	7	10	7	7	5	—
Self-contained Modified (Min. 7)	7	9	10	7	7	7	10
Self-contained Integrated (Min. 9)	9	9	10	9	9	9	13
Resource (Min. 15)	—	15	15	15	15	15	15
Itinerant (Min. 15)	—	15	15	15	15	15	—

SPEECH/LANGUAGE

	Early Education	Primary	Inter-mediate	Elementary Wide Range	Middle/ Junior	Senior	Secondary Wide Range
Self-contained Complete (Min. 5)	12	—	—	—	—	—	—
Self-contained Integrated (Min. 9)	15	15	—	—	—	—	—
Resource (Min. 15)	—	30	30	—	30	30	—
Itinerant (Min. 15)	—	30	30	—	30	30	—

SCHOOL-AGE PREGNANT GIRLS AND MOTHERS

	Elementary Wide Range	Middle/ Junior	Senior	Secondary Wide Range
Self-contained Modified (Min. 7)	10	15	15	15
Self-contained Integrated (Min. 9)	12	15	18	18

EARLY CHILDHOOD

	Early Education
Self-contained Complete (Min. 5)	9
Self-contained Modified (Min. 7)	12
Self-contained Integrated (Min. 9)	12
Resource (Min. 15)	18

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

During the course of their initial meeting leading to the negotiation of a collective bargaining agreement to succeed the agreement which was in effect from 1980-1982, MTEA proposed that the new agreement contain a significant number of provisions which were included in the 1980-1982 agreement. The Board contends that some eighty-six provisions, in whole or in part, relate to permissive subjects of bargaining principally on the claim that the proposals primarily relate to the formulation or management of educational policy rather than primarily to wages, hours and working conditions of "regular teachers" represented by the MTEA.

Either in arguments at the hearing, or in its brief, MTEA has taken a specific position with respect to some of the proposals, contending that they are mandatory subjects of bargaining since they primarily relate to wages, hours and working conditions of the employes represented by them. With regard to the majority of the provisions, the MTEA stated no specific position other than to a request that the Commission issue a ruling declaring the proposal mandatory or permissive. Thus, when discussing the various proposals in this memorandum, proposal by proposal, where the discussion does not reflect the MTEA's position, it is because the MTEA took no specific position with regard thereto.

We emphasize that our conclusions herein result from the provisions as written. MTEA has suggested that where we have determined that a provision relates to a permissive subject of bargaining, the Commission should suggest language so as to convert the provision into one that is mandatory. Such a request cannot be honored for various reasons. Many of the provisions are incapable of such conversion and others may concern subjects about which the Commission lacks certain knowledge. Furthermore, after more than a decade of collective bargaining the parties and their counsel have sufficient sophistication and expertise to modify proposals so that they become mandatory subjects of bargaining. As to proposals (78), (81), (82) and (84), the Commission has concluded that it cannot resolve their status without additional facts. Thus should the parties be unable to resolve their dispute over these proposals, further hearing will be scheduled.

When resolving the issues herein the Commission must determine whether the provision involved primarily relates to wages, hours, and conditions of employment or to the formulation or management of public or educational policy. Where the former relationship predominates, the provision is mandatory; where the latter relationship predominates, the provision is permissive. Beloit Education Association v. WERC, 73 Wis. 2d 43 (1976); Racine Unified School District v. WERC, 81 Wis. 2d 89 (1977).

THE DISPUTED PROVISIONS

(1) Part I - Section F. 1.

The disputed contractual provision contains the following language:

> This contract shall, wherever the same may be applicable, including (sic) existing rules of the Board at the time the agreement is entered into.

The District asserts that the Board rules contain provisions on matters which are primarily related to educational and public policy. As such matters are permissive subjects of bargaining, the District contends that a proposal which requires that such permissive rules be deemed incorporated in the collective bargaining agreement is not a mandatory subject of bargaining. The District

maintains that under the rationale in the Commission's City of Wauwatosa (15917) 11/77, such a proposal must be limited to the inclusion of Board rules which primarily relate to wages, hours and conditions of employment. The District further argues that the MTEA's claim that the word "applicable" refers to the parties' contract is not clear from a reasonable reading of the phrase. Given this ambiguity, the District asserts that the Commission should reject the MTEA's interpretation of the disputed language. The Union counters by arguing that this contractual provision only applies to existing Board rules which impact upon or are "applicable" to wages, hours and conditions of employment which are contained in the bargaining agreement. Therefore, the Union asserts that the clause in question should be found to be a mandatory subject of bargaining.

The provision requires the incorporation of the Board's rules into the collective bargaining agreement. It is admitted that many of the rules do not primarily relate to wages, hours and conditions of employment, but to educational policy. The term "wherever the same may be applicable" appearing in the first sentence of the provision is quite nebulous. Does it mean "applicable to the terms in the agreement?" Does it mean "applicable primarily to wages, hours and working conditions of the employes covered by the agreement?" Does it mean "applicable to the impact of the rules on wages, hours and working conditions?" It is apparent that the provision, as written, is susceptible to many interpretations, some of which would encompass non-mandatory subjects of bargaining, and therefore we deem the provision to relate to a permissive subject of bargaining. Such a conclusion is consistent with the rationale immediately following regarding proposal (2).

Commissioner Torosian - Dissent

I believe the language in question, may reasonably be interpreted as requiring inclusion of rules in the contract only where those rules relate to or are "applicable" to provisions of the contract. Thus, while it is clear that certain portions of the Board rules relate to permissive subjects of bargaining, the language in question only requires the inclusion of said rules in the contract if they relate to existing contractual clauses. Inasmuch as the contract may include permissive subjects of bargaining, it is clear that permissive Board rules may well be applicable to provisions of the contract. As one of the purposes of a collective bargaining agreement is to allow the union to meet its statutory obligation to represent employes by informing bargaining unit members as to their rights, responsibilities and benefits, and as inclusion of rules which relate to or are "applicable" to provisions of a bargaining agreement will enhance the contract's ability to fully inform unit members, I would conclude that the clause in question is primarily related to wages, hours and conditions of employment and thus is a mandatory subject of bargaining. In reaching this conclusion, it is noted that the City of Wauwatosa decision cited by the Board related to a proposal which would require that the employer bargain over work rules or regulations which may not have been mandatory subjects of bargaining. The proposal at issue herein, which does not require such bargaining but merely requires the listing of rules which the Board has chosen to adopt which relate to contractual provisions, is distinguishable from the proposal confronted by the Commission in City of Wauwatosa, supra.

(2) Part I - Section F. 2.

The disputed contractual language states:

> Where there is any new new rule or Board policy or amendment to any rule or Board policy which will have a major effect on wages, hours, and working conditions of the members of the bargaining unit and the contract is silent, no such rule or Board policy shall be effective until after negotiations with the MTEA.

This provision provides, that, with respect to a rule or Board policy which has a "major effect" on wages, hours, or conditions of employment, the MTEA may, after a reasonable period of negotiations, proceed to mediation and ultimately to advisory fact finding if no agreement (on the effect) is reached. The provision also provides that in emergency situations the administration may temporarily implement a rule or policy prior to mediation. The Board argues that as the disputed contractual language is not limited to those Board rules or policies which primarily relate to wages, hours and conditions of employment, the language

requires bargaining prior to implementation of rules or policies which are permissive subjects of bargaining. The Board asserts that in both Sewerage Commission of the City of Milwaukee, (17302) 9/79, herein Sewerage II, and City of Appleton, (17034) 5/80, the Commission concluded that a municipal employer can implement a permissive rule or policy without first bargaining either over the rule or policy itself or the impact of that rule or policy upon wages, hours and conditions of employment. Citing these decisions, the Board argues that it cannot be required to bargain prior to implementation as required by the proposal in question. It further argues that it need not establish that an emergency exists before it can implement a decision regarding a permissive subject of bargaining. The Board argues that the distinction drawn by MTEA between the right to establish a rule or policy and the right to implement a rule or policy is not a meaningful one because it effectively precludes the Board from taking actions which primarily relate to public or educational policy.

The MTEA initially argues that a proposal requiring an employer to bargain regarding the impact of a decision upon employes' wages, hours and conditions of employment is a mandatory subject of bargaining. The MTEA contends that while the language in question refers to a "major effect" on wages, hours and working conditions, the term "effect" has the same meaning as impact, and thus the proposal must reasonably be interpreted in that fashion. The MTEA asserts that the Board must negotiate the impact or effect of a permissive decision before that decision, rule or policy is implemented. It asks the Commission to note that the proposal does not require that agreement be reached prior to implementation and further allows for implementation under certain circumstances, even prior to the conclusion of the contractual negotiations procedure. MTEA argues that the slight delay in implementation, which the clause in question might require, cannot be seen as any substantial interference with the Board's right to establish educational policy. It further notes that as a practical matter, the MTEA and the Board generally negotiate impact prior to implementation and that the contractual provision at issue requires nothing more than that. The MTEA further asserts that it has not abused its right to negotiate under the language in question and that the potential for abuse should not become the basis for a conclusion that the language is permissive. The MTEA urges that as long as management ultimately has the ability to implement permissive rules or policies, the intent of the statute establishing the duty to bargain is not violated.

Initially we should state that we agree with MTEA's interpretation of the term "effect" and find it to be synonymous with impact. Thus, the Commission is confronted with a clause which requires that the Board negotiate over the impact on wages, hours and conditions of employment which a permissive rule or policy may have prior to the Board's implementation of said rule or policy. In Sewerage II, supra, we concluded that a union may not insist that negotiations commence before the employer implements a permissive decision, and we noted therein that an opposite conclusion would result in the imposition of an unwarranted restriction upon an employer's right to unilaterally implement a change over which it is not required to bargain. We have reaffirmed the continuing validity of this conclusion in City of Appleton, supra. As the proposal in issue requires that the Board negotiate on the impact prior to implementation, we must conclude that the proposal is a permissive subject of bargaining. We find the distinction offered by the MTEA between the right to decide and the right to implement to be a meaningless one. If the scope of the proposal were limited to a requirement that the Board bargain over any new rule or policy, or an amendment to any rule or policy, which primarily relates to wages, hours and conditions of employment, the proposal would be found to be mandatory. We would also note our statement in Sewerage II, supra, that the union has the right to obtain copies of permissive decisions, rules or policies taken or enacted by the employer, in order that it may bargain on the impact thereof. We believe that this right serves to protect the union from unknowingly waiving its right to bargain over the impact, while at the same time leaving the employer free to implement the decision policy or rule. We would also note that if a union is informed of a permissive decision prior to its implementation, the union's statutory right to bargain over impact "at reasonable times" under Sec. 111.70(1)(d) Stats. may require that bargaining over impact commence prior to implementation.

(3) Part I - Section F. 3.c.

The disputed portions of this provision are similar to those just discussed except that the clause refers to administrative procedure rather than rules or policies. The parties have made identical arguments with respect to this

provision, the same analysis of those arguments applies, and the language involves a permissive subject of bargaining.

(4) Part I - Section F. 4.

The District argues that the section in issue requires that it negotiate with the MTEA over permissive subjects of bargaining which may impact on wages, hours and conditions of employment. It notes that the clause requires that such permissive matters be submitted to the MTEA in order that negotiations may take place, and that the clause further provides that if negotiations are not completed prior to the Board's consideration of the permissive matter, the Board may approve a policy or rule in principle, subject to further negotiations. The Board thus argues that the proposal improperly interjects the MTEA into the Board's decision making process, as well as requiring bargaining once a permissive decision is approved. The Board asserts that the clause is clearly permissive because it has no duty to bargain over permissive subjects. The Board also argues that even if one were to assume that the scope of the clause is limited to bargaining over the impact of a permissive decision, the clause would still be permissive in that it requires bargaining prior to implementation Sewerage II, supra; City of Appleton, supra.

The MTEA asserts that the provision is a mandatory subject of bargaining because it provides an efficient procedure for addressing the impact of Board decisions while the decision is being discussed and made. It contends that the provision does not prevent the Board from making policy choices and argues that the bargaining requirements are not unduly burdensome.

The language of the provision reveals that it, in essence, requires that the Board bargain with the MTEA over permissive management decisions and, while not precluding the Board from ultimately making a decision, it also requires that the negotiations process be exhausted prior to the implementation of the permissive subject. As the Board has no duty to bargain with the MTEA with respect to a decision on a permissive matter, and as the Board may not be required to delay implementation of decisions until it has bargained the impact of such decisions on wages, hours and conditions of employment, the clause is clearly permissive.

(5) Part I - Section F. 5.

