STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

RACINE EDUCATION ASSOCIATION,		
Complainant,	:	Case 131
	:	No. 50462 MP-2853
vs.	:	Decision No. 27972-B
RACINE UNIFIED SCHOOL DISTRICT,		
Respondent.		

Appearances:
Hanson, Gasiorkiewicz & Weber, S.C., by Mr. Robert K. Weber, and Mr. Brian Wright
Melli, Walker, Pease & Ruhly, S.C., Attorneys at Law, by Mr. Jack D. Walker, and

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

Racine Education Association filed a complaint with the Wisconsin Employment Relations Commission on February 3, 1994, and an amended complaint on March 18, 1994, alleging that the Racine Unified School District had committed prohibited practices in violation of Sections 111.70(3)(a)1, 3, and 4, Stats. On March 2, 1994, the Commission appointed Lionel L. Crowley, a member of its staff, to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order as provided in Section 111.07(5), Stats. Hearing was held on April 5, 28, and 29, 1994, in the City of Racine. After the hearing, the Association withdrew that portion of its complaint alleging the formation of labor dominated employe committees and individual bargaining with teachers. Thereafter briefs and reply briefs were submitted, with the last briefs being exchanged on July 18, 1994, at which point the record was closed. The Examiner, having considered the evidence and the arguments of counsel, makes and issues the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. The Racine Education Association, hereinafter referred to as the Association, is a labor organization within the meaning of Section 111.70(1)(h), and its offices are c/o James J. Ennis, 516 Wisconsin Avenue, Racine, Wisconsin 53403. Its Executive Director is James J. Ennis and he has acted on its behalf.

2. The Racine Unified School District, hereinafter referred to as the District, is a municipal employer within the meaning of Section 111.70(1)(j), and its principal office is at 2220 Northwestern Avenue, Racine, Wisconsin, 53404. Major Armstead, Jr. is the District's Superintendent and Frank L.

Johnson is the District's Director of Employee Relations and they have acted on its behalf.

3. The Association is the duly certified exclusive collective bargaining representative for all regular full-time and regular part-time certified teaching personnel employed by the Racine Unified School District, but excluding on-call substitute teachers, interns, supervisors, administrators, and directors, as described in the certificate instrument issued by the Wisconsin Employment Relations Board on the 28th day of April, 1965. (Decision No. 7053)

4. The Association and the District have been parties to a series of collective bargaining agreements, the most current of which expired on August 24, 1992. The parties have been engaged in negotiations for a successor agreement and currently are in mediation, following the District's petition for interest-arbitration pursuant to Section 111.70(4)(cm)6., Stats., dated December 14, 1992 and filed on January 15, 1993.

5. In 1991, the District began to consider the idea of going to a year-round education program. On March 5, 1991, Frank Johnson, chief negotiator for the District, wrote to James J. Ennis, chief negotiator for the Association, stating the following:

> Year-Round School
>
> The Board of Education's Negotiating Committee has authorized me to write this letter.
>
> As you know, the District is currently looking into some form of year-round education as a way to alleviate crowded building conditions and to improve the quality of education available to the children of our district.
>
> You have stated at the Board's study committee that you are personally in favor of a 60/20 plan similar to that in effect in certain communities around the country. However, you have cautioned the Board that the Racine Education Association had not yet taken a stand on year-round education and, in fact, had opposed a similar plan in 1972.
>
> It is anticipated that many Racine Unified School District employees and other interested persons will be spending hundreds of hours in the coming weeks to evaluate year-round education as it might work in our community. As you are well aware, Racine Unified School District could never change to year-round education unless the Association consents to it through the labor contract. In Wisconsin, unlike many other states, the school calendar is a mandatory item of

bargaining.

The Negotiating Committee is formally requesting two things:

> First, would the Association support year-round education in the 60/20 or any form if it obtained the contract changes it needed?
>
> Second, if so, would the Association furnish the District copies of the written contract modifications it believes it would need?

Your quick and timely response to this request is important because if the Association is unequivocably opposed to year-round education, then the District should be directing its efforts and energies toward other more obtainable solutions. Also, it is important for the District to be able to evaluate the cost of such contract modifications as part of its overall consideration of the year-round schooling prospect.

Thank you for your anticipated cooperation in this regard.

On March 12, 1991, Mr. Ennis replied as follows:

In your letter of March 5, 1991 you misquoted my statements on year-round school.

> My statement to the Board at its study session was "If year-round school was to be adopted by the Board I personally would favor the 60/20 plan among those we investigated."

I am neither in favor of or opposed to year-round school and when I appeared at the Board's study session I believed that was made very clear. If it was not made clear let this letter stand for that clarification.

> Re: **Reply to Johnson letter (for the Board) of March 5, 1991**
> **Year-Round School Request for Negotiations Position**

In your letter of March 5, 1991 you requested two things:

> "First, would the Association support year-round

education in the 60/20 or any other form if it obtained the contract changes it needed?

"Second, if so, would the Association furnish the District copies of the written contract modifications it believes it would need?"

It is the current policy of the Association as it regards building and space actions by the RUSD Board to be reactive rather than pro-active.

With that Association policy I am able to state in reply to your letter that we will negotiate in good faith any proposed action to resolve the space needs of the District. This could include, but is not limited to, consideration of the year-round school but the Association does not have a position, at this time, to bring before the Board.

I do not believe that the Association is "unequivocally opposed" to any reasonable alternative to crowded classrooms or double shifting.

As always we are open to discussions and if the Board does desire to discuss its interests and/or desires, we will be more than willing to meet for such discussions.

6. In August, 1992, the parties' collective bargaining agreement expired and despite meeting for hundreds of hours, the parties were unable to reach a voluntary agreement on a successor contract. In January, 1993, the District filed a petition for interest-arbitration with the Wisconsin Employment Relations Commission and Chairman A. Henry Hempe was appointed as mediator. Ongoing efforts to reach a new collective bargaining agreement through mediation have not been successful to the present time.

7. On February 1, 1993, the District's Board approved the creation of a year-round steering committee to study year-round education for implementation in the 1994-95 school year. Rita Applebaum, the District's Director of Strategic Planning and Information Research, was appointed Chairperson and directed to form the steering committee. Applebaum asked the Association to include representatives on the committee and one representative attended a few meetings and thereafter the Association no longer participated on the committee.

