

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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**RHINELANDER EDUCATION ASSOCIATION**, Complainant,

vs.

**SCHOOL DISTRICT OF RHINELANDER**, Respondent.

Case 49  
No. 57662  
MP-3531

**Decision No. 29717-A**

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Appearances:

**Mr. Gene Degner**, Executive Director, Northern Tier UniServ-Central, 1901 West River Street, P.O. Box 1400, Rhinelander, Wisconsin 54501, appearing on behalf of the Complainant.

Quarles & Brady, L.L.P., by **Attorney Michael Aldana**, 411 East Wisconsin Avenue, Milwaukee, Wisconsin 53202-4497, appearing on behalf of the Respondent.

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

Rhineland Education Association filed a complaint with the Wisconsin Employment Relations Commission on June 24, 1999, alleging that the Rhinelander School District had committed prohibited practices within the meaning of Secs. 111.70(3)(a)1 and 4 of the Municipal Employment Relations Act by making a unilateral change in the 1998-1999 school year calendar and with regard to the scheduling of a floating inservice day. On October 5, 1999, Rhinelander Education Association amended its complaint alleging, in addition to the above, that a violation of Sec. 111.70(3)(a)5 had occurred based upon the same set of facts. The Commission appointed Stephen G. Bohrer, a member of its staff, to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order in the matter. On November 18, 1999, a hearing on the complaint was held in Rhinelander, Wisconsin. The parties thereafter filed post-hearing briefs, the last of which was received on February 8, 2000.

**To maximize the ability of the parties we serve to utilize the Internet and computer software to research decisions and arbitration awards issued by the Commission and its staff, footnote text is found in the body of this decision.**

No. 29717-A

Based upon the record and argument of the parties, the Examiner makes and issues the following

### **FINDINGS OF FACT**

1. Rhinelander Education Association, hereinafter the Union, is a labor organization under Sec. 111.70(1)(h), Stats., and has its principal office at 1901 West River Street, Rhinelander, Wisconsin, 54501. At all times material hereto, the Union has been the exclusive representative for a bargaining unit consisting of all professional teaching personnel, guidance counselors and department heads, and excludes the following:

- a. Administrators and coordinators;
- b. All principals, including teaching principals, and all supervisors;
- c. Non-instructional personnel, such as nurses;
- d. Office, clerical, maintenance, and operating employees;
- e. Athletic Director;
- f. Interns – Practice Teachers – Teacher Aides;
- g. School Psychologists;
- h. School Social Workers; and
- i. Substitute Teachers.

2. Rhinelander School District, hereinafter the District, is a municipal employer under Sec. 111.70(1)(j), Stats., and has its principal office at 315 South Oneida Avenue, Rhinelander, Wisconsin 54501. At all times material hereto, the District has operated a public school system in Rhinelander, Wisconsin.

3. The Union and the District were parties to a collective bargaining agreement from July 1, 1997, through June 30, 1999, hereinafter the Agreement. The Agreement provides, in pertinent part, as follows:

### **NEGOTIATIONS PROCEDURE**

A. On or about March 1 and no later than March 31 of the year the contract expires, the parties agree to meet and to confer and negotiate in accordance with the procedures set forth herein in good faith to reach agreement on all matters raised by either party concerning questions of wages, hours and conditions of employment. Any agreement reached shall apply to all teachers, be reduced to writing, and be executed by the appropriate and duly authorized officer or officers of the Board and the Association.

B. This agreement may not be modified in whole or in part by either party except by an instrument in writing duly executed by both parties.

## II. MANAGEMENT RIGHTS

A. The Board retains all rights of possession, care, control and management that it has by law, and retains the right to exercise these functions under the term [sic] of the collective bargaining agreement except as to the precise extent that functions and rights are explicitly, clearly and unequivocally restricted by the express terms of this Agreement. These rights include, but are not limited by enumeration to, the following rights:

. . .

15. To determine the means and methods of instruction, the selection of textbooks and other teaching materials and the use of teaching aids, class schedules, hours of instruction, length of school year and terms and conditions of employment.

B. The exercise of the foregoing powers, rights, authority, duties and responsibilities by the Board, the adoption of policies, rules, regulations and practices in furtherance thereof, and the use of judgment and discretion in connection therewith shall be limited only by the specific and express terms of this Agreement and Wisconsin Statutes, Section 111.70, and then only to the extent such specific and express terms hereof are in conformance with the Constitution and laws of the State of Wisconsin, and the Constitution and laws of the United States.

. . .

