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#### STATE OF WISCONSIN

JAY 1 / 1979

#### WISCONSIN EMPLOYMENT RELATIONS COMMISSION

BEFORE THE MEDIATOR-ARBITRATOR

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Arbitration between

SCHOOL DISTRICT OF ALMA

and

:

ALMA EDUCATION ASSOCIATION

Case II

No. 23082 MED/ARB-115 Decision No. 16672-A

Appearances:

Mr. James C. Bertram, Executive Director, Coulee Region United Educators, appearing on behalf of the Association.

Mr. Kenneth Cole, Director, Employee Relations Services, Wisconsin Association of School Boards, appearing on behalf of the District.

:

#### ARBITRATION AWARD

Alma Education Association having, on May 31, 1978, filed a petition with the Wisconsin Employment Relations Commission to initiate Mediation-Arbitration pursuant to Section 111.70(4)(cm)6 of the Municipal Employment Relations Act to resolve a collective bargaining dispute between the Association and the School District of Alma. On November 29, 1978, Kay B. Hutchison was appointed Mediator-Arbitrator in the dispute. A mediation session was held in Alma, Wisconsin on January 25, 1979. Mediation failed to resolve the impasse and the matter proceeded to arbitration. An arbitration hearing was held on February 14, 1979. The parties had full opportunity to present relevant evidence and argument. Post-hearing briefs and reply briefs were filed with the Arbitrator.

#### STATUTORY CRITERIA:

The Arbitrator is required to select one of the parties' final offers in total having considered and given weight to the following factors:

- "a. The lawful authority of the municipal employer.
- b. Stipulations of the parties.
- c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
- d. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally in public employment in the same community and in comparable communities and in private employment in the same community and in comparable communities.
- e. The average consumer prices for goods and services, commonly known as the cost-of-living.

- f. The overall compensation presently received by the municipal employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- g. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- h. Such other factors, not confined to the foregoing, which are normally and traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment."

#### POSITIONS OF THE PARTIES:

The Association's final offer on the issues remaining in dispute is as follows:

# "Article VI - Supervision

Section E.

Section C. Delete

# Article VIII - Professional Qualifications

Assignment to extended activities and those activities listed in Article XIII, Section M., shall be made with the consent of the teacher. Any teacher wanting to be relieved of such activity(ies) shall notify the Board on or before the last day of February of the current year or two (2) weeks following the end of the activity, whichever occurs later. If after a good faith effort such as posting the vacancy in the school teachers' lounge, advertising in the local newspaper(s) and in college or university placement offices, the Board is unable to find a replacement, the activity may be reassigned to the teacher who had requested to be relieved of the activity. Reassignment shall be for no more than one (1) The Board may remove a teacher from an assignment if the teacher is given prior notice of one year unless waived by both the individual and the Association. The years [sic] notice is not required when the removal is a disciplinary action.

# Article IX - Layoff Procedure

Section A. No teacher shall be laid off for any school year if said teacher shall have contracted on an individual basis to teach for that year. Layoffs pursuant to this article shall be in accordance with Chapter 118.22, Wisconsin Statutes, unless waived by both the individual and the Association. In the event that a reduction of personnel shall become necessary, the Board shall accomplish same through normal attrition. Should further reduction be necessary, the Board shall first retain those teachers

who are qualified by certification(s) and then by retaining those with the greatest number of years of local District experience in the assignment, and if equal, then by length of employment in the District.

Teachers who were laid off shall be offered recall in reverse order of layoff to vacant positions which they are certified to fill.

The Board shall give written notice of recall from layoff by registered mail to the Association and the laid off teacher(s) at their last known addresses. Teachers so notified shall have fourteen (14) calendar days from receipt of notice to accept or reject the position. If the teacher rejects the position, such teacher shall be considered to have waived recall rights. If the teacher has not been recalled within two (2) years of layoff, the teacher will no longer be on recall. Teachers will not lose their recall rights if they secure other employment during the layoff.

## Article XIII - Compensation

Section 1.

