

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MILWAUKEE TEACHERS' EDUCATION ASSOCIATION, Complainant,

vs.

MILWAUKEE BOARD OF SCHOOL DIRECTORS, Respondent.

Case 403
No. 61491
MP-3852

Decision No. 30524-A

Appearances:

Perry, Shapiro, Quindel, Saks, Charlton & Lerner, S.C., by **Attorney Barbara Zack Quindel**, 823 North Cass Street, P.O. Box 514005, Milwaukee, WI 53203-3405, on behalf of Milwaukee Teachers' Education Association.

Mr. Donald L. Schriefer, Assistant City Attorney, City of Milwaukee, 800 City Hall, 200 East Wells Street, Milwaukee, WI 53202-3551, on behalf of the Milwaukee Board of School Directors.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

Milwaukee Teachers' Education Association (Association) filed a complaint with Wisconsin Employment Relations Commission on August 8, 2002, alleging that Milwaukee Board of School Directors (Board or District) had committed prohibited practices in violation of Sec. 111.70(3)(a)(5) and (1) by its refusal to arbitrate a grievance regarding the District's imposition of a year-round school calendar at Granville Elementary School. Following efforts to conciliate the matter, the case was assigned to Sharon A. Gallagher, a member of the Commission's staff, on November 7, 2002. On December 20, 2002, the Commission formally appointed Examiner Gallagher to make and issue Findings of Fact, Conclusions of Law and Order as provided in Sec. 111.07(5), Stats. Hearing on the complaint was noticed on December 20, 2002, and held at Milwaukee, Wisconsin, on February 25, 2003, by mutual agreement of the parties. The parties filed initial briefs on April 16, 2003. On April 29,

Dec. No. 30524-A

2003, the parties advised the Examiner that they would not file reply briefs, whereupon the record was closed. The Examiner, having considered the evidence and arguments of counsel, makes and issues the following Findings of Fact, Conclusion of Law and Order.

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.

FINDINGS OF FACT

1. Milwaukee Teachers' Education Association, hereafter referred to as Association, is labor organization within the meaning of Sec. 111.70(1)(h), Stats., and at all times material herein was the exclusive collective bargaining representative

. . . for all regular teaching personnel (hereafter referred to as teachers) teaching at least fifty percent (50%) of a full teaching schedule or presently on leave, as well as those teaching on a regular part-time basis less than fifty percent (50%) of a full teaching schedule, (including guidance counselors, school social workers, teacher-librarians, traveling music teachers and teacher therapists, including speech pathologists, occupational therapists and physical therapists, music teachers 550N who are otherwise regularly employed in the bargaining unit, team managers, clinical educators, speech pathologists, itinerant teachers, diagnostic teachers, vocational work evaluators, community human relations coordinators, human relations curriculum developers, mobility and orientation specialists, community resource teachers, program implementers [sic], curriculum coordinators, school nurses, and Montessori coordinators), excluding substitute per diem teachers, office and clerical employes, and other employes, supervisors and executives. . . .

The Association's principal office is located at 5130 West Vliet Street, Milwaukee, WI 53208.

2. Milwaukee Board of School Directors, hereafter referred to as Board or District, is a municipal employer within the meaning of Sec. 111.70(1)(j), Stats., and maintains its principal offices at 5225 West Vliet Street, Milwaukee, WI 53208.

3. At all times material herein the Association and the Board have been parties to a collective bargaining agreement. The 1999-2001 collective bargaining agreement contained, in pertinent part the following provisions:

PART IV

TEACHING CONDITIONS AND EDUCATIONAL IMPROVEMENTS

A. SCHOOL YEAR

The regular school year shall be one hundred ninety-one (191) days. Where the school year is extended beyond one hundred ninety-one (191) days, teachers so assigned shall have their salaries augmented for each such day by adding $1/191$ of their regular annual salary. The school year for school social workers, community human relations coordinators, human relations curriculum developers, and personnel assigned case management responsibilities shall be two hundred (200) days commencing one (1) week before the teachers return and ending four (4) days after the close of school. Where the school year is extended beyond two hundred (200) days, the employees so assigned shall have their salaries augmented for each such day by adding $1/200$ of their regular annual salary.

B. TEACHING DAY

1. **HIGH SCHOOLS.** Study halls, hall duty, and attendance service shall be assigned so that individual teachers are not singled out with an unusually heavy workload arbitrarily or for illegal or other impermissible reasons. Volunteers shall be assigned first.