8. On August 4, 1993, Mr. Johnson sent Mr. Ennis the following letter:

As you are aware, the Board of Education has been considering establishing a year-round school on a trial basis. Initially, it would be limited to one or two schools and student enrollment would be on a voluntary

basis.

If the Board agrees to do this, it will take either a waiver or a modification of the current contract language regarding the calendar.

Enclosed is a proposed year-round school calendar for 1994-95. Please review and get back to me with the Association's position regarding this proposal. It would be appreciated if you would look at this matter fairly quickly since a lot of work would be required prior to year-round implementation for the 1994-95 school year.

On August 9, 1993, Mr. Robert K. Weber, the Association's attorney, responded to Mr. Johnson's letter as follows:

Mr. Ennis requested that I respond formally to your proposal regarding the referenced matter.

If district-wide bumping, appropriate salary (which would certainly be higher than that of BS-44), job protection and adequate Association involvement in the planning/implementation assessment stages were assured, certainly the Association would consider the concept.

Merely sending a proposed calendar is essentially meaningless and perhaps even counter-productive.

On August 5, 1993, Rita Applebaum sent the following letter to the Association's leadership with a copy to Mr. Ennis:

The members of the Year Round Education Committee wish to invite you and the Executive Committee of the Racine Education Association to a meeting on Tuesday, September 14, 1993, 7:00 p.m. in the Conference Room of the Administrative Office Building.

The Year Round Education Committee has been meeting since March at the direction of the Board of Education, to develop a plan for voluntary year round education in 1994-95. The committee members are interested in a discussion of year round education with the REA so that they will become familiar with the views of the Association on the program.

I look forward to hearing from you regarding this meeting. Please contact me if you have any questions or suggestions about the format for the meeting. Thank you.

There was no response to this letter.

9. On September 29, 1993, the District and the Association signed an agreement for the District to qualify for and receive state aid on teacher pay increases for 1992-93. Paragraph 5. of said agreement provided as follows:

> 5. The parties understand that they are in hiatus within the meaning of such term as established by previous WERC rulings. The District agrees that it will abide by the law regarding the implementation of any new, experimental/pilot programs or change in existing practices as such relate to wages, hours or working conditions.

On October 1, 1993, Mr. Johnson wrote to Mr. Ennis, as follows:

> Just a reminder that, on occasion, your Board of Education packet will contain prospective programs which might impact on employee wages, hours and conditions of employment. Please review your packets for any agenda item that you feel may fit in this category. If so and you wish to bargain the impact, please send a bargaining proposal on the subject and I will schedule a time for us to discuss it.

Attorney Weber, representing the Association, replied to Mr. Johnson by letter of October 8, 1993, indicating the following:

> Mr. Ennis requested that I follow up on his initial, October 4, 1993 response to your referenced letter. As you are aware, the Board cannot make unilateral changes in areas primarily related to wages, hours and working conditions.
>
> Regardless of the format of the notice regarding such matters, the Board has an affirmative duty to bargain the decision as well as the impact of any such programs. You have formally recognized this duty even in the recent past (e.g., your transmittal letter on year-round schools), and the Association wishes to advise you that it does not waive its rights in any such matters.
>
> As for programs that only impact on employees wages, hours or conditions of employment, please let me make it clear that we do demand immediate impact bargaining on any such items, and our initial proposal on all "prospective programs" is that the board pay wages commensurate to the change or addition of duties;

supply the additional planning time needed in the opinion of the teachers; comply with all provisions of the pilot program proposal which has already been submitted to the District and which is enclosed herein.

Thank you for your prompt attention to this most important matter.

By a letter dated October 12, 1993, Johnson responded:

> The whole purpose of my October 1, 1993 letter was to invite bargaining proposals whenever the REA believes a program being considered by the Board would impact on wages, hours and working conditions. I also wanted to point out that prospective programs are in the Board packets that the REA receives.
>
> We would expect notice of your interest to impact bargain on an individual basis rather than the blanket request set out in your letter. Furthermore, bargaining proposals must be specific not general. Otherwise it is impossible to make a response. It is not acceptable to state that you want, "wages commensurate to the change or addition of duties" or to "supply the additional planning time needed in the opinion of the teachers." We need the specifics.
>
> As to your specific pilot program proposal and specific teacher assignment and transfer proposal, the District has previously rejected those proposals. As you may recall, the District counterproposed on those subjects and the Association rejected those proposals. I know of no new progress in this area. We may be at impasse. However, the District will consider any written offer in response to your request for impact bargaining on a case by case basis.
>
> I hope this better clarifies our position.

On October 14, 1993, Mr. Weber wrote the following to Mr. Johnson:

> Please consider this to be the Association's formal response to the enclosed letter of October 12, 1993 regarding the referenced matter.
>
> First of all, your "invitation" of October 1st was less than the duty the Board already has under sec. 111.70, of the Wisconsin Statutes. In point of fact, you were attempting to effect a blanket waiver by the Association of its bargaining rights. The Association was compelled to respond generally to your general, vague "invitation."
>
> When prospective programs are primarily related to wages, hours or working conditions, the Board cannot implement them unilaterally. Even to the extent that some programs may only impact on wages, hours and

working conditions, the Association demands that the impact be immediately bargained in good faith.

The unfortunate side effect of your letter is that it forces the Association's membership to refrain from involvement in labor-management cooperation programs.

Associations that participate in cooperation programs already risk violating their duty of fair representation. See **Walker v. Teamsters Local 71,** 714 F. Supp. 178, 191 (WDNC 1989). When the District expresses its intransigience to bargain, except by its rules, the suspicions of the membership are confirmed. Cooperation programs, by definition, do not always act in the name and interests of employees -- labor organizations that become involved in them must perform a dangerous balancing act in order to fulfill their statutory requirements of fair representation.

In view of your letters of October 10, 11 and 12, 1993, it appears to the Association that the District intends to circumvent the Association in the planning stages of programs, and to implement them without regard to their impact. This may compel the Association to withdraw from active participation on new or modified programs.

10. On October 4, 1993, the year-round steering committee submitted a comprehensive proposal to the District's Board, recommending the creation of two year-round schools, one elementary and one middle school effective July 1, 1994. The proposal listed the benefits of year-round education as follows:

III. BENEFITS OF YEAR-ROUND EDUCATION

According to the literature and the Year-Round Education Committee the following benefits have been documented for year-round education:

. Reduces overcrowded schools.

