STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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| In the Matter of the Petition of<br><br>SCHOOL DISTRICT OF CAMPBELLSPORT<br><br>Requesting a Declaratory Ruling Pursuant to Sec. 111.70(4)(b), Wis. Stats., Involving a Dispute Between Said Petitioner and<br><br>CAMPBELLSPORT EDUCATION ASSOCIATION | Case V<br>No. 30720 DR(M)-273<br>Decision No. 20936 |

Appearances:

Mr. Barry Forbes, Staff Counsel, Wisconsin Association of School Boards, on behalf of the School District of Cambellsport.

Mr. Michael L. Stoll, Staff Counsel, Wisconsin Education Association Council, on behalf of the Campbellsport Education Association.

## FINDINGS OF FACT, CONCLUSION OF LAW AND DECLARATORY RULING

The School District of Campbellsport having on November 29, 1982, filed a petition requesting the Wisconsin Employment Relations Commission to issue a declaratory ruling, pursuant to Section 111.70(4)(b) of the Municipal Employment Relations Act, as to whether certain proposals contained in the final offer of the Campbellsport Education Association, submitted in the course of the informal mediation-arbitration investigation in the negotiations pursuant to a reopener provision in the parties' 1981-83 collective bargaining agreement, are non-mandatory subjects of bargaining; and the parties having waived a hearing in the matter and submitted briefs in support of their respective positions by June 13, 1983; and the Commission having considered the proposals in issue and the arguments of the parties, makes and issues the following

## FINDINGS OF FACT

1. That the School District of Campbellsport, hereinafter referred to as the District, is a municipal employer having its offices at Campbellsport, Wisconsin 53010.

2. That the Campbellsport Education Association, hereinafter referred to as the Association, is a labor organization affiliated with Winnebagoland UniServ-South which has its offices at 785 South Main Street, Fond du Lac, WI 54935.

3. That at all times material herein, the Association has been the voluntarily recognized exclusive collective bargaining representative of all certified personnel including full time teaching employees, librarians and guidance counselors employed by the District, but excluding professionals who teach in classroom situations less than fifty percent (50%) of their time and have

5. That the final offer of the Association contained a proposal regarding class size which the District objected to as a non-mandatory subject of bargaining; and that on November 29, 1982 the District filed a petition with the Commission alleging that the following proposal relates to the basic educational policy of the District and requested the Commission to issue a declaratory ruling that said proposal relates to a non-mandatory subject of bargaining:

Article VI Workload

B. 5. The District shall determine the number and type of work assignments (within a teacher's area(s) of certification) which teacher shall perform during the regular teacher work day.

a. Teachers in grades K-6 who are assigned no more than 27 students on a daily basis shall be paid in accordance with the salary schedule. Split grade teachers in grades K-6 who are assigned no more than 22 students on a daily basis shall be paid in accordance with the salary schedule.

Teachers in grades 7-12 who are assigned no more than 160 students on a daily basis shall be paid in accordance with the salary schedule.

b. Number of students on a daily basis shall be calculated on a semester basis excluding the first ten (10) days of the semester.

c. Teachers assigned class sizes greater than that expressed in B. 5(a) shall receive additional compensation on the following basis:

1. Grades K-6 Teachers shall receive compensation at the rate of 2% for each additional student beyond 27 .

2. Split Grades Teachers shall receive compensation at the rate of 2% for each additional student beyond 27 .

3. Grades 7-12 Teachers shall receive compensation at the rate of .5% for each additional student beyond 160 .

4. Additional compensation shall be paid teachers by separate check at the end of each semester.

6. That in response to the District's petition for a declaratory ruling the Association, on January 13, 1983, submitted a revised final offer which included the following revision of its class size proposal:

Article VI

B.5. Class Size Workload

a. The parties recognize that the number of students assigned to a teacher is a matter of basic educational policy and that the District may assign any number of students it so desires to a teacher's classes. The parties also recognize that the number of students assigned to a teacher directly affects the conditions of employment and workload of that teacher.