The disputed language provides that when the Board intends to implement a program in September of a school year, it shall where "possible" reserve consideration of the program until the previous April. The Board alleges that this language places an unwarranted restriction on its ability to plan and implement its educational programs. It contends that it must have the ability to discuss and resolve various aspects of its decision prior to the preceding April if such programs are to be well planned and successful. It asserts that the phrase "where possible" does nothing to protect the Board's right to implement necessary program decisions where substantial lead time may be required. The Union counters by arguing that the clause is essentially a calendar for the negotiation of wages, hours and conditions of employment, which are related to programs which will be implemented during the term of the agreement. It contends that such a calendar for negotiations is a mandatory subject of bargaining and thus that the clause in question should not be found to be permissive.

We agree with MTEA that a calendar for negotiations is a mandatory subject of bargaining. To meet bargaining obligations and rights, parties can insist upon a schedule for negotiating a new contract, exchanging proposals, etc. However, the clause in question is more than a timetable for negotiations. It represents an infringement upon the Board's right and need to have sufficient flexibility in the timing of its program decisions to insure their proper and full implementation. The provision, in effect, limits the Board's right to consider the aspect of any program impacting on wages, hours and working conditions, until some five months prior to the implementation of the program. The potential impact may very well be such as to require considerable study for more than five months in order for the Board to make its determination as to the implementation of the program. Further, "where possible" has a very expansive definition and could include virtually all possible circumstances in which the Board may find itself. We thus conclude that the clause with its limits on "consideration," is a permissive subject of bargaining. However, we do wish to again indicate that a proposal by the MTEA which would seek to require that the Board provide it with notice of program decisions which will impact on wages, hours and conditions of employment and which

would require the Board to meet at reasonable times to bargain impact would be found to be a mandatory subject of bargaining. Under such a proposal, MTEA could engage in bargaining over the impact at a time prior to implementation of the program where, as here, the program will be implemented in the future.

(6) Part I - Section J. 1. 2. 3. 4. 5. and 6.

This multiple provision provides that certain denominated contractual provisions will continue to remain in the agreement, and if, during the term thereof, the Board proposes any changes in said provisions, the changes shall be treated as mandatory subjects of bargaining under Section 111.70(4)(cm), MERA. The language also provides that should the mediation/arbitration procedure set forth in said statutory provision expire during the term of the agreement, the provisions contained within the mediation/arbitration statute will be utilized by the parties to resolve any impasse which may be reached. The Board asserts that a provision which requires that permissive subjects of bargaining be contained in a contract and treated as if mandatory is clearly a permissive clause.

As the Board has no duty to bargain with the MTEA over permissive subjects of bargaining, it clearly has no duty to bargain over a contract provision which requires that certain permissive contractual provisions be retained in a future agreement. As the provision in question requires just that, it is found to be a permissive subject of bargaining.

(7) Part II - Section A. 1.

The recognition clause set forth in this Section defines the scope of the bargaining unit represented by the MTEA. The clause also states that there is "a general recognition of the vital importance of involving the ability, the experience, and the judgment of the members of the teaching, supervisory, and administrative staffs in the development of basic education policies and long range educational goals."

The Board, citing the Commission's decision in Sauk County, (18565) 3/81, (Aff'd Dane Co. Cir. Ct. 6/82), asserts that it has no duty to include the recognition clause in a contract because it lacks a statement to the effect that it is only to be interpreted as describing the bargaining representative and the bargaining unit covered by the terms of the agreement. The Board also contends that to the extent that the clause contains a statement regarding the development of basic education policies and educational goals, it is a permissive subject of bargaining since it contains a statement regarding educational policy over which the Board need not bargain. MTEA, while acknowledging the Sauk County decision, asserts that said decision was based upon the peculiar facts which confronted the Commission in that matter including the employer's lack of experience with the collective bargaining representative. The Union asserts that it has a wealth of experience with the Board and their collective bargaining relationship, and that there is no basis in that experience to justify a concern that the recognition clause might be interpreted by an arbitrator for any purpose other than identification of the collective bargaining representative and bargaining unit. Given this distinction between the experience of the parties in Sauk County and here, MTEA argues that the Sauk County decision ought not govern. It also contends that the Board's concern with respect to a statement of educational policy is not a basis for finding the clause to be a permissive subject of bargaining. It claims that the clause merely recognizes the uncontested fact that teachers, as professionals, are interested in the education of the students and have abilities which are of necessity recognized in the development of educational policy.

In response to the parties' arguments regarding the impact of Sauk County, supra, the Commission concludes that the absence in the recognition clause of a statement that the clause shall not be interpreted for purposes other than identifying the bargaining representative and bargaining unit requires the conclusion that the Board need not include same in the parties' contract. The experience factor cited by MTEA is irrelevant to a determination as to whether, as a matter of law, specific language is mandatory or permissive. Obviously, if MTEA wishes to place language in the clause which would meet that requirement and which would parallel the assurances which MTEA has stated in its brief, the District's objection would be overcome. Turning to the District's second objection regarding the recognition clause, the Commission notes that the disputed language states a recognition by the parties of the "vital importance" of involving unit members in

the development of educational policy and goals. As MTEA is the bargaining representative of said employes, the clause in question could be interpreted as requiring MTEA's involvement in the development of such policies and goals. As MTEA has no right to bargain over those subjects, this portion of the clause is also deemed to be a permissive subject of bargaining.

Commissioner Torosian - Dissent

While I concur with the majority's discussion of the Board's second objection to the clause, I dissent from the majority's conclusion first enunciated in Sauk County, ". . . that the absence in the recognition clause of a statement that the clause shall not be interpreted for purposes other than identifying the bargaining representative and bargaining unit requires the conclusion that the clause is permissive."

I agree with my colleagues' memorandum discussion of the recognition clause in the Sauk County case in which I did not participate. However, I disagree with their final decision that a sentence like the above must be added to a standard recognition clause in order to have a recognition clause included in a collective bargaining agreement. The majority, in that case, responded to an arguement by the employer that the union might make certain unit and work jurisdiction claims under the standard recognition clause in question and that an arbitrator might interpret said clause accordingly. Thus, the employer argued, said clause should not be found to be a mandatory subject of bargaining.

In my opinion a standard recognition clause, as present herein in pertinent part, should be reasonably interpreted on its face and not interpreted on the basis of what one of the parties might argue it to mean or what an arbitrator might decide it to mean. Here the recognition clause on its face only describes the bargaining representative and the bargaining unit covered by the terms of the agreement. On said basis, I would find that the employer cannot refuse to include the recognition clause portion of Part II A, i.e., all language except for last two sentences, in the collective bargaining agreement.

(8) Part II - Section D.

The disputed contractual language (the portion underlined) grants MTEA the right to place bargaining unit members on study committees, which could involve matters other than those primarily relating to wages, hours and conditions of employment. The Board alleges that the disputed language is a permissive subject of bargaining, because it could involve MTEA members in Board determinations regarding matters of educational policy.

When the Board chooses to establish study committees for the purpose of studying matters which do not primarily relate to wages, hours and conditions of employment, it has no obligation to include the MTEA in that study. Inasmuch as such participation would invade the Board's right to make educational policy decisions, the language in issue is found to be a permissive subject of bargaining.

(9) Part IV - Section B. 2.e. (Teacher Day))

This clause describes the activities which learning disability and behavioral disability teachers can be required to engage in during a specific portion of the pupil contact day. The provision also requires that any change in the pupil day will be negotiated with MTEA. The Board alleges that the above-mentioned requirements are permissive since they allocate teacher time to enumerated specific responsibilities and mandate bargaining over a change in the pupil day. The Board contends that both of these requirements are directly related to questions of educational policy and service levels, and have been found to be permissive subjects of bargaining by the Commission in Oak Creek-Franklin Joint City School District No. 1, (11827-8) 9/74 (Aff'd Dane Co. Cir. Ct. 11/75).

In Oak Creek, supra, the Commission concluded that the allocation of the teacher's workday, as well as the determination as to the length of the pupil day, constituted permissive subjects of bargaining, inasmuch as they directly related to basic educational policy decisions by the District. Thus, the MTEA's proposal which specifies how a portion of the teacher workday will be spent and which further mandates bargaining over change in the pupil day relates to a permissive subject of bargaining.

(10) Part IV - Section B. 5.b., c., d., e., and f. (Teacher Day)

The Board objects to this contractual language only to the extent that it requires the Board to supply, or to attempt to supply, substitute teachers to replace absent teachers. It argues that the decision as to whether it should supply substitute personnel primarily relates to educational policy, in that the Board may decide that in some instances a substitute is not needed or would be detrimental to the needs of particular students. While recognizing that the language does not absolutely require that substitute teachers be provided, the Board notes that it does mandate that "every effort" be made to supply a substitute. Thus, the language does in fact preclude the Board from initially deciding that no substitute is needed. The Board cites Oak Creek, supra, Blackhawk VTAE, (16640) 9/80; aff'd Rock Co. Cir. Ct. 8/81; aff'd in part Ct. of Appeals, Dist. IV, 10/82 and Madison Metropolitan School District (16598) 1/79, in support of its position. MTEA argues that as the language only requires that the Board make an effort to utilize substitutes, it is not permissive. It notes that the heart of the contractual provision is its requirement that teachers who serve as substitutes be compensated for the extra work. It asserts that the Board's effort to utilize grievances to support its position is unpersuasive, and contends that the Board has an obligation to make an effort to assign a substitute under its own policies, and that therefore the proposal is a mandatory one.

Inasmuch as the clause in question requires that the Board make every effort to provide a substitute, the Commission must conclude that it is permissive, since it precludes the District from making an educational policy decision as to whether to utilize a substitute teacher. If the language were modified to eliminate this objectionable requirement, then the District's concerns could be met.

(11) Part IV - Section B. 6.a. and b. (Teacher Day)

This contractual provision specifies that teachers assigned lunchroom duty will be excused from teaching a class. The District objects to the underlined language, asserting that it primarily relates to a management decision regarding the manner in which a teacher's work time is allocated. In support of this position, the District cites the Circuit Court of Dane County, which held that "the allocation of the time and energy of its teachers is a consequence of basic educational policy decisions on the part of the District." Oak Creek, supra.

As the proposal in question represents an attempt by the MTEA to bargain over the allocation of duties during the teacher's workday, the proposal must be found to be permissive. Of the course the impact of such an assigment is mandatory.

Commissioner Torosian - Dissent

Whether the lunch room proposal is mandatory or permissive may, in my opinion, depend on the determination of whether lunch room duty falls within or outside a teacher's normal work duties. Since there is no record in this regard, I would withhold a determination on this issue.

(12) Part IV - Section B. 10. (Teacher Day)

The current collective bargaining agreement provides as follows:

> In developing secondary teachers' programs, principals shall attempt, where possible, to limit the number of preparations to three (3). However, it is recognized that certain subject areas make the attainment of this more difficult.

The Commission held in Oak Creek, supra, that a proposal limited "the number of preparations that may be required of a teacher concerns matters of educational policy, and therefore, is permissive, and not a mandatory subject of bargaining. Such decision directly articulates the District's determination of how quality education may be attained and how to pursue same." The District cites this language and asserts that the provision is clearly permissive.

The language of this proposal may be distinguished from the proposal in Oak Creek, supra, at least in part, in that the latter absolutely limited the number of preparation periods to two per day, while the former merely sets forth a goal of three preparations. The proposal specifically recognizes that the goal may not

be obtained and simply calls for an effort by the school principals "where possible" to respect the goal. Nevertheless, the MTEA's proposal does address a subject primarily related to educational policy and could reasonably be interpreted as interfering with the District's decision as to allocation of the teacher work day. Thus, it is a permissive proposal.

(13) Part B - Section B. 11. (Teacher Day)

The current collective bargaining agreement contains language addressing the uses of preparation time. The provision in issue specifies that utilization of the preparation period shall normally be determined by the teacher. The agreement recognizes that preparation time may be utilized for conferences, either between the teacher and his/her supervisor or between the teacher and the parent. It specifies however that "attempts will be made to avoid a pattern of scheduling parent conferences during regular instructional time."

The District objects to this provision as it addresses the allocation of a teacher's time during a work day and is therefore a matter of educational policy. Oak Creek, supra.

In much the same manner as the preceding provision, it generally defines goals and recognizes that they may not be met. As it does address an area which is primarily related to the formulation of educational policy it is found to be permissive.

Commissioner Torosian - Concurrence

I concur with my colleagues that the instant proposal is too ambiguous to find mandatory.

The language on its face does not require that preparation periods be provided. I think that if the MTEA's intent is to protect infringement upon the preparation time provided by the Board then unambiguous language providing same would constitute a mandatory subject of bargaining.

