STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of WHITNALL SCHOOL DISTRICT Requesting a Declaratory Ruling Pursuant to Section 111.70(4)(b), Wis. Stats., Involving a Dispute Between Said Petitioner and WHITNALL AREA FEDERATION OF TEACHERS	Case XV No. 23766 DR(M)-106 Decision No. 20784-A

Appearances:

Mulcahy & Wherry, S.C., Attorneys at Law, 815 East Mason Street, Suite 1600, Milwaukee, Wisconsin, 53202, by Mr. Mark L. Olson, appearing on behalf of the District.

Habush, Habush & Davis, S.C., Attorneys at Law, First Wisconsin Center, Suite 2200, 777 East Wisconsin Avenue, Milwaukee, Wisconsin, 53202, by Mr. John S. Williamson, Jr., on behalf of the Federation.

FINDINGS OF FACT, CONCLUSION OF LAW AND DECLARATORY RULING

The Whitnall School District, herein the District, filed a petition with the Wisconsin Employment Relations Commission on November 20, 1978, seeking a declaratory ruling pursuant to Sec. 111.70(4)(b), Stats., regarding the District's duty to bargain with the Whitnall Area Federation of Teachers, herein the Federation, over certain subjects. On November 28, 1978, the Federation filed a petition with the Commission seeking a declaratory ruling pursuant to Sec. 111.70(4)(b), Stats., with respect to the Federation's duty to bargain with the District over certain additional subjects. The parties waived hearing as to both petitions, stipulated to certain facts, and filed original briefs and reply briefs. Thereafter, on June 19, 1979, the parties notified the Commission that they had reached accord on a 1978-1980 collective bargaining agreement but still desired a ruling as to the subjects raised in their respective petitions. The parties then filed supplemental briefs concerning the impact, if any, of the Wisconsin Supreme Court's decision in Mack V. Joint School District No. 3, 92 Wis. 2d 476 (1979). On February 8, 1983, the Commission requested that the parties clarify their positions since the contractual language at issue had been modified in subsequent collective bargaining agreements. As a result of further correspondence from the parties, a status conference was held by Commissioner Gary L. Covelli on March 29, 1983. During the status conference the Federation withdrew its petition for declaratory ruling and the District withdrew one of the issues in its petition, clarified the two remaining issues, and moved to amend its petition to include an additional issue. The Federation opposed the District's motion to amend. On June 28, 1983, the Commission issued an Order dismissing the Federation's petition for declaratory ruling (Decision No. 20785) and denying the District's motion to amend petition. The parties were then given the opportunity to file additional briefs and the District filed same on August 2, 1983. Having considered the evidence and the arguments of the parties, the Commission makes and issues the following

FINDINGS OF FACT

1. That the Whitnall School District, herein the District, is a municipal employer having offices at 5000 South 116th Street, Greenfield, Wisconsin, 53228, and operating a school system lying entirely and exclusively in a county having a population of 500,000 or more.

2. That the Whitnall Area Federation of Teachers, herein the Federation, is a labor organization having offices at 6525 West Bluemound Road, Milwaukee, Wisconsin, 53213.

3. That at all times material herein, the Federation has been the exclusive collective bargaining representative of all non-supervisory certified personnel, including all elementary and secondary teachers in the employ of the District. The Federation and the District have been parties to a series of collective bargaining agreements covering the wages, hours and conditions of employment of the teachers included in the aforementioned collective bargaining unit.

4. That the District filed a petition for declaratory ruling pursuant to Sec. 111.70(4)(b), Stats., seeking a ruling from the Commission as to the District's duty to bargain with the Federation over the underlined portions of the following language:

(1) Layoffs shall occur when one or more of the following circumstances are present:

1. Substantial decrease in pupil population within the School District or a specified grade level.

2. Substantial decrease in pupil population in a program area.

3. Loss of operating revenue beyond the District's control not related to a decrease in pupil population.

4. Return of a teacher from a leave of absence.

5. Elimination of an educational program.

(2) It is understood and agreed that the welfare and safety of the children is at all times of prime importance, and that adult supervision is necessary to protect the children's welfare and safety. Noon supervision of elementary cafeterias, indoor and outdoor play areas will, to the extent possible by law, be provided by non-teaching adults.

