STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JAMES SCIBORSKI, Complainant, vs. CITY OF LACROSSE, a MUNICIPAL CORPORATION, Respondent.	Case XXIV No. 22968 MP-857 Decision No. 16380-C
LACROSSE CITY EMPLOYEES' UNION, LOCAL 180, SERVICE EMPLOYEES' INTERNATIONAL UNION, AFL-CIO and LOCAL 519, AMALGAMATED TRANSIT WORKERS OF AMERICA, AFL-CIO, Complainants, vs. CITY OF LACROSSE, Respondent.	Case XXVI No. 23169 MP-867 Decision No. 16431-C
PROFESSIONAL POLICEMAN'S ASSOCIATION, Complainant, vs. CITY OF LACROSSE, Respondent.	Case XXX No. 23547 MP-894 Decision No. 16570-B

Appearances:
Johns, Flaherty, Gillette, S.C., Attorneys at Law, by Mr. James Birnbaum, on behalf of Complainants LaCrosse City Employees, Union Local 180, Local 519, Amalgamated Transit Workers of America and Professional Policeman's Association.
Hale, Skemp, Hanson & Skemp, Attorneys at Law, by Mr. Thomas S. Sleik, on behalf of Complainant Local 127, International Association of Firefighters.
Mr. Jerome H. Rusch, Director of Personnel, and Mr. Everett B. Hale, Deputy City Attorney, on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

James Sciborski and Local 127, International Association of Firefighters, 1/ having on May 8, 1978, filed a complaint with the Wisconsin

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1/ Said complaint was amended at hearing to include Local 127 as a named complainant.

Employment Relations Commission, hereinafter Commission, alleging that the City of La Crosse had committed prohibited practices within the meaning of Section 111.70(3)(a), of the Municipal Employment Relations Act; and on June 19, 1978, La Crosse City Employees, Local 180, SEIU, AFL-CIO, and Local 519, Amalgamated Transit Workers of America, having also filed a complaint of prohibited practice against the City of La Crosse with the Commission; and the Commission having appointed Thomas L. Yaeger, a member of its staff, to serve as Examiner and make and issue Findings of Fact, Conclusions of Law and Order; and said complaints having been consolidated for hearing and hearing thereon having been held at La Crosse, Wisconsin on October 2 and 3, 1978; and post-hearing briefs having been filed by November 28, 1978; and the Examiner having considered the evidence and arguments, and being fully advised in the premises, makes and files the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That Local 127, International Association of Firefighters, hereinafter Local 127, is a labor organization and has since March 12, 1964, been recognized as the exclusive collective bargaining agent of certain regular full-time employes of the City of La Crosse Fire Department; and that at the time of the filing of the instant complaint Sciborski was President of Local 127.

2. That La Crosse City Employees Union, Local 180, SEIU, AFL-CIO, hereinafter Local 180, is a labor organization and since January 19, 1967, has been the certified exclusive bargaining agent for all employes of the City of La Crosse exclusive of all department heads, supervisors, craft and confidential employes, members of the La Crosse Professional Police Association, non-supervisory bargaining unit, La Crosse Professional Policeman's supervisory bargaining unit, Local 127 International Association of Fire Fighters, Amalgamated Transit Union Local 519, all crossing guards, all temporary and seasonal employes who are employed less than 120 calendar days in a calendar year.

3. That Local 519, Amalgamated Transit Workers of America, AFL-CIO, hereinafter Local 519, is a labor organization and since January 1, 1975, has been the recognized exclusive collective bargaining agent for all City of La Crosse transit department employes exclusive of managerial, supervisory, craft, confidential and part-time employes.

4. That the Professional Policeman's Association is a labor organization and since sometime in 1964, has been the recognized exclusive collective bargaining agent for the unit of all City of La Crosse regular full-time police officers, excluding Cadets, Sergeants, Lieutenants, Captains and the Chief of Police, and also since sometime in 1976, the recognized bargaining agent for the unit of all City of La Crosse Police Department Sergeants and Lieutenants.

5. That City of La Crosse, hereinafter City or Respondent, is a municipal employer with its principal offices in La Crosse, Wisconsin.