2. TEACHER DAY

a. The normal school day for the high school faculty shall begin no sooner than 7:25 a.m. or later than 8:25 a.m. and end seven (7) hours and thirty-three (33) minutes after the starting time.

b. The normal school day for middle school faculty shall begin no sooner than 7:30 a.m. or later than 8:30 a.m. and end seven (7) hours and thirty-three (33) minutes after the starting time.

c. The normal school day for elementary school faculty shall begin no sooner than 7:45 a.m. or later than 9:00 a.m. and end seven (7) hours and five (5) minutes after the starting time.

d. Existing contract provisions conflicting with a, b, and c above shall be modified to reflect the provisions a, b, and c above.

e. The normal workday for school social workers shall be from 8:00 a.m. to 4:30 p.m. provided, however, that if the school social worker is in the field and completes the day's assignment at 4:00 p.m. (where the school closes at 4:00 p.m.), there shall be no need for the school social worker to return to the school office. Required school

social worker staff meetings that may extend to one-half (.5) hour beyond the regular working hours (4:30 p.m.), when necessary, shall be limited, except in special situations, to once a month.

f. When it is necessary, a proposed shift may be instituted after negotiation with the MTEA, but in no case shall regular shifts be scheduled to begin earlier than 7:00 a.m. nor to end later than 5:00 p.m. The total period of teacher duty for such shifts shall be continuous and shall not exceed that of the normal school day.

g. The normal workday for human relations community coordinators, human relations curriculum developers, and personnel assigned the case manager responsibilities shall be 8:00 a.m. to 4:30 p.m.

...

O. PARENT CONFERENCE DAYS

The parent/teacher conference schedule of two (2) days per year, if scheduled, shall be conducted during regular school hours on the days established by the negotiated calendar or if modifications are desired as follows:

1. The principal will meet with the building representative(s) and discuss parent/teacher conference day options to be developed jointly by the principal, building representative, and parent representatives. After the options are developed, the building representative(s) will conduct a ballot of teachers. Parent representatives will provide meaningful parental input.
2. The principal and building representatives will meet to review the parent and teacher responses to the options. If a modified parent/teacher conference day schedule is established, the modification will provide a total number of hours for the parent/teacher conference day which are equal to the number of hours in the teacher day (exclusive of the lunch period) at each level (i.e., elementary, middle, and high).
3. Principals are to send their written requests for the modified conference days to the Division of Labor Relations. Building representatives are to send a letter with the dates and hours for the conference(s) reflecting the will of the teachers to the MTEA.
4. If the MTEA and administration cannot agree on a parent/teacher conference modification, then the school will adhere to the negotiated day. On such days, conferences, if scheduled, shall be conducted during regular school hours or on consecutive hours equal to the normal school day not to exceed 9:30 p.m.

PART VII

GRIEVANCE AND COMPLAINT PROCEDURE

A. PURPOSE

The purpose of this grievance procedure is to provide a method for quick and binding final determination of every question of interpretation and application of the provisions of this contract, thus preventing the protracted continuation of misunderstandings which may arise from time to time concerning such questions. The purpose of the complaint procedure is to provide a method for prompt and full discussion and consideration of matters of personal irritation and concern of a teacher with some aspect of employment.

B. DEFINITIONS

1. A grievance is defined to be an issue concerning the interpretation or application of provisions of this contract or compliance therewith provided, however, that it shall not be deemed to apply to any order, action, or directive of the superintendent or anyone acting on his/her behalf, or to any action of the Board which relates or pertains to their respective duties or obligations under the provisions of the state statutes which have not been set forth in this contract.

...

C. RESOLUTION OF GRIEVANCE OR COMPLAINT

If the grievance or complaint is not processed by the MTEA or the grievant within the time limits at any step of the grievance or complaint procedure, it shall be considered to have been resolved by previous disposition. Failure by the administration or the Board to communicate their disposition in writing within the specified time limit shall permit the MTEA to appeal the grievance or complaint to the next step of the grievance procedure or arbitration. Any time limits in the procedure may be extended or shortened by mutual consent.

D. STEPS OF GRIEVANCE OR COMPLAINT PROCEDURE

Grievances or complaints shall be processed as follows:

FIRST STEP. Where a complaint is involved, a teacher shall, within five (5) workdays after he/she knew or should have known of the incident, submit the same to the principal orally. Where a grievance is involved, the teacher shall

promptly, but in no case longer than thirty (30) workdays after he/she knew or should have known of the incident, submit the same to the principal orally. The principal shall orally respond to the grievance or complaint within five (5) days. If the grievance or complaint is not adjusted in a satisfactory manner orally, the grievant or complainant shall, within two (2) workdays, submit the same in writing to the principal. The principal shall advise the grievant or complainant of his/her disposition in writing within five (5) workdays after receipt of the written grievance or complaint. A copy of the disposition shall be sent to the MTEA, the grievant or complainant, and Labor Relations.

SECOND STEP. If the grievance or complaint is not adjusted in a manner satisfactory to the employe or the MTEA within five (5) workdays after receipt of the written answer, then the grievance or complaint may be set forth in writing by a representative of the MTEA. The grievance shall set forth the particular section of the contract under which the grievance is brought. Either the grievant and the MTEA shall sign the grievance or complaint, or the MTEA shall sign the grievance or complaint naming the individual(s) affected.