b. Teachers in grades K-5 who are assigned twenty-seven (27) or fewer students per school day, averaged on a semester basis, in academic subjects, shall receive wage compensation in accordance with the provisions of the Salary Schedule. Split-grade teachers in grades K-6 who are assigned twenty-two (22) or fewer students per school day, averaged on a semester basis, in academic subjects, shall receive wage compensation in accordance with the provisions of the Salary Schedule. Teachers in grades 7-12 who are assigned one hundred sixty (160) or fewer students per school day, averaged on a semester basis, in academic subjects, shall receive wage compensation in accordance with the provisions of the Salary Schedule.

c. In the event the District chooses to assign more students to a teacher per school day than the class size workloads set forth above, the teachers so affected shall receive, as work overload compensation in addition to their scheduled salaries, additional compensation each semester in accordance with the following rates:

1. Grades K-6: Additional compensation at the rate of one percent (1%) of the teacher's yearly base salary for each student in excess of twenty-seven (27) per school day, averaged on a semester basis.

2. Split-Grades (K-6): Additional compensation at the rate of one percent (1%) of the teacher's yearly base salary for each student in excess of twenty-two (22) per school day, averaged on a semester basis.

3. Grades 7-12: Additional compensation at the rate of one-quarter percent (0.25%) of the teacher's yearly base salary for each student in excess of one hundred sixty (160) per school day, averaged on a semester basis.

d. For teachers with less than full-time contracts with the District, the class size workloads described above in paragraph b., and the additional compensation provided for in paragraph c., shall be pro-rated according to the percentage of a full-time contract held by such teachers.

e. The provisions of subsection 6.5 shall not apply to physical education, music, art and special education teachers, where instructional needs and/or legal requirements dictate a modification in the class size workloads referred to above.

f.1. For the purpose of determining the number of students assigned to a teacher "per school day, averaged on a semester basis", the first ten (10) school days of the semester, and the number of students assigned to a teacher during that period of time, shall be excluded from the calculation.

2. Any additional compensation earned by a teacher pursuant to subsection B.5. shall be separately itemized and paid at the end of each semester.

3. The class size workload provisions of subsection B.5 shall be effective with the beginning of the second semester of the 1982-1983 school year.

7. That in response to the Association's revision of its class size proposal the District's representative, Kenneth Cole, indicated on February 18, 1983, in writing to both the Commission and the Association, that the District continues to object to the Association's class size proposal on the same basis set forth in its petition for declaratory ruling.

8. That the proposal submitted by the Association on January 13, 1983 as part of its revised final offer regarding provisions to be included in the parties' 1981-1983 collective bargaining agreement covering the wages, hours and conditions of employment of the employes in the collective bargaining unit involved herein, as set forth in Finding of Fact No. 6, primarily relates to the wages, hours and conditions of employment of the employes in said bargaining unit.

## CONCLUSION OF LAW

That the proposal of the Campbellsport Education Association, as set forth in paragraph 6 of the Findings of Fact, primarily relates to wages, hours and conditions of employment, and therefore, is a mandatory subject of bargaining within the meaning of Section 111.70(1)(d) of the Municipal Employment Relations Act.

## DECLARATORY RULING

That the School District of Campbellsport has a duty to bargain regarding the items in the proposal of the Campbellsport Education Association set forth in paragraph 6 of the Findings of Fact, and therefore, that said proposal may properly be included in the final offer of the Association. 1/

Given under our hands and seal at the City of Madison, Wisconsin this 29th day of August, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Herman Torosian, Chairman

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Gary L. Covelli, Commissioner

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Marshall L. Gratz, Commissioner

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

227.12 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final

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1/ (Continued)

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.

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

The issue presented in the instant petition is whether the Association's proposal, Article VI, B.5., Class Size Workload, included in its final offer, and set forth in paragraph 6 of the Findings of Fact, is a permissive or mandatory subject of bargaining within the meaning of Section 111.70(1)(d) of the Municipal Employment Relations Act (MERA).

### DISTRICT ARGUMENTS

Citing the Wisconsin Supreme Court's decision in Beloit Education v. WERC, 2/ The District contends that bargaining proposals may be categorized as follows:

(1) where collective bargaining is required;

(2) where collective bargaining is permitted, but not required; and

(3) where collective bargaining agreements are prohibited.