Each teacher shall be provided with an uninterrupted, duty-free lunch period of thirty (30) minutes. No teacher in grades K-8 shall be assigned to more than thirty (30) minutes playground or lunchroom supervision per day during lunch period and to no more than 1170 minutes per school year.

The need for heavy class scheduling during the lunch periods at the high school limits the availability of staff. It is understood, however, that the high school administration will make every effort to involve as many teachers as possible in the supervision of lunch.

5. That disputed proposals 1 and 2, as set forth in Finding of Fact 4, primarily relate to educational policy and/or school management and operation.

Based upon the above and foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSION OF LAW

1. That the proposals referenced in Finding of Fact 5 are permissive subjects of bargaining within the meaning of Sec. 111.70(1)(d), Stats.

Based upon the above and foregoing Findings of Fact and Conclusion of Law, the Commission makes and issues the following

DECLARATORY RULING 1/

1. That the District and the Federation have no duty to bargain under Sec. 111.70(1)(d), Stats., over the disputed proposals referenced in Conclusion of Law 1.

Given under our hands and seal at the City of Madison, Wisconsin this 23rd day of May, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Herman Torosian, Chairman

_____
Gary L. Covelli, Commissioner

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Marshall L. Gratz, 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.

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 (Continued on Page 4)

1/ (Continued)

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.

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

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

Before entering into a specific consideration of each proposal, it is useful to set forth the general legal framework within which the issues herein must be resolved. Section 111.70(1)(d), Stats., defines collective bargaining as ". . . the performance of the mutual obligation of a municipal employer, through its officers and agents, and the representatives of its employees, to meet and confer at reasonable times, in good faith, with respect to wages, hours and conditions of employment with the intention of reaching an agreement, . . . the employer shall not be required to bargain on subjects reserved to management and direction of the governmental unit except insofar as the manner of exercise of such functions affects the wages, hours and conditions of employment of the employees . . . . " (emphasis added)

When interpreting Sec. 111.70(1)(d), Stats., the Wisconsin Supreme Court has concluded that collective bargaining is required with regard to matters "primarily", "fundamentally", "basically" or "essentially" related to wages, hours or conditions of employment. The Court also concluded that the statute required bargaining as to the impact of the "establishment of educational policy" affecting the "wages, hours and conditions of employment." The Court found that bargaining is not required with regard to "educational policy and school management and operation" or the "'management and direction' of the school system." Beloit Education Association v. WERC, 73 Wis. 2d 43 (1976), Unified School District No. 1 of Racine County v. WERC, 81 Wis. 2d 89 (1977) and City of Brookfield v. WERC, 87 Wis. 2d 819 (1979).

The Federation has asserted that the presence of binding arbitration under Sec. 111.70(4)(cm)6, Stats., requires a different view of the standards by which proposals are adjudged mandatory or permissive. We reject this assertion. Our review of the Supreme Court's holding in Brookfield, Glendale Professional Policemen's Association v. City of Glendale, 83 Wis. 2d 90 (1978), Professional Police Association v. Dane County, 106 Wis. 2d 303 (1982) and the Court of Appeals' decision in Blackhawk Teachers Federation v. WERC, 109 Wis. 2d 415 (Ct. App.1982), all of which involved collective bargaining relationships where access to binding arbitration was available under Secs. 111.77 or 111.70(4)(cm)6, Stats., yields no indication of any judicial inclination to have differing standards depending upon the availability of interest arbitration. The Federation's argument was specifically rejected in Blackhawk wherein the Court held:

