STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of STOUGHTON AREA SCHOOL DISTRICT Requesting a Declaratory Ruling Pursuant to Section 111.70(4)(b), Wis. Stats., Involving a Dispute Between Said Petitioner and STOUGHTON EDUCATION ASSOCIATION	Case 28 No. 36059 DR(M)-385 Decision No. 23666

Appearances:

Melli, Walker, Pease & Ruhly, S.C., Attorneys at Law, by Mr. Jack D. Walker, 119 Monona Avenue, P. O. Box 1664, Madison, Wisconsin 53701-1664, on behalf of the District.

Mr. Michael L. Stoll, Staff Counsel, Wisconsin Education Association Council, 101 West Beltline Highway, P. O. Box 8003, Madison, Wisconsin 53708, on behalf of the Association.

FINDINGS OF FACT, CONCLUSION OF LAW AND DECLARATORY RULING

The Stoughton Area School District having, on November 15, 1985, filed a petition with the Wisconsin Employment Relations Commission seeking a declaratory ruling pursuant to Sec. 111.70(4)(b), Stats., as to the District's duty to bargain with the Stoughton Education Association over an Association proposal made to the District during collective bargaining; and the Association having, on December 12, 1985, filed its statement in response to the District's petition which included an amendment of the proposal in dispute; and the parties thereafter having engaged in unsuccessful efforts to resolve their dispute; and the Association having, on February 10, 1986, filed a Motion for Summary Judgment; and neither party having requested hearing; and both parties having filed written argument, the last of which was received on March 28, 1986; and the Commission having considered the matter makes and issues the following

FINDINGS OF FACT

1. That the Stoughton Area School District, herein the District, is a municipal employer operating a public school system and having its principal offices at 211 North Forest Street, Stoughton, Wisconsin 53589.

2. That the Stoughton Education Association, herein the Association, is a labor organization functioning as the exclusive collective bargaining representative of certain professional employes employed by the District and having its principal offices at 4800 Ivywood Trail, McFarland, Wisconsin 53558.

3. That during collective bargaining between the District and the Association, a dispute arose as to the District's duty to bargain with the Association over the following Association proposal:

> All elementary teachers will receive no fewer than 225 minutes per week of preparation time during the student day.

and that on November 15, 1985, the District filed the instant petition seeking a ruling from the Commission that the proposal was a permissive subject of bargaining.

4. That on December 12, 1985, the Association responded to the District's petition by amending the proposal in dispute as follows:

> Section 201.3. Elementary School Preparation Time.
>
> a. Full-time elementary school teachers (grades K-5) to whom the District does not provide three and three-quarters (3 3/4) hours of preparation time per week during the student school day shall

receive compensation, in addition to their scheduled salaries, in the amount of one-fourth (1/4) of the teacher's regular hourly pay for each such quarter hour (or major fraction thereof) less than three and three-quarters (3 3/4) hours per week provided by the District.

b. As used herein, preparation time means that time during the student school day when the teacher is not assigned to instruct, tutor or supervise one or more students, or attend administrative conferences or faculty meetings, and which the teacher has available to prepare lesson plans, correct papers, prepare classroom materials and presentations, do research, consult with other teachers, and engage in those activities which are essential to good instruction. Preparation time does not include the teacher's duty-free lunch period.

c. As used herein, a teacher's regular hourly pay shall be determined by dividing the teacher's yearly scheduled salary by the product of 189 (contract days per year) x 6.

d. For teachers with less than full-time contracts with the District, the amount of preparation time provided for in this section (on the basis of which the additional compensation provided for in this section is calculated) shall be prorated according to the percentage of a full-time contract held by such teachers.

e. Any additional compensation earned by a teacher under this section shall be separately itemized and paid monthly by the District on the basis of a voucher submitted biweekly by the teacher.

and that the District thereafter advised the Commission that there remained a dispute between the parties as to the duty to bargain over the amended proposal.

5. That the proposal set forth in Finding of Fact 4 primarily relates to wages, hours and conditions of employment.

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

CONCLUSION OF LAW

That the proposal set forth in Finding of Fact 4 is a mandatory subject of bargaining within the meaning of Sec. 111.70(1)(a), Stats.

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

DECLARATORY RULING 1/

That the District and the Association have a duty to bargain within the meaning of Sec. 111.70(1)(a), Stats., over the proposal set forth in Findings of Fact 4.

Given under our hands and seal at the City of Madison, Wisconsin this 16th day of May, 1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Herman Torosian, Chairman

_____
Marshall L. Gratz, Commissioner

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Danae Davis Gordon, Commissioner

1/ See Footnote on Page 3.

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

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

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

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

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.20 upon which petitioner contends that the decision should be reversed or modified.

. . .