Copies of the same shall be transmitted to the director of the Division of Labor Relations for transmittal to the appropriate department head for discussion. Such discussion shall be held within ten (10) workdays at a mutually convenient time arranged by such department head. Within ten (10) workdays after discussion, a disposition of the grievance or complaint shall be written and distributed with a copy for the MTEA and the grievant or complainant.

THIRD STEP. If the written grievance or complaint is not adjusted in a manner satisfactory to the teacher or the MTEA within ten (10) workdays of the written disposition of the department head, it may be presented to the superintendent or his/her designee for discussion. Such discussion shall be held within ten (10) workdays at a mutually convenient time fixed by the superintendent or his/her designee. Within ten (10) workdays thereafter, the superintendent shall send a written disposition to the MTEA.

FOURTH STEP. If the grievance is not adjusted in a manner satisfactory to the MTEA within twenty (20) workdays of the written disposition of the superintendent, it may be presented to final binding arbitration in accordance with the following procedures.

The final decision of the impartial referee, made within the scope of his/her jurisdictional authority, shall be binding upon the parties and the teachers covered by this contract.

1. **JURISDICTIONAL AUTHORITY.** Jurisdictional authority is limited to consideration of grievances as herein above defined.

...

h. The impartial referee shall lay down the rules for orderly conduct of the hearing.

i. In making his/her decision, the impartial referee shall be bound by the principles of law relating to the interpretation of contracts followed by Wisconsin courts.

j. The expenses of the impartial referee shall be borne equally by the parties, except that the party requesting reconsideration or rehearing shall bear the full expenses of the impartial referee incurred in such reconsideration or rehearing.

2. **APPOINTMENT OF IMPARTIAL REFEREE.** The impartial referee shall be selected as follows:

a. The certifying party shall request the WERC to submit to the parties a list of names of five (5) persons suitable for selection as impartial referee.

b. If the parties cannot agree upon one (1) of the persons named on the list, the parties shall strike a name alternately, beginning with the MTEA, until one (1) name remains. Such remaining person shall act as impartial referee. In subsequent selections, the parties shall alternate the first choice to strike a name.

4. Part IV, Section B of the labor agreement defines the "Teaching Day," "Additional Assignments," "Additional Paid Assignments" and "Lunch Periods;" Part IV, Section I, defines "Inservice." In 2001-02, the parties negotiated an MOU regarding "Banking Time" as a "deviation from the contract to permit bank time and the dismissal of students five (5) days" as follows:

...

1. As an exception of Part IV, Section B, of the contract, individual schools will be permitted to request a modification of the teaching day for the 2001-02 school year. The modification of the teaching day would require an increase in the teaching day through a corresponding reduction on teacher preparation/special help supervision or team planning time.

2. Individual schools will be permitted to request a modification of the teaching day if at least 51 percent of the teachers on the staff at each school vote in favor of the full day student release time. The building representative in each school shall be responsible for conducting the vote of the teachers as well as reporting the vote and making a request in writing to the MTEA before implementation. Principals shall notify Leadership Services of the vote in writing.
3. As the result of the lengthening of the pupil day, students will be dismissed on the same five (5) full days on a district-wide basis. The time shall be used for activities leading to improved academic achievements (e.g., staff planning, staff development, and teacher preparation/planning). The teachers on the staff shall determine the use of at least half of each release block and may decide that such time will be available for individual preparation/planning.
4. The proposed student release days shall be held on September 28, December 3, 2001, January 28, March 4, and May 8, 2002.
5. The workdays/hours of educational assistants in these schools and the full-time traveling music teachers will not be reduced because of the release day.
6. If the Wisconsin Department of Education determines that the full day release does not fulfill the mandatory days of instruction requirement, the schools that voted to modify the teaching day shall revert to the day required by the contract.
7. The proposed student release dates are contingent on the Milwaukee Board of School Directors approving the 2001-02 school year calendar after July 1, 2001. Any modifications made to the school calendar may necessitate modifications of the student release dates.
8. This memorandum of understanding shall cease at the end of the 2001-02 school year. No later than June 1, 2002, the parties shall meet to discuss the continuation of the "banking time" memorandum of understanding for the 2002-03 school year.

. . .

5. For at least the past 40 years, the Association and the Board have negotiated the start date of the school year as well as the beginning, end and duration of the Winter and Spring breaks, the existence and placement of unpaid mid-semester breaks as well as the

record/staff planning day at the end of the first semester and parent conference days. These negotiations normally have occurred separately from negotiations over the labor agreement because negotiations for successive labor agreements have been protracted. Calendar negotiations have resulted in initial calendar grids supported by calendar narrations which the parties mutually agreed upon, or executed Memoranda of Understandings (MOU's). For some years, the negotiated school calendars have been incorporated by reference into the Master contract; in approximately six or seven years, the negotiated calendar was printed in the contract book because it was ready to be printed in the agreement at printing time.

