STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of UNIFIED SCHOOL DISTRICT NO. 1 OF RACINE COUNTY Requesting a Declaratory Ruling Pursuant to Section 111.70(4)(b) Wis. Stats., Involving a Dispute Between said Petitioner and RACINE EDUCATION ASSOCIATION	Case XXXVI No. 20573 DR(M)-72 Decision No. 14722-A

Appearances:

Melli, Shiels, Walker and Pease, S.C., Attorneys at Law, by Mr. Jack D. Walker, for the Petitioner.

Perry and First, S.C., Attorneys at Law, by Messrs. Richard Perry and Arthur Heitzer, for the Association.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECLARATORY RULING

The Unified School District No. 1 of Racine County having, on April 22, 1976, filed a petition with the Wisconsin Employment Relations Commission requesting the Commission to issue a Declaratory Ruling, pursuant to Section 111.70(4)(b), Stats., with respect to the District's right to unilaterally implement its last proposed offer upon reaching impasse in negotiations that occurred pursuant to an agreement to bargain about proposed changes in the health insurance provision, already contained in the parties' collective bargaining agreement, during the term of said contract; and hearing on said petition having been held before Examiner Marshall L. Gratz on September 22, 1976, at Racine, Wisconsin; and the Commission having considered the evidence and arguments, and being fully advised in the premises issues the following Findings of Fact, Conclusions of Law and Declaratory Ruling.

FINDINGS OF FACT

1. That Unified School District No. 1 of Racine County, herein Petitioner, District or District Board, is a municipal employer within the meaning of Section 111.70(1)(a), Stats., with offices at 2230 Northwestern Avenue, Racine, Wisconsin; that at all times material hereto Thatcher Peterson, Coordinator of Employee Services and C. Richard Nelson, Superintendent of Schools, were agents of Petitioner acting on its behalf.

2. That Racine Education Association, herein Association, is and has been a labor organization within the meaning of Section 111.70(1)(j), Stats.; that the Association is the exclusive certified bargaining representative of all regular full and regular part time certificated teachers employed by Petitioner; and that James Ennis, Executive Director of the

employment of teachers shall be resolved by the terms of this agreement in keeping with the high standards of the profession and without interruption of the school program.

b. Accordingly, the Association agrees that there should be no strikes, work-stoppages, or other concerted refusal to perform work by the teachers covered by this agreement.

c. Upon notification by the Board of any unauthorized work stoppage, the Association shall make public that it does not authorize such violation and will direct its members to cease and desist. Having given such public notice, the Association shall be freed from all liability for any breach of this article.

. . .

XIII. INSURANCE AND RETIREMENT

1. The Board shall provide each teacher (except where both spouses are teachers, only one will be eligible) an opportunity to participate in a group hospitalization and surgical-medical benefit plan with the premium cost being paid by the Board, and with all benefits thereunder accruing as of September 1. Out-patient diagnostic hospital services shall include benefits up to $200.00 for each yearly period.

. . .

XXII. ENTIRE AGREEMENT

1. This agreement supersedes and cancels all previous agreements, verbal and otherwise, between the parties.

2. The parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject as provided by Wisconsin Statute 111.70 and that the understandings arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement.

3. In the event any provision of this Agreement shall conflict with any federal or state law, the provisions of such law shall apply and this Agreement shall be deemed to be automatically amended to the extent necessary to conform to the requirements of said law without affecting any of the other provisions of the Agreement."

That said contract did not contain any provision specifically providing for the reopening of same with respect to negotiating changes in Article XIII (1) during its term.

4. That pursuant to the provisions of the abovesaid collective bargaining agreement the Association, in December 1975, advised Petitioner of its intent to negotiate a successor to said contract; that on or about January 30, 1976, Ennis attended a District Board Finance Committee meeting and remarked concerning the Association's feelings respecting the forthcoming expiration of Petitioner's medical insurance policy; that Petitioner expressed uncertainty to the Association's intent as expressed by Ennis and so Peterson on the same date asked Ennis in writing for clarification of the same; that Ennis advised Peterson by letter dated February 9, 1976, that the Association desired to open the aforesaid collective bargaining agreement to negotiate changes in the medical insurance provisions therein to take effect prior to expiration of said agreement; and that on February 10, 1976, Ennis, in a conversation with Peterson, confirmed the Association's February 9, 1976 letter was a request to reopen said agreement for the aforementioned purpose.

5. That on February 27, 1976, Peterson advised Ennis in writing of Petitioner's decision to reopen under the following conditions:

"1. The only provision in the collective bargaining agreement that is being reopened by collective bargaining is Article XIII, Section 1, which says:

'The Board shall provide each teacher (except where both spouses are teachers, only one will be eligible) an opportunity to participate in a group hospitalization and surgical-medical benefit plan with the premium cost being paid by the Board, and with all benefits thereunder accruing as of September 1. Out-patient diagnostic hospital services shall include benefits up to $200.00 for each yearly period.'