> The Federation finally contends that the adoption of compulsory and binding arbitration has encouraged municipal employers to adopt rigid positions on permissive bargaining subjects since only mandatory subjects of bargaining may be submitted to an arbitrator if the arbitration process is invoked. See sec. 111.70(4)(cm)6a, Stats. Because of these alleged adverse effects on the collective bargaining process, the Federation asserts that the underlying policy of sec. 111.70(1)(d) has been altered, and it urges the adoption of a test that allows greater flexibility in classifying bargaining subjects as mandatory.
>
> We conclude that the amendments to sec. 111.70 do not warrant adoption of a different test to determine the scope of collective bargaining under sec. 111.70(1)(d). When our supreme court approved the "primary relation" test, it was construing the language in sec. 111.70(1)(d). The 1977 amendments to sec. 111.70 did not alter that provision.
>
> There is also nothing in the legislative history of ch. 178, 1977 Wis. Laws, to suggest that the legislature intended to depart from the underlying policy of sec. 111.70(1)(d), which had prompted the court to approve the "primary relation" test. Although sec. 111.70(1)(d) imposes a duty to bargain with respect to "wages, hours, and

conditions of employment," the legislature also inserted a "management rights" clause, which provides:

> The employer shall not be required to bargain on subjects reserved to management and direction of the governmental unit except insofar as the manner of exercise of such functions affects the wages, hours and conditions of employment of the employes.

Such scope restrictions are often included in statutory provisions relating to public sector collective bargaining (Footnote omitted) to ensure limited employe input into decisions concerning the direction and management of governmental services. The language of sec. 111.70(1)(d) evinces a strong legislative intent to restrict the scope of municipal collective bargaining, and the failure to amend this subsection indicates the intent remains unchanged.

Turning to the specific proposals that are in dispute herein, the disputed layoff language is as follows:

(1) Layoffs shall occur when one or more of the following circumstances are present:

1. Substantial decrease in pupil population within the School District or a specified grade level.

2. Substantial decrease in pupil population in a program area.

3. Loss of operating revenue beyond the District's control not related to a decrease in pupil population.

4. Return of a teacher from a leave of absence.

5. Elimination of an educational program.

The District contends that the foregoing language relates to the circumstances, reasons or necessity for a layoff. The District argues that the Commission's decision in West Bend Joint School District No. 1 18512, (5/81), as affirmed in pertinent part by Circuit Judge J. Tom Merriam, unequivocally establishes that contract language dealing with the necessity of teacher layoffs is a permissive subject of bargaining. Given the holding in West Bend, and the prior supportive holding by the Supreme Court in City of Brookfield v. WERC, 87 Wis. 2d 819 (1979), the District asserts that it is clear that the reasons for which a layoff is to occur, and the necessity for such layoffs, are matters to be left to the management of the school district and are not mandatory subjects of bargaining. Thus the District argues that the language at issue in this proceeding, which requires that one of five reasons exist before a layoff can occur, is clearly permissive. The District contends that by including a limited number of reasons which allow a layoff, the contract language actually purports to dictate the circumstances upon which the District can and cannot determine to lay off teachers. Such a limitation clearly seeks to limit the policy function of the District in making its permissive layoff decisions.

The District also points to the statutory language contained in Sec. 118.23(5), Stats., which specifies "a collective bargaining agreement may modify, waive or replace any of the provisions of this section as they apply to teachers in the collective bargaining unit, but neither the employer nor the bargaining agent for the employees is required to bargain such modification, waiver or replacement." The District asserts that it is clear from the face of this statute that the Legislature believes that matters referenced in Sec. 118.23, Stats., including the reasons for which a layoff can occur, as well as timelines and frequency for layoffs, are permissive subjects of bargaining.

The Federation contends that any contract language dealing with the subject of teacher layoffs must track the provisions of Sec. 118.23, Stats., and that,

given the content of Sec. 118.23(5), Stats., any proposal which varies from Sec. 118.23, Stats., must be found to be a permissive subject of bargaining.

