STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

IN the Matter of the Petition of CAMERON SCHOOL DISTRICT Requesting a Declaratory Ruling Pursuant to Section 111.70(4)b), Wis. Stats., Involving a Dispute Between Said Petitioner and NORTHWEST UNITED EDUCATORS	Case 21 No. 39841 DR(M)-438 Decision No. 25612

Appearances:

Mr. Michael J. Burke, Executive Director, 16 West John Street, Rice Lake, Wisconsin 54868, for the Union.

Mulcahy and Wherry, S.C., Attorneys at Law, by Mr. Stephen L. Weld, 21 South Barstow, P.O. Box 1030, Eau Claire, Wisconsin 54702-1030.

FINDINGS OF FACT, CONCLUSION OF LAW AND DECLARATORY RULING

Cameron School District, having on December 21, 1987 filed a petition with the Wisconsin Employment Relations Commission pursuant to Sec. 111.70(4)(b), Stats., seeking a declaratory ruling as to whether it has a duty to bargain with Northwest United Educators over certain matters; and hearing having been held in Cameron, Wisconsin, on February 10, 1988, before Examiner Peter G. Davis; and the parties having filed written argument, the last of which was received on July 1, 1988; and the Commission, having considered the record and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That the Cameron School District, herein the District, is a municipal employer having its principal offices at Cameron, Wisconsin 54822.

2. That Northwest United Educators, herein the Union, is a labor organization having its principal offices at 16 West John Street, Rice Lake, Wisconsin 54868.

3. That during bargaining between the District and the Union, a dispute arose as to whether the following language was a mandatory subject of bargaining;

ARTICLE XIX - CONVENTIONS

> Teachers shall have the option of attending either both days of the N.W.E.A. convention in Eau Claire or the first day of said convention and the C.E.S.A. #4 In - Service program held in Rice Lake on the second day of the N.W.E.A. convention. School will be closed for the two (2) days of the N.W.E.A. convention to allow such attendance. Each teacher shall notify the Superintendent in writing as to which option he/she selects.

4. That the 1985-1987 collective bargaining agreement between the parties also contains the following pertinent language:

ARTICLE XVII - CALENDAR

. . .

> B. The parties agree that the basic calendar shall be for the 188-1/2 full working days, and inclusive of holidays (Labor Day and Memorial Day), of which a minimum of 180 days are to be instructional days with students present and remaining days are to be in-service days.

Schedule C-I from the 1985-1987 contract sets forth the parties 1986-1987 calendar and is attached to this decision as Appendix A.

5. That the disputed language set forth in Finding of Fact 3 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 disputed language set forth in Finding of Fact 3 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 Cameron School District has a duty to bargain within the meaning of Secs. 111.70(3)(a)(4) and (1)(a), Stats., with Northwest United Educators as to the disputed language set forth in Finding of Fact 3.

Given under our hands and seal at the City of Madison, Wisconsin this 4th day of August, 1988.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Chairman

Herman Torosian, Commissioner

A. Henry Hempe, Commissioner

(Footnote 1/ appears on page 3)

1/ Pursuant to Sec. 227.48(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. 227.49 and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.53, Stats.

227.49 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.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefore 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. 227.49, 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. 227.48. If a rehearing is requested under s. 227.49, 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. 77.59(6)(b), 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. 227.57 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.

CAMERON SCHOOL DISTRICT

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

POSITIONS OF THE PARTIES

The District

The District initially notes that it seems well settled that the number and timing of in-service and convention days are mandatory subjects of bargaining while the content of in-service programs is a permissive subject of bargaining. The District argues that the question in this case is whether the disputed days are in-service days or convention days and, if the latter, whether the District nonetheless has the right to determine program content. Viewing the two disputed days as in-service days, the District asserts that having teachers attend programs at conventions is no longer sufficient to meet its managerial and educational policy needs. If Article XIX was found to be permissive, District asserts that all that would change would be its acquisition of a right to utilize the two days presently labelled "convention days" in a manner more consistent with its educational needs.

If the Commission determines that the two days in question are indeed convention days, the District urges the Commission to carefully review the manner in which existing duty to bargain law evolved as to convention days and to note the statutory changes which occurred during that evolution both as to the statutory duty to bargain as well as whether districts were allowed to count teacher convention days as "school days". The District urges that within the historical context, it is appropriate for the Commission to conclude that the content of "convention days", like the content of "in-service days", is a matter of educational policy and that the District should retain the unilateral right to determine that "convention days" could be better spent attending local district in-service programs which the District determines are appropriate.