Naturally, the other provisions of the collective bargaining agreement will remain in effect until the expiration on 25 August 1976.

2. Each party is free to make proposals and counter-proposals with respect to the subject matter of medical insurance only.

3. The negotiations must conclude by 25 March 1976 in order that changes, if any, may be put into effect as of 1 April 1976."

6. That on March 6, 1976, by letter to Peterson, the Association agreed to reopen negotiations on Article XIII(1), Medical Insurance, of the parties' contract pursuant to the conditions established by the District Board at the February 26, 1976 special meeting; that on the same date the Association requested Petitioner to provide it with certain information it deemed necessary to enter into negotiations on medical insurance; and that on March 19, 1976, the Association wrote the District Board requesting the appropriate committee chairperson to establish an immediate meeting date in order to meet the previously established cutoff date of March 25, 1976, for the conclusion of negotiations.

7. That on March 24, 1976, the Association's Insurance Committee met with Petitioner's representative at or about 3:00 p.m. for the first time pursuant to their agreement to reopen negotiations on Medical Insurance; that at said meeting the parties discussed various aspects of medical insurance benefits and costs; that said matters of benefits and cost of medical insurance primarily relate to wages, hours and working conditions of teachers in Petitioner's employ; that the parties initially tentatively agreed that any "new language" with respect to Article XIII(1) of the collective bargaining agreement would become effective April 1, 1976, and expire August 24, 1976; that thereafter continuing into March 25th the Association and Petitioner exchanged additional proposals but no agreement was reached by the evening of the 25th when negotiations were concluded.

8. That on March 29, 1976, the District Board determined that negotiations on the matter of medical insurance had reached an impasse and, therefore, it would implement its last bargaining proposal to the Association which had been to modify Article XIII(1) of the parties' collective bargaining agreement as of April 1, 1976, so as to require unit employes to contribute toward the premium cost of said medical insurance; and that the Association had never agreed to said modifications; that by letter of March 29, 1976 Petitioner advised the unit employes of said decision, the amount they would be required to contribute, and enclosed a payroll deduction form for said employes to complete and return if they desired to continue said medical coverage.

9. That on or about April 8, 1976, the Association initiated proceedings before Racine County Judge William F. Jones to enjoin Petitioner

from proceeding with implementation of the aforesaid change in medical insurance provision of the parties' collective bargaining agreement; that on April 9, 1976, Jones issued a temporary order restraining Petitioner from obtaining unit employe contributions toward medical insurance premiums and allowing said employes to continue said medical insurance pursuant to the conditions present on September 1, 1975 until August 21, 1976; and that on June 26, 1976, the court made the aforesaid order permanent until August 26, 1976.

10. That the agreement between Petitioner and the Association to negotiate during the term of their collective bargaining agreement covering Article XIII(1) thereof did not provide that said provision would expire earlier than the expiration date of said collective bargaining agreement; and that said agreement to renegotiate also did not provide that said provision would be modified absent mutual agreement between the parties.

Based upon the above and foregoing Findings of Fact, the Commission makes the following

CONCLUSIONS OF LAW

1. That since there existed a legally binding collective bargaining agreement between the parties in effect for the term August 25, 1974 through August 24, 1976 which agreement included Article XIII(1) in the form noted in Finding 3 above, for its entire term, neither Petitioner nor the Association was under any duty to bargain collectively within the meaning of the Municipal Employment Relations Act with respect to modification or termination of Article XIII(1) of said agreement during said term of agreement.

2. That the Petitioner and the Association did not agree that Article XIII(1) would terminate or be subject to unilateral modification at impasse when they voluntarily agreed to reopen negotiations concerning Article XIII(1).

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

DECLARATORY RULING

That since Petitioner's and the Association's agreement to reopen negotiations on Article XIII(1) of the collective bargaining agreement did not provide for termination or modification of said existing provision absent mutual agreement of the parties, Petitioner had no legal right to implement a change in said Article XIII(1) on or about April 1, 1976, after allegedly bargaining to impasse thereon in the negotiations conducted pursuant to said agreement to reopen.

Given under our hands and seal at the City of Madison, Wisconsin this 23rd day of August, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Morris Slavney, Chairman

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Herman Torosian, Commissioner

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Marshall L. Gratz, Commissioner

RACINE UNIFIED SCHOOL DISTRICT NO. 1, XXXVI, Decision No. 14722-A

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

Position of the District

In support of its petition, the District contends that the parties mutually agreed, for consideration, to reopen negotiations on Article XIII(1 Medical Insurance, in order to negotiate a change in said provision to becor effective prior to commencement of negotiations on a successor agreement. Once said agreement to reopen was reached, it thereby conferred upon the parties the same rights and duties of collective bargaining that otherwise attach at the expiration of a collective bargaining agreement. Further, Petitioner argues that the reopener agreement had the effect of terminating the existing medical insurance provision of the contract being reopened. Thus, when impasse was reached on April 25, 1976, the District could legally implement its last bargaining proposal pertaining to medical insurance.