4. Page 26 of the Agreement is captioned "August 1997 – July 1998 School Year". It displays August, 1997, through July, 1998, pictorial calendars in columns on the left and right margins. Between the two columns of calendars, it provides the following:

### **August**

**19**  
Inservice - NON STUDENT DAY  
**20**  
Inservice - NON STUDENT DAY  
**21**  
Inservice - NON STUDENT DAY  
**22**

Students First Day

### **September**

**1**  
Labor Day - NO SCHOOL

### **January**

**1**  
Christmas Vacation - NO SCHOOL  
**2**  
Christmas Vacation - NO SCHOOL  
**15**  
1st Semester Ends  
**16**

Inservice - NO SCHOOL

### **February**

**25**  
Early Release Day

**24**  
Early Release Day  
**October**  
**29**  
1st Quarter Ends  
**30**  
Vacation - NO SCHOOL  
**31**  
Vacation - NO SCHOOL  
**November**  
**5**  
Early Release Day  
**26**  
Comp Day - NO SCHOOL  
**27**  
Thanksgiving Holiday - NO SCHOOL  
**28**  
Vacation - NO SCHOOL  
**December**  
**22**  
Christmas Vacation - NO SCHOOL  
**23**  
Christmas Vacation - NO SCHOOL  
**24**  
Christmas Vacation - NO SCHOOL  
**25**  
Christmas Vacation - NO SCHOOL  
**26**  
Christmas Vacation - NO SCHOOL  
**29**  
Christmas Vacation - NO SCHOOL  
**30**  
Christmas Vacation - NO SCHOOL  
**31**  
Christmas Vacation - NO SCHOOL

**March**  
**13**  
CWE Convention - NO SCHOOL  
**19**  
3rd Quarter Ends  
**April**  
**6**  
Spring Vacation - NO SCHOOL  
**7**  
Spring Vacation - NO SCHOOL  
**8**  
Spring Vacation - NO SCHOOL  
**9**  
Spring Vacation - NO SCHOOL  
**10**  
Spring Vacation - NO SCHOOL  
**13**  
Comp Day - NO SCHOOL  
**May**  
**25**  
Memorial Day - NO SCHOOL  
**June**  
**3**  
Students Last Day  
**4**  
Teachers Last Day

NOTE: 1) The Board reserves the right to make up days school is closed as a result of inclement weather, the Board, or its Designee will schedule makeup days after consultation with the Association. 2) March 13, 1998 will be a districtwide inservice or attendance at Central Wisconsin Educators (CWE) in Wausau, any other alternative must be approved by the Superintendent before March 1.

5. Page 27 of the Agreement is similar in form to page 26. It is captioned “August 1998 – July 1999 School Year” and displays August, 1998, through July, 1999, pictorial calendars in columns on the left and right margins. Between those columns of calendars, it provides the following:

**August**

**24**  
Inservice Day - Floating Day

**25**  
Inservice Day

**26**  
Inservice Day

**September**

**7**  
Labor Day

**October**

**28**  
Half Term Day

**29**  
WEAC Convention - No School

**30**  
WEAC Convention - No School

**November**

**25**  
Comp Day - No School

**26**  
Thanksgiving Vacation

**27**  
Thanksgiving Vacation

**December**

**23**  
Christmas Vacation

**24**  
Christmas Vacation

**25**  
Christmas Vacation

**28**  
Christmas Vacation

**29**  
Christmas Vacation

**30**  
Christmas Vacation

**31**  
Christmas Vacation

**January**

**1**  
New Years Day – No School

**18**  
Inservice – No School

**March**

**12**  
CWE Convention - No School

**24**  
Half Term Day

**April**

**1**  
Comp Day - No school

**2**  
Easter Vacation

**5**  
Easter Vacation

**May**

**31**  
Memorial Day

**June**

**2**  
Half Term Day/Inservice

NOTE: 1) The Board reserves the right to make up days school is closed as a result of inclement weather, the Board, or its Designee will schedule makeup days after consultation with the Association. 2) March 12, 1999 will be a districtwide inservice or attendance at CWE in Wausau, any other alternative must be approved by the Superintendent before March 1.

6. In the spring and summer of 1997, the parties met to negotiate over the Agreement. On July 15, 1997, the parties reached a tentative agreement regarding the Agreement's 1997-1998 and 1998-1999 school year calendars. Sometime in late July or early August, 1997, the Agreement was ratified by the parties, including the 1997-1998 and the 1998-1999 school year calendars. At that time, an individual named Hanson was the District's Superintendent. On July 1, 1998, Robb Jensen replaced Hanson and became the District's new Superintendent.

7. On August 11, 1998, at the District's invitation, Jensen met with the Union. Present at this meeting was Local Union President Cody, who was also the Union's chief spokesperson and negotiator during the negotiations over the Agreement. At this meeting, Jensen initiated discussion with regard to the "floating inservice day" on page 27 of the Agreement and indicated that he was not clear about that term. Cody explained to Jensen that the teachers either report to work on August 24, 1998, for three days of inservice, or the teachers report to work on August 25, 1998, for two days of inservice. Jensen said that he did not know for what purpose teachers would need three days of inservice. Cody responded that this was up to Jensen and that he could decide either option. Cody said that if Jensen chose the latter, then the District would need to close the schools and have a non-student day for the floating inservice. And, according to Cody, since there were 181 or 182 student contact days scheduled in 1998-1999, Cody told Jensen that the District could cancel a student day and everything would be fine. (It was common knowledge to the parties that the State of Wisconsin requires 180 student contact days.) 1/ Jensen stated that he still was not clear about the floating inservice day. Cody said that that day was for District initiatives, that it was not a teacher driven inservice, and that Jensen should let people know soon if there was going to be an inservice on August 24, 1998.