(14) Part IV - Section B. 1.a. b. and e. (High Schools)

The current collective bargaining agreement limits the number of teaching periods, home room periods and preparation periods that may be assigned to a high school teacher in a given week. It further limits the maximum number of extra-curricular assignments and allots certain maximum teacher equivalency times to various extra-curriculars. The provision demands that a teacher assigned to lunchroom duties shall have such duties in lieu of a class, and that additional supervision required will be carried out by school aides. Finally, the agreement provides that "to the extent possible" first semester teachers will not be assigned to study halls, lunchroom duty, hall supervision, or attendance counseling but rather will be involved in in-service activities.

The Board renews its arguments made previously, based on Oak Creek, supra, that the allocation of a teacher's time is a matter primarily relating to educational policy and not of wages, hours and conditions of employment. The Board further notes that it is a management decision as to whether in-service will be provided. Milwaukee Board of School Directors, (17504-17508) 12/79. Thus the Board urges the Commission to find the current agreement permissive insofar as it attempts to allocate the high school teacher's work time.

The provisions of the collective bargaining agreement which purport to allocate teacher's time and set maximums on teacher equivalencies that may be devoted to extra-curriculars are clearly permissive. Of course the impact thereof is bargainable. While the use of the qualifier--"to the extent possible"--reduces the degree of intrusion presented by the provision which restricts first semester teachers to in-service activities, the provision is permissive as it requires that efforts be made even if no in-service is desired.

Commissioner Torosian - Concurrence and Dissent

I concur with the majority except for that portion that relates to paragraph e. For the same reason as stated in issue eleven, I would withhold a determination on this paragraph.

(15) Part IV - Section B. 1.f. (High Schools)

The provision in issue provides that high schools, which are on a seven period day, shall continue on a seven period day unless the principal and the staff agree that they wish to go to an eight period day, or a modular flexible schedule. The provision further provides that high schools currently operating on an eight period day will revert to a seven period day when they are no longer operating under certificate of overload or experiencing difficulty in programing students into industrial education classes. The ultimate authority to make a change to an eight period day is vested in the School Board, and a written request must be made including documentation of the advantages to be gained by the eight period schedule. Such a request can only be forwarded on agreement of the principal and the staff.

The Board asserts that former Commission Examiner Fleischli has clearly held that the type of student class schedule and number of periods in a school day are matters primarily related to educational policy (Racine Unified School District No. 1, (13696-C, 13876-B) 4/78. Accordingly, the District asks that the Commission designate this provision as a permissive subject of bargaining.

The Commission concludes that the decision as to how many periods the student day should be divided into is akin to the decision as to how long a class period should be. Both decisions primarily relate to educational policy and thus this proposal, which mandates retention of a seven period day under certain circumstances, is permissive.

(16) Part IV - Section B. 1. 2. 3. 4. 5. (Middle Schools)

The above identified provisions (1) specify the student teacher contact time during the regular work day in the middle and elementary schools, (2) address the allocation of work time and teacher equivalencies in the middle schools, and (3) provide for the number of school aides assigned to the middle school and the staffing levels of lunch room supervision.

The District alleges that as these provisions relate exclusively to student contact time and the allocation of teacher time during the regular work day and as these decisions are matters primarily related to educational policy, the objectionable provisions are permissive.

As previously discussed, determinations as to student contact time and the allocation of duties during the teacher day are permissive subjects of bargaining Oak Creek, supra. Furthermore, those portions of subparas. 3 and 4, which address staffing levels and specific activities are also permissive as they primarily relate to the educational policy decisions regarding which student activities will be present and how they should be staffed.

(17 & 18)
Part IV - Section C. 1. through 13.

This contractual section sets forth certain formulas for determining staffing levels and class sizes in the elementary, middle, and high schools. It also defines the ranges in which class sizes may be established for certain specialty programs. In addition, certain portions of this section require that the Board assign an aide to two certain types of specialty classes. The Board contends that because of these characteristics the section is a permissive subject of bargaining. It cites Beloit, supra, for the proposition that decisions as to class size are permissive and not mandatory subjects of bargaining. The Board also cites Oak Creek, supra and Blackhawk VTAE, supra, for the proposition that the determination as to whether to provide, and how to assign, additional non-teaching personnel is a management decision which need not be bargained.

As established by the court in Beloit, supra, class size is a permissive subject of bargaining, and as portions of this contractual provision establish class sizes, the proposal is a permissive subject of bargaining. In addition, we agree with the District that it need not bargain over the decision to supply non-teaching personnel. Finally, we conclude, as we have discussed previously, that the Board need not bargain over staffing levels as this decision is one which primarily relates to educational policy. Therefore, we conclude that the provision, as objected to, is a permissive subject of bargaining.

(19) Part IV - Section C. 14.

The District alleges that this contractual provision is permissive in that it relates exclusively to the establishment of new educational programs. The permissive nature of such proposals, the Board asserts, is clearly established by the holdings in Racine Unified School District No. 1, supra, and Oak Creek, supra.

The general subject matter of this proposal (experimental programming) is, without question, a permissive subject of bargaining as it relates primarily to the formulation and implementation of educational policy. This specific proposal has several components, each of which will be discussed in turn.

First, is the mandate contained in the second sentence that the District "will consider" proposals by the MTEA. This appears to give priority to MTEA proposals for experimental programing, where no such priority is apparently granted to proposals from other sources. Although the language requires only consideration, rather than adoption, it is open to the interpretation that some objective evidence must be offered to prove that consideration was given to a particular proposal. In this way it operates to constrain the District's decision making process. While it may be sound public policy to give serious consideration to the proposals of a professional organization, the decision whether to grant such consideration within the collective bargaining context need not be bargained.

The third sentence purports to allow the introduction of experimental and innovative programs within schools during the term of the agreement. Again, this does not appear to constrain the Board in introducing any experimental program. There is implicit, however, in a contractual grant of permission for such program the notion that, absent the agreement in the contract, such programs could not be introduced. Thus, while the actual language of the agreement in this respect does not interfere with management's right to introduce such programs, the mere presence of such a clause in the agreement does intrude on the District's authority to set and implement educational policy.

The fourth and fifth sentences require that MTEA be involved in the planning of such programs (where they involve members of the bargaining unit) and establish a minimum one month lead time for negotiations prior to implementation. Absent language restricting these provisions to those aspects of proposed programs which relate primarily to wages, hours and working conditions, these two sentences are permissive as they mandate bargaining over educational policy decisions.

The sixth sentence requires that the MTEA give prior approval to any program involving greater pupil-teacher ratios, greater expenditures of teacher time or changes in the rate of compensation. Of the three listed impacts, the final two are mandatory subjects of bargaining and the demand for negotiation is clearly appropriate. The restriction on pupil-teacher ratios, however, represents an attempt to bargain over a permissive subject. While the impact of greater pupil-teacher ratios on wages, hours and working conditions must be mandatorily bargained, this broad prohibition on changes in the ratios themselves intrudes on management's right to set the level of services.

The next sentence limits participation in any experimental program to volunteers "unless the experimental program complies with the other terms of the contract and does not make major changes in the working conditions." While the wages, hours and conditions of employment of staff members assigned to experimental programs are clearly mandatory subjects of bargaining, one can envision a situation this sentence could prevent the District from introducing an experimental program because no faculty members would voluntarily participate. This potential requires a finding that the language is permissive.

The next sentence requires that proposals received from any source will be subject to the provisions of this section. Again, the MTEA appears to be overreaching, in that the requirement is imposed on programs relating primarily to educational policy and not primarily to wages, hours and working conditions.

Finally, Subsection 14 requires that experimental or innovative programs be periodically assessed and evaluated, and that such evaluations be considered prior to expansion, continuation or modification of the programs. The Board must

consult with the MTEA prior to determining whether such programs will be continued, modified or expanded. These requirements clearly infringe on the right to determine whether, and in what form, such programs shall exist. Thus, this requirement is a permissive subject of bargaining.

(20) Part IV - Section C. 15.

The disputed contract language is an introductory statement regarding elementary multiunit schools. It includes a statement that "implementation and operation of a unitized program requires staffing in excess of that presently provided in the traditional program." The Board asserts that as decisions as to staffing levels are permissive subjects of bargaining which may be unilaterally determined by management, this contractual statement is a permissive subject of bargaining.

As the above quoted contractual language mandates a certain staffing level for a unitized elementary school, and as staffing levels constitute permissive subjects of bargaining, the Commission concludes that the objected to language is permissive.

(21) Part IV - Section 15.a.

> Pupil-teacher ratio for the school level organization of the unit shall be consistent with class size provisions in the contract. Specialty teachers shall not be included in computing pupil-teacher ratio.

The District asserts that the language in said provision relates to pupil-teacher ratio which has been held to be a permissive subject of bargaining. Beloit, supra. As the court in Beloit, supra concluded that decisions as to class size or pupil-teacher ratio primarily relate to basic educational policy determinations, and as the disputed language requires that a pupil-teacher ratio in the elementary multi-unit schools be maintained at a specific level established by other contractual provisions, the clause is a permissive subject of bargaining over which the Board need not bargain. The proposal can be made mandatory if it is altered to reflect the impact of a class size or pupil-teacher ratio upon the wages, hours and conditions of employment of the employes who the MTEA represents.

(22) Part IV - Section C. 15.b.

> At least two (2) school aides, two (2) paraprofessionals or one of each shall be provided for each unit.

The Board asserts that this provision requires the hiring of additional non-teaching personnel as well as setting the staffing level for those non-teaching employes and that, as these decisions are solely management's, the clause is a permissive subject of bargaining. Oak Creek, supra.

As the decision regarding use of non-teaching support personnel primarily relates to a determine as to basic educational policy and how those policies shall be implemented, the MTEA's proposal which mandates use of non-teaching support staff as well as the level at which such non-teaching positions will be staffed, is a permissive subject of bargaining. Oak Creek, supra.

(23) Part IV - Section C. 15.c.

> Each unit shall have a unit leader, whether on an individual or rotated basis, who teaches children at least fifty percent (50%) of the normal school day and such non-teaching time shall be in addition to the pupil-teacher class size ratio.

The Board asserts that as the contractual language establishes a unit leader position, as well as the manner in which the unit leader's time will be allocated, the provision is permissive. Oak Creek, supra. We agree. The Board need not bargain over either decision as they primarily relate to educational policy and the organizational structure which the Board believes is most appropriate to the fulfillment of the educational policy goals. Oak Creek, supra, Milwaukee Board of School Directors, supra.

(24) Part IV - Section C. 15.d.

> Teachers in each unit shall be provided two (2) hours of released time per week for the purpose of planning during the school day. Such planning time is in addition to the special help and preparation time provided for in the contract. Specialty teachers may be used to provide a part or all of the released time.

The Board asserts that as this provision specifies allocation of a teacher's time during the workday, it is permissive. Oak Creek, supra. We agree. The Board need not bargain over the allocation of the teacher workday.

(25) Part IV - Section C. 15.e.

> Each multi-unit school shall be provided at least one well-supplied instructional resource center to serve all children.

The Board contends that this proposal relates to the Board's ability to manage and control its own facilities and its prerogative to determine the extensiveness of its educational facilities. In Oak Creek, supra, we concluded that determinations as to the extensiveness of an educational facility or program were educational policy decisions which need not be bargained. We reaffirmed this conclusion in Blackhawk VTAE, supra. Thus, this proposal, which mandates the establishment of an instructional resource center in a school,must be found to be a permissive subject of bargaining. However, as we found in Oak Creek, supra, MTEA has the right to bargain with respect to the impact of the lack of such a facility upon wages, hours and conditions of employment.

(26) Part IV - Section C. 15.f.

This contractual provision requires that the Board make available in-service courses to teachers interested in being assigned to, or actually assigned to, a multi-unit school for the first time. The Board objects to the language on the basis that the decision as to whether in-service will be provided is an educational policy choice and therefore a permissive subject of bargaining. Milwaukee Board of School Directors, supra. As this clause does mandate the availability of in-service courses, we find, as we did in Milwaukee, supra, that it is a permissive proposal. We would refer the parties to our discussion of the in-service proposal in Milwaukee, supra for guidance as to how the proposal could be altered to render it a mandatory subject of bargaining.

(27) Part IV - Section C. 15.g.

The disputed contractual language is as follows:

> Units shall be composed from no more than what traditionally is referred to as three (3) grade levels and shall be organized in a manner which should be less than one hundred fifty (150) pupils, except in unusual circumstances.