Each teacher holding a Bachelor's Degree shall earn credits beyond the degree once every five (5) years. The credits earned shall consist of a minimum of six (6) semester hours or eight (8) quarter hours. The Board shall reimburse the teacher twenty dollars (\$20) per quarter credit for the cost incurred in fulfilling this requirement. Credits earned toward meeting this requirement shall be approved by the administrator or credits shall be toward an established college curriculum. Failure to comply to the established requirements of this provision shall result in no advancement on the salary schedule. teacher holding a Master's Degree shall earn credits beyond this degree once in every six (6) years with the above provisions applying.

# Article XIV - Discipline Procedure

The parties recognize the authority of the Board to suspend, demote, discharge, nonrenew, reprimand, or take other appropriate disciplinary action against teachers only for just cause. If the teacher and the Association allege that such action was not based on just cause, they may appeal such action beginning with the Board of Eduation [sic] in Step 3 of the Grievance Procedure except that actions appealing written reprimands shall begin with the first step of the Grievance Procedure.

Teachers new to the District shall be on probation status during their first year of employment with the District. Probationary teachers may be non-renewed in accordance with wisconsin Statute 118.22, but not for reasons which are capricious or arbitrary."

The District's final offer is as follows:

"Article VI - SUPERVISION

Section C - no change

Article IX - LAYOFF PROCEDURE

Section B

A teacher shall be eligible for reinstatement to a position within the district provided that a vacancy occurs in a grade level or subject area in which the teacher is certified and in which the teacher has previously taught in the district.

## Article VIII, Section E

Each extra curricular assignment is to be considered as continuing the ensuing school year, unless notification from the administrator to the contrary is received by the teacher prior to February 15. The extra curricular assignment is considered acceptable unless the teacher indicates in writing to the administrator by March 1 that he/she wishes to be relieved of the assignment. In the event the teacher so indicates, efforts will be made to find an adequate replacement. In the event such replacement cannot be found, the teacher will be assigned and efforts continued in order that the individual will be relieved of the assignment.

Article XIII, Compensation, Section L

page 18, lines 18-20

This section shall read as follows:

'Each teacher holding a Bachelor's Degree shall earn credits beyond this degree once in every five years. The credits earned shall consist of a minimum of 6 semester hours or 8 quarter hours. (The remainder of this section shall remain unchanged).'

Article VI, Section D

When, in the judgement of the Superintendent, a condition or situation warrants, the Superintendent may suspend a teacher with pay, pending action by the Board. The Board shall schedule a hearing within a reasonable time to act upon the suspension."

The stipulated areas of agreement are reproduced here as Addendum #1.

## POSITION OF THE ASSOCIATION:

The Association offers four sets of employment conditions to support its final offer: the Dairyland Athletic Conference (75 FTE, which includes Alma); school districts (75 FTE or fewer) within a 40-mile radius of Alma; other local public employees (Buffalo County); and private sector employees in the Alma area. The Association bases its comparisons on geographic proximity, size and the immediate community.

. With respect to the issue of extra-curricular assignments, the Association notes that the previous 1977-1978 contract is devoid of a pro-

cedure for the assignment of extra-curricular activities to teachers. The Association argues that its proposal will provide a workable solution to situations wherein teachers desire to be relieved from extra-curricular assignments. The proposal provides initial assignment by the administrator with consent of the teacher, a timetable and procedure for securing a replacement in the event the teacher requests relief. A teacher could be reassigned to the activity for a period of a year while the Board undertakes specified efforts to relieve the teacher. The Association contends that the Board proposal indefinitely locks the teacher to an extra-curricular assignment and fails to define the efforts which will be made by the administration to find a replacement when requested.

The motivation for its proposed extra-curricular assignment language, according to the Association, stems from the administration's inconsistent efforts to find replacements for some teachers and not others. Furthermore, the Association contends that extra-curricular assignments have been at issue in past non-renewals. The Association avers that its language would prevent such problems. The Association cites testimony of the Board to the effect that replacements are presently sought through college placement offices, local sources and existing staff members. Such efforts constitute the same procedure incorporated in its proposal and is consistent with the 1978-79 WIAA Handbook, the Association claims.