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1/ *Sec. 121.02(1)(f) states that each school board shall schedule at least 180 school days annually.*

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8. On August 13, 1998, Superintendent Jensen wrote the following letter to all District employes:

Dear School District of Rhinelander Staff,

As the School District of Rhinelander's new Superintendent, I welcome your return for the 1998-99 school year. I sincerely hope you have enjoyed the wonderful summer break and have recharged your creative batteries for the start of school.

Opening inservice days will be Tuesday, August 25 and Wednesday, August 26. The Monday, August 24 floating inservice day will be scheduled for another day or part of days later in the school year. This change to a two day opening inservice schedule has resulted in a modification of scheduling as noted on the enclosed schedule. The morning schedule will resemble the traditional format with either building faculty meetings or teacher instructional planning time to follow. The opening day afternoon schedule and Wednesday's schedule will consist of building meetings, EEN staff meetings, Department meetings and instructional planning time.

...

9. On August 17, 1998, Local Union President Cody wrote the following to Superintendent Jensen:

Dear Mr. Jensen:

After reflecting on the conversation of Tuesday, August 11, I am prompted to write about the floating inservice day in this year's school calendar. The floating inservice day was the result of the 1997 negotiations. The intent of the day, as the union recalls, was to provide the District with time during the year to provide inservice to the staff about an education issue that needed to be addressed in depth. To provide for the inservice day to occur during the year the parties negotiated for 182 days of student contact. The contract is to have 181 student contact days. The extra day is there for administration to close school for an inservice day during the year. Since no one at that time knew which day would be called for the inservice day it was referred to as the floating inservice day. The administration could also view the floating inservice day as two half days if they so desired.

When we talked with you on Tuesday, August 11th, we discussed staff education issues and one in particular the state standards and assessments. The District has adopted the standards, however, there has been little dialogue with the staff about what needs to be done with curriculum and in classrooms to meet them adequately. In the union's viewpoint, assessments and standards is one example of what could be addressed on the floating inservice day. However the floating inservice day's content is to be decided by the administration according to District needs.

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10. On August 24, 1998, the new teachers in the District went to their schools and got their rooms ready. The veteran teachers did not go to their schools on that date. On August 25, 1998, all teachers reported to work for the first day of inservice.

11. On September 22, 1998, October 20, 1998, November 17, 1998, December 17, 1998, January 12, 1999, and sometime in February, 1999, Jensen and the Union met for monthly communication meetings. Discussion during many of these meetings included the topic of the floating inservice day, but nothing was decided with regard to this subject. The Union repeatedly asked Jensen when a decision would be made with regard to the floating inservice day, but nothing was forthcoming. Another subject discussed early on in these meetings was whether the 1998-1999 school year would be in compliance with the State's required number of minutes spent teaching in the classroom.

12. On March 4, 1999, and during another monthly communication meeting, Jensen proposed to schedule the floating inservice day for June 3, 1999, thereby extending the end of the school year by one day. The Union was not in favor of this proposal.

13. On March 10, 1999, Superintendent Jensen sent the following e-mail memorandum to all staff:

The 1998-99 School Calendar includes a floating inservice day. The floating inservice day could have occurred on August 24, however, it was my understanding that the floating inservice day should probably "float" to another time in the school year. Therefore, the first official day of inservice began on August 25.

Over the last 7 ½ months, I have received various opinions as to what would be the appropriate use of the floating inservice day. I had hoped there would be a day during the 1998-99 school year where we could have inserted the floating inservice day on a Monday through Friday. This was not the case and other options were considered.

It is my belief that the floating inservice day should be viewed as a professional development day and the time accounted for. Therefore, the following options will be available to staff to complete the floating inservice day provisions:

Option 1: Attend or present 2 Floating Inservice Sessions

Option 2: Attend or present 1 Floating Inservice Session and complete 1 principal approved independent project

Option 3: Attend June 3<sup>rd</sup> Floating Inservice Sessions

Sessions for Options 1 and 2 will be scheduled after school and possibly some Saturdays during April and May. Each session should be three hours in length.



Andrea Deau, Technology Coordinator, is coordinating the approval and scheduling of floating inservice sessions. Staff interested in presenting a floating inservice session should contact Andrea with their proposal no later than the end of the school day on March 19.

In closing, I regret the floating inservice day could not “float” to a Monday through Friday between August 25 and June 2. The above options were developed to provide staff with a variety of opportunities to complete the floating inservice day requirement.

14. On March 15, 1999, the Union filed a grievance stating that Superintendent Jensen’s March 10, 1999, memorandum violates the Agreement in that it directs the teaching staff to work a day outside of the Agreement’s 1998-1999 school calendar. The remedy sought was to either rescind the directive or to pay the staff an additional day of wages for the additional day’s work.