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

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

Background:

When the Association submitted its amended proposal to the District in December 1985, in response to the District's declaratory ruling petition, the Association asserted that the Commission had already found such a proposal to be a mandatory subject of bargaining in Racine Unified School District, Dec. Nos. 20652-A and 20653-A (WERC, 1/84), School District of Janesville, Dec. No. 21466 (WERC, 3/84), and School District of Shullsburg, Dec. No. 20120-A (WERC, 4/84) and therefore that the Association would be filing a motion for summary judgment if the District did not agree that the amended proposal was a mandatory subject of bargaining. The District promptly responded by suggesting, among other things, that the matter be held in abeyance until the Court of Appeals ruled upon the correctness of the Commission decision in Racine, supra. The parties thereafter unsuccessfully attempted to agree on a procedure under which the outcome of the Court of Appeals decision in Racine, supra, would end the need for further proceedings in this matter. On February 10, 1986, the Association filed its motion for summary judgment.

The Court of Appeals affirmed the Commission's decision in Racine, supra, on March 6, 1986, and no appeal of that decision to the Wisconsin Supreme Court was pursued. The parties completed their briefing of the motion for summary judgment on March 28, 1986. Neither party has requested a hearing.

Positions of the Parties:

The Association

The Commission has consistently held that contract proposals which require the District to allocate the teacher workday in any specific manner (e.g., proposals which mandate the amount of preparation time to which a teacher is entitled during the workday, proposals which specify the maximum number of preparations or classroom assignments to which a teacher may be assigned during the workday, etc.) or which too narrowly limit the scope of the duties which will be performed by a teacher during that workday constitute permissive subjects of bargaining. However, it is equally well established that the District has the duty to bargain the impact of educational policy or work assignment decisions as they affect the wages, hours and conditions of employment of its employes. The Association's preparation time proposal at issue in this case focuses on the impact on employe wages, hours and working conditions of particular District work assignment or allocation decisions.

The Association's preparation time impact proposal implicitly recognizes the District's right to unilaterally determine the amount of preparation time to which a teacher is assigned, and it does not require the District to provide teachers with any specific amount of preparation time during the workday. The proposal requires only that additional compensation be paid to elementary school teachers who are not provided with three and three-quarters hours of preparation time per week during the student school day. In its Racine, Janesville and Shullsburg decisions, the Commission acknowledged the indisputable fact that teachers are expected to, and must, prepare for their classroom teaching assignments. The additional money provided for in the Association's proposal is intended to compensate teachers for the time outside of the regular workday which they will have to devote to preparation, in the event that the District does not provide such preparation time during the regular workday. As such, the proposal does not

primarily relate to matters of educational policy or to the allocation of teacher work assignments during the workday, but rather to the impact of particular District work assignment decisions on employe wages, hours and working conditions.

The District's primary contention in support of its challenge to the Association's proposal is that it is incumbent upon the Association to establish factual "evidence of an impact, of a relationship between the claimed impact and the proposal," and that such impact "predominate(s) over the impact (of the proposal) on school policy." As acknowledged by the District, this argument was advanced by the employers in the Racine and Janesville cases. In its decisions in those cases, the Commission clearly rejected this employer demand for proof of "actual impact" as a condition precedent for a ruling that the proposal is a mandatory compensation proposal, and, accordingly, the Commission's analysis applies equally well to the Association's proposal in this case.

The District's arguments about the definitional components of the proposal should be rejected. Similar contentions were rejected by the Commission in Racine and Janesville.

In its brief and other submissions to the Commission in this case, the District has not disputed, nor could it dispute, that

> A teacher cannot teach, even poorly, without some knowledge of the subject to be taught. Knowledge of the subject to be taught requires preparation. Preparation requires the expenditure of time by the teacher. Time is either available as a part of the teacher's regular work day or outside the work day. If sufficient time is not available as a part of the work day, time must be spent outside the work day.

Janesville, supra, p. 87; Racine, supra, p. 42. Under the Court of Appeals decision in Racine and the Commission's prior rulings, the Association's preparation time impact proposal is a mandatory subject of bargaining, and no hearing is necessary in this case to establish facts to support that determination. Only if the District denied the validity of the statements quoted immediately above could a hearing possibly be necessary -- and then only to demonstrate the disingenuousness of any such District denial. Accordingly, the Association is entitled to a prompt and summary ruling that its contract proposal in dispute herein is a mandatory subject of bargaining within the meaning of Sec. 111.70(1)(a), Stats., which the Association is entitled to include in its final offer under Sec. 111.70(4)(cm)6., Stats.

The District

The District contends that the Commission's decision in Racine, Janesville and Shullsburg were incorrect and resubmits for the Commission's consideration the positions previously taken by the school districts in those cases. In addition the District notes that if evidence of impact on wages, hours and conditions of employment is required before a proposal can be found mandatory, such evidence is lacking in this proceeding because there has not been a hearing.