6. Since approximately May, 1994, the Association has followed a procedure for the approval of school reform measures, including year-round school calendars at some of the MPS schools which involved negotiating separate calendar MOUs. (i.e., when school is conducted for students who, for example, need remediation.)

7. For the 2001-02 school year, the parties negotiated the regular school calendar separately from the remainder of the labor agreement. On January 9, 2001, a Board Committee approved a resolution to implement a year-round calendar at Granville Elementary which was then approved by the Board on January 30, 2001 "pending necessary negotiations with appropriate bargaining units." MTEA and the Board initialed the negotiated calendar on April 9, 2001, although the parties knew that due to a change in State law the 2001-02 calendar could not be formally established until after July 1, 2001, following a public hearing pursuant to Section 118.045, Wis. Stats. The agreed-upon narration of the 2001-02 calendar tentatively agreed to by the parties on April 9, 2001, read as follows:

TEACHER WORK YEAR

Organization Day - Wednesday, August 22, no classes scheduled
First day of attendance for ALL students -Thursday, August 23
Labor Day - Monday, September 3, schools closed
Elementary, Middle, and High School Parent Conferences - Friday, October 12, no classes scheduled
Convention days - Thursday & Friday, October 25 & 26 no classes scheduled
Thanksgiving recess -Thursday & Friday, November 22 & 23, schools closed
Winter recess -Monday, December 24 through Wednesday, January 2, schools closed
Non-paid, non-workday - Dr. Martin Luther King, Jr. Day, Monday, January 21, schools closed
Record/Staff Planning Day - Friday, January 18, no classes scheduled
Non-paid, non-workday-Monday, February 18, schools closed
Elementary, Middle, and High School Parent Conferences - Friday, March 15, no classes scheduled
Spring recess - Friday, March 29 through Friday, April 5, schools closed
Memorial Day - Monday, May 27, schools closed
Last pupil day- Wednesday, June 5
Record Day -Thursday, June 6, no classes scheduled
Emergency Make-up Day-Friday, June 7

TEACHER WORK YEAR 2001-2002

<u>Month</u>	<u>Days</u>	<u>Days No Classes Scheduled</u>	
August	8	Paid Holidays	3
September	20	(Labor Day, September 3)	
October	23	(Thanksgiving Day, November 22)	
November	21	(Memorial Day, May 27)	
December	15		
January	20		
February	19	Organization Day (8/22)	1
March	20	Conference Days (10/12 & 3/15)	2
April	17	Convention Days (10/25, 10/26)	2
May	23	Record/Staff Planning Day (1/18)	1
June	<u>5</u>	Record Day (6/6)	1
		Emergency Make-up Day (6/7)	<u>1</u>
TOTAL	191	TOTAL	11
Teacher Days	191	Non-paid, non-workday (MLK Day 1/21)	
	<u>-11</u>	Non-paid, non-workday (Mid-semester break 2/18)	
Pupil Contact Days	180		

8. Because Sec. 118.045, Wis. Stats., was amended by the legislature in 1999 to require school districts to hold a public hearing after July 1st if the District wished to start the school year for students prior to September 1 of any future year, the Board was required to hold such a hearing to set the 2001-02 school calendar, as that calendar had not been agreed upon at the time the amended statute went into effect. This public hearing was properly noticed on July 6, and held on July 11, 2001, to consider the above quoted regular 2001-02 calendar for approval and to receive public feedback regarding the calendar. The calendar was ultimately approved on July 11, 2001, applicable at all MPS schools for which the parties had not negotiated a separate calendar MOU.

9. During the 2000-01 school year, the Principal at Granville Elementary School became interested in trying to establish a year-round calendar at Granville Elementary. On November 30, 2000, the Administration at Granville Elementary notified the staff that it wanted to implement an experimental year-round calendar for the 2001-02 school year. At the request of the Granville staff, the MTEA representatives met with the affected teachers and educational assistants to answer questions about how wages, hours and working conditions might be affected by changing to a year-round calendar and to discuss the Association procedures for conducting a vote (required by MTEA) showing 2/3 of all MTEA-represented employees wished MTEA to make a proposal to modify the Master contract and propose a year-round calendar MOU for Granville. Various votes among MTEA represented employees at Granville were conducted. Thereafter, MTEA failed to make a proposal to the Board to

modify the Master contract negotiated calendar (approved July 11, 2001) at Granville Elementary.