15. On March 22, 1999, the Union met with Jensen pursuant to Step 2 of the Agreement’s grievance procedure. The Union stated it believed that 60% to 80% of the staff had already completed the equivalent of the floating inservice day outside of the school day and which could be counted as inservice. At the conclusion of the meeting, Jensen agreed to send out a survey to the staff to find out what was currently being done for inservice.

16. On March 31, 1999, Jensen sent a letter, a “Floating Inservice Plan” form, and a “Floating Inservice Sessions” brochure to all District staff. The letter stated the following:

Since my March 10<sup>th</sup> Floating Inservice Day e-mail communication, I have received suggestions to consider building level activities; previously approved simple inservice credits; and participating in other conferences, seminars, or workshops. These and other options may be acceptable floating inservice alternatives. Therefore, the following floating inservice alternatives have been designed to provide staff a variety of options in order to improve instruction and provide meaningful professional growth.

- Floating Inservice Session(s)  
(Please register via e-mail to Carol Carlson or phone 365-9714)
- June 3<sup>rd</sup> Floating Inservice Day
- After School Day or Weekend Conferences/Seminars/Workshops
- After School Day or Weekend Building/Department/Grade Level Inservice Activity
- Other

Attached is a Floating Inservice Session brochure which includes many outstanding sessions, most led by School District of Rhinelander staff. Please feel free to attend these sessions as floating inservice alternatives or as an interested staff member. I believe you will find sessions that will address the practicalities of teaching as well as researched-based sessions that feature the latest in educational developments. Register for sessions via the e-mail to Carol Carlson or phone 365-9714.

Please complete the attached form and return to your building principal no later than the end of the school day on Friday, April 9, 1999. If you are choosing to apply a previously approved simple inservice credit as a floating inservice alternative, the hours will be deducted from simple inservice hours.

After completion of floating inservice day sessions a teacher survey will be distributed to receive feedback on the appropriateness and value of floating day inservice alternatives. Staff will be asked to identify and rank floating inservice alternatives. This information will be used to evaluate the overall effectiveness of the floating inservice day concept.

The attached "Floating Inservice Session" brochure listed and described 25 inservice sessions to be held during the evening hours and on some Saturdays from April 7, 1999, to May 13, 1999.

17. On April 6, 1999, Jensen wrote the following letter to Cody:

Dear Ms. Cody:

On Monday, March 22, 1999 we met in accordance with Step 2 of Article IV of the collective bargaining agreement. Consistent with this Step, it was our obligation to attempt to resolve the issue. During our discussion, the REA offered a "survey" as a means to evaluate the number of staff that have provided hours in excess of the school day which could be construed as completion of the floating inservice day obligation. I considered this option, but have chosen an alternative means of providing those staff persons that attended professional development opportunities during the course of the school year with floating inservice day credit.

Review of the August 1998-July 1999 calendar as included in the agreement indicates that August 24, 1998 was identified as a "floating day". The District believes it has a fiduciary duty to the public to account for the contractual amount of working days for teaching staff members. I choose to exercise the rights afforded to the District during bargaining and "float" the inservice day to June 3, 1999 or the alternative inservice opportunities scheduled during evenings prior to this date. Additionally, the District's designation of June 3,

1999 as the staff's last school day of school is consistent with Article II, section A, subsection 15. Based on the content of our discussion and my review of the collective bargaining agreement, it is necessary that I deny the grievance.

18. On May 4, 1999, Jensen wrote the following letter to those staff that had not yet responded to the deadline stated in his letter of March 31, 1999:

On Wednesday March 10, 1999, I sent all staff an E-mail addressing the 1998-99 Floating Inservice Day. You should have received thereafter a "Floating Inservice Plan" form that directed you to identify how you intended to fulfill your 190<sup>th</sup> contract day and return this form to your building principal by April 9, 1999. As of this date, your form has not been received. If you submitted it, please telephone my office immediately so that I know you complied with my request and forward another copy.

All staff that did not submit a "Floating Inservice Plan" by April 9, 1999, will be expected to attend the June 3, 1999, Inservice Day. The District has scheduled speakers from DPI and CESA. Individuals who do not attend on June 3, 1999, will be subjected to disciplinary action and/or one day's per diem will be deducted from your pay.

You are strongly encouraged to fulfill your contractual obligation of providing 190 professional working days to the children of our District.

19. On June 3, 1999, approximately 40 teachers attended the District's inservice day. Several other teachers attended to support those who were required to attend. There were no teachers who refused to attend on June 3, 1999, and who had not yet otherwise received full credit for the District's floating inservice day.

20. The District's conduct in requiring teachers to work on June 3, 1999, is contrary to the Agreement. In addition, by requiring that teachers work on June 3, 1999, the District made a unilateral change in the 1998-1999 school year calendar in the Agreement and, thereby, refused to bargain over that change.