Position of the Association

To the contrary, the Association concludes that although the subject of medical insurance itself is normally a mandatory subject of bargaining, it was not in this case because the subject was already a part of the existing collective bargaining agreement and, therefore, negotiations to modify same were permissive. Thus, says the Association, while the parties could mutually agree to modify the collective bargaining agreement during its term, neither party was obligated to engage in such bargaining and, consequently, the terms of said agreement must continue in force until there is mutual agreement to change same inasmuch as the parties' conduct cannot alter the permissive nature of the subject. The Association also claims in this regard that it never stated to nor agreed with Petitioner that absent mutual agreement to modify the medical insurance provision of the contract that said provision (alone) would terminate upon the conclusion of said negotiations. Consequently, because mutual agreement between the parties as to a modification of the medical insurance provisions of their contract was never reached, said provision continued in full force for the duration of said contract.

Agreement to Reopen

The Association does not dispute in this proceeding that there was a binding collective bargaining agreement which contained Article XIII(1), Medical Insurance. Consequently, there was no right reposing with the Association to demand to bargain about changing said article during the contract term and, therefore, there was no concommittant obligation on the part of Petitioner to bargain with the Association about same. This result necessarily follows from the need for creating stability in the parties' relationship which is accomplished by fixing the conditions of employment for the duration of their agreement. 1/

Nevertheless, neither party was precluded by the overall agreement from requesting the other to bargain about changing Article XIII during its term, and the parties were also not precluded from formally and mutually agreeing to such a change to take effect during the term of the overwould terminate before the expiration date of the overall agreement in

remain in effect and the "reopened" bargaining would be entirely outside the scope of the statutory bargaining obligation of the parties.

Here, the Association proposed to Petitioner on February 9, 1976, that they agree to reopen Article XIII(1) of their contract to enable them to bargain over changes in the existing medical insurance provision contained therein. While Petitioner had no duty to bargain about reopening said provision for bargaining during the contract term, and could legally have refused the Association's request as it had done in 1975, 2/ it nevertheless agreed on February 26, 1976, that it would reopen said provision and bargain with the Association concerning modifications or changes thereto.

The terms of the parties' agreement to reopen were outlined in Peterson's letter of February 27, 1976, to the Association. By those terms, only Article XIII(1) was being reopened, each party would be at liberty to make any proposals it wished with respect to medical insurance, and said negotiations were to be concluded by March 25, 1976--so that any changes could be made effective with the renewal of the medical insurance policy on April 1, 1976. Nowhere in said terms is mention made, however, of what was to occur in the event no agreement could be reached concerning any changes in the existing provision by April 1, 1976. While Petitioner argues that the subject of medical insurance is a mandatory subject of bargaining and its agreement to reopen negotiations placed said negotiations in the same status as would exist with respect to negotiations on any other mandatory subject already provided for in an existing agreement at the time of expiration of said agreement, it ignores the existence of Article XIII(1) then subsisting between the parties. Unlike a contract expiration situation the parties' agreement to reopen did not provide that Article XIII(1) was to expire on the date they agreed to reopen, on March 31, 1976, or at the point of impasse in their negotiations. Therefore, it must be presumed that in the absence of an agreement to the contrary, Article XIII(1) would terminate with the other contract provisions on the date established by operation of said contract, August 24, 1976. Thus, in order for any other expiration date to become binding it would have to have been bargained for by the parties in their discussions which led to the agreement to reopen or during the actual negotiations respecting changes in Article XIII(1). Here, in our opinion, this was not done. Consequently, the status of negotiations for changing Article XIII(1) during the term of the agreement containing same, contrary to Petitioner's contention, cannot be equated with negotiations for modification of an agreement which has expired or been terminated.

Thus, the negotiations at issue between Petitioner and the Association were unlike a situation where the parties bargain to impasse at or after expiration of the contract 3/ or the relevant portion thereof. 4/ Hence, Petitioner here could not legally implement its latest bargaining proposal for modification of Article XIII(1) upon reaching impasse.

2/ Racine School Dist. No. 1, (13696-C and 13876-B) 4/78.

3/ Winter Jt. School Dist., (14482-B, C) 4/77.

4/ For example, some agreements make one or more provisions thereof effective for a lesser term than that of the overall agreement and provide for "reopening" of negotiations with regard to the status of the provision for the balance of the term but are otherwise silent as regards such status.

In view of the analysis above, we find it unnecessary to make findings as to whether a bargaining impasse had, in fact, been reached in the instant case.

Dated at Madison, Wisconsin this 23rd day of August, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Morrie Slavney, Chairman

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Herman Torosian, Commissioner

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Marshall L. Gratz, Commissioner