The District asserts that the Court noted a fourth category, i.e., proposals which implicate both wages, hours and conditions of employment and educational policy or school management. School districts are not required to bargain over such proposals as they implicate educational policy or management of the schools. If, however, a school district unilaterally adopts such a policy, then the district is required to bargain collectively over the impact of that policy on wages, hours and conditions of employment.

The District argues that the Association's proposal on class size workload falls into this fourth category. Relying on the Commission's decisions in City of Beloit 3/ and Oak Creek-Franklin Joint City School District No. 1 4/ the District takes the position that school districts have no duty to bargain over such proposals as they implicate educational policy. It is only when a school district adopts a new class size policy that the district must bargain the impact of that policy.

The District also contends that the Association's proposal is so similar to the class size proposal considered in Oak Creek, supra, that the Commission's decision in that case is controlling in the instant proceeding. The Commission found in that case that the class size proposal was a permissive subject of bargaining, including Section 21.3 of the proposal which dealt with payments to

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2/ 73 Wis. 2d 43 (1976).

3/ Decision No. 11831-C,D.

4/ Decision No. 11827-D,E.

teachers where class size guidelines were exceeded. 5/ The only difference between Section 21.3 of the proposal in Oak Creek and the Association's proposal in this case is that the Association's proposal does not limit the reasons for which the District may exceed the guidelines. That distinction is not relevant to the determination of the proposal's status. Rather, it is the fact that both proposals contain guidelines as to the number of pupils to be placed in particular classes that is determinative, i.e., that makes them permissive.

According to the District:

> A teacher association, faced with a decision to increase the number of pupils taught by each teacher over prior years, could demand that teachers be given a per pupil salary increase for each additional pupil per class under the decision in Oak Creek. But, if in that same siutation, the association proposal was not based on any actual change in district policy, but rather based on an association determination of a proper class size and a per pupil payment for exceeding that class size, that proposal would be permissive.
>
> . . .
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> Thus it is clear that any teacher association proposal to give teachers with large classes extra compensation on a per pupil basis will be found permissive if the proposal contains a class size guideline - even if this guideline is used only as a base number from which to calculate the additional compensation, such as in the CEA proposal.

The District in its brief characterizes the Association's proposals as containing the following components which primarily relate to educational policy:

> 1. The district should have a written class size policy contain (sic) at least in part within the collective bargaining agreement.
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> 2. The class size policy should treat grade K to 6 classes differently than grade K to 6 classes taught by split grade teachers and that both should be treated differently than grade 7 to 12 classes.
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> 3. The class size policy should treat physical education classes, music classes, art classes and special education classes differently than other classes. (Amended proposal).

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5/ The class size proposal before the Commission in Oak Creek provided:

Class Sizes

Section 21.1 Regular kindergarten through grade 6 classes shall not exceed a maximum of 25 pupils per teacher.

Section 21.2 Junior and Senior High School classes shall not exceed 25 pupils per teacher in average and high achievement classes and shall not exceed 15 pupils in basic sections; heterogeneous classes shall not exceed 25 pupils per class.

Section 21.3 All the pupil - teacher ratios are desirable goals that the Board will strive to obtain. They may, however, be revised if unforeseen population changes, transportation, and physical plant limitations dictate. In the event that any teacher is required to teach a class that exceeds those guidelines that teacher shall be compensated at a rate of $10.00 per week per pupil.

4. The class size policy should make no other distinctions between classes (original proposal) except where instructional need or legal requirements "dictate" a different policy. (amended proposal).

5. Classes in grades K to 6 should have no more than 27 students.

6. Classes in grades K to 6 taught by split grade teachers should have no more than 22 pupils.

7. The sum of all classes taught daily by teachers of grades 7 to 12 should have no more than 160 pupils.

8. The determination of compliance with these class size policies should be made by calculating the average number of students per day for each semester, excluding the first 10 days of each semester. (at page eight)

It is the District's position that it may wish to have different policies on class size and may not wish to have its policy stated in the collective bargaining agreement. These are determinations for the District to make and about which the District is not required to bargain with the Association.

In its reply brief the District maintains that the Association's proposal is not an attempt to bargain the impact of a class size policy established by the District, rather, the Association's proposal is an attempt to specify what the class size policy will be and then to bargain the impact of that policy.