Upon the basis of the above and foregoing Conclusions of Law, the Examiner makes and issues the following

### CONCLUSIONS OF LAW

1. Respondent Rhinelander School District and its agents did commit a prohibited practice within the meaning of Sec. 111.70(3)(a)5 and Sec. 111.70(3)(a)1, derivatively, of the Municipal Employment Relations Act by requiring that its professional teaching personnel attend a "floating inservice day" on June 3, 1999.

2. Respondent Rhinelander School District and its agents did commit a prohibited practice within the meaning of Sec. 111.70(3)(a)4 of the Municipal Employment Relations Act by making an unilateral change in the 1998-1999 school year calendar of the Agreement and by refusing to bargain over that change.

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

**ORDER**

IT IS ORDERED that the Rhinelander School District, its officers and agents, shall immediately:

1. Cease and desist from violating its duty to bargain under the Municipal Employment Relations Act by unilaterally implementing a change in the last teachers' work day.

2. Take the following affirmative action which the Examiner finds will effectuate the purposes and policies of the Municipal Employment Relations Act:

(a) Pay those teachers who were required to attend the June 3, 1999, floating inservice day pro rata wages, along with any corresponding benefits, with interest accrued from the date of the violation at the rate of 12% per annum for June 3, 1999;

(b) Notify all of its employes by posting, in conspicuous places on its premises where the employes are employed, copies of the notice attached hereto and marked "Appendix A." That notice shall be signed by an official of the District and shall be posted immediately upon receipt of a copy of this Order and shall remain posted for thirty (30) days thereafter. Reasonable steps shall be taken to ensure that said notices are not altered, defaced or covered by other material.

(c) Notify the Wisconsin Employment Relations Commission within twenty (20) days of the date of this Order as to what steps the District has taken to comply with this Order.

Dated at Eau Claire, Wisconsin, this 11<sup>th</sup> day of April, 2000.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Stephen G. Bohrer /s/  
Stephen G. Bohrer, Examiner

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APPENDIX "A"

NOTICE TO ALL EMPLOYEES

Pursuant to an Order of the Wisconsin Employment Relations Commission, and in order to effectuate the policies of the Municipal Employment Relations Act, we hereby notify our employees that:

1. WE WILL NOT unilaterally change the school year calendar for employees in the bargaining unit represented by the Rhinelander Education Association without first bargaining with the Association on the proposed change.

2. WE WILL immediately reimburse those teachers who were required to work on June 3, 1999, for the purpose of a floating inservice day.

3. WE WILL pay all teachers who worked on June 3, 1999, pro rata wages, along with any corresponding benefits, with accrued interest from that date at the rate of 12% per annum.

By \_\_\_\_\_  
For the School District of Rhinelander

Date: \_\_\_\_\_

**THIS NOTICE MUST BE POSTED FOR THIRTY (30) DAYS FROM THE DATE  
HEREOF.**

**SCHOOL DISTRICT OF RHINELANDER**

**MEMORANDUM ACCOMPANYING**  
**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

**POSITIONS OF THE PARTIES**

**The Union's Brief**

The 1998-1999 school year calendar calls for a starting date of August 24, 1998, an ending date of June 2, 1999, and is clearly defined. Further, these dates were negotiated and ratified by both parties, were printed in a calendar used by the parties and these dates were a part of the Agreement. Any change in these dates would need to be reduced to writing and agreed to by both parties as required by the Agreement. Since there was no agreement otherwise, the District violated the Agreement by requiring certain teachers to work on June 3, 1999, and, thereby, has committed a prohibited practice under Sec. 111.70(3)(a)5.

Another calendar handed out by the District office reiterates and shows that school starts on August 24, 1998. The Union's document titled "Tentative Agreements between the Rhinelander Education Association and Rhinelander Board of Education" dated July 15, 1997, defines the intent of the floating inservice day: "Two in-service days to begin each school year. Floating day created for teacher initiatives." (Emphasis given by the Union.)

Jensen told the Union in August of 1998 that he did not understand the meaning of the floating inservice day and reiterated this in subsequent monthly communication meetings with the Union. On August 13, 1998, Jensen wrote to the staff that the floating inservice day will be scheduled for another day or part of days in the school year (emphasis given by Union). Thus, the communication from Jensen states that the inservice day would be scheduled for a different day within the school year, i.e., August 24, 1998, to June 2, 1999. Further, Cody's letter dated August 17, 1998, makes it clear that the floating inservice day needed to be within the school year and that the District had the option of using August 24 or canceling classes on another day. This letter from Cody made it very clear that the school year could not be extended and that if August 24 was not used, then another day had to be taken within the school year. The District had plenty of notice to understand the Union's position and the intent of the negotiated agreement.

Jensen's memo dated March 10, 1999, shows that Jensen unilaterally changed the intent of the Agreement. Options 1 and 2 of that document provide that employees can make up the time outside the school day and Option 3 provides that it must be made up outside the school year. Jensen's statement within that letter, i.e., "[i]t is my belief that the floating inservice day should be viewed as a professional development day and the time accounted for", is not the same intent of the floating inservice day as testified to by former Human Resources Director James Chilstrom and Local President Cody. Further, a memo from Lauri Millot to employe Lynn Lintereur dated May 14, 1999, states that Millot's belief for the intent of the floating

inservice day “is to provide staff members with professional development separate from the day-to-day obligations of [Lintereur’s] teaching position.” This is contrary to the intent as testified to by Local President and Chief Negotiator Cody and former Human Resources Director Chilstrom who were present during the negotiations for the Agreement.