6. That the latest collective bargaining agreements for those units represented by Local 127, Local 180, Local 519, and the Professional Policeman's Association contain clauses pertaining to group health insurance for unit members; and that each of these clauses is silent with respect to carrier and coverage but deals with the amount of the City's contribution toward premium, which varies from contract to contract; and that the only other matter relative to health insurance dealt with in each of said clauses, with the exception of the Local 519 contract, which deals exclusively with the subject of the City's premium contribution, pertains to early retiree 2/ eligibility to participate in the group health insurance program.

2/ Employes also retire at age 55 or older but prior to eligibility for Medicare.

7. That on November 12, 1964, the Common Council of the City adopted the following resolution creating an insurance committee composed of employe representatives from the various City departments, in addition to the City's Finance Director, whose responsibility it was to determine type of coverage and insurance carrier while at the same time limiting the City's participation in the matter of health insurance to determining its contribution toward the cost of coverage.

RESOLUTION

WHEREAS, it is desirable that City employes determine the type of health insurance they desire and the company to carry such insurance, and

WHEREAS, the City's participation in the health insurance program should be limited only to the extent of its monetary contribution to the program, which contribution is determined from time to time, and

WHEREAS, it is desirable that City employes secure more adequate voice in such determination,

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of La Crosse that the existing special Health Insurance Committee be, and the same is hereby disolved.

BE IT FURTHER RESOLVED that upon the adoption of this Resolution a new insurance committee shall be formed containing the following persons:

1 representative from the Police Department;

1 representative from the Fire Department;

1 representative from the City Hall employees;

1 representative from the Public Works, Parks and other departments;

The Director of Finance and Purchase

BE IT FURTHER RESOLVED that the representatives provided for herein, shall be selected by their respective organizations; said Committee shall be organized thereafter and elect its own officers.";

that prior to adoption of said resolution, the City had exercised exclusive control over determination of coverage, carrier and premium contribution for the employe health insurance program; and that after adoption of the aforesaid resolution and prior to 1978, the City did not exercise any control over coverage and carrier selection except as through the vote of the Finance Director on the committee created pursuant to the aforesaid resolution.

8. That on March 10, 1977, to be effective May 1, 1977, the insurance committee voted by a vote of 3 to 2 to switch carriers for the employe group health insurance program from Wisconsin Physicians Service to Wisconsin Life Insurance Company; that the aforesaid decision of the committee was implemented by the City and Wisconsin Life Insurance Company became the carrier for the health insurance program effective May 1, 1977.

9. That on or about April 18, 1977, the City Council Finance and Purchase Committee proposed that the health insurance committee, created in November, 1964, be abolished and replaced by another committee with

the same purpose and responsibility, but with an altered membership composition; that this change was adopted by the City's Common Council on or about July 14, 1977; and that the newly formulated committee was to be composed of the following membership that was delineated in said resolution:

1 representative from each of the bargaining units in the Police Department;

1 representative from the Fire Department;

1 representative from the City Hall employes, including all non-affiliated personnel;

1 representative from Union Local 180;

1 representative from MTU 3/ Union;

The Director of Finance and Purchase.

10. That on or about March, 1978, the following resolution was introduced through the City Common Council

RESOLUTION

BE IT RESOLVED by the Common Council of the City of La Crosse that the City fund its health insurance program through the cost plus method, rather than the fixed premium method now in effect.

BE IT FURTHER RESOLVED that the health insurance benefit level established May 1, 1977 remain unchanged from the current benefit level now in force, except, however, that the maternity benefit shall be increased to pay for all reasonable and customary physician's charges, effective May 1, 1978.

BE IT FURTHER RESOLVED that the Employee Health Insurance Committee established by Council resolution of November 17, 1964 be abolished effective May 1, 1978 and such committee be recreated to be advisory to the Council only.