Page 11
Dec. No. 30524-A

10. In August, 2001, the Administration at Granville Elementary School implemented an experimental year-round calendar for the 2001-02 school year. On August 30, 2001, Director of Labor Relations Deborah Ford sent MTEA Executive Director Sam Carmen a copy of a proposed MOU concerning a year-round calendar for Granville Elementary School, which read as follows:

MEMORANDUM OF UNDERSTANDING

Year-Round Calendar for Granville Elementary School

The following Memorandum of Understanding is made and entered into between the Milwaukee Board of School Directors and the Milwaukee Teachers' Education Association concerning a year-round calendar for Granville Elementary School and is subject to the following:

1. The year-round calendar for Granville Elementary School for the 2001-02 school year is attached and is a part of this agreement. Specific calendars for subsequent school years shall be negotiated prior to June 1 of each year. The number of paid days in the teacher work year shall be maintained at 191 days and the number of paid days for educational assistants shall be maintained at 187 days.
2. Teachers and educational assistants assigned to Granville Elementary School who believe they are not compatible with the year-round calendar may declare themselves excessed from the school in June, 2001, and be reassigned in accordance with their respective contract provisions prior to the start of the 2001-02 school year.
3. The parties agree that employees working the modified work year, provided by this agreement, shall not incur a loss or reduction in any benefit that would accrue to employees working a normal work year.
4. Part II, Section E(1)(a), of the MBSD/MTEA teacher contract shall be modified for teachers assigned to Granville Elementary School to allow salaries to be paid on a 26-paycheck basis, commencing with the second pay period in August and ending with the first pay period in August of the following year. The first paycheck (paid the second pay period in August) shall be a seven-day check providing the employee has worked seven days. The remaining 25 checks shall be seven-day paychecks except for the 25th paycheck will be for 11 days and the 26th paycheck

will be for 12 days.

Deductions for organization dues, fair share, and Washington National Short-Term Disability Insurance shall be made on the first 20 paychecks, commencing the second pay period in August.

All other employee deductions shall follow the normal 12-month deduction schedule.

Effective the 2002-03 school year, deductions for organization dues, fair share, and Washington National Short-Term Disability Insurance shall follow the normal ten-month deduction schedule.

5. Part II, Section I, of the MBSD/MTEA educational assistant contract shall be modified for educational assistants assigned to these schools as follows:

Educational assistants shall continue to be paid on a biweekly basis. Educational assistants will continue to be paid for the hours reported in each pay period (a two-week holdback basis), consistent with the normal pay dates and periods established within the school system.

Educational assistants permanently assigned to work 30, 32.5, 35, or 40 hours per week shall receive a total of 26 paychecks per year, commencing with the second pay period in August and ending with the first pay period in August of the following year. The first paycheck (paid the second pay period in August) shall be a seven-day paycheck, providing the employee has worked seven days. The remaining 25 paychecks shall be seven-day paychecks except for the 25th paycheck will be for nine days and the 26th paycheck will be for ten days.

Deductions for organization dues, fair share, and Washington National Short-Term Disability Insurance shall be made on the first 20 paychecks, commencing the second pay period in August.

All other employee deductions shall follow the normal 12-month deduction schedule.

Effective the 2002-03 school year, deductions for organization dues, fair share, and Washington National Short-Term Disability Insurance shall follow the normal ten-month deduction schedule.

6. Two hundred-day employees shall schedule their nine extra days of work, subject to approval of the building principal.

7. If a teacher assigned to Granville Elementary School believes that he/she is incompatible with the school, the teacher shall at the earliest opportunity confer with the principal. The principal may write an incompatibility evaluation and the teacher, if found to be incompatible, shall, where practical, at the earliest opportunity, be reassigned to another MPS school or be placed on day-to-day assignment [sic]. When the transfer is made, the evaluation form shall be destroyed and there shall be no documentation of the reassignment in the permanent evaluation file of the teacher. Teachers who have received written notice from the principal that he/she is being considered for an unsatisfactory evaluation or a needs improvement may not be reassigned under this provision.
8. Employees who accept assignments under this memorandum of understanding shall not be eligible for any of the benefit accruals associated with 12-month, 260-day positions.
9. Employees who accept assignment under this memorandum of understanding shall be eligible for employment in summer school assignments only at year-round schools.
10. After discussion with the school council, employees at Granville Elementary School have the right to annually review the above contract [sic] modifications. If a majority of employees vote to rescind all or a portion of the above agreement(s) by December 1 of a school year, such agreement(s) will be rescinded effective at the end of the school year.
11. With the exception of the contract sections specifically modified in this memorandum, all other provisions of the MBSD/MTEA contracts shall apply to the operation of Granville Elementary School.
12. The above modifications to the contracts are entered into on an experimental basis and shall expire on June 30, 2004.

. . .

