



scheduled for September, 1976; that the premiums for said coverage would be increased from \$10.64 to \$29.66 for single coverage and from \$35.40 to \$83.84 for family coverage effective in September, 1976; that on June 14, 1976, the district board met and approved the renewal of said health insurance contract for the 1976-77 year at the increased rates; that on June 15, 1977, Jaeger submitted the executed 1976-77 contract to the Blues; that sometime after June 15th but prior to September 1, 1976, the Blues advised the District that an additional charge of \$.69 for single and \$1.99 for family coverage was being added to the previously quoted rates for the 1976-77 year to cover the cost of additional outpatient services, (legislatively mandated); and that as a result of said addition, the premiums for single and family coverage respectively for the 1976-77 year amounted to \$30.35 and \$85.83.

5. That prior to the Union's certification herein, the District, since 1968, had always paid 100% of the employe's health insurance premium for single coverage and beginning in 1973, 100% of the premium for family coverage; that the following policy statement appeared without change, except for dates, in the written summary of Policies Relating to Clerical Employees since August 15, 1973.

"C. Health Insurance

A group health insurance program through Blue Cross-Blue Shield is available on an optional basis to all full-time clerical employees. It is available in both a single and family plan.

The Board shall assume 100% of the cost of the individual plan or 100% of the family plan during 1975-76.";

and, that the last such policy statement covered the period from July 1, 1975 through June 30, 1976.

6. That for either the 1974-75 or 1975-76 year the carrier increased health insurance premiums by 48%; and, that the District did not require employes to contribute anything toward said increase and continued to pay 100% of clerical employe premiums.

7. That on September 8, 1976, without previously bargaining or offering to bargain with Complainant, Jaeger sent the following memorandum to all clerical employes:

"September 8, 1976

MEMORANDUM:

To: Clerical Employees

From: Earl F. Jaeger, District Director

Message: BLUE CROSS-BLUE SHIELD HEALTH INSURANCE

Effective September 1, 1976 our BC-BS Health Insurance was raised from \$55.40 to \$85.83 per month for the Family Plan and \$19.64 to \$30.35 per month for the Single Plan. During 1975-76 the Board paid 100% of the cost for the Family Plan or 100% of the cost for the Single Plan.

Inadvertently [sic] the increase in health insurance premiums for the month of September were not deducted from your

August 31 check (health insurance premiums are paid in advance). Payment for health insurance for the month of October must be deducted from the checks you receive on September 15 and September 30 in order to comply with the twelve month payment plan. From October on there will be only one deduction made per month.

The Board will continue to pay \$55.40 per month for the Family Plan or \$19.64 for the Single Plan. This means that clerical employees who are members of the district's health insurance program will have to contribute to the health insurance program as follows:

Single Plan	-	\$10.71 per month
Family Plan	-	\$30.43 per month

Payroll deductions of \$10.71 per month for the Single Plan or \$30.43 per month for the Family Plan will be made on September 15 and September 30. Starting in October the appropriate deduction for health insurance coverage will be made once a month. These payroll deductions for health insurance coverage will continue until a negotiated agreement has been reached and approved by the Union and the Board.";

that on or about September 9, 1976, Cross, Union President, advised, Pierce, the District's attorney and Chief Negotiator that the aforesaid Board action of charging health insurance premium increases to employes violated state law; that Pierce told Cross he did not believe said action was a violation of state law; that during said conversation Cross and Pierce discussed how the deductions would be made; that an additional notice would have to be sent to employes concerning said deductions; and, that on September 10, 1976, Jaeger sent the following memorandum to all clerical employes:

"September 10, 1976

MEMORANDUM:

To: Mid-State VTAE District Clerical Employees  
From: Earl F. Jaeger, District Director  
Message: PAYROLL DEDUCTIONS FOR BC-BS HEALTH INSURANCE

I have just received word that there might be some difficulties with the BC-BS Health Insurance deduction procedures that was circulated to the district clerical employees by a memorandum from my office dated September 8, 1976. Because of these difficulties an alternative process has been established and this process is as follows:

1. Clerical employees have the opportunity to state whether they desire their present health insurance coverage to continue in the future.
2. If coverage is to continue, each clerical employee must file a written authorization for this coverage. This authorization must reach the district office by SEPTEMBER 20, 1976.
3. Those individuals who select health insurance coverage will receive a payroll deduction effective

September 30, 1976. The amount of deduction will depend upon the type of coverage and at the rate specified in the September 8 memorandum.