BE IT FURTHER RESOLVED that the membership of the Employee Health Insurance Committee shall be made up on one (1) member from each recognized collective bargaining unit and the Director of Personnel.

that on or about April 13, 1978, the City Common Council adopted a resolution that called for a change in the City's method of financing the health insurance program from a fixed premium to a cost-plus method; that this decision was made by the City without the concurrence of the special health insurance committee or the exclusive bargaining agents representing various units of its employes; that in addition to the aforesaid change in method of financing the resolution also called for modification in the existing maternity benefit; that on or about April 25, 1978, at an insurance committee meeting called by Rusch, Director of Personnel, to "discuss increased maternity benefits", the committee voted 3 to 2 "to not accept cost plus insurance"; that on or about June 16, 1978, the Wisconsin Life Insurance Company advised

that said change in method of financing did not result in any change in coverages or the amount of premium contribution made by the City toward employe health insurance as required by the various collective bargaining agreements.

11. That or or about May 4, 1978, at a meeting of the special health insurance committee, the committee voted 3 to 1, with the City Finance Director abstaining, to return to the Wisconsin Physicians Service-Health Maintenance plan for City Employes; and that to date, the City has refused to implement this decision of the committee, although the Wisconsin Life Insurance plan provided for termination by the policyholder on the day immediately preceeding a premium due date by giving prior written notice to the company.

12. That on or about September 14, 1978, the City Common Council, with prior notice only to Local 180, abolished the special health insurance committee; and that since the City's abolition of the committee, it has not instituted any change in coverage or carrier and has continued to maintain Wisconsin Life Insurance Company as carrier.

13. That in or about December, 1977, Local 519 employe Newburg inquired of Rusch's office if, when he retired, he would be eligible to participate in the group insurance plan, and he was advised that he would be allowed to participate; that in or about mid-February, 1978, when Newburg went to Rusch's office to pay for the March health insurance premium, as he was planning to retire on March 1st, he was told he would not be permitted to participate in the group health insurance plan after retirement; that upon learning this, he deferred his retirement until March 14th, so that he could secure other health insurance prior to retirement; and that he has never, since his retirement, been permitted to participate in said group health insurance plan.

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

CONCLUSIONS OF LAW

1. That the Respondent, by unilaterally requesting the Wisconsin Life Insurance Company to change financing methods of the employe group health insurance plan from a fixed premium method to a cost-plus basis without direction from the special insurance committee to do so, did not commit a prohibited practice within the meaning of Section 111.70 (3)(a)4, Stats.

2. That the Respondent did not commit a prohibited practice within the meaning of Section 111.70(3)(a)4, Stats., by adopting a resolution on April 13, 1978, calling for an improvement in the maternity benefit under the employe group health insurance plan.

3. That the Respondent, by refusing to implement the special health insurance committee decision of May 4, 1978, to terminate the Wisconsin Life Insurance Company as carrier for the group health insurance program and replace it with the Wisconsin Physician's Service Health Maintenance plan, committed a prohibited practice within the meaning of Section 111.70(3)(a)4 and 1, Stats.

4. That the Respondent's decision to abolish the special health insurance committee, pursuant to a resolution adopted by the City's Common Council on September 14, 1978, was not a mandatory subject of bargaining and, therefore, by not bargaining with Complainants about said decision, did not commit a prohibited practice within the meaning of Section 111.70(3)(a)4, Stats.

5. That because the Respondent has abolished the special health insurance committee its alleged refusal to allow Local 519, its own representative, on said committee, is now moot.

6. That Respondent's alleged unilateral change on May 1, 1977, in the group health insurance coverage and carrier for Local 519 employes, without first giving Local 519 notice of and opportunity to bargain about said change, occurred more than one year prior to filing of the instant complaint on June 19, 1978, and, therefore, commission consideration thereof is barred by Section 111.07(14), Stats.

7. That the Respondent, by refusing to allow Newburg to continue to participate in the group health insurance program after retirement, at his expense, did not commit a prohibited practice within the meaning of Section 111.70(3)(a)4, Stats.

On the basis of the above and foregoing Findings of Fact and Conclusions of Law, the Examiner makes the following

ORDER

IT IS ORDERED that Respondent, City of La Crosse and its agents, shall immediately

1. Cease and desist from:

   (a) Failing or refusing to abide by the binding May 4, 1978, special health insurance committee decision to terminate the Wisconsin Life Insurance Company plan coverage and replace it with the Wisconsin Physician's Service HMP plan.