The District argues that as this provision relates to class size, it is a matter primarily related to educational policy and as such is permissive. While the Commission notes that this proposal speaks in terms of "units," as opposed to classes, we believe that the proposal, to the extent that it sets forth an educational policy choice as to the organizational structure of a school, is a permissive subject of bargaining.

(28) Part IV - Section C. 15.h.

The disputed contractual language is as follows:

> Facilities shall be provided for teachers in each unit to meet.

The Board asserts that the proposal's requirement that it provide facilities for teachers to meet, relates to the Board's ability to manage and control its physical facilities and thus is a permissive subject of bargaining. Blackhawk VTAE, supra. The provision as worded does not characterize the purpose of the

teacher meetings and therefore might encompasse meetings not required by the Board, such as meetings to discuss internal MTEA matters. Therefore, we deem the provision to be permissive. If the provision were worded to apply only to meetings required by the administration, the provision would be mandatory.

(29) Part IV - Section C. 15.i.

The disputed language is as follows:

> A committee composed of an equal number of principals and central office staff and teachers selected by the MTEA who teach in multi-unit schools shall study the present record keeping forms used in the multi-unit schools to recommend changes, when needed.

The Board asserts that the proposal is entirely unrelated to wages, hours and conditions of employment and thus is permissive. While it could be argued that the form used for a specific record could impact on hours or working conditions in that it might require a greater or lesser amount of time to prepare, the decision as to whether to maintain records and, if so, the form thereof and what information should be present on those records is one which relates to educational policy. Thus, while the MTEA may be able to bargain the impact on a change in record keeping forms, it cannot insist that it bargain over the decision to alter existing record keeping forms. Therefore the proposal in question, which mandates the establishment of a committee to study the question of changes in forms, is found to be a permissive subject of bargaining.

(30) Part IV - Section C. 16.

The Board alleges that this proposal is objectionable because it relates exclusively to staffing formulas and class size, which are matters of educational policy and need not be bargained. We agree and thus find the proposal to be permissive.

(31) Part IV - Section D. 3.

The disputed language is as follows:

> 3. The Board shall provide child care matrons for TR and Orthopedically Handicapped classes, where needed.

The Board asserts that this clause involves a determination of whether to hire and how to assign additional non-teaching personnel and as such is a permissive subject of bargaining. Oak Creek, supra, Blackhawk VTAE, supra. We find the Board's objection to be well-founded and thus the proposal is found to be a permissive subject of bargaining.

(32) Part IV - Section D. 8.

The disputed language provides for the following:

> When it becomes necessary to release the regular teacher or diagnostic teacher to meet with multi-disciplinary team during the regular school day, provision shall be made to relieve such teacher from classroom responsibilities in accordance with Part IV, Section B(5).

The Board alleges that this proposal requires that it provide substitute teachers and thus invades the power of the Board to determine the need for and the qualifications of replacement personnel. The Board's concerns with respect to this proposal parallel those expressed with respect to Part IV, Section B(5) of the contract.

We have previously concluded that Part IV, Section B(5) of the parties' contract requires that the Board make an effort to secure a substitute teacher and that this interferes with the Board's educational policy choice to determine whether a substitute is desirable. Thus, we must conclude that this clause which also, by reference to Part IV, Section B(5), contains the requirement that the Board make an effort to secure a substitute, is for the same reason a permissive subject of bargaining.

(33) Part IV - Section D. 11.

The disputed provision is as follows:

> If an exceptional education teacher and his/her immediate supervisor agree that behavioral intervention techniques should be used in his/her classroom, an amount will be appropriated from the program budget of that exceptional education program.

The Board contends that this clause clearly involves educational policy decisions regarding teaching methods by which educational goals can best be achieved. Beloit, supra, Oak Creek, supra.

It is somewhat difficult for the Commission to assess the status of this clause inasmuch as the definition of behavioral intervention techniques is not present in the record. However, to the extent that the proposal mandates agreement between a unit member and a supervisory employe over an educational policy decision as to the use of certain educational techniques for the achievment of educational goals, we believe that it interferes with the Board's right to unilaterally make such policy decisions. Thus, we conclude that the clause is a permissive subject of bargaining.

(34) Part IV - Section D. 14.

The following language is in dispute:

> Itinerant exceptional educational teachers and English as a second language teachers have the same preparation time as provided in the contract for all teachers.

The Board alleges that to the extent that this language specifies the number of preparation periods, it is a permissive subject of bargaining. Oak Creek, supra. We agree and reaffirm the permissive nature of decisions regarding the allocation of the teacher workday.

(35) Part IV - Section E. 1.

This contract provision contains the following language:

> Board funds, presently available in elementary schools through location budgets, may be used to purchase basal reading programs in those schools desiring such a program.

The District asserts that this clause relates to the establishment and maintenance of a special reading program. It argues that the question of whether certain educational programs will be pursued, what money will be spent on such programs and what schools will implement a program, are management decisions which need not be bargained. We concur with the Board's analysis of this clause and find it to be permissive.

(36) Part IV - Section F. 1. 3. and 4.

These contractual provisions require that the Board hire additional staff in certain areas and budget a specified amount for that purpose. The Board objects to this contractual language asserting that the determination as to whether personnel shall be hired is a management function and further that to the extent the provision relates to staffing formulas, it should also be found to be permissive. We agree with the Board and find that the MTEA has no right to bargain over the number of teachers hired in specific areas, or the amount which the Board may choose to budget for that purpose. Such decisions primarily relate to management determinations as to how educational policy goals can best be implemented.

(37) Part IV - Section F. 2.

The disputed contractual language is as follows:

> When possible, exceptional education classes shall be scheduled for art, music and physical education classes, where specialists conduct a regular program in the school.

The Board asserts that this contractual provision relates to the decision to establish and maintain special educational programs in art, music and physical education for exceptional educational classes. It asserts that decisions as to curriculum and educational programs offered to students are matters of educational policy which need not be bargained. We agree that the clause is permissive for the reasons cited by the Board. Oak Creek, supra, Milwaukee Board of School Directors, supra.

(38) Part IV - Section F. 5.

The disputed language is as follows:

> When a specialty teacher is absent, a substitute will be dispatched if a qualified substitute is available.

The District asserts that this clause requires that it hire additional personnel and invades the power of the Board to determine the qualifications of replacement personnel. We agree that the clause is permissive because it precludes the Board from determining that there may be circumstances in which qualified substitutes are available, but it chooses not to replace the specialty teacher. In this regard, our analysis is the same as that previously made with respect to the provision in Part IV, B (5) of the contract.

(39) Part IV - Section G. 1.

This proposal sets forth the duties and responsibilities of the principal of each school. The Board asserts that this provision relates to its decision as to how it will use its administrators and how it should structure its internal organization. As such, it argues that the proposal is permissive. The Board has the right to determine who in its organizational structure will perform specific duties and responsibilities, Milwaukee Board of School Directors, supra, and since the bargaining representative has no right to bargain over the wages, hours and conditions of employment of non-bargaining unit personnel, City of Sheboygan, supra, this clause is permissive.

(40) Part IV - Section G. 2. and 8.

The disputed contractual language is as follows:

> 2. ADMINISTRATIVE REINFORCEMENT. When the regular resources of the school are inadequate to accomplish this responsibility, principals are expected to call the central office for additional assistance, or if the nature of the problem so indicates, call upon the Milwaukee Police Department. Where additional personnel are assigned, they shall assist with administrative duties, such as handling of any suspensions and/or reassignments.
>
> 8. In schools having persistent problems with unauthorized people in the halls, assigned lay personnel shall be used.

The Board contends that these provisions relate to management's decision as to whether additional personnel shall be hired and the manner in which they shall be assigned. Oak Creek, supra. It further asserts that the decision as to who within management's organizational structure will provide the type of assistance referred to and whether employes should be utilized to provide such assistance primarily relates to management functions and need not be bargained. Milwaukee Board of School Directors, supra.

As to Section G. 2., the Board has no duty to bargain over who it will utilize to perform specific responsibilities which it deems appropriate for principals to perform. Thus, as we have held with respect to the preceding proposal, this clause is permissive. As to Section G. 8., we have previously concluded that where physical safety of employes in a bargaining unit may be in jeopardy, the union has a right to bargain over that subject, since such a matter primarily affects working conditions. Thus to the extent that G. 8. focuses on safety, it could be argued that it should be found to be mandatory. However, the proposal, as worded, is not limited to situations involving physical safety of

employes and, as the Board's objection notes, the clause also specifies the type of personnel which shall be utilized by the Board. These flaws mandate that the proposal be found to be permissive, as the proposal must be limited to safety concerns and as the Board has the right to determine which employes in its organization shall provide assistance. Milwaukee Board of School Directors, supra.

(41 & 42)
Part IV, Section H. 1. 2. 3. 4. 5. 6. 7. 9. and 10.

The Board contends that the disputed language relates primarily to the procedure to be followed in handling student discipline and is not limited to situations involving threats to a teacher's physical safety. It cites Beloit, supra, for the proposition that the disciplinary procedure to be followed when dealing with student misbehavior which does not involve threats to physical safety to teachers is a permissive subject of bargaining. It also cites the Court of Appeals decision in Blackhawk VTAE, supra, as reaffirming that proposition. The Board also contends that subsections 4. and 5. are objectionable in that they relate to the management function of hiring additional personnel. Oak Creek, supra. As to Section H. 3., the Board contends that it should be found to be permissive to the extent that it sets forth a procedure for handling problem students which is unrelated to conditions of employment. It argues that while a proposal such as that in Beloit, supra, which requires exclusion of a student from a classroom is a mandatory subject of bargaining, a proposal such as the MTEA's which requires suspension from school altogether is an educational policy decision entrusted to the Board.

The MTEA contends that Section H. 3. sets forth a disciplinary procedure applicable after a student has physically assaulted a teacher. It therefore believes that the language falls within the mandatory scope of disciplinary language established by the Commission and affirmed by the court in Beloit, supra. The MTEA notes that in Beloit, supra, the proposal dealt with threats to physical safety, whereas the instant proposal deals with the aftermath of an actual assault on a teacher. It therefore believes that the distinction between suspension from a classroom and suspension from school set forth by the Board is not a meaningful one when determining the status of this clause. MTEA states that as a teacher may be assaulted by a student who is not in his or her classroom, it may be necessary to remove a student from the vicinity of a teacher physically assaulted in order to ensure the teacher's safety and to remove a cause of anxiety until a parent conference is held.

The Commission is satisfied that as to Sections H. 1., 2., 4., 5., 6., 7., 9. and 10., the language therein is not limited to a disciplinary procedure which is relevant to threats to the physical safety of teachers and thus, under Beloit, supra, the objected to language must be found to be permissive. However as to Section H. 3., we conclude that as the impact of the clause is applicable to instances in which there has been a physical assault on a teacher, that portion of the clause which mandates suspension, would be found to be a mandatory subject of bargaining. This conclusion assumes that the procedures regarding student suspension incorporated in the provision are not in conflict with the statutory requirements involving student suspension and/or explusion under Sec. 120.13(1), Stats. We do not find that distinction set forth by the Board is a meaningful one for the purposes of determining whether the clause is a mandatory subject of bargaining. Rather, it is clear that where physical safety is threatened or has already been compromised the union has the right to bargain with respect to action to be taken by the agents of the Board to remove the condition or person responsible for the threat to the physical safety of or the actual injury to or assault on the employe or employes. However, to the extent said provision goes beyond dealing with the physical safety of the teacher by dictating the appropriate remedial procedure for the student and naming of particular school personnel to be present at certain conferences, we find it permissive. In Beloit, supra, the Dane County Circuit Court reversed the Commission's finding that a proposal which provided for referral of problem students who threatened teacher safety to specialized personnel was mandatory. The Court found said proposal to constitute a matter of basic educational policy and therefore a permissive subject of bargaining. The identification of a "field counselor" similarly interferes with the District's right to determine which personnel should be responsible for these matters. Such matters relate primarily to the District's management function as noted in Milwaukee Board of School Directors, supra.

Commissioner Torosian - Dissent

I disagree with the majority's conclusion in the last paragraph above. In the instant case, as opposed to the referral of problem students to specialized personnel addressed in the Beloit case, the language does not refer students to specialized personnel, but provides that in situations where ". . . the assault has resulted in bodily injury, a field counselor shall be present at the re-instatement conference . . .". Assuming that it is the field counselor's job responsibility to deal with problem students who assault teachers, I find that the field counselor's attendance at the re-instatement conference after an assault and injury to a teacher primarily relates to the teacher's working conditions and not primarily to educational policy. The language places no commitments on field counselors except for his/her attendance at the re-instatement conference.