. Enhances the retention of learning by changing the traditional 2 1/2 months of summer vacation to shorter vacation periods of 60 days of school followed by 20 days of vacation (intersession) in a continuous cycle.

. Provides more flexibility for students to make up missed work without losing an entire year of schooling; provides opportunities for prompt,

meaningful remediation.

- Provides an opportunity to redirect construction funds toward the improvement of educational programs.

- Increases student and teacher attendance.

- Reduces school vandalism and discipline referrals to the school office.

- Results in less boredom and greater enthusiasm on the part of students.

- Avoids construction and interest charges costs by better utilizing school space.

- Reduces per pupil operating costs for books, materials, equipment, furniture.

- Lessens teacher "burnout" by providing more frequent vacation periods.

- Provides continuing, year-long opportunities for staff development.

- Provides an opportunity for school and community student service during intersession periods.

- Enables the District to utilize the services of experienced District teachers as substitutes.

- Allows families to enjoy a wider variety of vacation experiences throughout the year.

- Provides opportunities for curriculum writing during teacher vacation periods, reducing the need for teacher substitutes.

- Provides an opportunity for planning and decision-making at the school level regarding teacher scheduling for tracks and implementation issues.

- Provides an opportunity for curriculum integration.

- Provides opportunities for school-wide themes.

- Offers job sharing opportunities.

The report also included the following:

> Employee Relations
>
> Frank Johnson, Director of Employee Relations, stated that the school calendar is a mandatory subject of bargaining in the state of Wisconsin. Consequently, a change in the calendar from the present calendar to a 60/20 year-round education calendar would necessitate bargaining with the Racine Education Association.

The District's Board voted to approve the steering committee's recommendation to create a multi-track 60/20 year-round education program at an elementary and a middle school.

After approval of the committee's recommendation, the District put Deputy Superintendent Delbert Fritchen in charge of the implementation of the year-round education program with a start date of July 1, 1994. Janes Elementary School was first selected for the year-round education program and later Gilmore Middle School was selected.

11. On November 17, 1993, Mr. Johnson sent the following letter to Mr. Ennis:

> As we get closer and closer to the implementation date of year-round education for Janes Elementary School and a yet unnamed middle school, it becomes clear that we need to meet and work out necessary changes to the school calendar and other contractual provisions that may impact on the year-round concept.
>
> In order to facilitate our working out a year-round agreement, the Superintendent has authorized a special negotiating team consisting mainly of cabinet members, Debbie Coca and one middle school principal. In the coming days, our group will meet with each other to brainstorm issues relating to year-round school in order that we will be better prepared to discuss our needs when we get together with you.
>
> Please advise when the REA will be available to meet. If you want to send a list of issues relating to year-round schools that are of interest to the Association, this will be helpful for us to review in advance.
>
> I envision our meeting to be more of a round table type discussion rather than restricting the conversation to two main spokespersons as is normally done during regular bargaining.

If you have any other ideas that would help us resolve year-round school contract issues in a timely manner, please let me know. Thanks.

Mr. Ennis responded on November 29, 1993, in part, as follows:

The Association has not agreed to meet with any "special negotiating team" regarding YRE nor has the Association agreed to meet only on YRE.

We will meet in "regular" negotiations and will consider any negotiations proposal you desire to present concerning Year-Round Education along with all of the items that are still before the parties.

We would remind you that you have submitted a "final offer" to the WERC which does not include Year-Round Education.

The Association is interested in arriving at a total agreement and in the context of the agreement do understand that the wages, hours and conditions of employment language will need to be added for those teachers who will be assigned and reassigned to and from Year-Round Schools.

You ask in your letter:

> "If you have any other ideas that would help us resolve year-round school contract issues in a timely manner, please let me know."

Mr. Ennis then posed 14 questions and continued as follows:

This listing is not complete but does suggest many of the major areas of information [proposals] necessary for the REA to understand the YRE plan as it affects the contract.

The Association believes it's way too late in the game for you to propose the type of meeting as you suggest in paragraph four (4) of your letter which states:

> "I envision our meeting to be more of a round table type discussion. . ."

We are and have been in negotiations since July of 1992 with an expired contract since August 25, 1992. We

> have no settled items. And, the Board has adopted the YRE concept for implementation in early 1994. It is now Board proposal [negotiations] time - not round table discussion time.
>
> Further, you appear to have ignored the impact that YRE will have on many sections of the contract and the effect that the implementation of the program will have on both those assigned to year round schools and those not assigned.
>
> The Association is more than willing to negotiate YRE and is interested in including YRE in the Teacher Labor Agreement. Inform me when you are ready to revise your final offer and when you are ready to return to the negotiations table.

On January 13, 1994, Mr. Weber sent Mr. Johnson a letter on Institute Day, which stated, in part, as follows:

> Among other unsettled items on the table for the 1993-94 school year is the calendar. It is my understanding that the parties are currently operating on a day-to-day basis.
>
> The Racine Education Association has requested that I notify you of its proposal for the duration of the school year -- which in all but one important item, corresponds directly to the proposal of the District -- to-wit: Institute Day.
>
> . . .
>
> The Association would note that this proposal and notice is being made more than a month in advance of the non-student contact day; that there is no emergency requiring that the training program be held on February 25, 1994 (or at all); that the Association is willing to meet at any time to negotiate this issue; and that the last mediation package proposal made by the Association in November of 1993 has never been countered by the District.
>
> If the District is interested in negotiating a mutually agreeable date for Institute Day, please contact Mr. Ennis directly in order to schedule a mutually agreeable time.

On January 25, 1994, Mr. Johnson responded thusly:

> This is in response to your letter dated January 13, 1994 and received by my office on January 18, 1994.
>
> You ask that we meet to specifically bargain the calendar. You indicated that Institute Day is the only item the Association disagrees with in the District's proposed calendar.
>
> We accept your offer to meet and specifically talk about the calendar. However, we also would want to talk about the calendar of 1994-95 since our ultimate agreement will cover that period of time. Because of the year-round school proposal, the District would like to obtain a year-round calendar that would apply to Janes and Gilmore schools. A copy of that year-round calendar was sent to you previously but if you need another copy please let me know.
>
> Also, the Superintendent has expressed a desire to obtain more inservice training days for teachers. With that in mind, I have attached some ideas for discussion. This is not a formal proposal at this point, but I just wanted the Association's initial impression.
>
> Please advise when you would like to meet.