<u>MON</u>	<u>TUE</u>	<u>WED</u>	<u>THUR</u>	<u>FRI</u>	<u>MON</u>	<u>TUE</u>	<u>WED</u>	<u>THUR</u>	<u>FRI</u>
AUGUST 2001					FEBRUARY 2002				
		1	2	3					1
6	7	8	9	10	4	5	6	7	8
13	14	15	16	17	11	12	13	14	15
20	21	22	23	24	18	19	20	21	22
27	28	29	30	31	25	26	27	28	

1 & 2 – Banking Days – no student attendance
 3 – Organization day – no student attendance
 6 – First day of school for students

SEPTEMBER 2001

3	4	5	6	7
10	11	12	13	14
17	18	19	20	21
24	25	26	27	28

3 – Labor Day – no student attendance
 28 – Report Cards go home

MARCH 2002

				1
4	5	6	7	8
11	12	13	14	15
18	19	20	21	22
25	26	27	28	29

21 – Report cards
 28 – Banking Day
 29 – Good Friday – no student attendance

OCTOBER 2001

1	2	3	4	5
8	9	10	11	12
15	16	17	18	19
22	23	24	25	26
29	30	31		

5 – Banking Day – no student attendance
 8 – Parent Teacher Conference Day
 9 thru 26 Fall Intersession – no student attendance
 25 & 26 – Teacher’s Convention
 29 – Classes resume

APRIL 2002

1	2	3	4	5
8	9	10	11	12
15	16	17	18	19
22	23	24	25	26
29	30			

1 – Parent Teacher Conference Day – no student attendance
 2 thru 19 – Spring Intersession – no student attendance
 22 – Classes resume

NOVEMBER 2001

			1	2
5	6	7	8	9
12	13	14	15	16
19	20	21	22	23
26	27	28	29	30

22 & 23 Thanksgiving recess – no student attendance

MAY 2002

		1	2	3
6	7	8	9	10
13	14	15	16	17
20	21	22	23	24
27	28	29	30	31

24- Banking Day – no student attendance
 27 – Memorial Day – no student attendance

DECEMBER 2001

3	4	5	6	7
10	11	12	13	14
17	18	19	20	21
24	25	26	27	28
31				

20 –Report cards
 21- Record Day – no student attendance
 24 thru 31 – Winter Intersession – no student attendance

JUNE 2002

3	4	5	6	7
10	11	12	13	14
17	18	19	20	21
24	25	26	27	28

21- Report cards – last day of student attendance
 24 – Record Day
 25 - Emergency make-up day

JANUARY 2001

	1	2	3	4
7	8	9	10	11
14	15	16	17	18
21	22	23	24	25
28	29	30	31	

1 thru 11 – Winter Intersession – no student attendance
 14 – Classes resume
 21 – Dr. ML King Jr. Day – no student attendance

JULY 2002

1	2	3	4	5
8	9	10	11	12
15	16	17	18	19
22	23	24	25	26
29	30	31		

1 thru 31 – Summer Intersession – no student attendance

That letter also enclosed a 2001-02 year-round school calendar for Granville designed in the same fashion as a majority of year-round schools.

11. From 1991 through 2001, MTEA has filed several grievances each alleging that actions taken by the Board violated the negotiated calendar at various schools all of which have been settled to the satisfaction of the Association or have become moot.

12. On December 3, 2001, the Association filed the underlying grievance which contended that the Administration had unilaterally implemented “. . . the experimental year-round calendar at Granville Elementary School (which) was in violation of the collective bargaining agreement and the negotiated school calendar. . . .” The District continued to assert that the grievance is not arbitrable because it concerns a permissive subject of bargaining and therefore refuses to proceed to arbitration on the grievance.

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

CONCLUSION OF LAW

The Milwaukee Board of School Director’s refusal to arbitrate the December 3, 2001 grievance regarding the 2001-02 Granville School calendar constitutes a prohibited practice in violation of Sec. 111.70(3)(a)(5), and derivatively Sec. 111.70(3)(a)1, Stats., and also constitutes a violation of the parties’ collective bargaining agreement. Based on the above and foregoing Findings of Fact and Conclusion of Law, the Examiner makes and issues the following

ORDER

It is ordered that Milwaukee Board of School Directors, its officers and agents, shall immediately:

1. Cease and desist from refusing to arbitrate the December 3, 2001 Granville School grievance.
2. Take the following affirmative action which the Examiner finds will effectuate the policies of the Municipal Employment Relations Act:
 - a. Immediately proceed to arbitration on the December 3, 2001 Granville School grievance.
 - b. Post in conspicuous places in its offices where notices to employees are

customarily posted copies of the Notice attached hereto and marked "Appendix A".
The Notice shall be signed by an official of the Milwaukee Board of School Directors

Page 16

Dec. No. 30524-A

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 insure that said Notice is not altered, defaced or covered by other material.

c. Notify the Wisconsin Employment Relations Commission, in writing, within twenty (20) days following the date of this Order as to what steps have been taken to comply herewith.

Dated at Oshkosh, Wisconsin, this 25th day of June, 2003.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Sharon A. Gallagher /s/

Sharon A. Gallagher, Examiner

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 proceed to arbitration with the Milwaukee Teachers' Education Association on the December 3, 2001 grievance filed regarding the 2001-02 school calendar at Granville Elementary School.