   (b) In any like or related manner interfering with, restraining or coercing employes in the exercise of rights guaranteed in Section 111.70(2), of the Municipal Employment Relations Act.

2. Take the following affirmative action which the examiner finds will effectuate the purposes of the Municiapl Employment Relations Act:

   (a) Immediately, or as soon thereafter as is permissible under the policy with the Wisconsin Life Insurance Company, terminate said coverage and, at the same time, contract with the Wisconsin Physician's Service for its health maintenance plan in accordance with the May 4, 1978, decision of special health insurance committee and make all employes represented by Complainant whole for any losses occassioned by its failure to implement this change as soon as possible after May 4, 1978, pursuant to the terms of the contract with Wisconsin Life Insurance Company.

   (b) Notify all of its employes represented by Complainants of its intent to comply with the Order herein by posting in conspicuous places on its premises where notices to employes are usually posted, copies of the notice attached hereto and marked "Appendix A". Such copies shall be signed by the City's Personnel Director and shall be posted 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 materials.

(c) 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.

IT IS FURTHER ORDERED that the complaint be dismissed as to all violations of MERA alleged, but not found herein.

Dated at Madison, Wisconsin this 1st day of October, 1979

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Thomas L. Yaeger, Examiner

Appendix "A"

Notice to All Employes Represented by
Local 127, International Association of Firefighters,
La Crosse City Employees Union, Local 180,
Local 519, Amalgamated Transit Workers of America,
and the Professional Policeman's Association

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 all employes that:

WE WILL implement the May 4, 1978, decision of the special health insurance committee to contract with Wisconsin Physicians Service for its HMP insurance plan.

WE WILL NOT in any other or related matter interfere with the rights of our employes, pursuant to the provisions of the Municipal Employment Relations Act.

Dated this day of , 1979.

By_____
Personnel Director
City of La Crosse

This Notice Must Remain Posted For A Period of Sixty (60) Days and Must Not Be Defaced, Altered Or Covered By Any Other Material

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The subject complaints were filed individually and consolidated for hearing by order of the Commission. The undersigned has determined that they should also be consolidated for decision inasmuch as the facts giving rise to these complaints are so interwoven that efficiency and clarity dictates consolidation.

The history of the City's handling of its employe group health insurance, from at least as far back as the early 1960's, is quite clear. Prior to 1964, the City exercised complete control over the selection of coverage, carrier, and premium contribution. However, in November, 1964, the City relinquished its control over the selection of coverage and carrier to a special committee created by resolution of the Common Council. 4/ As stated in the resolution, it was the City's intent to allow its employes to make binding decisions and this was to be accomplished through employe representatives from each of the departments who would sit on the special committee.

The committee, as noted in the resolution, was structured along departmental lines, and in those departments which were organized, union members selected one from their organization to sit on the committee as their representative. Over the years, all departmental units noted in the 1964, resolution were ultimately organized. In 1977, the Common Council, by resolution, restructured representation on the committee, and it coincided with the established bargaining units.

Thus, from the creation of the committee until 1978, some 13 years, the employes, through their elected representative on the committee, determined what health insurance coverage and carrier would be purchased. While the City has argued herein that the committee acted only in an advisory capacity, earlier statements made by City bargainers are to the contrary, e.g., during a negotiation session on November 10, 1976, between the City and Local 127, City negotiators stated:

> Our objection at this time is that we don't want to risk the health insurance increase in the first year. The City does not have control over what the employes purchase in health insurance; therefore, we will pay the $14.01 and inasmuch as you have control with your membership on the insurance committee over the kind of insurance purchased, you take the increase.
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> . . .
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> We cannot afford to pay the additional $30.00 toward the health insurance premiums, and you are the only people who have control over the kind of insurance purchased; therefore, our only hope is to influence you, as well as all the other bargaining groups, by not paying any further amounts toward their health insurance premiums.