(43) Part IV - Section I.

This contractual provision requires the establishment of special classes in or programs to deal with socially maladjusted pupils. The Board objects to this clause asserting that it relates exclusively to the establishment and maintenance of special classes and programs at a specified cost to the Board. Citing Milwaukee Board of School Directors, supra, the Board contends that the clause is permissive as it clearly relates to educational policy choices. A review of this contractual proposal demonstrates that it relates primarily to the educational policy choices which confront the Board when dealing with pupils who have special problems or needs. As such, it must be found to be permissive.

(44) Part IV - Section J.

This contractual language sets forth a procedure which shall be followed when conditions in any school evidence a "potential interference with the educational process." The Board contends that as the application of this contractual provision is not limited to interference with the educational process that threatens the physical safety of teachers, the clause is overbroad and a permissive subject of bargaining. Beloit, supra, Blackhawk VTAE, supra.

MTEA submits that the disputed language is a mandatory subject of bargaining. This assertion is premised upon the MTEA's belief that the bargaining history of this section, as well as its specific application, demonstrates its relationship to the working conditions of teachers and their physical safety. It contends that it has only invoked the investigatory procedures specified in Section J. where the cumulative conditions in the school are so bad for employes that a thorough investigation is necessary. It also asserts that this section allows it to investigate and grieve poor working conditions which may also constitute violations of the collective bargaining agreement. Thus, it asserts that the clause is a legitimate exercise of the MTEA's responsibility to represent teachers and to oversee the administration of the contract.

When reviewing this contractual language, it is clear that it may well encompass interference with the educational process which is generated by threats to the physical safety of teachers. It is also clear that the clause may apply to MTEA's legitimate concerns as to compliance with respect to contractual provisions. However, the clause, as written, is so broad as to include virtually all matters which may relate to educational policy, but which do not necessarily relate to contractual provisions or to threats to physical safety of teachers. While it is true, as the MTEA asserts, that this provision is merely an investigatory one and does not mandate specific disposition of a MTEA complaint by the Board, it is clear that the procedure intrudes into educational policy choices which the District has made. We would note that the language also requires that funds be made available to pay for the investigatory procedure, and that the clause further limits the Board's ability to determine how it may choose to respond to any complaints by the MTEA. Given the foregoing, the Commission concludes that the clause, as written, is a permissive subject of bargaining.

(45) Part IV - Section L. 3.

The Board objects to the portion of L. 3. which states that all newly hired elementary classroom teachers shall be required to have six college hours in reading. The Board contends that this provision relates to criteria for hiring employes in a situation where selection is exclusively from non-members of the

teacher bargaining unit. It contends that determination as to such criteria have been previously held to be management decisions over which the bargaining representative has no right to bargain. Sewerage Commission of the City of Milwaukee, (17025) 5/79, herein Sewerage I; Madison Metropolitan School District, supra.

As we have previously determined in the cases cited by the District that the criteria for a municipal employer's initial hiring decisions are permissive subjects of bargaining where the selection is exclusively from among non-members of the bargaining unit, and as this clause establishes such a criteria, we must agree with the District that it is permissive.

(46) Part IV - Section M. 1. 2. 5a. 5b. and 7.

The District asserts that these provisions relate to the policy choice of whether to provide new teachers with an orientation program, as well as the manner in which such a program would be conducted. It asserts that the number of days, if any, necessary for orientation, as well as the management individuals made responsible for the orientation, are both management prerogatives which need not be bargained.

In Milwaukee Board of School Directors, supra, we concluded that the decision as to whether to provide inservice training, as well as the decision as the type of programs to be held and the participants therein, are not subjects of mandatory bargaining. Similarly as this clause mandates certain orientation and interferes with the management decision as to how orientation, if any, should be carried out, the clause is permissive. Should the Board determine to have orientation days, the number of such days are mandatory subjects of bargaining. Beloit, supra. We would also note that matters regarding the orientation of new teachers as to evaluative procedures and instruments are mandatory subjects of bargaining. Beloit, supra.

(47) Part IV - Section O.

The disputed contractual language is as follows:

> Representatives of the school administration shall meet with representatives of the MTEA, upon request, to hear recommendations for curricular change at all levels. Proposed changes, as developed by teacher committees, shall be transmitted in writing by the MTEA to the administration. Meetings will be held as necessary. After a reasonable time, the administration will respond in writing to proposed changes.

The Board contends that this language establishes a process by which a teacher committee proposes changes in curriculum. It contends that the decision as to whether certain educational programs and courses should be pursued is a matter of educational policy which need not be bargained. Oak Creek, supra.

As the determination of what curriculum should be pursued in a school district concerns itself with basic educational policy, we conclude, as we did in Oak Creek, supra, that this proposal which mandates teacher participation in curriculum changes is a permissive subject of bargaining.

(48) Part IV - Section Q. 1. and 4.

The Board objects to these contractual provisions to the extent that they

that it have the right to utilize one or more evaluators. As to the Board's objection regarding the color and content of the evaluation card, MTEA contends that the testimony of the Board's witness indicates that the administrator's evaluation is completely unfettered by the form which provides space for the evaluator to include whatever he/she wishes. As it believes that the form utilized for an evaluation is part of a "procedure" which affects job security within the meaning of Beloit, supra, the MTEA contends that the Board's objections to Subsection Q. 4. should be dismissed.

In Beloit, supra, the Commission concluded, and the courts ultimately affirmed, that the employer's decision as to the selection of evaluators is an inherently managerial prerogative over which the union has no right to bargain. We believe that the issue of how many evaluators will be utilized by the Board is encompassed in its permissive right to make a selection as to the evaluators. Thus, just as MTEA cannot dictate to the Board who will be utilized to evaluate teachers, MTEA has no enforceable right to bargain as to the number of evaluators the Board will utilize for that purpose. As to the issue of forms, the Commission concludes that just as the MTEA cannot bargain over what the evaluator places on the evaluation form, the MTEA cannot bargain over the format or color of the evaluation report. We recognize the MTEA's right to bargain over the procedures to be followed during an evaluation. However we see no relationship between job security and the color of an evalution card or its physical form. Thus the provision is permissive.

(49) Part IV - Section R. 1b. and 2.

The Board contends that these clauses, which provide that specified administrators will assume certain responsibilities and be empowered with authority to make certain decisions, interfere with the Board's choice as to the assignment of particular management personnel in situations involving employe misconduct. The Board contends that the provisions therefore relate to management functions and are permissive.

In Milwaukee Board of School Directors, supra, we concluded that where a provision would "restrict the Board in making determinations as to who in its organizational structure would provide such assistance and whether it should utilize employes in supplying such assistance" that proposal would be a permissive subject of bargaining. This provision in issue constitutes an interference with the Board's right to make determinations as to which management employe or employes will be involved in the procedure regarding allegations of employe misconduct. Thus, the objected to language is found to be permissive.

(50) Part IV - Section T. 1.

The Board contends that this contractual language requires it to hire additional staff, a determination solely within management's discretion. The Board also asserts that the provision relates to a bargaining unit of employes for whom the MTEA is not authorized to bargain.

The language in issue requires the employment of aides for additional hours and as the District has no duty to bargain over such matters, Oak Creek, supra, the Commission concludes that the language is permissive.

(51) Part IV - Section T. 2.

The objectionable contract language is as follows:

> Provision concerning school aide formula found at Part IV, Section T(1) are included in this contract. Should the board during the term of the contract desire to change the policy as stated herein, not the last two sentences, in a manner that has a major impact on wages, hours or working conditions, it shall first notify the MTEA concerning its intention to change the policy. The MTEA shall have an opportunity to introduce proposals related to the impact of such changes. Negotiations pursuant to such proposals will be subject to the provision of 111.70(4)(cm).
>
> If during the term of the contract, the administration will recommend changing the policy with respect to the school aide

formula, to the board, the MTEA will be notified of the recommendation at least ten (10) working days prior to committee consideration and the MTEA will be provided a copy of the recommendation.

The District asserts that this contractual language initially makes reference to Section T. 1., which is previously discussed permissive contract language regarding utilization of aides and paraprofessionals. The Board contends that the remainder of Section T. 2. requires that it bargain with the MTEA regarding the impact of a change in the permissive aide language prior to implementing a permissive decision which would alter the aide formula. The Board contends that under Commission's decision in Sewerage II, supra, and City of Appleton, supra, the Commission has concluded that such a requirement is an unwarranted restriction on the employer's right to implement a decision where it has no duty to bargain over the decision itself. The Board also contends that it need not supply the bargaining representative with a written copy of a contemplated change in the proposal prior to implementation. Thus, it asserts that said requirement as contained in the objectionable contract language is permissive.

The MTEA contends that a proposal, which requires bargaining over the impact of management decisions, is mandatory so long as agreement over the impact subject is not required prior to implementation. The MTEA believes that if an employer's decision can be implemented without timely negotiation over the impact of said decision on wages, hours and working conditions, labor relations would be adversely affected. It contends that provisions which would allow the union to negotiate prior to implementation and, in certain cases to negotiate the major impact of Board decisions to agreement, prior to implementation should be found to be mandatory subjects of bargaining. As the MTEA asserts that this contract section primarily relates to negotiation of the impact of policy changes on wages, hours and working conditions of union employes, it contends that the section relates to a a mandatory subject of bargaining. Beloit, supra.

The clause in question requires the Board to notify the MTEA concerning its intention to change the aide formula where such a change has a major impact on wages, hours or working conditions. The clause also requires that the Board give the MTEA an opportunity to introduce proposals related to the impact of such changes. In Sewerage II, supra, we noted that the union had no right to insist that it receive notice of contemplated changes in permissive subjects of bargaining. However, the essence of the Board's objection herein goes to the MTEA's position that the disputed language requires that bargaining over the impact on wages, hours and conditions of employment would have to be completed before a change in a permissive policy could be implemented. We hereby reaffirm our prior determinations in Sewerage I and II, supra, that such a requirement is a permissive subject of bargaining inasmuch as it is an undue restriction upon management's ability to implement policy decisions. We would again note, however, as we have earlier in this decision, that there may well be circumstances in which the union will have the right under the Board's general statutory duty to bargain, to insist that negotiations over the impact commence prior to implementation where there is a time gap between the Board's policy decision and the scheduled implementation of said policy. Under those circumstances, the employer is obligated to bargain, where requested, before implementation where it would not restrict the implementation of educational policy. With regard to the MTEA's argument that timely negotiations over the impact of said management decision must take place prior to implementation, we note that this was rejected by the court in City of Brookfield v. WERC, 87 Wis. 2d 819 (1979). In that case, the Court rejected the Union's argument that a layoff decision cannot be implemented until the impact of said decision has been negotiated. The problem with the language herein is that it requires negotiations prior to implementation in all cases.

(52) Part IV - Section V. 2.

The disputed contractual provision is as follows:

> HOMEROOM COMMITTEE. The results of the Homeroom Study Committee shall be provided to the principal and staff of each secondary school. If the principal, after involving his/her staff, wishes to propose the elimination, modification, or replacement of the present homeroom, such proposals shall be submitted to the Superintendent for approval with a copy to

> the MTEA. Before implementation, any proposal change which would affect wages, hours, or conditions of employment would be submitted to the MTEA for negotiations.

The Board contends that the language in question is permissive in that it initially interferes with the management's choice as to the means by which it obtains input into making decisions. The Board contends that the court in Oak Creek, supra, held that the "selection of the means by which one obtains input to be used in making decisions, is part and parcel of the power to make decisions." As the Board believes that it has no duty to bargain over any elimination, modification or replacement of the present homeroom, and as it believes that it has no obligation to establish a homeroom study committee, the Board asserts that those portions of the contract language which mandate such a committee, and dictate involvement of teachers and the MTEA in any proposed changes, render the clause permissive. The Board also contends that the language as written also mandates bargaining over the proposed change is a permissive policy and that said portion of the clause is clearly permissive as well. Even if the contract language is read as requiring bargaining over the impact of the proposed change on wages, hours and conditions of employment, the Board believes that the clause is still permissive because it mandates negotiations prior to implementation of the change.

The MTEA maintains that the language in question does not mandate the existence of a homeroom committee, rather, that the language only requires that if management forms a committee, the committee's recommendations shall be circulated to enable the MTEA to represent teachers in the negotiation of the impact of any proposed change upon wages, hours and working conditions. As the Board is obligated to bargain over the impact and as the clause in question does not mandate that an agreement exist over the impact prior to implementation, the MTEA asserts that the provision is mandatory.