The District also disputes the Association's claim that under its definition of class size impact bargaining the Association could be precluded from the right to bargain impact simply by a district's choosing not to set a class size policy or by setting a policy of unlimited class sizes. According to the District, each district makes class size decisions each year when a particular number of students are placed in a particular class and the Association may bargain the impact of those decisions. Also, rather than waiting for actual class size decisions to be made the Association could select a base year and base its proposal on the practice that existed in that year.

ASSOCIATION ARGUMENTS

The Association contends that according to the construction given to section 111.70(1)(d) of MERA by the Commission and the Wisconsin Supreme Court, that statutory provision requires bargaining as to (1) matters primarily related to wages, hours and conditions of employment and (2) "the impact of the establishment of educational policy affecting the wages, hours and conditions of employment." Citing Beloit Education Association v. WERC, supra.

Where a subject area relates to both wages, hours and conditions of employment and matters of educational policy and school management and operation, the Court has taken a case-by-case approach and applied the "primary relationship" standard to determine whether the subject area is a mandatory subject of bargaining. That test requires a determination of whether the management decision involved primarily relates to the formulation or management of public policy or, instead, primarily relates to the wages, hours and conditions of employment of the employes in the bargaining unit in question. The Association considers the Court analysis in Beloit, supra, Unified School District No. 1 of Racine County v. WERC, 81 Wis. 2d 95 (1977) and City of Brookfield v. WERC, 87 Wis. 2d 819 (1979) as requiring the utilization of a balancing test to determine whether a matter is a mandatory subject of bargaining. The Commission must weigh the effects of the proposal on district policy and on the employes' terms and conditions of employment and determine which interests predominate. If a proposal has little impact on wages, hours and conditions of employment and is shown to impact adversely on a school district's policy-making prerogatives, the proposal is a permissive subject of bargaining. Conversely, if a proposal does not adversely impact on the district's managerial authority and impacts on wages, hours, etc., the proposal is a mandatory subject of bargaining.

It is the Association's position that its proposal in question is a mandatorily bargainable "impact" proposal. According to the Association, its proposal expressly recognizes that the number of students assigned to a teacher is a matter of basic educational policy and that the District has the right to assign any number of students to a teacher. The proposal in no way restricts the District from adopting and implementing any class size policy or practice it considers proper.

The Association contends that the District's definition of "impact bargaining," implicit in its legal position in this case, is so narrow as to effectively terminate the Association's right to bargain the impact of the District's class size policy or practice on employes' working conditions. Merely relating to permissive managerial or educational policy decisions is not, as the District contends, sufficient to make the proposal permissive, since any impact proposal by necessity is "related" to the policy decision whose impact is dealt with in such a proposal. It is conceded that a proposal that dictates the maximum number of students that can be assigned to a teacher primarily relates to educational policy and is a permissive subject of bargaining. A proposal, however, that does not set class size limits or restrict the school district with respect to class size options it may elect to implement, does not, however, primarily relate to the formulation of educational policy, and if the proposal primarily relates to the impact of the district's class size decisions on employes' wages, hours and working conditions, it is a mandatory subject of bargaining. The Association argues that its proposal falls within this latter category.

According to the Association:

> Under the principles established in the decisions of the Commission and the courts, there are two essential characteristics of a mandatory, impact proposal: the absence of undue restrictions on managerial decision-making and/or educational policy-making (as opposed to proposed consequences, with respect to employe wages, hours or conditions of employment, which attach to particular management decisions and/or educational policies); and the presence in the proposal of a relationship between the particular permissive managerial decision and the impact of that decision on employes' wages, hours or working conditions.