4/ At that time, Local 127, had already been recognized by the City as the exclusive bargaining agent for its firefighters. It is also possible that it could have already recognized the Professional Policeman's Association as bargaining agent for non-supervisory police officers, although that is not clear from the record.

Clearly, the City had intended to, and did in fact, relinquish all control over coverage and carrier to the committee.

Additionally, examination of recent collective bargaining agreements subsisting between Complainants and the City reveal that they are silent, respecting health plan coverage and carrier. Rather, they deal with the amount of the City's contribution toward the employe's premium for health insurance, as well as the matter of employe eligibility to continue in the group after retiring between the ages of 55 and 65. The obvious explanation for the contractual silence respecting coverage and carrier, is the City's lack of control over the selection of either. Having relinquished control of such matters to the committee, it was not feasible to bargain to any agreement on those subjects with the individual bargaining agents. Furthermore, inasmuch as the Union's had representation on the committee, they were then obviously willing to forego individual bargaining on those matters with the City, as long as the committee continued to exist, apparently preferring committee control.

Turning then to the allegations of prohibited practice, Complainants allege the City had a duty to bargain about the Common Council's decision of April 13, 1978, to change from a fixed premium to a cost-plus method of financing the employe health insurance program. The Complainants argue that method of financing is a mandatory subject of bargaining as being primarily related to wages, hours and conditions of employment; Thus, the City, by deciding to change the method of financing without giving notice to Complainants and affording them the opportunity to bargain over said change, committed a prohibited practice. The City, although denying in its answer to said complaints that it committed any prohibited practice, does not specifically address this allegation in its brief.

Complainants argument presumes the committee had control over funding of the plan, but this is contrary to the evidence. Since establishment of the committee in 1964, the City's participation in the health insurance program was restricted to funding of the plan. This was expressly provided in the 1964 resolution, and is one of the two subjects which Complainants have bargained about in contract negotiations through the years, e.g., the 1977-78 contract with Local 127 provides:

> The City contribution to medical, hospital and surgical insurance policy is established at $88.92 for a family policy and full premium for any individual covered by the City's group policy provided, however, the premium contribution by the City shall not exceed $88.92 per month for any such individual policy. In 1978 the City will pay up to an additional $15.00 per month for City group health insurance premiums. If the health insurance premiums do not reach such amount, the City will pay only the remainder of the 1977 employe share and the amount such premiums increased.

Consequently, the undersigned is pursuaded that the City did not relinquish financing authority of the health insurance program to the committee. Thus, because the City, not the committee, had responsibility for financing the plan, it could initiate action thereon without first being directed to do so by the committee, so long as the changes it initiated did not effect a change in coverage or carrier, or deviate from the negotiated provisions of the labor agreement. The record, however, is devoid of any evidence to establish that the change in funding resulted in any change in coverage or carrier. Furthermore, there was no showing by Complainants that the change from a fixed premium method of financing to the cost-plus method resulted in any reduction in the level of the City's contribution toward premium for the employe's health insurance from what it was contractually bound to contribute. Thus, there has been no substantiation of the claim of unilateral change.

Complainants also charge that the Common Council voted on April 13, 1978, to adopt, via the same resolution calling for a change in method of funding, a resolution calling for an increase in the maternity benefit under the Wisconsin Life plan. This increase in benefit was to pay for all reasonable and customary physician's charges effective May 1, 1978. This, the Complainants argue, was a unilateral change in a condition of employment and a prohibited practice.

The undersigned's review of the record, however, reveals that on January 4, 1978, the Committee approved adding maternity benefits, effective that date, if it could be done without affecting present rates. In comparing this with the April 13, 1978 resolution, it is not clear if the Council was merely implementing the committee's January 4, 1978, decision or if this was to be an additional change in benefit. Consequently, because the Complainants did not prove by a clear and satisfactory preponderance of the evidence that the Council's decision was not merely implementing a prior committee decision, that allegation has been dismissed.

The use of the committee mechanism for determination of employe health insurance coverage and carrier dates back to November 12, 1964. At that time, only Local 127 had been recognized as bargaining agent for any City employes. Consequently, the committee from its inception and to date has had binding authority in establishing health insurance for both represented and unrepresented employes.