Discussion of Layoff Proposal

In City of Brookfield, supra, the Wisconsin Supreme Court held that the municipal employer could not be required to bargain over an economically motivated decision to lay off five fire fighters as a means to implement a fire department budget reduction. The Court concluded that economically motivated layoffs of public employes resulting from budgetary restaints are matters primarily related to the exercise of municipal powers and responsibilities and the integrity of the political process.

Relying primarily upon City of Brookfield, the Commission, in West Bend, supra, concluded that a proposal which required that a school district discuss the necessity of proposed layoffs of teachers was a permissive subject of bargaining. The Commission reasoned:

> The Association's proposal '. . . to discuss with the Board the necessity of the proposed reduction in teaching positions . . .' is in the opinion of the Commission clearly permissive.
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> Our Supreme Court in City of Brookfield held that the decision to layoff municipal employes to implement budget cuts relates to a non-mandatory subject of bargaining, while the impact of said layoffs on the wages, hours and working conditions is a mandatory subject of bargaining. Here the employer has agreed to provide timely notice to enable the Association '. . . to bargain concerning the impact of any necessary reduction.' The Association proposes more, however, in that it wants to discuss the actual necessity of any proposed reduction. As such, said proposal clearly primarily relates to the decision of reduction itself and not the impact of same. Since the District has no duty to bargain regarding the layoff decision it follows that it may not be required, as a part of its bargaining duty, to discuss the necessity of said layoffs. We agree with the Association's contention that it may have a constitutional right to be heard on educational policy, such as the need for teacher layoffs. However, as the court stated in Brookfield the bargaining table is not the appropriate forum for the formulation or management of public policy.

As noted by the District, the Commission's determination in this regard was affirmed on appeal in Circuit Court.

We have previously found proposals to be mandatory subjects of bargaining which mandate compliance with the law and thereby make the statutory requirements involved contractually enforceable. 2/ Hence a proposal that would mandate

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2/ In Milwaukee Board of School Directors, 20093-A (2/83), p.64 and Milwaukee Board of School Directors, 20979 (9/83), p.10, the Commission indicated that proposals which required compliance with DPI class size regulations and statutory procedures relating to compensation were mandatory. See also Blackhawk, supra, and Racine Unified School District, 20653-B (1/84), p.17.

compliance with Sec. 118.23(4), Stats., 3/ would, in our view, be a mandatory subject of bargaining. The instant proposal would impose standards regarding the circumstances in which layoffs will occur that differ in certain material respects from the statutory mandates. Hence, we find that the proposal limits and interferes with the extent to which the District is lawfully authorized to make policy determinations regarding whether to layoff employes. Under our West Bend rationale, therefore, we find that the proposal as written is a permissive subject of bargaining.

The remaining disputed proposal is as follows:

(2) It is understood and agreed that the welfare and safety of the children is at all times of prime importance, and that adult supervision is necessary to protect the children's welfare and safety. Noon supervision of elementary cafeterias, indoor and outdoor play areas will, to the extent possible by law, be provided by non-teaching adults.

Each teacher shall be provided with an uninterrupted, duty-free lunch period of thirty (30) minutes. No teacher in grades K-8 shall be assigned to more than thirty (30) minutes playground or lunchroom supervision per day during lunch period and to no more than 1170 minutes per school year.

3/ Secs. 118.23(1) and (4), Stats., provide:

118.23 Populous counties; teacher tenure

(1) In this section "teacher means any person who holds a teacher's certificate or license and whose legal employment requires such certificate or license, who is employed full time and meets the minimum requirements prescribed by the governing body employing such person and who is employed by a school board, board of trustees or governing body of any school operating under this title and lying entirely and exclusively in a county having a population of 500,000 or more. "Teacher" does not include any superintendent or assistant superintendent; any teacher having civil service status under ss. 63.01 to 63.17; any teacher in a public school in a city of the 1st class; or any person who is employed by a school board during time of war as a substitute for a teacher on leave while on full-time duty in the U.S. armed forces or any reserve or auxiliary thereof and who is notified in writing at the time of employment that the position is of a temporary nature. This section does not apply to any teacher after the close of the school year during which the teacher has attained the age of 65 years, nor to any subsequent employment of such teacher.