Given the foregoing, the District asks that the Commission find the disputed language to be a permissive subject of bargaining.

The Union

The Union asserts that the law is well settled that a proposal establishing convention days is a mandatory subject of bargaining. Thus, the Union argues that its proposal is clearly a mandatory subject of bargaining and that the District's position to the contrary is "frivolous".

To the extent that the District argues that the convention leave provided for in Article XIX is actually part of the content of the District's in-service program, the Union asserts that such an argument ignores several well-established standards for the interpretation of contract language. Construing the agreement as a whole, the Union asserts that Article XIX clearly establishes a contractual entitlement to two days of convention leave per school year. The Union contends that the District is seeking through this proceeding additional in-service days that it was unable to acquire at the bargaining table. The Union urges the Commission to reject the District's position as a "free kick at the cat" and find the Union proposal to be a mandatory subject of bargaining.

DISCUSSION

Under current law, calendar proposals which seek to establish convention days and the number and timing of in-service days are mandatory subjects of bargaining while proposals which seek to establish the content of in-service days are permissive. 2/ We continue to be satisfied with the validity of these long-standing conclusions and will apply them to the District's proposal.

2/ Beloit Education Association vs. WERC 73 Wis. 2d 42 (1976); School District of Janesville, Dec. No. 21406, (WERC, 3/84); Milwaukee Board of School Directors, Dec. No. 20093-B, (WERC, 8/83).

The District herein seeks, in part, to persuade us that while the number and timing of convention days may well be mandatory subjects of bargaining, the "content" of a convention day, like the content of an in-service day, is permissive. Thus, the District contends that even if the Commission concludes that this is a convention day proposal, the District should be free, for instance, to have teachers attend local in-service workshops on convention days should the District determine that such workshops would be of greater value to the teacher and the District. We reject the conceptual framework implicit in the District's argument. In our view, it is self-evident that convention days are days on which a convention is attended. The Union has the right under existing precedent to bargain over the number and timing of days on which a teacher will attend a specified convention. If the "content" of convention days were within the District's control, convention days would become indistinct from in-service days. The law as to the bargainability of convention days and in-service days has evolved in a manner which makes them conceptually distinct and we are not inclined to disturb the existing and long-standing conceptual framework.

Given the foregoing, the result of the instant dispute turns on whether the proposal in question establishes the content of in-service days, as argued by the District, or whether the proposal is a convention day proposal, as argued by the Union. On its face, the disputed Article XIX language appears to clearly be a convention day proposal which is mandatory. However, the District argues that when the contract is viewed as a whole, Article XIX in fact establishes the content of 2 in-service days and thus is permissive. We disagree.

The parties' contract language, most recently set forth in Article XVII (B) of the 1985-87 agreement, creates 2 basic calendar categories: 180 instructional days and 8 1/2 "in-service days". Article XVII (B) and Schedule C-1 (attached to this decision as Appendix A) when read in the context of the factual record, establish that 2 of the "in-service days" are paid holidays and 2 of the "in-service days", October 9 and 10, are the days referenced in the Article XIX convention clause. Thus, we are satisfied that the phrase "in-service days", as used in Article XVII (B), is simply a general term used for non-instructional contract days for which the teachers are paid. Thus, Article XVII (B) cannot be reasonably be interpreted in a manner which would negate the clear language of Article XIX.

Given the foregoing, we find the disputed language to establish convention days and, as such, find it to be mandatory.

Dated at Madison, Wisconsin this 4th day of August, 1988.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Chairman

Herman Torosian, Commissioner

A. Henry Hempe, Commissioner

SCHEDULE C-1

1986 1987

⊘ PAID HOLIDAY
△ Last day 9weeks
○ Vacation Day
□ In service

AUGUST 1986

S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

3

SEPTEMBER

S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

Days → 21/24
Total w Students

OCTOBER

S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

21/45

NOVEMBER

S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

18/63

DECEMBER

S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

15/78

1987

JANUARY

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

20/98

FEBRUARY

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28

18/116

MARCH

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

22/158

APRIL

S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

19/157

MAY

S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

20/177

JUNE

S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

3/158