On February 3, 1994, the Association made a proposal related to the impact of year-round education and the District made a proposal on year-round schools but no agreement was reached on year-round schools.

On February 14, 1994, Mr. Johnson wrote to Mr. Ennis and responded to the 14 questions set forth in Mr. Ennis' November 29, 1993, letter.

11. On March 7, 1994, the District's Board voted to approve a single-track year-round education program at Janes Elementary School and no less than two sections of year-round school at Gilmore Middle School, effective July 1, 1994. This calendar consisted of three periods of 60 consecutive weekdays of school followed by 20 consecutive weekdays of no school, to be done on a single track basis and to be voluntary for all students and teachers. The Board's decision was based on its conclusion that the system would substantially improve the quality of education for three reasons. First, it would eliminate the substantial loss of learning, particularly for disadvantaged students, which takes place during the traditional two and a half month summer vacation. Second, it would provide three 20-day periods available for remedial work for students needing additional assistance, rather than the single two and a half month summer session available under the traditional system. Third, these same three 20-day periods would be available to provide additional learning opportunities for gifted students.

12. On March 9, 1994, Mr. Johnson sent Mr. Ennis the following letter:

> This is to notify you that the Board of Education took action at its regular Board meeting, March 7, 1994, to implement year-round school at Janes Elementary School and Gilmore Middle School effective July 1, 1994. Because of the student enrollments, Janes School will be one track rather than four. Gilmore School will also be one track but only for two sections of the sixth grade. The remaining grades and sections at Gilmore will be conducted as a traditional school.
>
> You have indicated that the REA supports the year-round school concept but that you wanted contract language pertaining specifically to year-round schools. The District agrees with you that contract language specific to the year-round program would be better, however, the program can be implemented using existing transfer and reassignment language, if necessary. As you know, teachers' involvement with year-round schools is voluntary.
>
> If you would like to meet and bargain the impact that year-round schools would have on teachers, please let me know and I will try to arrange that meeting. If you plan to submit another bargaining proposal on this issue, please send it to us for advance review.

On March 16, 1994, Mr. Weber sent Mr. Johnson the following letter:

> Mr. Ennis and I briefly respond to your letter of March 9, 1994 regarding the referenced matter.
>
> The Racine Education Association objects to the District's implementation of a year-round school program prior to a voluntary successor collective bargaining agreement being reached or a final binding arbitration award being issued.
>
> There are certainly impacts of the District's plan (e.g., utilization of specialists, inservice, supervisory duties, roaming teachers, displacement assignment, transfer) which are all addressed in our last bargaining proposal.
>
> Just as important, however, is the issue of extending the work year (i.e. calendar) for certain elementary and middle school teachers. This is a mandatory subject of bargaining, in your memo of March 20, 1991 (attached) -- and which, pursuant to

Brookfield, you cannot unilaterally implement.

Mr. Johnson responded on March 22, 1994, as follows:

> This is in response to your letter dated March 16, 1994 concerning year-round school.
>
> As I indicated in my letter of March 9, 1994, the District will implement year-round school effective July 1, 1994. If we are able to agree to any new contract language concerning year-round school and we agree to operate under such language prior to total contract agreement, that, of course, will be the language utilized for year-round. If not, the District will operate under existing contract language. The calendar itself should not be a bar to implementation. In this regard, you mention my memo of March 20, 1991 which we believe is a privileged communication involving my legal advice to the Board of Education and administration. I do not know how you obtained a copy of the document, but at any rate, the District reserves its right to claim this privilege.
>
> No, I am not suggesting that year-round subjects be segregated from other bargaining proposals at mediation. For all I know, we may never have another mediation session. Those appear to happen at the pleasure of the Chairman and I do not know what he intends to do.
>
> As I indicated in my letter of March 9th, if the Association wishes to submit another bargaining proposal, please submit it to me as soon as you are able. We appeared to be at impasse on these issues at the end of our last mediation session but we will consider any change of position the Association may choose to make.

No further negotiations have taken place since March 22, 1994, and the parties have reached no agreement on year-round schools. The District implemented year-round schools on or about July 1, 1994.

13. The year-round education program instituted by the Board is primarily related to educational policy rather than wages, hours and conditions of employment.

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

CONCLUSIONS OF LAW

1. The District's year round education program is not a mandatory subject of bargaining, therefore, the District did not violate Sections 111.70(3)(a)4 and 1, Stats., by failing to bargain over its decision to institute such a program and its implementation.

2. The impact of the year round education program on employes is a mandatory subject of bargaining and the District is obligated to bargain thereon with the Association. The District has not refused to bargain in good faith over the impact of the year round education program and thus has not committed any violation of Sec. 111.70(3)(a)4 or 1, Stats.

Based on the above and foregoing Findings of Fact and Conclusion of Law, the Examiner makes and issues the following

ORDER 1/

IT IS ORDERED that the Complaint, as amended, be, and the same hereby is, dismissed in its entirety.

Dated at Madison, Wisconsin this 15th day of September, 1994.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Lionel L. Crowley /s/
Lionel L. Crowley, Examiner

1/ Any party may file a petition for review with the Commission by following the procedures set forth in Sec. 111.07(5), Stats.

Section 111.07(5), Stats.

> (5) The commission may authorize a commissioner or examiner to make findings and orders. Any party in interest who is dissatisfied with the findings or order of a commissioner or examiner may file a written petition with the commission as a body to review the findings or order. If no petition is filed within 20 days from the date that a copy of the findings or order of the commissioner or examiner was mailed to the last known address of the parties in interest, such findings or order shall be considered the findings or order of the commission as a body unless set aside, reversed or modified by such commissioner or examiner within such time. If the findings or order are set aside by the commissioner or examiner the status shall be the same as prior to the findings or order set aside. If the findings or order are reversed or modified by the commissioner or examiner the time for filing petition with the commission shall run from the time that notice of such reversal or modification is mailed to the last known address of the parties in interest. Within 45 days after the filing of such petition with the commission, the commission shall either affirm, reverse, set aside or modify such findings or order, in whole or in part, or direct the taking of additional testimony. Such action shall be based on a review of the evidence submitted. If the commission is satisfied that a party in interest has been prejudiced because of exceptional delay in the receipt of a copy of any findings or order it may extend the time another 20 days for filing a petition with the commission.

This decision was placed in the mail on the date of issuance (i.e. the date appear immediately above the Examiner's signature).