The Commission is satisfied that the contractual language does represent an interference in the Board's decision making process as to permissive policy changes and that said interference renders the clause permissive. As to the parties' argument over the implementation issue, the Commission notes that the language explicitly requires that the Board bargain with the MTEA over a permissive policy change which would affect wages, hours or conditions of employment. Thus, it is the policy itself which must be bargained under this clause, and as the Board has no duty to bargain over permissive subjects such as the question of what type of homeroom should exist, this portion of the clause is also permissive. Even if one were to assume that the MTEA's version of the clauses' proper interpretation is accurate, the clause would be found permissive because it prohibits implementation prior to negotiation over the impact. We would again note that it is this absolute prohibition which is fatal inasmuch as there may be circumstances where the MTEA could insist that the Board meet at reasonable times to bargain over impact where implementation of a permissive decision has not occurred.

(53) Part IV - Section V. 4.

The disputed contractual language is as follows:

> VOLUNTEER PROGRAMS. Any new volunteer programs and the significant expansion of present volunteer programs shall be subject to negotiations with the MTEA before they may be implemented in the Milwaukee Public Schools.

The Board contends that as the volunteer programs referred to in the contractual language are not limited to programs which might impact on wages, hours and conditions of employment, the clause as written must be found to be permissive in that, as the MTEA has itself admitted, volunteer programs could include subjects which in no way relate to duties or responsibilities of bargaining unit members. The Board also argues that the language, as written, would require bargaining over the program decision itself prior to implementation and that this requirement renders the clause permissive. Even if the clause were interpreted to refer to bargaining impact prior to implementation, the Board asserts that the language is permissive in that it cannot be so restricted. MTEA asserts that the contractual provision provides a way to monitor the Board's use of volunteers to insure that they do not perform bargaining unit work. It contends that provisions to protect work historically performed by unit employes have been previously found by the Commission to be mandatory subjects of

bargaining. City of Oconomowoc, (18724) 6/81; Oak Creek, supra.; City of Menomonie, (15180-A) 4/78; Walworth County, (15429-A, 15430-A) 12/78. MTEA also submits that the clause only requires bargaining over the impact of the employer decision to use volunteers. It contends that a proposal requiring bargaining before implementation, which does not also require agreement, is a mandatory subject of bargaining. Sewerage I, supra.

The plain meaning of the contractual language requires negotiation over new volunteer programs, or the significant expansion of present volunteer programs, prior to implementation. The language is also not restricted to volunteer programs which may involve the performance of bargaining unit work by volunteers. Thus, the clause, as written, mandates bargaining over the decision to establish volunteer programs where those programs are primarily related to educational policy choices as opposed to wages, hours and conditions of employment. Given this inextricable mixture of permissive and mandatory elements, the clause must be found to be permissive. City of Wauwatosa, (15917) 11/77.

(54) Part IV - Section V. 5.

The disputed contractual language is as follows:

> INTERN PROGRAM. The Board and the MTEA agree with the policy of an intern program that meets the needs in areas where specially qualified teachers are needed. The program shall not be expanded to other areas and shall be limited up to twenty-five (25) first and second semester interns. The administration and the MTEA agree to meet annually to analyze the program.

The Board contends that the establishment of an intern program is a permissive subject of bargaining because it primarily concerns itself with a basic educational policy decision concerning the affect upon the quality of education provided by the use of such personnel. Oak Creek, supra. The Board asserts that as the clause in question is not directed to the issue of whether interns will be used to replace or substitute for teachers in the performance of bargaining unit duties, the language is not mandatory under Oak Creek, supra. MTEA submits that the language is mandatory, inasmuch as it attempts to monitor use of interns to insure that that they are not being used to supplant bargaining unit employes in duties normally performed by unit employes. It contends that an effort to seek protection regarding use of practice teachers, interns and paraprofessionals is a mandatory subject of bargaining under Oak Creek, supra.

In Oak Creek, supra, the Commission concluded that an employer had a mandatory duty to bargain with respect to the utilization of intern teachers for duties normally performed by bargaining unit employes. If the language in said provision was limited in its scope to bargaining that protection, it would be found to be mandatory. However, the clause as written is not limited to addressing this legitimate concern of the MTEA and thus it is found to be a permissive subject of bargaining under our rationale in Oak Creek, supra.

(55) Part IV - Section X. 4.a.

The disputed provision states the following:

> When homeroom is scheduled before first period, at least one physical education teacher shall be released from a homeroom assignment to prepare the facilities for the day's program.

(56) Part IV - Section X. 4.b.

The disputed language is as follows:

> Students with medical excuses shall be excused from physical education classes and shall be sent to study halls where seats are available.

The Board contends that this clause primarily relates to a management determination as to student scheduling and the level of services it will offer students. The Commission finds this argument to be persuasive and concludes that the Board's judgment as to how students with medical excuses should best be handled is a matter which primarily relates to educational policy and not primarily to working conditions of the teachers.

(57) Part IV - Section X. 3.

The disputed contractual language is as follows:

> SPEECH, MUSIC AND ART SPECIALISTS, GUIDANCE COUNSELORS ROOMS. When room is available, the aforementioned will be programmed into regular classrooms or suitable rooms designed for smaller groups. If rooms other than regular classrooms are used, possible inadequacy of the rooms should be made known to the principal, the Superintendent, and the Board of School Directors. Where repairs are needed, they shall be made within budgetary limitations of the repair budget.

The Board asserts that this contractual provision primarily relates to the management of its facilities and to educational policy decisions which it may choose to implement in a particular fashion within said facilities to make educational programs as effective as possible. It contends that the instant contractual language gives certain types of teachers a contractual right to demand available classroom space which is "suitable." This right may interfere with the Board's determination that use of a classroom, even though available, is not an appropriate manner in which to implement curriculum decision. The Board also contends that the question of what type of room is "suitable" is not a subject over which it need bargain with the MTEA. The Board objects to that portion of the contractual provision which it believes requires that repairs be made if needed and if money is available in the budget. It contends that even where the principal and the Board's repair division believe repairs to be needed and even where the Board within its substantial overall budget could be deemed to have money available, the Board must be able to set its priorities in the manner in which its budget will be expended. As the contractual clause severely restricts the Board's ability to determine that money which is available for minor repairs is more needed for other purposes, the Board contends that it is permissive in that it relates directly and exclusively to its right to manage and control its physical facilities.

The MTEA contends that the clause is mandatory, claiming it primarily relates to the working conditions of teachers. It contends that providing of rooms under the section is not absolute, but is conditioned upon the availability of space. If no space is available, it need not be provided under the contract. MTEA argues that in Blackhawk VTAE, supra, the Commission noted that a contractual provision calling for a teachers lounge or restroom would be a mandatory subject of bargaining, and that surely the provision for classrooms for teachers has as much relationship to wages, hours and working conditions, as a provision calling for restrooms. As the facilities in question are completely within the control of the Board, MTEA also cites the Commission's decision in Sheboygan County Handicapped Children's Education Board, (16843) 2/79, as support for its position. MTEA fails to see how allowing a teacher to have a classroom which is available impinges unduly on management control of the school system. As to the Board's second objection, MTEA alleges that the section in question does mandate repairs and permits the Board to determine whether repairs will be made. Where the budget cannot accomodate repairs, none will be made. MTEA argues that the Board determines budgetary allocations and the schedule for building repair. In summary it claims that, given the total deference to the Board's authority and the primary relationship of this provision to teacher's working conditions, the clause as written should be found to be a mandatory subject of bargaining.

Initially, it should be noted that in Sheboygan County, supra, and Blackhawk VTAE, supra, the Commission was confronted with arguments as to whether facilities were adequate so as to maintain the health, safety and welfare of teachers. The MTEA presents no such argument to the Commission with respect to the contractual provision in dispute. Absent any such safety overtones, we believe it is clear that the clause in question is permissive, because it interferes with the Board's educational policy judgments as to the manner in which students are best educated, and as to the priorities which the District may wish to establish in the maintenance and repair of its facilities.

(58) Part V - Section M.

The disputed contractual provision is as follows:

> Teacher vacancies occurring after November 15 and March 15 may be filled by long-term substitutes for the duration of the first and second semester, respectively. These substitutes are to be paid in accordance with the regular teacher salary schedule and are to receive full fringe benefits except for pensions.

The Board claims that the second sentence of this contractual provision is permissive in that it sets forth the salary and fringe benefits of individuals who are not within the teacher bargaining unit. The Board contends that it need not bargain with the MTEA over the compensation of non-bargaining unit personnel. City of Sheboygan, supra. MTEA contends that the intent of this provision is to govern the use of non-bargaining unit employes when filling teacher vacancies which occur during the school year. Citing Oak Creek, supra, MTEA claims that given this intent, the clause should be found mandatory. As to the Board's objection regarding the compensation level, the MTEA asserts that in City of Madison, (16590) 10/78, the Commission held that a proposal containing a wage rate for non-unit temporary and/or limited term employes was mandatory because it was "intended to provide individuals performing unit work the same benefits received by other employes in the bargaining unit."

The Commission, in City of Sheboygan, supra, and Wisconsin Rapids School District (17877) 6/80, concluded and hereby reaffirms, that a bargaining representative cannot bargain over the terms and conditions of employment of non-bargaining unit employes. MTEA is incorrect in citing the City of Madison, supra, as being supportive of a contrary holding. The temporary employes discussed in that decision were bargaining unit employes, and thus it was entirely proper for the union representing those employes to bargain over their wage rates and benefits. Here, from the record, it is clear the parties agree that the work involved is within the jurisdiction of the substitute teachers. Having so agreed, MTEA, as the bargaining representative of the teachers, has no right to bargain over the terms and conditions of employment of the substitute teachers since they are in a separate bargaining unit. We agree with MTEA it has a right to protect unit work and it can accomplish same by bargaining a provision that provides that long-term vacancies, if filled, will be filled by bargaining unit employes and not by long-term substitutes.

(59) Part VI - Section C. 2.

The disputed contractual language is as follows:

> Orientation for summer school shall be conducted either on the day following the regular school term or on the day preceding commencement of summer school.

The Board contends that this provision mandates that it provide one day of teacher orientation for the summer school program, a decision which primarily relates to the formulation or implementation of public policy in an area which is similar to the decision as to whether inservice shall be provided. Citing the Commission's decision in the Milwaukee Board of School Directors, supra, the Board asserts that the clause should be found to be permissive. MTEA counters by arguing that the clause is in essence a calendar proposal which does not mandate that orientation be held, but only states that if it is held, it shall be conducted on specified days. MTEA thus argues that the proposal is far different from that which confronted the Commission in Milwaukee Board of School Directors, supra.

The clause as written clearly mandates that orientation be held. Thus, it is permissive in that it primarily relates to the educational policy determination as to whether orientation is desirable. If the provision were reworded to state that should the Board determine to conduct an orientation for summer school, it shall be conducted on such and such a day, it would become a mandatory calendar proposal. We would again note that matters regarding orientation of new teachers as to evaluative procedures and instruments are mandatory subjects of bargaining because they directly relate to the teachers' ability to perform as required by the employer. Beloit, supra.

(60) Part VII - Sections B., C., D. and E.

The underlined portions of the provisions involved, which are objected to by the Board, set forth a specific procedure whereby a teacher can pursue a "complaint" regarding "any matter of dissatifaction . . . with any aspect of his/her employment . . ." The Board asserts that as this clause allows teachers to pursue complaints which are not limited to matters which are primarily related to wages, hours or conditions of employment or to the impact of a permissive matter upon wages, hours or conditions of employment, the clause should be found to be permissive. The Board asserts that in Blackhawk VTAE, supra, the Commission found a similar definition of a complaint in a grievance procedure to be permissive. The Board argues that the language in question substantially dilutes its right to make educational policy decisions and intrudes on areas where the Commission and the courts have already determined there is no obligation to bargain. The Board contends that the absence of the ability to pursue such complaints to arbitration, unlike the clause in Blackhawk VTAE, supra, is irrelevant. Citing testimony regarding MTEA's intervention with respect to the rules of girl's volleyball, the Board contends that as such complaints have no substantial impact on wages, hours and working conditions, it has no duty to bargain over a procedure which allows teachers to pursue such matters.

The MTEA contends that the procedure in question is mandatory, in that it provides an orderly outlet for employe complaints over matters other than contractual violations which might otherwise not be addressed. It notes that the administration has complete discretion to determine how it will address the complaint and that there is no appeal to the Board or to an arbitrator if the complainant is not satisfied with the administration's decision. MTEA argues that this complaint procedure does not restrict the Board's ability to manage the school system or to make educational policy. The MTEA further claims that the proposal here is distinguishable from that in Blackhawk VTAE, supra, in that here there is a separate procedure for complaints.

