

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

OFFICE & PROFESSIONAL EMPLOYEES	:	
INTERNATIONAL UNION, LOCAL NO. 95,	:	
	:	
Complainant,	:	Case V
	:	No. 20871 MP-666
vs.	:	Decision No. 14958-D
	:	
MID-STATE VOCATIONAL, TECHNICAL &	:	
ADULT EDUCATION DISTRICT,	:	
	:	
Respondent.	:	
	:	

ORDER AFFIRMING EXAMINER'S FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER

Examiner Thomas L. Yaeger having, on May 17, 1977, issued his Findings of Fact, Conclusion of Law and Order in the above-entitled matter; and thereafter, on May 20, 1977, Examiner Yaeger having issued an order amending his Findings of Fact, Conclusion of Law and Order; and the Respondent District having timely filed a petition for review of the Examiner's decision pursuant to Section 111.07(5), Stats.; and the Commission having reviewed the record, including the petition for review and the briefs of the parties, and being satisfied that the Examiner's Findings of Fact, Conclusion of Law and Order, as amended, be affirmed;

NOW, THEREFORE, it is

ORDERED

That the Examiner's Findings of Fact, Conclusion of Law and Order, as amended, be, and the same hereby are, affirmed and the Respondent District is hereby directed to advise the Commission in writing, within ten days of the date of the Order herein, as to what steps it has taken to comply therewith.

Given under our hands and seal at the City of Madison, Wisconsin this 19th day of April, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Herman Torosian
Herman Torosian, Commissioner

Marshall L. Gratz
Marshall L. Gratz, Commissioner

MEMORANDUM ACCOMPANYING
ORDER AFFIRMING EXAMINER'S FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER

The initial proceeding was initiated by a complaint filed on October 4, 1976 with the Commission, wherein the Union alleged that the District had refused to bargain collectively with the Union in violation of the Municipal Employment Relations Act by unilaterally changing its level of contributions toward health insurance premiums for employe insurance coverage from 100% to a lesser dollar amount. Hearing was held in the matter on November 3, 1976 by the Examiner, and said hearing was closed on said date. The transcript of the record was sent to the parties on December 3, 1976. Prior to any further action by the Examiner, and on April 11, 1977, the Examiner received a letter from counsel of the District calling his attention to the alleged fact that the parties have executed a collective bargaining agreement effective as of July 1, 1976 and remaining in effect through June 30, 1977, and further that said collective bargaining agreement contained a provision which required the District to pay less than 100% of the insurance premiums for the employes covered by the agreement. In said letter, said counsel requested that the Examiner dismiss the complaint.

On May 3, 1977, the Examiner received a communication from the Union wherein it urged that the Examiner deny the request to dismiss the complaint and that the Examiner rule on the merits involved. In said letter, the Union took the position that the collective bargaining agreement, which has been reached by the parties, did not, in effect, resolve the issue as to whether the Employer was obligated to pay 100% of the premium for the months of September through December, 1976.

On May 11, 1977, the Examiner issued a formal order denying the motion to dismiss the complaint, and on May 17, 1977, the Examiner issued his Findings of Fact, Conclusion of Law and Order in the matter, wherein he found that the District had committed a prohibited practice within the meaning of Section 111.70(3)(a)4 of the Municipal Employment Relations Act by refusing to bargain with the Union prior to unilaterally discontinuing its practice of paying 100% of the health insurance premiums for the employes involved and in requiring the employes to pay a portion of the premiums for the months of September through December, 1976. The Examiner ordered the District to, among other things, reinstate its policy of paying 100% of the employes' health insurance premiums "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 such 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."

On May 20, 1977, the Examiner issued an Order amending that portion of the original order cited above and stated said order as follows:

- "(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 or until an impasse in contract negotiations has been reached."

The Petition for Review

On June 7, 1977, the District timely filed a petition for review with the Commission, wherein it alleged certain facts which had occurred following the close of the hearing, namely that the parties had reached an agreement on a new collective bargaining agreement for the school year 1976-77 and that in said agreement it was not required to pay 100% of the insurance premiums. The District alleged that the complaint should be dismissed.

The Union, in responding to the petition, took an opposing view, contending that the collective bargaining agreement, which was reached after the close of the hearing, did not excuse the Employer from paying 100% of the premiums prior to the date on which the collective bargaining agreement was actually executed.

It is to be noted that in the petition for review, and in the response thereto, both parties alleged facts pertaining to a new collective bargaining agreement. Such alleged facts are not part of the record, since neither party requested that the hearing be reopened.

Discussion

The Commission has reviewed the entire record, the briefs filed with the Examiner, as well as the Examiner's decision. We affirm the Examiner's Findings of Fact and his Conclusion of Law, as well as his Order. We agree with the Examiner that the District unilaterally implemented a change with respect to the payment of insurance premiums, in that for the months of September through the date of the hearing, the District did not pick up 100% of the insurance premiums for the employes, but rather maintained or paid the same dollar amount that it paid the previous school year and that the increased costs of the premiums were required to be paid by the employes.

In its petition for review, the District, and in its reply thereto, the Union, alleged facts which were not before the Examiner. It appears to the Commission that an issue remains as to whether the District has complied with the affirmative portion of the Examiner's order with respect to the payment of insurance premiums. There is no doubt, if the facts as alleged by the parties are true, that the parties in their new collective bargaining agreement reached an agreement on the sum of money to be paid by the District towards the payment of insurance premiums for the employes covered by the agreement.

It is to be noted that the Examiner, neither in his original order nor in his amended order, in fact, required the Employer to pay the 100% of the insurance premium from September through December, 1976. The Examiner ordered such payments ". . . until any negotiated change in said condition of employment takes effect" After an examination of the petition for review, as well as the correspondence from the Union in response thereto, and the briefs filed by the parties subsequent to the Examiner's decision, it is apparent to the Commission that the parties are in dispute over the effective date of the change in the Employer's contribution towards insurance premiums. A determination of said issue requires an interpretation of the collective bargaining agreement in order to determine whether there is any fiscal obligation with respect to the premiums which must be paid by the District. We suggest that the parties attempt to reach a stipulation with respect to the facts which the parties desire the Commission to consider in order to determine whether there has

been compliance with our order affirming the Examiner's order, and absent such a stipulation, it appears that it will be necessary for the Commission to conduct a hearing to determine whether the District has complied with the Examiner's order, as affirmed by the Commission, with respect to the issue of premium payments for the months of September through December, 1976.

Dated at Madison, Wisconsin this 19th day of April, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Herman Torosian
Herman Torosian, Commissioner

Marshall L. Gratz
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