. . .

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

> The need for heavy class scheduling during the lunch periods at the high school limits the availability of staff. It is understood, however, that the high school administration will make every effort to involve as many teachers as possible in the supervision of lunch.

The District contends that the underlined portions of this proposal are clearly permissive under the Commission's holding in Oak Creek - Franklin Joint School District, 11827-D, E (9/74) aff'd Dane Co. Cir. Ct.(11/75) wherein the Commission concluded that the employer is not obligated to bargain about its allocation of the teacher work day as between student-contact and non-student-contact duties. The District asserts that the provision at issue here allocates the teachers' contact time on the playground and in the lunchroom. It asserts that teacher-student contact on the playground and in the lunchroom is a significant part of the overall educational program. It contends that a child's education is all-encompassing; and not limited to textbooks, nor to the confines of a classroom. Thus, the District contends that the educational process continues on the playground and in the lunchroom. The District alleges that in said locations the child is educated as to sportsmanship, acceptable social behavior, the development of attitudes about him or herself in relationship to others, etc. The District contends that these facets of a child's education are every bit as important as the benefits he or she derives from learning in the classroom. The District argues that this is especially true in grades K-8, when a major portion of a child's social development occurs. As such, the District contends that the influence of a teacher in this part of a child's education is as significant as the contact time devoted to classroom instruction. The District asserts that there can be no doubt that significant contact between the supervising teacher and the student does occur during the playground period and lunchroom period at issue herein.

The District also contends that it is important to note that, just as in Oak Creek, the proposal does not focus on additional work hours but merely upon the allocation of the time and energy of the teachers as a consequence of basic educational policy decisions by the District. Therefore, the District asserts that when a balance is struck between the wages, hours and conditions of employment aspects of a proposal as against the policy implications, it must be concluded that the contact time dealt with by this proposal primarily relates to basic educational policy. Therefore the District would request that the Commission find this proposal to be a permissive subject of bargaining.

The Federation contends that the existence of Sec. 118.235, Stats., which guarantees a teacher a duty-free lunch period, demonstrates a legislative intent that bargaining could occur over the general issue of lunch periods. The Federation asserts that the remaining question is whether bargaining over the number of minutes per school year teachers may be assigned to perform playground or lunchroom supervision is mandatory or permissive. The Federation finds this issue to be analogous to the question confronting the Commission in Oak Creek wherein the Commission concluded that it was mandatory for teachers to bargain over whether they would perform the duties, such as typing and duplicating, which were not related to their teaching responsibilities. The Federation asserts that the question of whether teachers or other employes supervise pupils during lunch periods and on the playground is not a basic educational policy question. Therefore the Federation asserts that its proposal is a mandatory subject of bargaining.

Discussion of Supervision Proposal

In Oak Creek, supra, the Commission was confronted with the question of whether the following proposal was a mandatory subject of bargaining:

> This 25 contact hours may be averaged out over the entire school year. In the 1972-73 school year, no teacher in the Senior High School shall be obligated to teach more than five classes each semester. No 7-12 school teacher shall be required to teach more than three different preparations or ability levels. If a teacher agrees to more than three

different preparations, said teacher shall be freed from all other supervisory duties such as study hall, lunchrooms, etc. They shall be guaranteed 2 preparation periods per day. If the teacher wishes, he or she may agree to take other supervisory duties as study hall." (emphasis added)

When finding the proposal to be a permissive rather than a mandatory subject, the Commission commented:

> We conclude that the Association's proposal with regard to teacher-pupil contact hours, and the number of preparations that may be required of a teacher concern matters of educational policy, and therefore are permissive and not mandatory subjects of bargaining. Such decisions directly articulate the District's determination of how quality education may be attained and whether to pursue same. However, the impact thereof, also as in the "class size" issue, have direct affects (sic) on a teacher's working conditions, and therefore, the impact thereof is subject to mandatory bargaining.