When determining whether a matter is a mandatory subject of bargaining, the Commission is obligated to consider whether the matter primarily relates to wages, hours and conditions of employment. Here, a complaint procedure which allows teachers to pursue dissatisfaction with respect to "any aspect" of employment is deemed to be so broad as to encompass matters which bear no primary relationship to wages, hours and conditions of employment or an impact thereon. An example of such a matter is the rules of girl's volleyball. As we held in Blackhawk VTAE, supra, a complaint procedure which does not focus upon violations of the agreement or upon matters which are primarily related to wages, hours or conditions of employment must be found to be permissive. In this regard, we note the Circuit Court's discussion in Blackhawk VTAE, supra, wherein the Supreme Court's holding in Beloit, supra, was set forth. That discussion indicates that as to matters which do not primarily relate to wages, hours and conditions of employment "the bargaining table is the wrong forum and the collective agreement is the wrong instrument." Thus our decision herein follows the court's admonition that teachers have no greater standing to be heard on matters of school or educational policy than other groups or individuals similarly concerned. Thus, the language in the sections involved relates to permissive subjects of bargaining.

(61) Appendix "B" 11. - Application

The Board contends that the provision in this section relates to the ratio of coaches to students in various athletic programs, and that as such it is permissive, in that student/teacher ratio has been held to be primarily related to educational policy. Beloit, supra. We conclude that under Beloit, supra, the section is permissive as it is primarily related to educational policy choices.

(62 & 63)
Appendix "C" - Schedule E. 3. 9. 10. and 11.

As to Appendix C 3., the Board contends that it is permissive since it designates the specific fund from which employes will be paid for certain activities, and thus would hamper the ability of some schools to maintain extra-curricular programs and would discourage fund raising activities. The Board claims that the particular fund from which teachers will be paid primarily relates to the Board's management function and has no relationship to wages, hours or conditions of employment. As to Appendix C 9., 10., and 11., the Board contends that said paragraphs mandate a certain service level with respect to said activities, and thus that these sections are also permissive. MTEA counters by arguing that with respect to Appendix C 3. it is not concerned where the money comes from as long as the teachers are paid. As to Appendix C 9., 10., and 11., MTEA argues that the maximums established and referenced in these provisions only limit the number of hours for which teachers will be compensated under the contract. The MTEA contends that the Board is in no way precluded from scheduling fewer or more hours of activities by this provision and that the provisions in issue were placed in the contract pursuant to the Board's desire to limit the maximum compensation which could be received. As it alleges that the clauses thus only relate to employe wages, the MTEA asserts that they should be found to be mandatory subjects of bargaining.

As to Appendix C 3., the Commission concurs with both the Board and the MTEA that the issue of which fund teachers are paid from is a permissive subject of bargaining. While the MTEA has asserted that it is not concerned as to the source of the money as long as teachers are paid, it has nonetheless refused to modify the language in question to give the Board that discretion. Thus, the Commission must conclude that the section, as written, is a permissive subject of bargaining in that it interferes with management's determination as to how to fund certain programs. Turning to Appendix C 9., 10., and 11., the Commission is satisfied based upon testimony that said provisions only establish a maximum number of hours for which teachers can be compensated when performing certain extra-curricular activities, rather than a limit on the level of services or a prohibition against the offering of certain activities. As these clauses do not restrict the Board's determination as to what level of service to provide, the Commission concludes that the clauses, given their primary relationship to wages, are mandatory subjects of bargaining.

(64) Appendix "G" 10. - Driver Education Instructors

The Board contends that as this clause requires that driver education classes in summer school be organized "as nearly as possible" at twenty-five students per teacher, the clause relates to class size which is a permissive subject of bargaining. Beloit, supra. The Commission agrees and under Beloit, supra, concludes that the clause is permissive.

(65) Appendix "G" 1. - Guidance Counselors

The Board asserts that as this provision requires that counselors be granted a preparation period which is related to the allocation of a teacher's workday, the clause is permissive. Oak Creek, supra. The Commission agrees.

(66) Appendix "G" 2. - Guidance Counselors

The Board objects to the provision asserting that it establishes a student-teacher ratio which is a matter of educational policy which it need not bargain. arguments in this regard and finds thus the clause to be permissive under the

(68) Appendix "G" 3. - Vocational Counselors

The Board contends that this clause relates to the determination of whether a particular educational facility and program will be provided and that it thus is a permissive subject of bargaining. Oak Creek, supra. As this clause mandates use of available space in a certain fashion and by inference makes a policy decision as to how counselors should function, we conclude that it primarily relates to educational policy choices and to management of facilities and thus is permissive under Oak Creek, supra.

(69) Appendix "G" 1. and 3. - School Librarians

The Board asserts that the last sentence of paragraph 1 requires that the school library be closed if a certified person is unavailable when the librarians are attending department chairperson meetings. The Board asserts that as the ability to continue to offer library facilities to students at all times is primarily related to educational policy, this closing requirement renders that portion of the clause permissive. As to paragraph 3, the Board asserts that the determination as to whether or not work is available and whether or not a librarian's services are needed is a management function which is not left to each librarian's discretion. The Board does not dispute that if a librarian does work during this period the compensation to be received is a mandatory subject of bargaining.

The Commission concurs with the Board's arguments as to both paragraph 1 and paragraph 3 and thus finds the objected to portions of this contractual language to be permissive.

(70) Appendix "G" 1. - Coordinating Teachers of Cooperative Programs

The Board contends that this contractual provision relates to the determination as to whether in-service will be provided. It contends that the Commission has already concluded this to be a permissive subject of bargaining. Milwaukee Board of School Directors, supra.

We do not agree that the language in question mandates the establishment of in-service activities. Rather, it provides a method for teachers to defray expenses, subject to the administration's approval, incurred while attending in-service activities. Thus, we conclude that the clause is mandatory.

(71) Appendix "G" 3 c. 3. - Change from Coaching Assignments

The objectionable contractual language is as follows:

> A principal may remove a teacher from his/her coaching assignment at any time for just cause with the approval of the Superintendent.

The Board contends that the MTEA interprets the objectionable language in the provision to prohibit the Board from discontinuing an athletic program after the season has begun, even if there are not enough students willing to participate in the program. The Board contends that its ability to eliminate an extra-curricular program due to lack of student participation relates directly and primarily to educational policy and that if it is required to continue a program with no participants or to retain and pay coaches for a program with no participants, it may have to forego offering students the opportunity to participate in other extra-curricular programs. The MTEA counters by arguing that the clause in question is a straight forward due process clause negotiated to provide coaches with protection against termination during the coaching season. It denies the Board's contention that it has filed a grievance alleging a violation of this specific language and asserts that even if it had filed such a grievance, the Commission is obligated to interpret the language in question as it sees fit. Thus, the MTEA asserts that the clause is a mandatory subject of bargaining.

Initially we note that the grievance cited by the Board does not explicitly involve a violation of this specific contract language. Nor do we view this language as on its face prohibiting discontinuance of programs. We agree with MTEA that the language in question is primarily related to conditions of employment, as it provides employes with protection from arbitrary dismissal from coaching positions. Thus, we find the language in issue to be a mandatory subject of bargaining.

(72) Appendix "G" 5. 6. and 8.

The Board contends that the provisions exclusively involve educational policy decisions regarding program establishment and the administration of programs and therefore relate to permissive subjects of bargaining. Milwaukee Board of School Directors, supra. Our examination of these clauses indicates that they do involve educational policy choices as to the manner in which athletic programs shall be administered and thus we conclude that they relate to a permissive subject of bargaining.

(73) Appendix "G" 2. - Audiovisual Building Directors in Middle and High Schools

The Board contends that this section prohibits it from assigning audiovisual directors to homeroom assignments, that it relates to the management decision as to allocation of teacher's time during the workday, and that it is therefore a permissive subject of bargaining. Oak Creek, supra. We concur with the Board's analysis of this proposal and find it to primarily relate to educational policy choices and thus to be a permissive subject of bargaining.

(74) Appendix "G" 3. - Band Directors

The Board contends that this contractual provision relates to the purchase of educational equipment and materials, and the funding therefore, and clearly involves matters of educational policy unrelated to the employment conditions of teachers. As this clause, on its face, specifies the purchasing procedure for certain equipment under certain circumstances, the provision primarily relates to management decisions as to how best to supply necessary educational materials and thus is a permissive subject of bargaining.

(75) Appendix "G" 1. - Industrial Education Teachers

The Board contends that as this clause prohibits the assignment of industrial education teachers to homeroom or equivalent assignments, it thus involves the allocation of a teacher's time during the workday and is a permissive subject of bargaining. Oak Creek, supra. While we note that the clause does not absolutely prohibit such an assignment, it nonetheless interferes with Board decisions as to how best to allocate the teacher's workday to achieve educational policy goals and thus must be found to be permissive.

(76 & 77)
Appendix "G" 1. - School Social Workers

The Board asserts that as paragraph 1 relates to the management decision as to whether substitute social workers are needed and will be hired, it is a permissive subject of bargaining. Oak Creek, supra. As to paragraph 3, the Board contends that that section restricts it when determining who within its organizational structure shall compile the annual social worker's report. It therefore contends that the clause is a permissive subject of bargaining. Milwaukee Board of School Directors, supra. We have earlier concluded that the choice as to whether to provide substitute employes is one which need not be bargained with the union, as it primarily relates to the educational policy choice of how best, if at all, to provide the services normally performed by the absent employe. Thus, we conclude that the contractual language here is a permissive subject of bargaining. As to paragraph 3, we agree with the Board that it is permissive in that it interferes with the Board's choice as to who, within its organizational structure, shall compile a specific report.

(78) Appendix "G" 1. - Kindergarten Teachers

The Board contends that this clause primarily relates to its determination as to whether parent-teacher conferences will be held and the time of day they will be conducted. The Board thus asserts that as this provision involves the manner in which a teacher's time will be allocated during the workday, it is a permissive subject of bargaining. Oak Creek, supra. As the Commission needs additional facts, no determination has been made regarding this proposal.

(79) Appendix "G" 1. - Elementary Specialty Teachers

The Board contends that this contractual provision relates exclusively to the manner in which a teacher's time will be allocated during the workday and thus

primarily relates to educational policy and is permissive. Oak Creek, supra. A review of this contractual language indicates that it is basically a prep time proposal which does involve educational policy choices as to proper allocation of the workday, and thus is permissive.

(80) Part IV - Section C (2-12), (16)(d); Appendix "K"

The disputed contractual language is as follows:

> All exceptional educational class sizes shall not exceed the DPI maximums and those mimimums and maximums shall be printed in the contract. See Appendix "K" (attached).

Other contractual language (Section C (2-12)) then sets forth various class sizes which are derived from Appendix "K". The Board contends that these provisions relate exclusively to class size, which is a matter of educational policy which need not be bargained. Beloit, supra. The Board submits a post-hearing affidavit which purports to reveal that the DPI guidelines referred to in the contractual language may be exceeded with prior approval from DPI. Thus, the Board contends that it may, as a matter of an educational policy choice, seek and possibly acquire permission to exceed the maximums contractually established. The Board contends that the contractual language in question precludes it from seeking that approval and thus inhibits it from making educational policy choices as to the appropriate class size levels in various classes. The Board also contends that it is entirely inappropriate to provide a contractual mechanism over which its compliance with guidelines could be placed before an arbitrator. Thus, the Board requests that the Commission find this disputed language to be permissive.

MTEA contends that the contractual provisions in question are mandatory subjects of bargaining as DPI has established legal maximums which the Board cannot exceed without prior approval. The MTEA argues that having these maximums in the contract allows teachers to address violations of law through the contractual grievance procedure. It contends that this is a more expedient route to pursue violations of DPI regulations than an appeal to the department, or other extraneous litigation and has less serious consequences for the Board. The MTEA asserts that if the Board receives approval to exceed the maximums, an arbitrator may view the Board's action in light of this approval.

A review of the affidavit submitted by the Executive Director, Department of Employment Relations of the Board, reveals that the DPI maximums can be exceeded with prior approval from DPI. Thus, pursuant to DPI bulletin number 81-1, it appears that the Board could make an educational policy judgment which, when implemented, would yield class sizes which would exceed those set forth in any current DPI guideline. Thus, the guidelines do not establish, as a matter of law, what class size should be. As it is clear that judgments as to class size are permissive subjects of bargaining, Beloit, supra, we conclude that the contractual language, as written, and Appendix "K" are permissive subjects of bargaining in that they preclude the Board from exceeding the maximums under any circumstances. If Appendix K contained a statement to the effect that deviations from the schedule can be made subject to approval by DPI, we would conclude that such an amended appendix related to a mandatory subject of bargaining since it would merely reflect the status of the law or established rules in this area.