RACINE UNIFIED SCHOOL DISTRICT

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

In its complaint, as amended, initiating these proceedings, the Association alleged that the District's decision to implement year round education is a mandatory subject of bargaining and that the District's unilateral implementation thereof constitutes a change in the status quo in violation of Sections 111.70(3)(a) 4 and 1, Stats. The District denied that it had committed any prohibited practices and sought dismissal of the complaint.

POSITION OF ASSOCIATION

The Association contends that year round education is a mandatory subject of bargaining under the Supreme Court decision in Beloit Education Association v. WERC, 73 Wis.2d 43 (1975) and the Wisconsin Employment Relations Commission's decision in School District of Janesville, Dec. No. 30763 (WERC, 3/84). It argues that these decisions make it clear that the calendar items considered by the Supreme Court in Beloit are mandatory subjects of bargaining as a matter of law, so there is no need to apply the "primary relationship" test established in Beloit. These calendar items are (1) length of school year; (2) number of teaching days; (3) vacation periods; (4) holidays; (5) convention days; (6) inservice days. It asserts these six items are all affected by a change to year-round education, so that they are mandatory as a matter of law. The Association submits that the year-round calendar is mandatory because of the Commission's prior decisions and because of the dramatic impact on teachers' hours and working conditions.

The Association further contends that the District is barred from making a unilateral change in these mandatory subjects of bargaining during the hiatus period as the District is obligated to maintain the status quo until agreement is reached, or an arbitration award is issued, citing City of Brookfield, Dec. No. 19822-B (Rubin, 2/84) aff'd Dec. No. 19822-C (WERC, 11/84). The Association maintains that it has not waived its right to bargain the change in school calendar, and there is no emergency to justify the District's unilateral implementation. It claims that if no agreement is reached, the program can be implemented next year. The Association argues that once the District implements the program, there will be no remedy available to the Association.

The Association claims that passage of 1993 Wisconsin Act 16 does not alter the mandatory nature of the calendar, and the District has not met the requirements of Act 16 as it has not made a qualified economic offer to the Association. The Association contends that Section 17.3 of the Labor Agreement and the parties' agreement of September 29, 1993, when construed together, represent a contractual commitment by the District not to make changes in the school calendar without bargaining with the Association. It believes that implementation of year round education is a violation of the 1990-92 labor

agreement, which continues in effect during the hiatus, as it provides in Section 17.3.1 as follows:

> "The school year shall not be extended beyond the school calendar year, except by written agreement between both parties with salaries increased as prorated on the regular yearly salary of that contract."

No agreement to extend the school year has been reached, so any unilateral implementation will violate the contract.

Additionally, the Association asserts that implementation of year round education is barred by an agreement signed by the parties on September 29, 1993, which provides:

> The parties understand that they are in hiatus within the meaning of such term as established by previous WERC rulings. The District agrees that it will abide by the law regarding the implementation of any new, experimental/pilot programs or change in existing practices as such relate to wages, hours or working conditions.

The Association insists that there is no exception to the prohibition on unilateral implementation of a mandatory subject merely because it is limited to a "pilot" or "trial" program.

The Association also argues that the District is estopped from denying year-round education is a mandatory bargaining subject because of the fact that Mr. Johnson advised the Association that the subject was mandatory and the Association reasonably relied upon this representation to its detriment. The Association asserts that although its principal contention is that year-round education is a mandatory subject, there are other mandatory bargaining subjects in the following three areas: (1) makeup of snow days; (2) continuing teacher education; (3) payroll periods. It argues that bargaining in these areas must be completed before year-round education can be implemented.

The Association concludes that the District has violated its duty to bargain in good faith by its unilateral implementation of the year round school program without having reached agreement with the Association on the change to a year round calendar.

POSITION OF DISTRICT

The District contends that year round education is not a mandatory subject of bargaining because it is primarily related to educational policy and/or the operation and management of the schools. It asserts that neither the Commission nor the courts have decided that a voluntary year round school calendar is a mandatory subject of bargaining. It submits that not each and

every component of the calendar is primarily related to wages, hours and conditions of employment and only those that are "primarily related" are mandatory subjects of bargaining, citing, Beloit, supra.

The District claims that since Beloit, the Commission has spoken sparingly on the subject of school calendar. It points out that in Unified School District No. 1 of Racine County, Dec. Nos. 13696, 13876-B (Fleischli, 4/78), the District's change from a double shift class schedule to a fixed variable schedule was primarily related to educational policy. Additionally, in Milwaukee Board of School Directors, Dec. No. 20093-B (WERC, 8/93), the District notes the Commission held the dates of parent-teacher conferences and the distribution of report cards reflect educational policy choices and was not a mandatory subject of bargaining. The District argues that Janesville, supra, which held that the length of the school year, the number of teaching days, vacation periods, holidays, convention days and inservice days were mandatory is a case of the tail wagging the dog. It insists that the Commission's decisions are inconsistent and unconvincing. The District claims that the Commission has not dealt with the subject of whether a year round calendar is a mandatory subject of bargaining. The District points out that previous court decisions on aspects of the school calendar were issued when interest arbitration was not available as an end result if the parties could not reach agreement and because interest-arbitration is now available, the Association can block implementation to obtain benefits it otherwise would not be able to obtain. It asserts that the courts did not require school districts to abandon educational policy decisions if the Union's demands were too costly or unreasonable.

The District concludes that year round education is a change from the traditional method of educating students, and it must be reexamined in its entirety to determine whether it is mandatory. It claims that year round school enhances the retention of learning, allows flexibility for students to make up work, and with a multitrack system, reduces costs and overcrowded schools plus numerous other benefits. The District alleges that cost considerations are often primarily related to management or educational policy with class size and economic layoffs as examples of this. It submits that the educational policy benefits and school operational benefits far outweigh any impact on teachers. It maintains that the year round school calendar should be held to be permissive because it primarily relates to the formulation of educational policy or school operations. To hold otherwise, according to the District, would yield absurd results such as a calendar that required three months off in winter in a rural area with school the rest of the year, or school on Monday through Thursday for 45 weeks. The District takes the position that to hold the year round school calendar mandatory would grant the Association a veto power contrary to the holdings of the Wisconsin Supreme Court. It argues that important educational policy decisions should be made by school boards who are subject to the political process, and not by interest-arbitration.