The method by which questions of coverage, and possibly carrier, should the commission so rule in a case pending before it, is a mandatory subject of bargaining. 5/ The Wisconsin Supreme Court has said, that questions of mandatory or permissive subjects of bargaining are to be answered on a case by case basis by determining whether the disputed decision "is primarily related to the wages, hours and conditions of employment of employes, or whether it is primarily related to the formulation or management of public policy." 6/ Clearly, the decision to have a joint employer-employe committee comprised of representatives of management and the employes in an established bargaining unit to determine health insurance coverage for employes in said unit is a mandatory subject of bargaining. Said committee's determinations clearly pertain to conditions of employment and "governmental or policy dimensions" 7/ do not predominate the judgment to have said health insurance coverage governed by a committee.

However, the instant case differs from the above in that the special health insurance committee herein was responsible for determining health insurance coverage and carrier for all City employes, including several units of represented employes as well as unrepresented employes. Mandatory subjects characteristically deal with the individual working relationship between employer and the employes or their representatives, not matters between the employer and third persons. The elements of the various employer-employe relationships in this case are several, but also singular, i.e., there exists an employer-employe relationship between the City and Local 127, but none exists between the City and Local 127, and 180 jointly, or the City and Local 127 and the unrepresented

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5/ Mid-State Vocational Technical District., (14958-B) 5/77; Jefferson County, (15482-A) 8/77.

6/ Beloit Education Association, 73 Wis. 2d 43 (1976); Racine Schools, 81 Wis. 2d 89 (1977).

7/ Racine Schools, supra.

employes jointly. Thus, Locals 127 and 180 could not insist to impasse that the City execute a single collective bargaining agreement with both Local 180 and Local 127. That, however, is the essence of the existing special health insurance committee in that it goes beyond the employer-employe relationship to encompasse several such relationships under the umbrella of one committee.

Furthermore, this mechanism allows for a coalition of represented employes to control conditions of employment for other represented employes, as well as supervisors, managers, confidential employes and other unrepresented employes. This is clearly against public policy as that policy is reflected in MERA. Thus, the decision to continue or discontinue the subject special health insurance committee as the mechanism by which to determine health insurance coverage is not only a nonmandatory subject but also a prohibited subject of bargaining. As such, the complainants could not insist to impasse that this arrangement be contractualized. 8/ Although that is not the case herein, nevertheless it cannot now insist that the City must first bargain with them before abolishing the committee. Consequently, by unilaterally determining on September 14, 1978, to abolish the special health insurance committee, the City did not commit a prohibited practice within the meaning of Section 111.70(3)(a)4, Stats.

The next question, in light of the foregoing analysis is whether the City, who created the committee can, during its life, refuse to abide by its judgments. That however, is exactly what it has done by refusing to implement the committee decision of May 4, 1978, to terminate the health insurance coverage underwritten by the Wisconsin Life Insurance Company and return to the HMP plan underwritten by the Wisconsin's Physicians Service. The undersigned believes that although the mechanism was illegal and not contractualized the District was nevertheless obligated to abide by its decisions even though those decisions concerned matters that might be permissive and nonmandatory subjects of bargaining, e.g., insurance carrier. The employes and their representatives had obviously relied upon the committee's apparent authority to make binding decisions on coverage and carrier and had not bargained in contract negotiations upon matters within the purview of the committee. This reliance was obviously based upon the City's manifest willingness to abide by the committee's decisions and its expression during negotiations that it had no control over matters within the committee's decision making authority. Thus, the method by which health insurance coverages and carrier were selected became an established condition for employment. To allow the City to now escape from decisions of an instrument of its own creation, notwithstanding that instrument was flawed, is unthinkable. The decisions of the committee were not flawed, only unpalatable to the City. Consequently, because the committee on May 4, 1978, was still vested with authority to make such decisions, those decisions established conditions of employment and were binding upon the City. Thus, by unilaterally refusing to implement them it changed conditions of employment without meeting its statutory duty to bargain, thereby committing a prohibited practice, in violation of Section 111.70(3)(a)4, Stats.