By: _____

THIS NOTICE MUST BE POSTED FOR THIRTY (30) DAYS FROM THE DATE HEREOF AND MUST NOT BE ALTERED, DEFACED OR COVERED BY ANY OTHER MATERIAL

MILWAUKEE PUBLIC SCHOOLS

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

In its complaint, the Association alleged that the Board violated Sec. 111.70(3)(a)5 and 1, Stats., by refusing to arbitrate the a grievance regarding the 2001-02 school calendar at Granville School. The Board answered the complaint, denying it had committed any prohibited practice and asserted that the subject matter of the grievance, the Board's decision to go to a year-round school calendar at Granville Elementary School was a permissive subject of bargaining which should be exempt from arbitration. The Board also alleged that in any event, the Association had waived its right to impact bargain concerning the issue.

POSITIONS OF THE PARTIES

The Association

The Association argued that the labor agreement between it and the Board contains a broad grievance arbitration clause, which provides that any dispute regarding the interpretation or application of the provisions of the agreement or compliance therewith should be arbitrated. As the Association filed a grievance concerning the Board's decision to impose a year-round school calendar at Granville Elementary, and the Board has refused to arbitrate, the Association sought an order to arbitrate the dispute.

The Association noted that the standard for determining arbitrability was long ago determined by the Wisconsin Supreme Court in *JOINT SCHOOL DISTRICT NO. 10 V. JEFFERSON ED. ASSOCIATION*, 78 Wis.2d 94 (1977). The Association urged that precedent states that if there is a construction of the arbitration clause that would cover the grievance on its face and if there is no specific provision of the effective labor agreement which excludes the grievance from arbitration, the grievance should be arbitrated. The Association noted that the Supreme Court has resolved doubts in favor of coverage so that only if it can be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the grievance, will the court find a grievance not arbitrable.

The Association also cited two cases, *MILWAUKEE POLICE ASSOCIATION V. CITY OF MILWAUKEE*, 92 Wis.2d 145 (1979) and *CITY OF MILWAUKEE V. MILWAUKEE POLICE ASSOCIATION*, 97 Wis.2d 15 (1980) in which the Wisconsin Supreme Court found grievances to be arbitrable even where the employer had argued it had complete discretion to act as it did under the labor agreement. The Association also noted that under *RACINE EDUCATION ASSOCIATION V. RACINE UNIFIED SCHOOL DISTRICT*, 176 Wis.2d 273, 500 N.W. 2d 379 (Wis. App. 1993), the Court of Appeals noted that there is a strong presumption favoring arbitrability in Wisconsin and that courts will reasonably imply an agreement to arbitrate even when no specific language in the contract excludes arbitration.

In the instant case, the Association contended that the allegation raised by the grievance is that the Board violated the negotiated school calendar by implementing a calendar at Granville Elementary that differed from that negotiated calendar. On this point, the Association noted that the facts show that calendars between the parties have been incorporated into their labor agreements and have always been considered a part of those agreements, whether the negotiated calendar has been placed in the Master agreement or not. Thus, the Association asserted that the grievance in this case is essentially a dispute over the interpretation of the negotiated teacher calendar and no provision of the labor agreement specifically precludes arbitration of calendar disputes.

The Association further noted that the Board's arguments in this case go to the merits of the grievance and are not relevant to the issue before the Commission in this case. The Association pointed out that although the Commission has found that year-round calendars are permissive subjects of bargaining in the RACINE UNIFIED SCHOOL DISTRICT case, this does not resolve the question of arbitrability presented in this case. The Association urged that it is not a defense to arbitrability that the subject matter of the grievance is permissive, citing ONEIDA COUNTY, DEC. NO. 30213-A (BOHRER, 10/01). In that case, the Examiner held that "once the parties have reached a collective bargaining agreement, the subjects contained therein are enforceable for the duration of that agreement regardless of the permissive or mandatory nature of those subjects." SLIP OP. AT PAGE 9. On this basis, the Association respectfully requested that the Commission find the grievance arbitrable and order the Board to proceed to select an arbitrator and arbitrate the grievance.

The Board

The Board argued that the decision to go a year-round school calendar at Granville Elementary is a permissive subject of bargaining under Commission precedent. Therefore, the only bargaining required concerning the subject matter of a year-round calendar at Granville was impact bargaining which the Board asserted the Association failed to request. The Board noted that it has no legal responsibility to make impact bargaining proposals under Commission precedent. The Board therefore urged that the Association waived its right to impact bargain in this case by failing to make any proposals thereon, citing HARTFORD JOINT SCHOOL DISTRICT NO. 1, DEC. NO. 27411 (JONES, 4/93). Because the full Board approved a resolution to go to a year-round calendar at Granville Elementary on January 30, 2001, "pending necessary negotiations with appropriate bargaining units," the Board urged that it had met its obligation to negotiate with the Association regarding a year-round calendar at Granville based upon the Association's refusal/failure to request and/or pursue impact bargaining on the subject; citing RACINE UNIFIED SCHOOL DISTRICT, DEC. NO. 25283-B (WERC, 5/89).