4. Clerical employees who do not state that coverage is desired will automatically be dropped from the health program, and no payroll deduction will take place.

The above procedures will be in effect immediately, and will continue until final procedures are negotiated with the bargain- [sic] unit. Any questions regarding this matter should be directed to my office immediately."

8. That after September 10, 1976, the Union continued in its objection to the District's action respecting the increased health insurance premiums; that in a bargaining session in late September, 1976, Pierce again reiterated the Union's position and asked that the District rescind its prior action; and that the District refused to do so.

9. That at no time from early June, 1976, until the subject hearing did the parties bargain on the Union's proposals respecting health insurance or the increased premiums for 1976-77; and that the parties considered health insurance as an economic issue to be resolved after non-economic issues were settled.

10. That the District by requiring clerical employees to pay the increase in health insurance premiums that went into effect in September 1976, without bargaining about same unilaterally changed a condition of said employees' employment.

Based upon the foregoing Findings of Fact, the Examiner makes the following

#### CONCLUSION OF LAW

That the Respondent District, by unilaterally discontinuing its policy of paying 100% of clerical employees' health insurance premiums and requiring employees to pay the increased premiums, that were effective in September, 1976, failed and refused to bargain collectively within the meaning of Section 111.70(1)(d), Stats., and, thereby, committed prohibited practices within the meaning of Section 111.70(3)(a)4, Stats., and Section 111.70(3)(a)1, Stats.

Based upon the foregoing Findings of Fact and Conclusion of Law, the Examiner makes and enters the following

#### ORDER

IT IS ORDERED that Mid-State Vocational, Technical & Adult Education District, its officers and agents, shall immediately:

1. Cease and desist from refusing to engage in collective bargaining with Complainant Local No. 85 of the Office and Professional Employees International Union concerning the increase in employe health insurance premiums for the 1976-77 insurance contract year.
2. Take the following affirmative action which the Examiner finds will effectuate the policies of the Municipal Employment Relations Act.
  - (a) Immediately reinstate its policy of paying 100% of employe health insurance premiums for all unit employes unless the parties have since reached an agreement on

said condition of employment in negotiations for a 1976-77 collective bargaining agreement, and, in any event make, each employe whole for all losses occasioned by its unilateral action in refusing to pay premium increases that were effective in September, 1976, for the period beginning with said change and until the policy of paying 100% of the cost is reinstated or until any negotiated change in said condition of employment takes effect.

- (b) Before instituting future changes in the level of employer contributions toward health insurance premiums for unit employes give notice of intent to make changes and, if requested by Complainant bargain regarding same.
- (c) Notify all of its employees represented by Complainant of its intent to comply with the order herein by posting in a conspicuous place on the premises, where notices to unit employes are usually posted, copies of the Notice attached hereto and marked Appendix A. Such copies shall be signed by the District Administrator and shall be posted immediately upon receipt of a copy of this Order. Such notice shall remain posted for sixty (60) days thereafter. Reasonable steps shall be taken to insure that said notice is not altered, defaced or covered by other material.
- (d) Notify the Wisconsin Employment Relations Commission, in writing within twenty (20) calendar days following the date of this order as to what steps have been taken to comply herewith.

Dated at Madison, Wisconsin this 17th day of May, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By   
Thomas L. Yaeger, Examiner

APPENDIX "A"

NOTICE TO ALL EMPLOYEES REPRESENTED BY LOCAL NO. 95 OF THE  
OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION

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

1. WE WILL immediately reinstate the policy of paying 100% of the employe health insurance premium and make employes whole for losses occasioned by our prior termination of said policy for the period beginning with said change and until the policy of paying 100% of the cost is reinstated or until any negotiated change in said condition of employment takes effect.
2. WE WILL NOT institute changes in the health insurance premium payment policy without first notifying Local No. 95 of the Office & Professional Employees International Union, offering to bargain, and, if requested, bargaining with the Local.

Mid-State Vocational, Technical & Adult  
Education District

By \_\_\_\_\_  
District Administrator

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 1977.