The District anticipates that the Association will argue that the District had acknowledged that the year round school calendar is mandatory

based on Frank Johnson's letter of March 5, 1991; however, it insists that this letter is irrelevant and the particular facts of this case must be reexamined to determine whether year round school is a mandatory or permissive subject of bargaining.

The District points out that where a subject is permissive, it may implement same and later bargain the impact of the change. It asserts that the District has offered to bargain the impact of the change to year round school but this offer has been largely ignored.

Alternatively, the District contends that, even if year round education were mandatory, the Association has waived its right to bargain thereon because of its failure to submit proposals on the subject. The District also asserts that it was free to implement year round education without completing bargaining, due to the necessity of establishing a calendar for the 1994-95 school year.

The District agrees with the Association that the impact of year round education on employes is a mandatory subject of bargaining, which it stands ready to bargain; however, it asserts that it was free to implement year round education, which is merely permissive, prior to completing bargaining on the mandatory subject of impact.

Finally, the District asserts that the Association is no longer an appropriate bargaining unit since passage of Wisconsin Act 16 because it represents non-professional employes as well as professional teaching employes. The District argues that it therefore has no duty to bargain with the Association, since the duty to bargain is limited to appropriate units.

Association's Reply

The Association contends that the Commission's prior decisions on school calendar are not inconsistent nor unconvincing and the inclusion of interest-arbitration in MERA does not negate these previous decisions. It submits that Janesville, supra, is clear and unequivocal that certain aspects are primarily related to hours and working conditions and they predominate over their relationship to educational policy. It notes that the Commission's case by case approach on other calendar issues is not inconsistent with Janesville, and is why the Association parceled out three subject areas for the Commission to determine their mandatory/permissive nature specific to this case, namely: make-up days for inclement weather; continuing teacher education programs and year-round payroll plan. The Association claims that all three are mandatory. With respect to the inclusion of interest arbitration, the Association argues that the Legislature is presumed to act with knowledge of the existing law and it did not alter prior court or Commission decisions when it included interest arbitration in MERA.

The Association claims it is not abusing its statutory right in this case because the District was alerted by Mr. Johnson that the year-round calendar needed to be agreed to by the Association before implementation, yet the

District proceeded full speed ahead to implement year-round education. The Association insists that there is no abuse of power to reach a bargained-for agreement on a proposed change that will have a significant and substantial impact on teachers' hours and working conditions.

Contrary to the District's claim that absurd results will occur if bargaining is required, the Association submits that the duty to bargain over calendar promotes the public policy by ensuring that no one group, the District included, can effectuate significant and substantial changes unilaterally. The Association rejects the District's assertion that the political process will provide a check on managerial abuses because such a check might take years and would only occur after implementation. It maintains that protections afforded employes must come before significant changes are made in wages, hours and conditions of employment; otherwise employes have no protection.

The Association reiterates that the change to a year-round calendar is a mandatory subject of bargaining. It argues that the District's claim that the change is permissive because "the policy benefits for the District far outweigh any impacts on wages, hours and conditions of employment," is not the appropriate standard for determining whether it is a mandatory subject of bargaining because the standard is the "primarily related" test. The Association submits the District is attempting to create a loophole by circumventing the duty to bargain by making a gigantic change instead of a minimal change. It insists that the District's year-round proposal is an excellent example of this in that if it sought to change the start-up or end dates of the current school year calendar, it would be a mandatory subject of bargaining; however, by making a quantum change from the conventional nine-month calendar to a twelve-month calendar, it can elevate the educational policy benefits so it can argue these outweigh the impact of the change in teacher's wages, hours and working conditions. It claims that the District's standard is totally misplaced because teachers have less and less protection as the District makes greater and greater changes.

The Association disputes the three reasons the District has put forward in support of its argument that year-round education is permissive. It submits the District's assertion that in most cases it can use existing language to implement the change is erroneous because it would amount to a unilateral change in the status quo in violation of Brookfield, supra. The Association admits that certain subject areas arising out of the proposed year-round calendar may be permissive; however, other calendar aspects are clearly mandatory. The Association takes the position that the District's argument that the program is permissive merely because the year round program is voluntary is a fallacy because if the District expands the program, teachers may be laid off or terminated. The Association maintains that the significant changes the District's proposal will have on teachers is primarily related to their wages, hours and working conditions.

The Association argues that the District is not confronted with any emergency or necessity to justify its unilateral implementation of the year-round school program. It claims that the District can accommodate all students

under the August to June calendar and the start up of year-round can wait until after the parties have reached agreement on it. The Association requests that the District be ordered to comply with its bargaining obligations to the Association and be prohibited from implementing the year-round calendar until it has reached an agreement with the Association or until an interest-arbitration award has been issued.

District's Reply

The District asserts that it has no duty to bargain with the Association because it does not represent an appropriate collective bargaining unit because the unit contains both school district professional employes and employes who are not school district professional employes. It claims the Association has never requested bargaining in an appropriate unit and seeks dismissal of the complaint on that ground alone.

The District reiterates its argument that the educational policy benefits outweigh any impact on teachers' wages, hours and conditions of employment. It points out that the Association in its brief acknowledges the educational policy benefits of the year-round school. It asserts that the Association's statement about a year's delay in implementation shows the fallacy of its protestations about the impacts on teachers and the District claims that if year-round school would be beneficial a year from now, it would be beneficial now. It takes the position that the impact on teachers would be the same next year as this year. It suggests that the extra year would allow the Association to back down from its single-minded strategy of not agreeing to bargain on year round schools in the hopes of obtaining a successor agreement and to reward the Association's "gamble" is not a basis for determining whether the year-round program is a mandatory subject of bargaining.

The District insists that the impact on teachers' wages, hours and conditions of employment is minimal as few have been identified and many have no basis in the record. It notes that the Association has listed only three impacts: making up snow days, continuing teacher education credits and pay periods. It argues that these are minor compared to the major educational policy benefits and the school management and operation considerations. The District points out the absence of any discussion by the Association of the financial impact of the change to year round school, yet the record demonstrates the cost savings that will be obtained once the program is instituted on a multitrack basis. The District contends that middle schools are already overcrowded and this population is increasing. Additionally, it repeats the educational benefits of the program and concludes that waiting will harm the children and the community.

The District alleges that the Association has waived its right to bargain over the change to year round school. The District points out that the Association made no proposal until February, 1994, although the District began soliciting proposals in 1991 and again in August, 1993. After this one proposal, the Association did nothing, so the District claims the Association has waived its right to bargain, citing City of Appleton, Dec. No. 17034-D

(WERC, 5/80).