Thus, the Board contended that whether sufficient Association members voted to propose a year-round to the Board or whether the negotiated calendar should have been applied to Granville Schools are irrelevant to this case. Therefore, the Board asserted that it had properly refused to arbitrate this grievance because it had decided to implement a year-round

calendar at Granville Elementary. As Commission precedent shows that the Board was free to unilaterally implement a year-round calendar, subject only to impact bargaining, the Board urged that the complaint be dismissed in its entirety given the Association's waiver of its right to pursue impact bargaining on the issue of a year-round calendar for Granville School.

DISCUSSION

The complaint in this case alleges that the Board violated Sec. 111.70(3)(a)5, and derivatively Sec. 111.70(3)(a)1, Stats., by refusing to submit grievance number 01/224 to arbitration. The underlying grievance asserted that the Board violated Part IV of the collective bargaining agreement and the negotiated school calendar by unilaterally implementing an experimental year-round calendar at Granville Elementary School.

The Municipal Employment Relations Act makes it a prohibited practice for a municipal employer to “violate any collective bargaining agreement previously agreed upon by the parties . . . including an agreement to arbitrate questions arising as to the meaning and application of the terms of a collective bargaining agreement. . . .”

In determining whether a grievance is substantively arbitrable, the Commission has followed a relatively narrow path. As the Wisconsin Supreme Court stated in *JOINT SCHOOL DISTRICT NO. 10 v. JEFFERSON EDUCATION ASSOCIATION*, 78 Wis.2d 94 (1997), the issues before the Commission are whether there is a construction of the arbitration clause that would cover the grievance on its face and whether another provision of the labor agreement specifically precludes arbitration. See also, *KIMBERLY AREA SCHOOL DISTRICT v. ZDANOVEC*, 222 Wis.2d 27 (1998); *CITY OF WHITEWATER*, DEC. NO. 28972-B (WERC, 4/98); *CLARK COUNTY*, DEC. NO. 29480-A (CROWLEY, 3/99), *AFF'D BY OP OF LAW*, DEC. NO. 29480-B (WERC, 4/99); *BROWN COUNTY*, DEC. NO. 30016-B (WERC, 11/01). In addition, in *JEFFERSON*, *SUPRA*, the Court stated that unless it can “be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute,” the grievance will be found arbitrable.

In Part VII, Section B, a grievance is defined as “an issue concerning the interpretation or application of provisions of this contract or compliance therewith. . . .” 1/ In its grievance, the Association argued that the Board had violated Part IV — Teaching Conditions and Educational Improvements as well as the negotiated school calendar by implementing a year-round school calendar at Granville Elementary School for the 2001-02 school year without first reaching an agreement with the MTEA.

1/ *Although there is a proviso following the above-quoted phrase, that proviso is not applicable in this case.*

I note that Part IV of the labor agreement defines school year, teaching day and parent conference days, among other items affecting the calendar and it refers to the necessity of reaching agreement thereon if the parties wish a variance from the Master contract's negotiated school calendar. Thus, it could be said that the grievance seeks to interpret or apply contract provisions referring to the school year calendar. In its grievance, the MTEA seeks a cease and desist order, that teachers be reimbursed who have suffered any financial loss due to the calendar change at Granville and that teachers who left Granville as a result of the school year being changed to year-round should have a right to return to Granville despite their decision to transfer out.

On its face, therefore, the grievance raises an issue whether the Board has violated the labor agreement specifically those sections of Part IV, as well as the negotiated calendar for 2001-02 by its actions concerning Granville School. The broad arbitration clause covers the grievance on its face. In addition, I can find no contractual provision that specifically excludes arbitration of the dispute. Under JEFFERSON, SUPRA, the grievance is substantively arbitrable and it is up to the arbitrator to decide whether the Board has violated the labor agreement by its actions concerning the school calendar at Granville Elementary School.

In addition, the Board's arguments are appropriately for the arbitrator. Indeed, the Board's defense that year-round school calendar is a permissive subject of bargaining, is no defense at all in an arbitrability case. This is so based upon the holding in ONEIDA COUNTY, DEC. NO. 30213-A (BOHRER, 10/01), AFF'D BY OP OF LAW, DEC. NO. 30213-B (WERC, 11/01), that even if a subject of bargaining is permissive it is enforceable through grievance arbitration.

In addition, other arguments raised by the Board 2/ specifically go to the merits of the grievance and are properly for the arbitrator to hear. Therefore, as it cannot "be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute," the grievance herein is substantively arbitrable, constituting a dispute as to the interpretation or application of provisions of the labor agreement. The standard remedy has been ordered.

2/ *HARTFORD JOINT SCHOOL DISTRICT NO. 1, DEC. NO. 27411 (JONES, 4/93) cited by the Board.*

Dated at Oshkosh, Wisconsin, this 25th day of June, 2003.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Sharon A. Gallagher /s/

Sharon A. Gallagher, Examiner