The Association argues that its proposal satisfies both of those criteria. This is so since the proposal (1) neither sets the number of students that may be assigned to a teacher's class nor restricts the District's ability to establish the class size at whatever ratio it deems proper, and (2) embodies within it the "decision-impact relationship" via its recognition that the number of students assigned to a teacher directly affects that teacher's work load and working conditions. The latter being a relationship which the Association contends has been acknowledged by the Commission in its decisions in City of Beloit 6/ and Oak Creek-Franklin Joint City School District No. 1. 7/

It is the Association's contention that in embodying that relationship its proposal is primarily related to teachers' compensation and their class size workloads, i.e., wages and working conditions. In identifying different wage-class size relationships the proposal reflects the Association's bargaining position as to what it views as different workload situations at those three levels and also reflects the class size averages existing in those levels in the District.

specify any class size policy or require the District to have any class size policy, nor does it address the question of how many students "should" or "should not" be in a class. The distinction the proposal makes between the three levels and different classes merely reflects its bargaining position and the District is free to take a different position. The fact that the proposal is not based upon actual District policy or practice supports the Association's position that it is not primarily related to educational policy, but is instead concerned with the impact on teachers' wages and working conditions. By not taking into account present District policy the proposal leaves the District free to adopt any policy it deems appropriate.

The Association distinguishes between its proposal and the class size proposals the Commission found to be permissive in Beloit and Oak Creek, supra. The basis of the distinction is that, unlike the proposals considered in Beloit and Oak Creek, the Association's proposal does not place numerical limits on the number of students in a class nor does it make any class size policy the District may adopt violative of the bargaining agreement. The Association also contends that its proposal is conceptually parallel to the class size proposal which the Commission indicated it would find to be a mandatory subject of bargaining in Oak Creek.

The Association claims that the District by defining mandatory class size impact bargaining as something that can occur only after the District unilaterally alters existing class sizes would thereby make the right meaningless. The Association views the District position as inconsistent with sound labor relations policy and not supported by either Sec. 111.70 or case law. Furthermore, limiting the right to bargain the impact of class size in the manner advanced by the District would preclude the Association from bargaining class size impact during negotiations on a successor collective bargaining agreement. In other words, the Association would only be able to attempt to bargain meaningfully on the subject during the term of an existing agreement, a period during which the Association is legally precluded from utilizing statutory impasse resolution procedures. Such a result is contrary to the public policy underlying the duty to bargain.

The Association further contends that if the District's theory is adopted a school district could avoid ever having to bargain over the impact of class size by never formally adopting a class size policy or by having an existing policy of unlimited class sizes. It is the Association's position that it has the right to bargain over the impact of existing class size practices, as well as over the impact of any unilateral changes in existing policy or practice, and that the Association has the right to propose a class size impact provision which incorporates the Association's bargaining position with respect to the impact of any class size practice the District might in the future or at present elect to implement.

DISCUSSION

The Commission and the Wisconsin Supreme Court have interpreted Section 111.70(1)(d), Stats., as requiring mandatory bargaining both as to "(1) matters which are primarily related to 'wages, hours and conditions of employment,' and (2) the impact of the 'establishment of educational policy' affecting the 'wages, hours and conditions of employment,' " and as permitting, but not requiring, municipal employers to bargain as to matters that primarily relate to the formulation of basic educational policy. 8/ In order to determine whether the Association's proposal is a mandatory "impact" proposal or a permissive "policy" proposal it is necessary to determine which relationship predominates.

The District makes several arguments in support of its position that the Association's proposal is primarily related to class size policy, and hence, permissive. The District's first argument, that the duty to bargain impact of class size only arises when the District adopts a new class size policy, appears to be based on a misinterpretation of the Commission's decisions in Oak Creek, supra. Contrary to the District's contention, the decisions in Oak Creek, including the decision on the Motion for Reconsideration, do not require that a new class size policy decision be made and implemented before the

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8/ Beloit Education Association, supra; Racine Unified School District v. WERC, 81 Wis. 2d 89 (1977).

Association would have the right to bargain the impact of the district's class size policy. Rather, the Commission, as did the Court in Beloit Education Association, supra, simply recognized the impact of class size on the working conditions of the teachers and concluded that the district had to bargain over that impact, holding:

> The size of a class is a matter of basic educational policy because there is very strong evidence that the student-teacher ratio is a determinant of educational quality. Therefore, decisions on class size are permissive and not mandatory subjects of bargaining. On the other hand, the size of the class affects the conditions of employment of teachers. The larger the class, the greater the teacher's work load, e.g., more preparation, more papers to correct, more work projects to supervise, the probability of more disciplinary problems, etc. While the School Board has the right to unilaterally establish class size, it nevertheless has the duty to bargain the impact of the class size, as it affects hours, conditions of employment and salaries. (At pages 21-22; Emphasis added).