The traditional remedy for such violations is a return to the status quo and make whole, with an accompanying order to offer to bargain prior to making any such changes in the future. That remedy is also appropriate herein. Thus, the City must immediately reinstate the plan underwritten by said carrier

and contract with WPS for its HMP plan. Several months, however, have intervened since the committee decision to change to WPS for its HMP plan. Because there may be differences in the level of benefits between the WPS plan and that plan which was underwritten by Wisconsin Life Insurance Company, the City must make any employe, represented by Complainants, whole for any losses incurred due to any differences in coverage. The date to which said make whole remedy shall be retroactive will necessarily be the earliest date after May 4, 1978, when the switch in carrier and coverage could have been accomplished, had the City not chosen to disregard the Committee decision. The undersigned's examination of the Wisconsin Life Insurance Company contract with the City that is in evidence herein, suggests that would have been the day before the next premium due date falling after May 4, 1978.

Local 519 has also charged that the City failed to permit it to have its own voice or vote on the special health insurance committee as it had agreed at the time of negotiations on the takeover of the transit company on or about January 1, 1975. At that time, Local 519 opted to give up the health insurance it had before the City takeover. It argues that since that agreement, the City has never allowed it its own vote on the committee, but rather, insisted it was to be represented by Local 180's representative. The City, however, denies it ever agreed to Local 519 having its own representative on the special committee.

The undersigned's examination of the record evidence disclosed although overlooked by both parties, that the Common Council Resolution of July 14, 1977, wherein the committee was restructured, provided for a separate representative from the "MTU Union". "MTU" stands for "Municipal Transit Utility," and said designation appears on the cover page of the 1975-77, Local 519 contract with the City. In any event, because the committee has been abolished, the question of the City's alleged refusal to allow 519 to participate on the committee through its own representative is now moot. 9/

Another claim raised by Local 519 that does not involve the other Complainants herein, is that the change in coverage and carrier that occurred on May 1, 1977, when the committee voted to switch from WPS-HMP to the Wisconsin Life Insurance Company plan was done without bargaining with the Union. This claim flows from the earlier charge that it had no representation on the committee.

The time limit for filing complaints of prohibited practices in violation of the Municipal Employment Relations Act is one year from the date of the "specific act or unfair labor practice alleged". 10/ Herein the conduct complained of occurred on May 1, 1977; whereas the instant complaint was filed by Local 519 on June 19, 1978. Inasmuch as the complaint was filed more than one year after the change in coverage and carrier was effected by the City, Commission consideration thereof is time barred.

The only remaining matter raised by the complaint filed by Local 519 pertains to the City's refusal to allow Newburg to continue in the employe group health insurance program at his own expense upon early retirement. The Complainant charges that the contract between the City and the Wisconsin Life Insurance Company respecting group health insurance for City employes allowed retired employes between the ages

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9/ Madison Joint School District No. 9 v. WERB, 37 Wis. 2d 493 (1967); Board of School Directors of Milwaukee (15825-B, C) 7/79

10/ Section 111.07(14), Stats., "(14) The right of any person to proceed under this section shall not extend beyond one year from the date of the specific act or unfair labor practice alleged."

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of 55 and 65 to continue to participate in the health insurance program. Then, in February, 1978, after having advised Newburg in December, 1977, that he would be allowed to participate in the group insurance program, the City informed him, when he applied to retire that he would not be able to participate. Thereafter, the Complainant charges the City had the carrier amend the aforesaid insurance contract to exclude Local 519 members from eligibility to continue to participate in the group upon early retirement. This amendment, it claims, was never negotiated with Local 519 and, thus, the City committed a prohibited practice by effecting a change in a mandatory subject of bargaining without prior negotiation.

The City, however, contends that at the time Newburg applied to retire, the issue of whether retirees between the ages of 55 and 65 could continue in the group, was an issue in contract negotiations with Local 519 and, ultimately, the contract that resulted from interest arbitration. It claims that if it would have granted Newburg's request at that time, it would have committed an unfair labor practice inasmuch as the prior collective bargaining agreement made no provision for early retirees to continue in the group. Further, it took the position at hearing that the definition of "protected person" in the contract with the carrier was an error in that it did not exclude members of 519, and that was corrected via the amendment of June 16, 1978.