(81 & 82)
School Calendar

The school calendar contained in the parties' collective bargaining agreement specifies the dates on which parent-teacher conferences will be held, as well as the date on which report cards will be issued. The Board contends that said determinations primarily relate to the Board's ability to communicate most effectively with parents and to assure the greatest possible participation in parent conferences. It contends that these are matters of educational and public policy which need not be bargained. The Board asserts that as long as teachers are properly and timely notified as to the dates on which conferences will be held and report cards issued, the affect on teacher's hours is mimimal. The Board further argues that the responsibilities regarding conferences and report cards are duties fairly within the scope of a teacher's responsibilities and that it thus should be able to expect that teachers are fulfilling these basic responsibilities on an ongoing basis. The Board contends that negotiating a "school calendar" certainly does not mean that it must negotiate the days on which

teachers will fulfill their various job responsibilities. The Board therefore contends that it need not bargain over the dates on which these activities occur.

MTEA submits that negotiation of the calendar for parent conference day and report cards is a mandatory subject of bargaining. It contends that the determination as to whether to hold conferences or whether to issue report cards are management's, but that the question of when those events should occur is a matter of calendar, which is a mandatory subject of bargaining. Beloit, supra. The MTEA further argues that the scheduling of conferences and report cards impacts upon working conditions in that teachers must plan in order to have the necessary work done by the conference or report card date. The MTEA further argues that the parties have, in the past, bargained acceptable solutions which provide the Board with sufficient flexibility as to when to schedule the events in question. The MTEA thus urges that the two subjects in question be found to be mandatory subjects of bargaining.

As the Commission needs additional facts, no determination has been made.

(83) Part II - Section E.

The objectionable contractual language is as follows:

> If the principal feels that the above standards for posting on bulletin boards have been violated, he/she shall, within two (2) working days, ask the appropriate assistant superintendent for clarification.

The Board contends that language in issue designates specific administrators to assume certain responsibilities regarding the standards for posting MTEA communications on bulletin boards. The Board contends that in Beloit, supra, the Commission held that naming which management official would evaluate an employe's job performance was a matter of management technique which need not be bargained. Similarly, the Board argues here that naming the precise individuals who will review bulletin boards relates to management's internal procedure, and should also be found to be permissive. The Board contends that this clause differs from that previously found to be permissive by the Commission in Milwaukee Board of School Directors, supra, in two important respects. First, in the earlier decision the Commission determined that a due process procedure dealing with charges of misconduct was involved. The Board contends that the instant procedure does not involve such a due process procedure. The Board also contends that unlike the earlier disputed provision, the clause here does not provide the Board with any discretion in determining which management person will have the responsibilities in question. Thus, the Board argues that this language does not reflect an attempt by MTEA to assure that matters are handled at a supervisory level and reviewed at a higher level, but rather dictates specific tasks to be assumed by specific administrators. The Board thus contends that the language relates primarily to management's internal procedure and the job responsibilities of particular administrators.

MTEA contends that the clause in question is a mandatory subject of bargaining in that it deals with due process for the union where materials submitted for posting on the bulletin boards have been challenged by the administration. In this regard the Union notes that the clause in total provides for a penalty for persistent violation of the standards for posting on bulletin boards. The Union contends that the procedure is worded to insure that review is made at the highest level in the school and then subsequently reviewed at a higher level within the District. Thus, the MTEA contends that the clause is analogous to the accountant's proposal found to be mandatory in Milwaukee Board of School Dirctors, supra. MTEA does not find the greater flexibility accorded to the District in the accountant's proposal to be a distinction of substance which would warrant a different result, and thus it urges the Commission to find the objected to language to be mandatory.

We concur with the MTEA that it has a legitimate and bargainable interest in assuring itself of a viable procedure for the review of disputes over postings. However, we find that this clause goes beyond protecting that interest in that it specifies the management personnel to whom such disputes will be referred. This lack of management flexibility, which is unlike the flexibility accorded the District in the accountant's proposal discussed by the parties, requires that we conclude the clause to be permissive in that it unduly interferes with management's determination as to who within its organizational structure will respond to such dispute.

(84) Appendix "G" 3. b. 1 and 2

The disputed contractual provisions are the following:

> b. VACANCIES. In the event a head coaching vacancy exists:
>
> 1) Except as provided in (2) below, such vacancy shall be advertised in the Staff Bulletin. The principal shall give first consideration to the applications of teachers on his/her teaching staff.
>
> 2) A head coaching vacancy occurring for emergency reasons ten (10) days or less prior to the beginning of or at any time during the WIAA season shall be filled by the principal with a teacher from within the system for the remainder of the WIAA season. In such emergency cases, the principal shall give first consideration to teachers on his/her teaching staff.

The Board contends that these provisions require that teachers already within the school system, and in particular, teachers already on the staff at a particular school, must be hired to fill coaching vacancies, regardless of the individual's qualifications in comparison to other applicants. The Board contends that the provision prohibits it from determining what qualifications a coach must possess in order to best serve a student's educational needs. The Board contends that para. 2) is especially restrictive since it requires that a vacancy "shall be filled" by a teacher from within the system. The Board contends that this provision prohibits it from concluding that a non-bargaining unit individual is the only qualified candidate for the vacancy or is better qualified than an available teacher. The Board cites the Commission's decision in School District of Rhinelander (19761) 6/82, for the proposition that the decision as to what types of persons (teachers or non-teachers) will direct extra-curricular activities and what qualifications they should possess are permissive subjects of bargaining. The Board contends that MTEA's effort to distinguish Rhinelander, supra, on the facts is unpersuasive, and notes that there is no assurance under the instant contractual language that a qualified teacher would be available to fill the vacancy especially from the same school's staff. Thus, the Board requests that the Commission find the disputed language to be permissive.

MTEA contends that the clauses are mandatory subjects of bargaining. It suggests that the contractual language does not say anything about the Board's ability to determine the qualifications for coaching positions. Rather, the MTEA suggests that the disputed language relates primarily to the assignment of work historically performed by bargaining unit employes and does not interfere with the Board's right to determine employe qualifications. The MTEA does not believe that the Commission's decision in School District of Rhinelander, supra, is a definitive ruling applicable to this dispute. It contends that unlike the Rhinelander School District, the instant District has a large number of qualified teachers to choose from in filling coaching vacancies. It contends that, as mandatory permissive decisions are decided on a case by case basis, Beloit, supra, the Commission's decision is not determinative. In its reply brief, the MTEA submitted an affidavit which identifies the Wisconsin Interscholastic Athletic Association (WIAA) procedures for approval of coaches. Said affidavit specifies that coaches of sports for students in grades 7-12 should be certified teachers, except when permission is obtained in emergency situations. The MTEA contends that this WIAA requirement, coupled with the fact that historically coaches have been teachers, clearly renders the provisions mandatory subjects of bargaining. The MTEA also cites the Commission's decision in Sheboygan, supra, as support for its position that a clause which only sets forth the procedure to be used when filling vacancies where one or more bargaining unit members are applicants should be found to be mandatory.

As the Commission needs additional facts, no determination has been made.

(85) Part I - Section G.

The objectionable contractual language is as follows:

> Where new position descriptions or changes in existing position descriptions have a major effect on the wages, hours

and conditions of employment of members of the bargaining unit, said changes or aspects of new descriptions dealing with wages, hours or working conditions shall be negotiated.

The Board contends that the objected to portion of the contractual provision in question does not limit the scope of bargaining to the impact of changes in position descriptions on wages, hours and conditions of employment. The Board further contends that although it has a duty to bargain over a change in position description which adds a duty which is not fairly within the scope of responsibilities applicable to teachers, the language in question is not limited to such a circumstance and thus must be found to be permissive. Sewerage I, supra.

MTEA contends that the language in this contractual provision does not prevent the Board from altering job descriptions and only requires that the Board bargain the impact on wages, hours and conditions of employment of changes in position descriptions. As the MTEA asserts that the clause is limited to impact bargaining, it contends that it should be found to be a mandatory subject of bargaining. Beloit, supra.

The language in question can most reasonably be interpreted as requiring that the Board bargain over the change in the job description itself, even where that change does not involve the addition of duties or responsibilities which are normally within the scope of those required of teachers. As the Board need not bargain over such changes, the clause as written must be found to be permissive. Sewerage I and II, supra. If the clause were modified to reflect that the impact of any change was to be bargained, it would be mandatory, as it would be if it were modified to only include bargaining over those changes which were not fairly within the scope of duties normally assigned to teachers.

(86) Part V - Section G. 1 and 2, Section J and Section K

The Board initially contends that there may be circumstances where the legitimate educational needs of students would require that the Board be able to determine that a teacher's race or gender may be a necessary consideration in filling positions within the school system, particularly in guidance and physical education. More specifically, the Board contends that the gender of a physical education teacher may be a necessary consideration where locker room supervision is required or where certain programs involve physical contact with students. The Board further contends that the gender or race of a teacher may also be a qualification for a guidance counselor where the existing guidance staff is made up of one gender or one race. The Board asserts that the interpretation placed on the contractual provisions in question by the MTEA precludes it from making these educational policy decisions. In this regard, the Board cites certain grievances filed by the MTEA and more specifically, the arbitration award issued in the Frey grievance. During the hearing the Board, through its counsel, indicated the following:

> "What we're asking the Commission to do is say that there is some qualifications, such as gender mix in the physical education department, gender and racial mix in the counseling department, that are policy decisions that are overriding issues; that the qualifications established in J and G minus those basic policy decisions where it can still operate."

Counsel for the Board also clarified the Board's position as follows:

> "I think again it should be clear we're seeking an interpretation which to some extent limits our obligation under this section, and does not strike them from the contract. We're looking for the decision from the Commission specifically directed to certain items that have arisen during --in the context of grievances and arbitration that have created the problem in our opinion."

The MTEA submits that the contractual language in question is mandatory. It contends that these provisions simply set out selection criteria to be applied in choosing between qualified bargaining unit members for reassignment, voluntary transfer, and filling vacancies. It contends that such a provision has previously been found to be mandatory. Sewerage II, supra; Sheboygan County, supra. The

MTEA contends that the Board's position is essentially that race and gender can be bona fide occupational qualifications for filling certain positions. The MTEA notes that the contractual language in question does provide for certain exceptions from strict seniority as the criteria for transfers, reassignments, or filling vacancies. It notes that in the Frey grievance, the Board attempted to pursuade an arbitrator that the scope of the exceptions in contractual language extended to demonstrating that there was a bona fide occupational qualification for teaching physical education. The MTEA notes that a review of the arbitrator's award in that grievance demonstrates that if the Board had proven the necessity to have a gender balanced staff to teach physical education classes or supervise locker rooms, the arbitrator might have held that gender came within the exception to senority contained in the contractual language. Thus, the MTEA contends that the existing contractual language does provide the Board with the opportunity to demonstrate to the MTEA or ultimately to an arbitrator that race or gender are legitimate considerations under the contract. While the MTEA views such efforts as ones that promote stereotypes which are descriminatory in their effect, the MTEA argues that the contractual provision does not prevent the Board from seeking to pursuade an arbitrator to the contrary. MTEA asserts that the Board has tried to negotiate the addition of gender and race considerations to the language in question in past years without success. MTEA contends that the Board wants the Commission to help it negotiate a position which the MTEA believes to be disriminatory. The MTEA thus contends that the contractual provisions are mandatory subjects of bargaining as written.

As evidenced by the Frey award, the Commission concludes that the contractual language in question does grant the Board certain flexibility in meeting educational needs which may exist and which may require consideration of factors other than basic qualifications and seniority when filling vacancies or when making reassignments or transfers. Thus, we cannot accept the Board's assertion that the language in question prevents it from making such judgments as to special qualifications. Furthermore, as the Frey award demonstrates, the language in question does extend the Board the opportunity to attempt to demonstrate that gender or race are bona fide occupational qualifications for a certain position. The fact that the Board did not succeed in the Frey grievance, or may not succeed in other grievances, in no way requires a determination that the language in question is permissive. Thus, we conclude that the Board's objections to the language are not well founded and find the language mandatory.

Dated at Madison, Wisconsin this 28th day of February, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Gary Covelli, Chairman

_____
Morris Slavney, Commissioner

I agree with my colleagues except as to proposals (1), (7), (11), (14) and (22) where I have dissented in whole or in part and as to proposal (11) where I have concurred.

_____
Herman Torosian, Commissioner