Moreover, Jensen’s letter dated April 6, 1999, stating “I chose to exercise the rights afforded to the District during bargaining and ‘float’ the inservice day to June 3, 1999 . . .” shows Jensen’s total disregard for the Agreement and the negotiations process that went into the Agreement and that was signed by both parties. Chilstrom, a member of the negotiating team at the time an agreement was reached regarding the 1998-1999 calendar, testified to the same purpose as Cody testified to which described the floating inservice day as a teacher initiative day.

Jensen’s explanation during testimony, i.e., “[w]hen I reviewed the calendar it said August 24<sup>th</sup> floating, and to me that meant it should float . . . meaning that it should go to some other part, some other day,” interjects his personal opinion into a negotiated agreement that he was not a part of. In other testimony, Jensen falsely believes that his rights were grounded in Article II, paragraph A, subparagraph 15, but Jensen fails to consider paragraph B of that same Article where those rights are limited by the express terms of the Agreement. Further, Human Resources Director Millot conspired with Jensen’s train of thought as shown by her testimony agreeing that the floating inservice day could have been held on July 1, 1999. This train of thought shows that Millot and Jensen intended to violate the Agreement and establish inservice days whenever they felt like it.

The District’s concern about fulfilling a required number of teaching days and minutes is clearly erroneous and is a “red herring” when one considers that inservice days are not required by state law and that 190 days is not required under the Agreement. It draws attention away from the real issue — the inservice time for professional employees. The issue in question never was student time, but rather inservice time.

Jensen indicated through testimony that the solution of starting school on August 24, 1998, and changing other days around so that the floating inservice day was within the school year was never thought of by himself. Therefore, Jensen let it slide until the end of the school year to write the infamous March 31 memo to all school staff.

The above shows that the District refused to bargain in good faith with the Union over the intent of the “floating inservice day” in violation of Sec. 111.70(3)(a)4. The record is deplete of information showing that the new administration sought out the old administration’s input of what the parties meant by the floating inservice day. Rather, the record shows that Jensen and Millot intended to inject into the Agreement their own beliefs and feelings over the content and date of the floating inservice day despite of fact that these were made clear in negotiations leading up to the Agreement.

The District also attempted to coerce employees into agreeing with a unilateral change in the school calendar as well as coercing employees into working outside of the school year when it denied floating inservice day credit for many of activities that the employees presented to the District and following Step 2 of the grievance procedure in violation of Sec. 111.70(3)(a)1.

### **The District's Brief**

The complaint should be dismissed. The Union has not alleged an independent violation of Sec. 111.70(3)(a)1, but rather that such an alleged violation is wholly derivative. And since the Union has not established that the District has violated either Secs. 111.70(3)(a)4 or 111.70(3)(a)5, then the complaint has no merit and should be dismissed.

The District was acting within its rights under the terms of the Agreement. The parties understood that the District had the discretionary right to schedule the floating inservice day on a date other than August 24, 1998. The parties explicitly designated a "floating day" during their negotiations in order to show their agreement that the District would hold it at another time. Even Union President Cody acknowledged as early as her first meeting with Superintendent Jensen that the determination of whether and when to have the floating inservice day was a matter left to the District's judgment.

There is no evidence, other than Union President Cody's self-serving recollections, that the parties agreed to hold the floating inservice day on a cancelled student contact day. Although Cody alleges that the parties discussed this during negotiations, there is nothing in writing to support this contention. Moreover, District negotiator Chilstrom testified that he had no recollection of any discussion during negotiations of closing school for the floating inservice day. Furthermore, the Union-created memorandum, which describes some alleged negotiated tentative agreements, is notably lacking any indication that the floating inservice day was to be held on a canceled school day. Although the Union may have desired this, the Agreement does not limit the District's discretion on when the District may hold the floating inservice day.

Because the Agreement afforded the District the right to schedule the floating inservice day, the District was under no obligation to yield to the Union's suggestion of canceling a day of teaching. Nevertheless, in good faith, Superintendent Jensen met with the Union and discussed the floating inservice day on numerous occasions in an attempt to collaboratively set its timing and content. However, no agreement was reached due in large part to the Union's erroneous contention that there were a sufficient number of student contact days during the 1998-1999 school year so as to allow a cancelled day of classes.

Section 121.006(2)(a), Wis. Stats., mandates that the District hold school at least 180 days each year or the District will risk the withholding of State aid. Section 115.01(10), Wis. Stats., defines school days for the purpose of calculating the 180 day requirement of Section 121.006(2)(a) as days during which school is taught as well as days during which



parent/teacher conferences are held. It is indisputable that there were only 180 days in the 1998-99 school year on which students were taught and/or on which parent/teacher conferences were held. Given the statutory definition of school days in Section 115.01(10), the Union inappropriately considered two “comp days” as school days. This is because no teaching or conferences took place on those days. Thus, it was necessary for Superintendent Jensen to exercise his discretion and to schedule the floating inservice day for a date other than a canceled school day.