The Association discounts the District's argument that the Association's proposal would be unworkable in the event that there was no available staff, no turnover or no special permit arrangements for persons other than regular staff members. Neither proposal, according to the Association, is distinguishable in the occurrence or impact of those possibilities.

The Association argues that its proposal is in the public interest because the initial extra-curricular assignment would be jointly determined and further, could be concluded by either party in an orderly fashion. The Association claims that the District has sufficient access to incoming, new teachers to generate replacements and that the Association proposal provides sufficient time in which to fill the vacated assignment. Sixteen new teachers (50 percent of the current faculty) have been employed in the District in the past six years, according to the Association. The Association reasons that the public interest is best served when a teacher functions voluntarily and willingly in a position. The Association indicates that four of the districts it cites as relevant comparisons provide for mutual consent in extracurricular assignments.

The 1977-78 contract provides that, "When a reduction in staff is necessary, the lay off will be based on certification, seniority, teaching experience, and ability and performance as a teacher. Assignment to extra-curricular and other special activities is also to be considered when necessary." The Association stresses that the Board's proposal, which maintains the present language and adds certain reinstatement language, provides no criteria or weights for criteria in the event staff reduction is required.

The Association reasons that its proposal is more appropriate and in the public interest because it maintains the Board's ability to lay off employees while affording staff members the protection of an orderly procedure for staff reduction. The Association's procedure considers certification, then years of District service in the assigned grade or subject area, and, if equal, then years in the District. The proposal initially relies on attrition for staff reduction.

The Association argues that the Board's proposal is inappropriate because it does not provide the use of Section 118.22, Wisconsin

Statutes in its layoff procedure, thereby indicating that the Board could lay off a teacher anytime during the school year. The Association further contends that the Board's proposal gives no real recall rights to teachers, reduces statutory rights, is vague, and allows capricious action since it is subject to administrative change. For the foregoing reasons, the Association argues that its proposal is in the best interest of the District's students, experienced teachers, and general public. The Association argues that layoff provisions are found among other public and private employers cited by the Association.

In the opinion of the Association, the issue on reimbursement for additional college credits concerns only whether or not there is to be reimbursement for same. Teachers have been and will continue to be required to earn post-degree credits under the 1978-79 contract. During negotiations, the parties agreed to change the 1977-78 agreement to reflect the parties' intent with respect to the stated credit requirements to be "minimum" rather than "maximum" required hours. The Association, contrary to the District, argues that such required credit should be reimbursed. Of the Dairyland Conference, the Association notes that only five schools require credits beyond the Bachelor's Degree, and that all reimburse for costs incurred. Further, the Assocition asserts that two other Dairyland schools do not require, but compensate for college credits. Without exception, according to the Association, where credits are required the practice is to grant reimbursement.

The Association asserts that its proposal seeks only reimbursement of partial expenses for the required college courses. Therefore, according to the Association reimbursement would apply only to hours required to meet the minimum of six semester or eight quarter hours; credits beyond the minimum requirements would not be reimbursable.

The last issue in dispute focuses on the discipline procedure. The 1977-78 contract provided that: "No teacher will be non-renewed for reasons that are arbitrary or capricious." The Board's proposal retains the foregoing language and adds that the superintendent may suspend a teacher with pay and that the Board shall hold a hearing to act upon the suspension. The Association proposes that a "just cause" standard be incorporated for non-renewal and forms of discipline including suspension. The Association proposal also includes a one-year probationary period for new teachers and grants probationary teachers an "arbitrary and capricious" standard for non-renewal.

The Association cites the seven tests for just cause enunciated by Arbitrator Carroll Daugherty and argues that application of such tests would not hamper the administration from evaluating and disciplining teachers, but would require that disciplinary actions be evaluated for fairness. In addition, the Association avers that the "arbitrary and capricious" standard proposed for probationary employees is reasonable and would not require that the Board prove a probationary teacher incompetent, inefficient, immoral or in violation of Board policy. The Association notes that fourteen cited districts have just cause and that many comparable districts have just cause without a probationary period. The Association further cites the prevalence

comparison of wages, hours and conditions of employment of municipal employees involved in this proceeding with those of other employees performing similar services; and other factors normally considered in the determination of wages, hours and conditions of employment. The District argues that its final offer is more reasonable than the Association's on the basis that each of the Association's proposals is defective, that data in comparable school districts supports the Board's position, and that the Association's proposals would limit the flexibility of a district the size of Alma and thereby threaten the District's educational quality.