Upon appeal, Dane County Circuit Judge Sachtjen upheld the Commission's determination as follows:

> The third proposal submitted by the Association would reduce the number of "contact hours" (ie., hours of contact with students) required of each teacher. The proposal would also establish the number of daily "preparation periods" allowed a teacher and the number of different "ability levels" which a teacher could be called on to teach without being freed from certain supervisory tasks.
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> The Association points out that the number of hours a teacher spends in contact with students, in "preparation periods," and in work on different "ability levels" directly affects the number of hours which a teacher must work each day. Thus, the Association characterizes the subject of this proposal as one of "work-load."
>
> We recognize that the subjects of the proposal here may have a significant effect on a teacher's workload. But one could also look at the proposals from another perspective: The Association's proposals relate to the allocation of a teacher's work day. The allocation of the time and energies of its teachers is a consequence of basic educational policy decisions on the part of the District. It is not without reason to conclude that those decisions significantly affect the quality of education offered in the District.

In general, then, the allocation of duties fairly within the scope of an employe's job is not a matter for mandatory bargaining. More specifically, the allocation of duties to be performed during the normal teacher work day that are fairly within the scope of a professional educator's job is not a matter for mandatory bargaining. However, in Janesville Schools 21466 (3/84) we recognized that a teacher union can mandatorily bargain to protect bargaining unit teachers from being singled out for an unusually heavy or otherwise onerous duties mix for arbitrary, illegal or other specified impermissible reasons.

The status of the instant proposal, therefore, turns on whether the lunchroom and playground supervision duties at issue are fairly within the scope of a professional educator's job. We are persuaded that they are. The District's arguments emphasizing the potential importance to students' social skills development that the teachers' performance of lunchroom and playground supervision can have may be educationally sound and hence worthy of weight in determining whether the duties involved are fairly within the scope of the bargaining unit positions involved here. Even more persuasive, however, are the common sense notions that students are more likely to respect the authority of teachers and conform to teachers' directions and control in playground and lunchroom settings than they would respond to nonfaculty personnel. For, students know that

teachers administer students' grades, impose disciplinary measures and grant or withhold student privileges. Moreover, teachers are responsible for controlling students' behavior in classes, study halls and hallway passing periods. Finally, given the historical inclusion of the instant language in the parties' agreement, it would appear that some measure of lunchroom and playground supervision duties have historically been performed by bargaining unit personnel.

For those reasons, we are satisfied that the allocation of playground and lunchroom supervision duties during the teacher work day is generally not a subject for mandatory bargaining. Rather, it is a matter primarily related to the formulation of educational policy.

As noted, the District would be required to mandatorily bargain about a proposal to protect bargaining unit members from being singled out for arbitrary, illegal or other specified impermissible reasons with an unusually heavy portion of lunchroom and playground supervision duties relative to the duties mixes assigned to the balance of the bargaining unit. Janesville, supra, at p.75. However, the instant proposal imposes a greater limitation than such an anti-discrimination proposal would on the District's educational policymaking in the area of allocation of the teacher work day. As written, therefore, we conclude that the instant proposal is a permissive subject of bargaining.

Of course, the Federation can propose and mandatorily bargain over the impact of District decisions to assign teachers certain amounts of playground and lunchroom supervision duties and could thereby mandatorily bargain for additional compensation for teachers who receive in excess of a stated amount of such work assignments.

Dated at Madison, Wisconsin this 23rd day of May, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Herman Torosian, Chairman

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Gary L. Covelli, Commissioner

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Marshall L. Gratz, Commissioner