As noted elsewhere in this decision, while the City was the policyholder, decision making authority regarding coverage and carrier was vested in the special health insurance committee. However, a matter which the committee did not have authority over was the amount of the employe's premium that was to be contributed by the City. That subject was left to negotiation between the City and the individual bargaining units. The result of their bargaining on the matter was reflected in the individual collective bargaining agreements. The only other item relative to health insurance that appeared in every contract but Local 519's was language relative to early retirees' eligibility to continue to participate in the group insurance program. It is obvious, therefrom, that this was a matter not within the control of the committee.

An analysis of the collective bargaining agreements that are a matter of record herein establishes that all of the other bargaining units had negotiated this protection by at least January 1, 1978, and some had done so sooner. 11/ This would explain why the initial contract with Wisconsin Life, effective May 1, 1977, included within the definition of "protected person," retires between the ages of 55 and 65. Inasmuch as the committee had no control over the matter of retiree eligibility, the language appearing in the plan itself could only have been included at the City's behest, and that direction of the City was obviously motivated by the committment it had made to several bargaining units.

The thrust of Local 519's claim, however, is that Newburg and other of Local 519's early retirees entitlement to continue in the group insurance program originates with the contract between the City and carrier. The undersigned disagrees. Such rights are necessarily only the creature of agreement negotiated between Local 519 and the City, and generally, reflected in the resultant collective bargaining agreement. For example, if the City had a contract with an insurance company for dental insurance because it had agreed to provide firefighters with dental insurance and that contract defined "protected person" as full-time City employe, that contract would not entitle Local 519

11/ It is not clear whether the language, which appeared in said agreement that was effective January 1, 1978, also appeared in the preceeding agreement.

employes to dental insurance. The only means by which they would be entitled to that protection is through an agreement with the City to provide it.

Herein, there is no evidence the City ever negotiated with Local 519 to allow its members who retire between the ages of 55 and 65 to continue in the group health insurance program. The contract is silent in this regard. Indeed, the Union in its brief submitted in the arbitration of the successor agreement to the 1975-77 contract said:

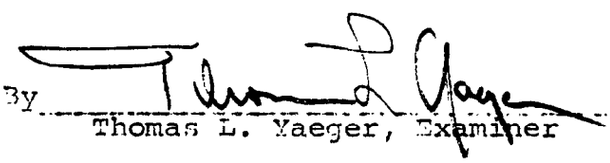
> The second issue with respect to health insurance is a contract provision permitting employees who retire before 65 to continue to participate in the group policy. The specific language is contained in the latest contract for the City workers, Local 180. This is a no cost item to the City and already exists in the group policy of which the transit workers are members. (See Union Exhibit 31).
>
> In that it is already contained in the group policy of which the transit workers are members, it is doubtful whether the City can validly exclude retired employees from inclusion in that aspect of the health insurance contract. However, in that the City has heretofore refused transit workers who retire before age 65 from utilizing this benefit of the group insurance policy, this clause is requested to be included in the Collective Bargaining Agreement for purposes of clarification.
>
> In that the City at the hearing offered no testimony objecting to the inclusion of this clause, it would appear that the request of the Union should be granted.

Local 519's claim that the aforsaid contract language was needed for clarification was based upon the same theory which the undersigned has already found unpursuasive. Consequently, it is clear that the City had never agreed in negotiations with Local 519 to allow retirees between the ages of 55 and 65 to continue in the group.

In view of the foregiong analysis, the City's amendment of the insurance contract with Wisconsin Life Insurance Company that occurred on or about June 16, 1978, and its refusal to allow Newburg to continue in the group insurance program after he retired, did not constitute a unilateral change in a condition of employment in violation of Section 111.70(3)(a)4, Stats.

Dated at Madison, Wisconsin this 1st day of October, 1979

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Thomas L. Yaeger, Examiner