The District also offers school districts in the Dairyland Conference as comparable employers. In addition, the District includes the surrounding districts of Altoona, Fall Creek and Bangor as relevant although the District claims that their inclusion makes little difference in the analysis. The Association's use of other local public and private employers is inappropriate, according to the District, in view of the issues in dispute unique to school districts.

The District regards the issue of extra-curricular assignments to be the most significant issue in the instant dispute. The District employs 29 staff members, K-12. There are 26 extra-curricular positions which are presently filled by approximately 11 teachers. The District contends that only with limited exceptions, the Wisconsin Interscholastic Athletic Association requires that certified teachers be assigned as coaches. The District indicates that of all the comparables cited by the parties, only one district has strictly voluntary extracurricular assignments while three others have modified positions in which the district generally has final authority to assign staff if no volunteers are forthcoming.

The District contends that it has attempted to release teachers from extra-curricular assignments when requested, but that such releases were only possible when new teachers were employed. The District states that as it has sought new teachers it has emphasized extra-curricular positions, however, many vacancies have not occurred in areas where replacement teachers are likely to be qualified to assume extra-curricular positions. The District asserts that although it has used "special permit" persons in the past, it has encountered problems it wishes to avoid. The District claims that if assignments were made on a voluntary basis as the Association requests, there might not be enough interested teachers to staff the assignments due to the limitations of the District's size. The District would then, it claims, be faced with the alternative of canceling activities. The District further contends that the Association's proposal has implications which would affect chaperoning, ticket-taking and other supervisory activities assigned on a limited basis. The consequences of the foregoing would be diminished community support for the district's schools.

On the subject of reimbursement for college credits, the District states that its proposal seeks only to clarify the existing language so that it is consistent with the parties' intent and corrects the misunderstanding which surfaced in a recent grievance arbitration. The District avers that the Association's proposal rewrites that language and adds reimbursement.

The District states that the Association's proposal is defective because it would allow any course offered by a college or university to be used in meeting the requirement. Thereby, teachers could be reimbursed for courses unrelated to the District's or a classroom's function. The District notes that only eight of the twenty districts cited by the Association pay for credits and all of these require either approval or must be the major or minor teaching area.

On the issue of just cause, the District indicates that whereas fourteen of the twenty-three districts it cites utilize a "cause" standard to some extent, those districts couple the standards with probationary periods which are generally longer than that proposed by the Association. The District asserts that the one-year probationary period proposed by the Association would effectively amount to a six-month probationary period as the District would be required to make its evaluation prior to issuance of individual contracts on March 15.

The District further argues that a recent arbitration between the parties which dealt with the non-renewal of a teacher under the previous contract's "arbitrary and capricious" standard, resulted in a decision which parallels decisions arrived at under "cause" standards. The District avers that the existing contract language affords the staff sufficient job security and that although the data for comparable districts appears to favor the Association's proposal for a cause standard, the one-year probationary period proposed is insufficient.

With regard to the layoff issue, the District indicates that eight of the twenty districts selected for comparison by the Association do not have layoff provisions and half of the districts cited by the District do not have layoff language. Of the ten remaining districts, four utilize criteria similar to that in the District's proposal; namely, certification, seniority, teaching, ability and performance, while one district has a provision similar to the Association's proposal; specifically, certification, then experience in assignment, then seniority.

The District argues that it is important that it maintain flexibility in the area of layoff in order to maintain the District's programs. Furthermore, the District avers that layoffs are unlikely because of the District's size and that the turmoil created by the Association's proposed "bumping rights" would create greater problems.