It submits that even if year round school is a mandatory subject of bargaining, the District has the right to implement it out of necessity because the parties are at impasse. Contrary to the Association's assertion, the District claims it created no "emergency" to move forward with the program, and it doesn't have to prove an emergency, only that a necessity exists and it did not create a necessity as some calendar is necessary for every school year. The District alleges that it will have to implement a traditional calendar for the 1994-95 school year as well as the year round school and it should make no legal difference in implementing either.

The District maintains that the September 29, 1993 agreement does not prevent it from implementing a year round school and the Association's arguments are based on the assumption that a year round school calendar is mandatory. According to the District, all the agreement requires is that the District will abide by the law and it is free to implement any program that is permissive. The District relies on negotiating history to support its position as the Association initially proposed that the District would not implement a new, experimental/pilot program or change existing practices, but instead, the final agreement was the September 29, 1993, language.

The District contends that implementation of the year round school program will not violate Section 17.3 of the expired agreement. It submits that this is true because the contract expired and has not been extended, the Examiner has no jurisdiction over contract violations as there is no allegation of same in the complaint as amended, and the section must be read in context, which simply provides for extra pay for additional work and this claim must be dismissed.

The District claims that the Association's arguments on the theory of equitable estoppel are misplaced and the Association's reliance on Mr. Johnson's opinion with respect to year round school as a mandatory subject was not reasonable. The District submits that any detriment suffered by the Association was due to its own decisions. The District insists it can change its legal theories. The District argues that the Association has failed to prove the elements of estoppel. It notes that courts have held that reliance on misstatements of the law by governmental officials in similar situations was unreasonable. Even if reliance is found to be reasonable, the subsequent actions by the District alerted the Association to a changed position and the Association could no longer rely on the prior opinion. Finally, the District insists that the Association suffered no detriment. It submits that the Association relied on the opinion of its own counsel and submitted impact proposals and had ample opportunity to submit offers but failed to do so based on its own strategy of refusing to bargain on year round schools unless it could be done in the context of reaching a successor agreement. The District requests dismissal of the Association's complaint.

DISCUSSION

The threshold issue presented in this case is whether year round education is a mandatory subject of bargaining. In Beloit Education Association v. WERC, 73 Wis.2d 743 (1976), the Supreme Court enunciated the "primarily related" test. It held that what is fundamentally or basically or essentially a matter involving "wages, hours and conditions of employment" is a mandatory subject of bargaining, whereas a matter primarily related to educational policy is permissive. It held that the school board was required to meet, confer and bargain as to any calendaring proposal that is primarily related to "wages, hours and conditions of employment."

Thereafter, in School District of Janesville, Dec. No. 21466 (WERC, 3/84), the Commission issued a declaratory ruling as to the permissive or mandatory nature of various components of a traditional school year calendar. It held that specific calendar proposals which had been involved in Beloit must be considered mandatory as a matter of law, because of the fact that they had been passed upon by the Supreme Court in Beloit. These subjects are: (1) length of school year; (2) number of teaching days; (3) vacation periods; (4) holidays; (5) convention days and (6) inservice days. The Commission concluded that all other calendar subjects, which had not been involved in Beloit, are to be analyzed on a case-by-case basis under the "primarily related" test of Beloit. The Commission stated, at pages 117 and 118:

. . .

> As the Court did not overturn any of the Commission's conclusions as to the calendar provision before it in Beloit, supra, we view the Court as having determined that there is a duty to bargain as to school calendar proposals which establish the length of the school year, the number of teaching days, vacation periods, holidays, convention days, and inservice days. We believe that Beloit reflects a determination by the Commission and the Courts that when the relationship of the educational policy determinations involved in the various elements of the school calendar provision referred to by the Commission in its decision are balanced against their relationship to employe concerns as to hours and conditions of employment, the latter relationship predominates in each instance. Thus, the calendaring provision before the Commission was found by the Commission and the Courts to be mandatory in all respects. 5/ We see no basis in this record for overturning those prior determinations. (footnote omitted)
>
> The District properly notes that the Court's holding reflects that a duty to bargain exists as to "any calendaring proposal that is primarily related to wages, hours and conditions of employment". Thus, as we recently concluded in Milwaukee Board of School

> Directors, supra, school calendaring issues beyond those involved in the specific proposal held mandatory by the Commission and the Court in Beloit must be analyzed on a case by case basis to determine whether they are primarily related to wages, hours and conditions of employment or, instead, primarily related to the formulation or management of educational policy. The Association's calendar proposal as to parent-teacher conferences and makeup days present two such issues which will be analyzed on such a basis by the Commission herein.
>
> . . .

The Commission went on to consider parent-teacher conferences and make-up days on a factual basis under the "primarily related" test. It concluded that parent-teacher conference dates were primarily related to educational policy and were therefore permissive. In Unified School District No. 1 of Racine County, Dec. Nos. 13696-C, 13876-B (Fleischli, 4/78), it was held that the abandonment of the traditional double-shift class schedule in the junior high schools and the adoption of the fixed-variable schedule in those schools primarily related to educational policy.

Obviously, a change to year round education affects all of the calendar subjects which were involved in Beloit as well as others. The Association has argued that year round education is a mandatory subject of bargaining as a matter of law under Janesville because in that case, the District had cited alternative school calendars in support of its argument that the calendar was permissive but the Commission rejected that argument then and should do so now because of the impact on teachers' wages, hours and conditions of employment. Whether year-round education is mandatory depends on the primary relationship test. The Examiner concludes that Janesville does not control here. Janesville simply involved a traditional calendar and the six subjects held mandatory as a matter of law were variations of the traditional calendar and primarily related to wages, hours and conditions of employment. It did not address the issue of whether year round education should be considered a mandatory subject of bargaining as a matter of law under Beloit. Beloit also involved a traditional school calendar. The Supreme Court did not address the issue of year round education in Beloit. As discussed, Beloit served as the basis for the Commission's decision in Janesville. Janesville must be interpreted as being limited to the actual situation involved in Beloit, i.e. a traditional school calendar.