The Union’s argument, i.e., that the floating inservice day must be scheduled during the school year, is incorrect because Article II(A)(15) of the Agreement explicitly provides that the District has the right to determine the length of the school year. Further, that same paragraph A of the Agreement provides that the right to exercise this function is limited only to the extent that it is explicitly, clearly and unequivocally restricted by the express terms of the Agreement. There was no such limitation in the Agreement on the District’s right to determine the length of the 1998-1999 school year.

There is nothing in the Agreement’s 1998-1999 calendar that prohibits the District from scheduling work after June 2, 1999. Unlike the Agreement’s 1997-1998 calendar, the 1998-1999 calendar did not explicitly designate the “teachers’ last day.” Rather, this language was noticeably dropped. And since there was no explicit, clear and unequivocal restriction on the length of the school year (see Article II(A)), then the District had the right to schedule the floating inservice day on June 3, 1999.

Contrary to the Union’s argument, teachers did not work an “additional day” by working on June 3, 1999. This was merely the fulfillment of working the last of the contractually required number of work days. Under the 1998-1999 calendar, as was the case in the 1997-1998 school year, teachers were contracted to work 190 days. There is no evidence to suggest that the parties agreed to reduce the total number of 190 work days between the 1997-1998 and the 1998-1999 school years. Rather, August 24, 1998, was designated floating, i.e., to be held at a later date, because it was determined from the parties’ 1997-1998 school year experience that it was unnecessary to have three inservice days at the beginning of the 1998-1999 school year. Had the floating inservice day been held on August 24, 1998, the teachers would have been required to work 190 days. The parties do not dispute this. It is not a violation of the contract to require that teachers work the 190 days that they otherwise would have worked if the August 24, 1998 date had actually been held as an inservice day.

The Union is neither legally nor equitably entitled to a remedy of an additional day’s pay for those teachers that worked on June 3, 1999. Those teachers were afforded numerous opportunities to satisfy the floating inservice obligation prior to June 3, 1999, but instead voluntarily chose to attend on June 3, 1999. Most importantly, those teachers worked no more hours than those who satisfied the floating inservice day obligation by attending weekend or evening sessions prior to June 3, 1999. The teachers that worked on June 3, 1999, merely worked and were paid for the 190 days agreed to under the contract.

When the District and Union could not reach consensus as to when to schedule the floating inservice day, the Union cavalierly insisted on an approach inimical to the welfare of the District's students: just cancel a day of classes. The District rejected that anti-educational method, which also would have violated state law, and appropriately insisted that teachers satisfy their contractual obligations.

### DISCUSSION

This case is primarily an alleged breach of a collective bargaining agreement. The issue is whether the District's act of requiring certain teachers to work a floating inservice day on June 3, 1999, is contrary to the parties' 1997-1999 Agreement. This depends on whether the parties agreed that June 2, 1999, would be the last day of required work for teachers for the 1998-1999 school year. Conversely, this depends on whether the parties agreed that the District had the right to determine the length of the school year beyond June 2, 1999.

The Union's complaint alleges that the District's conduct is a violation of Secs. 111.70(3)(a)1, 4 and 5 of the Municipal Employment Relations Act. If the District's conduct was contrary to the Agreement, then the Union has established a violation of Sec. 111.70(3)(a)5 and Sec. 111.70(3)(a)1, derivatively. I agree that there is insufficient evidence to establish an independent violation of Sec. 111.70(3)(a)1 and that the allegation is wholly derivative. In addition, if the District's conduct was contrary to the Agreement, then it was an unilateral change in the Agreement and is a per se refusal to bargain and a violation of Sec. 111.70(3)(a)4.

The Agreement, on page 27, has two columns of chronologically ordered dates with corresponding phrases immediately below each date. The column on the left begins with the entry "August 24" and beneath it states "Inservice - Floating Day." That date and phrase is followed by other dates and corresponding phrases. The right hand column also has dates and phrases, the last date being "June 2," and below that it states "Half Term Day/Inservice." Page 27 does not describe "Inservice - Floating Day" or "Half Term Day/Inservice" in a narrative form and those phrases do not appear elsewhere in the Agreement. Initially, page 27 appears more like a checklist than a statement for when teachers are to end the 1998-1999 school year.

However, page 27 of the Agreement infers, for the 1998-1999 school year, that the teachers' last day of work is June 2, 1999. The purpose of page 27 is to lay out significant dates for the 1998-1999 school year and to describe, in an abbreviated fashion, things that are to occur on each of those described dates. This is a school year calendar that has a beginning and an end. It is inherent that the teachers' last work date for the 1998-1999 school year is June 2, 1999, due to the fact that "June 2" and its descriptive are the last entry for that year. This interpretation is supported by page 26 of the Agreement for the 1997-1998 school year calendar where it states "June 4" and "Teachers Last Day." It is undisputed that this

abbreviated description on page 26 of the Agreement means that June 4, 1998, shall be the teachers' last day for the 1997-1998 school year. Further, the evidence indicates that that is what actually occurred in the 1997-1998 school year.