## **DISCUSSION:**

Both parties rely in chief upon comparisons of the terms and conditions of employment in surrounding districts to support their proposals. Having reviewed the data offered by the respective parties, the undersigned finds that the parties agree that districts in the Dairyland Athletic Conference constitute appropriate comparisons. In addition, the parties agree that 8 districts outside the conference are comparable. Of the remaining 9 districts cited by the Association and the 11 districts cited by the District, the undersigned finds 5 to be constructive comparisons on the basis of size and proximity. The Arbitrator does not consider the other local public and private sector employers offered by the Association to constitute meaningful comparisons. Clearly the qualifications, labor market and job duties relevant to teachers' employment distinguish it from the non-school employment situations cited by the Association.

The districts in the Dairyland Athletic Conference and surrounding districts jointly cited are listed by full-time staff equivalency below:

	FTE
Gilmanton	24.1
Taylor	24.5
Arkansas*	26.7
Plum City*	29.9
Pepin*	31.5
Alma	32.4
Independence	38.4

Elmwood*	38.5
Elkmound*	42.0
Blair	42.0
Alma Center	44.2
Melrose-Mindoro	48.5
Eleva	56.1
Augusta	62.1
Whitehall	63.2
Cochrane	68.0
Osseo	75.6

Districts outside the Dairyland Conference have been included for the purposes of comparison on the basis of size and proximity. An examination of the contracts and tables submitted by the parties generates the following comparisons.

With respect to the layoff procedure, seven of the sixteen districts have some form of layoff and recall procedure. However, most of those layoff procedures provide a more restrictive area for the application of seniority than that proposed by the Association. One contract provides a formula rating which includes factors of seniority, years in the position, extra credits attained; another contract provides seniority by high school department and one grade above and below assignment in K through 12; still a third contains seniority in the layoff area. In the opinion of the undersigned, the layoff provisions in the comparable school districts support the position of the District.

With respect to the "cause" standard, the preponderance of the districts selected for comparison have a "cause" standard. Eleven of the sixteen districts provide a "cause" standard for discipline and non-renewal; one has "cause" for discipline; and one district is not settled. Seven of those districts with "cause" require a probationary period, usually of two or three years' duration. Although the comparables on this issue strongly support the Association's position with respect to the presence of a "cause" standard, the probationary period it proposes appears to be relatively brief. Furthermore, the undersigned notes that the recent termination arbitration between the parties establishes a precedential interpretation of the present "arbitrary and capricious" standard which addresses much of the Association's concern for a "just cause" standard. In view of the comparables, the Arbitrator would be inclined to rule for the Association if the matter of the "cause" standard were standing alone.

On the issue of college credits beyond degree, a review of comparable districts finds that five out of the sixteen require completion of credits beyond degree and that all five compensate teachers for such credits. The Association's argument that credits are compensated where required is substantiated by the evidence. However, the undersigned notes that the five districts which require additional credits either specify that the courses must be approved by the administrator or require that the course work be in the teacher's major or minor teaching area. The Association's proposal specifies approval or that credits may be taken in an established curriculum. Under

<sup>\*</sup> Districts outside the Dairyland Athletic Conference.

such language, the Arbitrator recognizes the possibility that teachers would seek reimbursement for courses not related to their classroom assignments.

The merits of the Association's proposal for credit reimbursement are lessened by the lack of specifications for qualifying course work.

The parties devoted a major portion of the hearing and their respective briefs to the issue of extra-curricular assignments. The Association's offer provides assignment by mutual consent with reassignment for a period of one year if a replacement is not found. Of the sixteen districts selected for comparison, four provide mutual consent in extra-curricular assignments, with two of those establishing the employers' ultimate right to assign in the event there is no mutual consent or no qualified volunteers. While mutual consent is not unknown among comparable districts, it is relatively infrequent and appears primarily in contracts with two or three-year probationary periods. Although the Arbitrator is cognizant of the beneficial aspects of the Association's proposal upon staff morale, she is persuaded that the Association's position is not supported by the data on comparables.

Having considered the evidence, the arguments of the parties and the statutory criteria, the undersigned finds that comparability is the most appropriate criterion and makes the following

#### AWARD

That the District's final offer is selected for incorporation in the parties' collective bargaining agreement.

Dated at Madison, Wisconsin this 16 day of May, 1979.