A year-round education program is not just a calendar subject but is a concept and a method to improve the delivery of educational services to students. The year round program is not simply a change in start and end dates, length of the school year, etc., but rather an entirely different type of education program to enhance the education of students. The decision to change from a traditional school calendar to a year round calendar represents

important educational policy determinations. It results in a fundamental change in the manner in which students in the District are educated. The record abundantly demonstrates the policy considerations underlying the District Board's decision. The decision was made in an effort to accomplish two primary purposes. First, to improve the quality of education. The primary areas of improvement were to eliminate the two and half-month learning gap which takes place during the traditional summer vacation, particularly with disadvantaged students. The next was to provide for three 20-day periods in the school year in which prompt remedial programs could take place for students needing remediation. In addition, learning programs for gifted students could take place during these same three intersession periods. The second advantage considered by the Board was the potential future financial saving resulting from year-round utilization of the school buildings.

The present system is a single-track, so that the financial considerations are not applicable; however, it is possible in the future to convert to a multiple track system, so that the calendar will be staggered from class to class, so that the school buildings can be utilized year around. This presents the potential for financial savings. The record establishes that implementation of year-round education has certain educational policy implications. It is also clear from the record that year-around education will have substantial impact on the hours and working conditions of employes. The most dramatic example is the radical change in vacation schedules. This certainly represents a substantial impact on employes. However, the changes in the manner in which students are educated and the potential financial savings must be considered to predominate the concededly substantial impact on employes. The change is similar to the change from double-shift to fixed variable held permissive in Racine, supra. As to the financial aspects, City of Brookfield v. WERC, 87 Wis. 2d, 819 (1979) is instructive. There, the City of Brookfield reduced the fire department's budget by $80,000 resulting in the layoff of five employes. The Supreme Court employed the "primary relationship" test in determining that the layoffs were not mandatory subjects of bargaining, and concluded that the layoff decision was primarily related to a determination of the level of municipal services, despite its obvious drastic substantial impact on the laid-off employes.

In summary, it is concluded that year round education is primarily related to educational policy rather than to wages, hours and conditions of employment. It is therefore permissive, so that the District was free to unilaterally implement its year round education program. City of Brookfield, Dec. No. 19367-B (WERC, 12/83).

The Association has argued that the District is estopped to deny that the year-round education program is a mandatory subject of bargaining. Its argument is based on the undisputed fact that Mr. Johnson, chief negotiator for the District, advised the Association as well as the District's year round education steering committee, that year round education was a mandatory subject of bargaining. This argument is not persuasive. A permissive subject of bargaining does not become mandatory merely because an employer agrees to bargain over it. The District could bargain any permissive subject it chooses,

and where there is no objection by the employer, it is treated as a mandatory subject of bargaining. However, before an investigation is closed, a party may assert that a subject of negotiation is permissive. See Sec. 111.70(4)(cm)6.g., Stats., and ERB. 31.11(1), Wis. Adm. Code. The mere fact that the District may have indicated the subject of year-round schools was mandatory or offered to negotiate over it does not prevent it from raising the objection on the grounds that it is permissive at any time prior to the close of the investigation. It appears that the District gave ample notice that it considered the subject to be permissive and it is not precluded from taking such position on the basis of any estoppel argument.

Although the change to year round schools is permissive and it need not be bargained, the impact of the change is a mandatory subject of bargaining. The obligation to bargain the impact of the decision does not preclude implementation of the decision. Milwaukee Board of School Directors, Dec. No. 20093-A (WERC, 2/83). The obligation to bargain impact items at reasonable times may require that bargaining commence prior to implementation and the fulfillment of the bargaining obligation is subject to a case-by-case analysis as to whether the employer's totality of conduct is consistent with the statutory requirement of good faith. City of Madison, Dec. No. 17300-C (WERC, 7/83). Implementation does not extinguish the continuing obligation to bargain impact and the Association is still free to submit whatever impact proposals it chooses. This case does not involve mid-term implementation and impact items can be included in negotiations for a successor agreement. A review of the record in the instant case satisfies the undersigned that the District met its good faith obligation to bargain impact items prior to implementation. Commencing March 5, 1991, the District informed the Association it was considering year round education and sought negotiations. Again on August 4, 1993, the District offered to bargain on the year-round education program. It requested impact items on October 1, 1993 and later indicated it was willing to meet solely on this subject. The Association made one proposal on February 3, 1994, but no agreement was reached. On March 9, 1994, the District again offered to meet and bargain the subject of its year-round school program but nothing further was done. It is concluded from the record that the District satisfied its obligation to bargain impact before implementation.

The Association also contends that unilateral implementation of year round education violates Section 17.3.1 of the 1990-92 agreement, the last agreement reached by the parties. This section provides "the school year shall not be extended beyond the school calendar year, except by written agreement between both parties. . . ." The Association argues that this section must be construed in tandem with the agreement reached by the parties on September 29, 1993, which provides:

> The parties understand that they are in hiatus within the meaning of such term as established by previous WERC rulings. The District agrees that it will abide by the law regarding the implementation of any new, experimental/pilot programs or change in existing

> practices as such relate to wages, hours or working conditions.

The Association's position must be rejected for three reasons: First, the complaint does not allege a violation of Sec. 111.70(3)(a)5, Stats. by violating either Section 17.3.1 of the contract or the September 29, 1993 agreement. This claim is raised for the first time in the Association's post-hearing brief. A claim not raised prior to that point must be rejected. Monroe Water Department, Dec. No. 27015-B (WERC, 4/93). Finally, even if the Examiner were to consider this argument on the merits, it would have to be rejected because the year-round school decision is permissive and thus not violative of the status quo obligations. The September 29, 1993 agreement provides only that the District will "abide by the law". As previously discussed, the law allows unilateral implementation of year round education since it is permissive.

In summary, year round education is not a mandatory subject of bargaining, but is permissive because it primarily relates to educational policy. The District is not estopped from denying that year-round education is mandatory. The District was free to implement year round education before completing bargaining on the mandatory subject of impact on employes. It is thus unnecessary to consider the three defenses raised by the District: (1) waiver of bargaining by the Association, (2) necessity to implement a school calendar, and (3) the Association no longer constituting an appropriate bargaining unit since passage of 1993 Wisconsin Act 16. It is concluded that the District acted

in accordance with the law in implementing year round schools and did not violate Sec. 111.70(3)(a)4, Stats., or derivatively, Sec. 111.70(3)(a)1, Stats. Therefore, the complaint, as amended, has been dismissed.

Dated at Madison, Wisconsin this 15th day of September, 1994.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Lionel L. Crowley /s/
Lionel L. Crowley, Examiner