The District points out that the definition of "preparation time" used in the Association's proposal includes the time available for research, consultation with other teachers and "activities" which are essential to good instruction. The District asserts that these three components were not present in the proposals ruled upon in earlier cases and are unrelated to preparation for teaching. Therefore, the Association's "impact proposal should fall." The District further argues the proposal's specification that time outside the student day does not qualify as "preparation time" also makes this proposal different from those previously ruled upon and unrelated to the impact of preparation time on wages, hours and conditions of employment.

The District therefore asks that the proposal be found to be a permissive subject of bargaining.

Discussion:

The proposal before us herein provides that teachers will receive additional compensation if the employer elects to allocate the workday in a certain manner. In Racine, supra, we found an equivalent proposal 2/ to be a mandatory subject of bargaining because we concluded that such a proposal is primarily related to wages as well as the teacher's hours. We commented:

> In our view, the disputed language establishes compensation levels for weeks or days when the District chooses not to provide teachers with the specified amounts of preparation time. It is therefore a compensation proposal which is primarily related to the additional wages a teacher will receive when his or her day is allocated by the District in a certain manner. The Association bears no burden to demonstrate that a wage proposal which would apply to teachers who do not receive a specified level of preparation time or whose day is allocated in a specific manner is mandatory just as it bears no burden to establish the mandatory nature of the compensation which it proposes should be paid to teachers who receive levels of preparation time at or above those specified in the proposal. Both such proposals simply establish the compensation which the Association proposes is appropriate for different kinds of work weeks or work days. Thus, we reject the District's first contention as to why the proposal is permissive (i.e., because the Association allegedly failed to demonstrate the requisite impact upon teacher hours and working conditions) because we believe the analysis suggested therein is inapplicable. However, we are also persuaded that the impact which preparation time or the lack thereof has upon hours and conditions of employment is apparent.
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> . . .

2/ The proposal in Racine was as follows:

c. 1. Teachers shall be compensated in accordance with the provisions of the Basic Salary Schedule for duties within the normal scope of teacher's employment.

2. Elementary teachers Pre-K-5 to whom the District does not provide two and one-third (2 1/3) hours of preparation time per week shall receive compensation, in addition to their scheduled salaries, as provided in Article VIII(3)(c)(5).

3. Teachers in grades 6-12 to whom the District does not provide five and one-half (5 1/2) hours of preparation time per week, shall receive compensation in addition to their scheduled salaries as provided in Article VIII(3)(c)(5).

4. Departmental Chairpersons to whom the District does not provide nine and one-half (9 1/2) hours of preparation time per week shall receive compensation, in addition to their scheduled salaries, as provided in Article VIII(3)(c)(5).

5. Teachers to whom the district does not provide the hours of preparation time specified in VIII(3)(c)(2)(3) or (4) shall receive compensation in addition to their scheduled salaries, in the amount of one-fourth (1/4) of the teacher's regular hourly pay for each such quarter hour (or any portion thereof) less than the preparation time specified.

d. As used herein, preparation time provided by the District shall not include any unassigned time after the regular teacher workday begins but before the student school day begins, or after the student school days ends but before the regular teacher workday ends.

We find the impact of preparation time upon hours is clear. A teacher cannot teach, even poorly, without some knowledge of the subject to be taught. Knowledge of the subject to be taught requires preparation. Preparation requires the expenditure of time by the teachers. Time is either available as a part of the teacher's regular work day or outside the work day. If sufficient time is not available as a part of the work day, time must be spent outside the work day.

. . .

Given the foregoing, we find that the instant proposal is a mandatory subject of bargaining because it primarily relates to wages as well as to the impact upon hours and conditions of employment of District preparation time policy choices.

The foregoing analysis, which was just affirmed by the Court of Appeals, 3/ is equally applicable to the proposal before us herein. Because we remain persuaded that said analysis is correct, we respectfully the District's invitation to reach a different outcome herein, and we therefore find the instant proposal to be a mandatory subject of bargaining. 4/ While the District correctly points out that the instant proposal contains a definition of preparation time which differs in certain respects from the definition contained in the proposals ruled upon in Racine and its progeny, 5/ we conclude, as we did in Racine, that the definition of preparation time, like the level at which additional compensation is required and the amount thereof, is a necessary component to a preparation time impact proposal, the specific terms of which bear on the merits of the proposal but not its mandatory or permissive status.

Dated at Madison, Wisconsin this 16th day of May, 1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Herman Torosian, Chairman

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Marshall L. Gratz, Commissioner

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Danae Davis Gordon, Commissioner

3/ Case No. 85-0158 (Ct.App. 3/86, unpublished).

4/ Neither party has requested a hearing, and we have not found it necessary to conduct one on our own motion. As we noted in Racine, the proposal's status as a wage proposal and its relationship to employe hours are both apparent.

5/ Janesville, supra; Shullsburg, supra.