The District points out that the 1997-1998 calendar states "June 4" followed by "Teachers Last Day," while the 1998-1999 calendar states "June 2" followed by "Half Term Day/Inservice." I am not persuaded by the District's assertion that the "last day" language in the 1997-1998 calendar was noticeably dropped from the 1998-1999 calendar or that this was an intentional omission. Union Local President Cody testified that the parties' understanding at the bargaining table was that "Half Term Day/Inservice" meant that students were to be in school on June 2, 1999, for the last time for one half day, and that the other half day was inservice for the teachers to close out their rooms and leave. The District does not rebut this point and is silent in this regard. Although the words "last day" are missing from the phrase "Half Term Day/Inservice," it is not inconsistent for that phrase to mean that that was the teachers' last day for the 1998-1999 school year.

There is evidence that the parties agreed in the event the floating inservice day did not occur on August 24, 1998, that it would be held on a canceled student contact day. Cody testified that the parties met during the summer of 1997, including July 15, August 11 and August 14, 1997, and that during the July 15 and August 14 meetings, the parties discussed the 1998-1999 calendar changes. The District argues that Cody's allegations of the parties' understanding during negotiations to cancel a student contact day in order to hold an inservice is nothing other than self-serving recollections. It is true that the Union's written evidence of these discussions is limited since it is dated July 15, 1997, it does not specify closing school for inservice and it does not include what was discussed on August 14, 1997. However, the District's evidence is tenuous. Chilstrom testified that he did not recall any discussion on closing school for inservice during bargaining. Chilstrom also testified that he did not remember the meeting on August 14, 1997. Further, the District did not produce into evidence any written account of what occurred during these meetings even though the District had prepared its own version of "tentative agreements" for the Board to look at, presumably prior to it signing the Agreement. Moreover, Chilstrom was not the District's chief negotiator at bargaining and was only one of a team of District negotiators. The District gave no reason for the absence of individuals who might have testified on its behalf and with regard to the parties' intent on this subject.. Overall, the balance of the evidence supports the Union in this regard.

The District argues that Article II(A)(15) gives them the right to extend the 1998-1999 school year and to require teachers to work on June 3, 1999. Article II(A)(15) states, *inter alia*, that the Board's management rights include the right to determine the length of the school year. This language, however, is general in nature as opposed to the parties' specific intent to have the teachers' last day for 1998-1999 to be June 2, 1999. As a rule of contract interpretation, the more specific language is given precedence over the more general language. Therefore, I do not agree with the District that Article II(A)(15) gives it the right to extend the 1998-1999 school year beyond June 2, 1999, or that that language supercedes the parties'

school year shall be June 2, 1999. I agree that the District had the right to schedule the floating inservice date on a date other than August 24, 1998. However, the fact that it is "floating" does not mean that the District can float it beyond the Agreement's last date of work for teachers during the 1998-1999 school year, i.e., June 2, 1999.

Certainly, from the District's perspective, it may have seemed problematic to schedule an inservice day during the 1998-1999 school year when, according to the District's definitions, there were no more days on which to schedule that floating inservice day prior to June 2, 1999, and without going below the minimum 180 days of student contact. 2/ (I would point out that, under the District's method of computing the number of student contact days, there were 179 student contact days in the 1997-1998 school year.) However, the District knew when it negotiated at the bargaining table, or it should have known, that if August 24 "floats," then it must occur during the 1998-1999 school year. Thus, where August 24, 1998, is taken off of the 1998-1999 calendar as a required teacher work date, then the District knew, or the District should have known at the bargaining table, that that date is carried forward on or before June 2, 1999. If the District had wanted the flexibility to "float" that inservice date beyond the end of the school year, then it was incumbent upon the District to incorporate this flexibility within the Agreement's 1998-1999 school year calendar.

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*2/ I do not make any findings on the meaning or application of Sec. 115.01(10) or Sec. 121.006(2)(a), Wis. Stats., which is outside the purview of my authority.*

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In conclusion, the Union has proven by a clear and satisfactory preponderance of the evidence that the District has violated Sec. 111.70(3)(a)5 and Sec. 111.70(3)(a)1, Stats., derivatively, by requiring that teachers work on June 3, 1999, and beyond the agreed upon last date of work for the 1998-1999 school year. The Union has also proven by a clear and satisfactory preponderance of the evidence that the District has violated Sec. 111.70(3)(a)4, Stats., by making a unilateral change and refusing to bargain over that change in the Agreement.

Dated at Eau Claire, Wisconsin, this 11<sup>th</sup> day of April, 2000.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Stephen G. Bohrer /s/

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Stephen G. Bohrer, Examiner

SGB/ans