THIS NOTICE MUST REMAIN POSTED FOR SIXTY (60) DAYS FROM THE DATE HEREOF AND MUST NOT BE ALTERED, DEFACED OR COVERED BY ANY OTHER MATERIAL.

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSION OF LAW AND ORDER

On October 4, 1976 complainant filed the instant complaint wherein it alleged the respondent had refused to bargain in violation of Sec. 111.70(3)(a)4, Stats. by unilaterally changing its level of contributions toward unit employes health insurance premiums. The complainant argues that the respondent for many years had paid 100% of employe health insurance premiums and that its refusal to continue to do so after September, 1976, constituted a unilateral change in a condition of employment while bargaining for a collective bargaining agreement was in progress, all in violation of its statutory duty to bargain. The complainant seeks restoration of the status quo and a make whole order.

Respondent, on the other hand, denies it refused to discuss the issue of health insurance premiums and, contends it was mutually agreed that this was an economic item that would be discussed after language issues had been resolved. Further, respondent avers it would have been a prohibited practice to pay for the increase in premiums and, therefore, by continuing to pay the same amount in premiums, it was not a refusal to bargain.

The law in Wisconsin concerning the municipal employer's duty to bargain a change in wages, hours or conditions of employment is clear. The employer may not, as a general rule, make change(s) in wages, hours and conditions of employment without first bargaining concerning the proposed change(s) with the exclusive bargaining agent where one exists. 1/ It is a per se refusal to bargain to make a unilateral change regarding a mandatory subject without first bargaining said change to impasse 2/. Herein, no claim was made that the cost of health insurance is not a mandatory subject of bargaining. Clearly, it is an economic benefit flowing from the employment relationship and, as such, a matter of wages and a mandatory subject of bargaining 3/. In light of this conclusion it is unnecessary to determine whether it is also a condition of employment.

Respondent's principal contention is that by passing on the premium increase to employes and maintaining its existing dollar contribution toward premiums it did not change a condition of employment. The facts, however, establish that since 1969 in the case of single coverage respondent had contributed 100% of the employes' premiums, and, since 1973, it had made the same contribution for family coverage. The policy statements, dealing with employer contributions toward health insurance were stated in terms of percentage, not dollars. This is significant inasmuch as the contribution could have been stated in terms of the dollar amount of the respective premiums. Had the policy

- 
- 1/ NLRB v. Katz (1962), 369 U.S. 736, 743, 82 S.Ct. 203, 8 L.Ed. 2d 1107; Madison Jt. School Dist. No. 8 (12610) 4/74; City of Oak Creek (12105-A, B) 7/74, City of Menomonie (12564-A,B) 10/74; City of Madison, (15095) 12/76.
  - 2/ Fennimore Jt. School District (11865-A) 6/74, aff'd Commission (11865-B) 7/74, LaCrosse County (13284-A) 12/75. Winter Jt. School Dist. No. 1 (14482-B) 3/77.
  - 3/ W. W. Cross & Company, Inc., 15 LC pp. 65,157 (CA-1; 1949); General Motors Corp., 81 NLRB 779 (1944).

statements been written in the later fashion it would have required an amendment in said policy statements in order that the 100% contribution level be maintained. This was not the case and, even more significantly, prior premium increases had been automatically absorbed by respondent. Thus, respondent, prior to certification of complainant, was committed to paying 100% of employe health insurance premiums irrespective of the actual dollar cost.

Respondent also impliedly argues that complainant waived its right to bargain about the increase either by not demanding to bargain or alternatively by agreeing to put off discussion on health insurance until all language items had been resolved. The facts, however, are that there was an outstanding demand to bargain about health insurance dating back to early June 1976, coincident with respondent's first knowledge of the impending premium increase. In the face of this outstanding demand there can be no finding of a waiver. Furthermore, the decision to put off bargaining on economic issues until after non-economic items had been resolved, did not relieve respondent of its duty to bargain its decision to no longer pay 100% of employe health insurance premiums.

In conclusion the, respondent had a mandatory duty to bargain with complaint concerning nonpayment of increases in health insurance premiums. However, without bargaining, respondent unilaterally determined not to continue to pay 100% of employe health insurance premiums in violation of Section 111.70(3)(a)4, Stats.

Dated at Madison, Wisconsin this 17th day of May, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By   
Thomas L. Yaeger, Examiner