The District's argument ignores the fact that its existing class size practice has that impact on the working conditions of teachers noted above.

The District's contention that the Association's proposal at issue is indistinguishable from the class size proposal considered and found to be permissive in Oak Creek, supra, is without merit. The proposals in Oak Creek were found to be permissive because they established student-teacher ratios. In that regard, Sections 21.1 and 21.2 set specific maximums for class size at certain grade levels and while Section 21.3 identified those student-teacher ratios as "desirable goals" and provided for revisions to ratio maximums under certain circumstances, it still limited the School Board's ability to unilaterally decide the class size. It was that express limitation on the Board's right to establish the student-teacher ratio that made the proposal permissive. The proposal at issue here, however, specifically recognizes that class size is a basic educational policy and provides for the District to assign "any number of students it desires to a teacher's classes." It does not establish guidelines as to student-teacher ratios. Contrary to the District's contention, we note that the Commission's discussion of Section 21.3 in Oak Creek 9/ suggests that a proposal as provided herein, which does not restrict the District's right to determine class size, but provides for a method to compensate a teacher based on class size, would be considered impact and therefore mandatory.

The District also contends that to be a legitimate class size "impact" proposal the provision must be based on increases in actual class size practices in the District and not on numerical guidelines unrelated to existing class sizes. The District's argument, however, again ignores the impact of its existing class size practices and the concomitant right of the Association to bargain over that impact. Contrary to the District's claim, rather than being an attempt to bargain the Association's version of what it feels is appropriate class size policy, the Association's proposal only provides a means for determining when a teacher will be entitled to additional compensation and how much the teacher is to receive. Unlike the proposal in Oak Creek, the Association's proposal here does not limit in any way the District's authority to set whatever class size limits it feels are proper. The fact that under the Association's proposal the District would have to start paying teachers additional compensation at class size levels below what the

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9/ In Oak Creek, supra, we stated the following regarding Section 21.3 which provided for compensation of $10.00 per week per pupil beyond certain class sizes:

> While the District has the right to unilaterally establish class size, it nevertheless has the duty to bargain the impact of the class size, as it affects hours, conditions of employment and salaries. Such a proposal regarding impact is reflected in Section 21.3 of the Association's proposals. (at page 15)

District considers appropriate and that the proposal distinguishes between certain grade levels and types of classes goes to the merits of the proposal and not to its status as a mandatory or permissive subject of bargaining.

The District also errs in its argument that the Association's proposal is permissive since it requires the District to have a written class size policy, distinguishes or does not distinguish between certain grade levels and classes, requires additional pay for teachers with classes exceeding specified numbers and provides a means of calculating the number of students assigned to a teacher. The proposal does not require the District to have a written class size policy or even to have any established class size policy. As noted above, the proposal only provides a method for computing impact pay. The District is free to do as it deems proper as far as setting class sizes. While it is true that under the proposal the District would incur additional expense by having to pay teachers extra if it set class sizes above certain levels, that is not a sufficient limitation on the District's ability to set class size policy to make the Association's proposal permissive. 10/

The cost of a proposal goes to its merits and the question of the proposal's merits is left to the bargaining process. 11/ The question of the proposal's mandatory permissive status in this instance is decided by whether the proposal is worded so as to prevent the District from unilaterally determining class sizes. It has already been concluded that the proposal does not preclude the District from setting class size policy.

On the basis of the foregoing, we conclude that the Association's class size proposal primarily relates to the impact of the District's class size policy on the wages, hours and conditions of employment of the teachers. Therefore, the proposal is a mandatory subject of bargaining and may properly be included in the final offer of the Association.

Dated at Madison, Wisconsin this 29th day of August, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Herman Torosian, Chairman

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Gary L. Covelli, Commissioner

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Marshall L. Gratz, Commissioner

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10/ The Commission has consistently held that the fact that a proposal affects the municipal employer's budget is not determinative with respect to the question of whether a proposal is mandatorily bargainable. City of Brookfield (17947) 7/80; City of Wauwatosa (15917) 11/77.

11/ City of Wauwatosa, Supra.