Ву				
	Kay	В.	Hutchison,	Arbitrator

Stipulation of Tentative Agreements

Article XII, Section B

Replace with the following: Duration: If either party desires to modify or amend this agreement for the successive term, it shall give the other party written notice to that effect prior to February 15, 1979. The provisions of this agreement shall be in effect from July 1, 1978 and shall remain in effect through June 30, 1979.

Article XIII, Section D - Delete

Article XI, Leaves, Section A

page 14, line 2-3

A. Sick leave, on primary contract, is to be granted at the rate of ten (10) days, annually, accumulating to one hundred and ten (110) days.

Article XI, Leaves, Section C

page 14, line 15

Delete the words - "Time will be deducted from the teacher's sick leave, and"

Article XIII, Compensation, Section E

page 17, lines 22-23

Change the amount for mileage compensation:

"The Board shall reimburse each individual for the use of his/her own vehicle for school business at the rate of sixteen (16¢) cents per mile.

Article V, Working Hours and Calendar, Section B

Page 8, line 10

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Section M.	Increments for extra-curricular activities s	hall be as
	follows: (Percentage based upon experience	in coaching
	sport or directing activity on the BS schedu	ıle)
	<ol> <li>Head coach of football, basketball, wrestling and baseball</li> </ol>	9%
	<ol><li>Assistant coach of football and basketball</li></ol>	6%
	<ol> <li>Volleyball, gymnastics, golf and boys/ girls track coach</li> </ol>	5.5%
	<ol> <li>Assistant track coach, and freshman basketball</li> </ol>	4.5%
	5. Coach of junior high sports	2.75%
	<ol> <li>Home economics event, science fair, student council advisor, newspaper</li> </ol>	1.75%
ticle XIII -	Compensation (continued)	
	<ol> <li>Assistant forensics, annual, school play, school musical</li> </ol>	2.5%
	8. Forensics	3%
•	<ol> <li>Cheerleader and related activities, pep band and jazz band</li> </ol>	3.5%
·	<ol> <li>Timekeepers, scorekeeper, ticket work at athletic events and track helpers</li> </ol>	\$11.00
	11. Chaperoning buses, under 35 miles one way	\$11.00
	12. Chaperoning buses, over 35 miles one way	\$17.00
	<pre>13. Freshman A and B squad officials     (WIAA registered)</pre>	\$12.50

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# PROPOSED SALARY SCHEDULE

1978-79
ALMA AREA SCHOOLS

Exp. Le	<u>vel</u>	Level				
	BS	BS + 1/4	BS + 1/2	BS + 3/4	MS	MS + 10
0	9,650	9,800	9,950	10,100	10,300	10,500
1	10,035	10,190	10,345	10,500	10,725	10,935
2	10,420	10,580	10,740	10,900	11,150	11,370
3	10,805	10,970	11,135	11,300	11,575	11,805
4	11,190	11,360	11,530	11,700	12,000	12,240
5	11,575	11,750	11,925	12,100	12,425	12,675
6	11,960	12,140	12,320	12,500	12,850	13,110
7	12,345	12,530	12,715	12,900	13,275	13,545
8	12,730	12,920	13,110	13,300	13,700	13,980
. 9	13,115	13,310	13,505	13,700	14,125	14,415
10	13,500	13,700	13,900	14,100	14,550	14,850
11		14,090	14,295	14,500	14,975	15,285
12			14,690	14,900	15,400	15,720
13				15,300	15,825	16,155
14					16,250	16,590

The section below to be written and located in the contract as Article XIII, Section D., lines 19-21.

Five percent (5%) teacher retirement will be paid in addition to the

Five percent (5%) teacher retirement will be paid in addition to the salary schedule and will be paid on all monies paid the teacher by the District as wages in connection with contractual duties.

1978-79 Calendar Alma Aren Sahals

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#### Colendar

- 1. The contract/calendar consists of 187 days.
- 2. There shall be 180 days of classroom instruction, parent/studeht/teacher conference days and days (for inclement weather.)
- 3. Any days of school lost due to inclement weather or other reason will be made up if the board deems it necessary. If the Board chooses to make up inclement weather days, they will be May 25, 29,30 respectively. All make-up days will be mutually agreed upon by the Board and the Association.

L Cole