

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MILWAUKEE DISTRICT COUNCIL 48,
AFSCME, AFL-CIO,

Complainant,

vs.

MILWAUKEE COUNTY,

Respondent.

Case CVIII
No. 23784 MP-915
Decision No. 16713-D

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

Examiner Lionel L. Crowley having on November 11, 1981 issued Findings of Fact, Conclusions of Law and Order with Accompanying Memorandum in the above-entitled matter wherein he concluded that Respondent Milwaukee County had not committed prohibited practices within the meaning of Secs. 111.70(3)(a)1, 3, 4 or 5 of the Municipal Employment Relations Act (MERA) by unilaterally altering insurance coverage enjoyed by certain of its employees but that Respondent Milwaukee County had committed a prohibited practice within the meaning of Sec. 111.70(3)(b)3 of MERA by failing to bargain with Complainant Milwaukee District Council 48, AFSCME, AFL-CIO over the impact of the change in coverage upon employees' wages, hours and conditions of employment; and pursuant to Sec. 111.07(5) Stats. Examiner Crowley having on November 23, 1981, issued an Order Modifying Examiner's Conclusions of Law to reflect that Respondent Milwaukee County's refusal to bargain the impact of the change in coverage was violative of Sec. 111.70(3)(a)4 and not Sec. 111.70(3)(b)3 of MERA; and Complainant Milwaukee District Council 48 and Respondent Milwaukee County having on November 23 and November 30, 1981, respectively, filed petitions seeking Commission review of said decision pursuant to Sec. 111.07(5) Stats. and the parties having notified the Commission by February 4, 1982 that they would not be filing briefs in support of their respective petitions; and the Commission having reviewed the record and being satisfied that the Examiner's Findings of Fact, Conclusions of Law and Order should be affirmed;

NOW, THEREFORE, it is

ORDERED

That the Examiner's Finding of Fact, Conclusions of Law and Order be, and the same hereby are, affirmed.

Given under our hands and seal at the City of
Madison, Wisconsin this 14th day of April, 1982

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Gary L. Covelli, Chairman


Morris Slawney, Commissioner


Herman Torosian, Commissioner

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

Background

During the term of a collective bargaining agreement existing between the Union and the County, which required the County to pay the full cost of the premiums for employee health insurance coverage which included payment for services rendered in connection with abortions, the State Legislature enacted into law a prohibition restricting Counties from authorizing funds for the payment to any physician, surgeon, hospital, clinic or other medical facility for nontherapeutic abortions. The collective bargaining agreement between the parties also contained a "savings clause" as follows:

If any article or part of this Memorandum of Agreement is held to be invalid by operation of law or by any tribunal of competent jurisdiction, or if compliance with or enforcement of any article or part should be restrained by such tribunal, the remainder of this Memorandum of Agreement shall not be affected thereby and the parties shall enter into immediate negotiations for the purpose of arriving at a mutually satisfactory replacement for such article or part.

Following the date of the above legislative enactment, Chapter 245, Laws of 1977, Sec. 59.07(136), Stats., the County notified the Union that it would no longer pay the costs with respect to such services, and at the same time notified the insurance carrier in that regard. Prior to making such determination the County did not bargain collectively with the Union regarding such change in coverage, nor did it afford the Union the opportunity to bargain on the impact of such change on the wages, hours and conditions of employment of the employees covered by the collective bargaining agreement.

The Union's Complaint

The Union alleged that by the above conduct the County committed prohibited practices within the meaning of Secs. 111.70(3)(a)1, 3, 4 and 5 of the Municipal Employment Relations Act (MERA), and the Union urged that the Commission require the County to pay for all abortions as required under the insurance coverage in the collective bargaining agreement, to make any affected employees whole, and to cease and desist from committing such violations in the future.

The Answer of the County

While admitting the facts alleged in the complaint, the County, in its answer denied that it had committed any prohibited practices, and requested that the Commission dismiss the complaint.

The Examiner's Decision

The Examiner concluded that the County, by "unilaterally changing the insurance coverage for bargaining unit employees" did not interfere, restrain, coerce said employees, and therefore the County did not commit any prohibited practices within the meaning of Secs. 111.70(3)(a)1 and 3 of MERA. He further concluded that the County, by said action, did not violate the collective bargaining agreement in violation of Sec. 111.70(3)(a)5 of MERA, nor did it, by not bargaining such change with the Union, refuse to bargain in good faith with the Union within the meaning of Sec. 111.70(3)(a)4 of MERA. The Examiner did, however, conclude that the County, by refusing to bargain with respect to the impact of said change, did commit a prohibited practice in violation of Sec. 111.70(3)(a)4 of MERA. The Examiner ordered that the County bargain with respect thereto at the request of the Union.

The Petitions For Review

Both parties filed petitions requesting the Commission to review the decision of the Examiner. The Union requests the Commission to reverse the Examiner's Conclusions of Law, wherein he concluded that the County did not commit violations of MERA, as set forth above. The County, on the other hand, would have the

Commission reverse the single statutory violation found to have been committed by the County, and therefore dismiss the Union's complaint in its entirety.

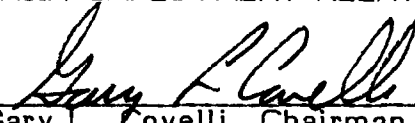
Discussion

We affirm the Examiner's decision in all respects and as we find his rationale to be persuasive, we see no reason to extensively discuss same. The parties ably briefed their cause prior to the issuance of the Examiner's decision. Due consideration thereto appeared to have been given by the Examiner prior to the issuance of his decision. We have also reviewed said briefs and find nothing therein which warrants reversal of the Examiner. As to the duty to bargain the impact of the change, suffice it to note that while a "true" substitute for such coverage cannot be legally negotiated, there remains the possibility that other coverage, which is not legally prohibited, could be substituted for the deleted abortion coverage. In addition, whatever savings the County may have realized in employe premiums from the elimination of such coverage could be negotiated to apply to other monetary benefits to the employees involved.

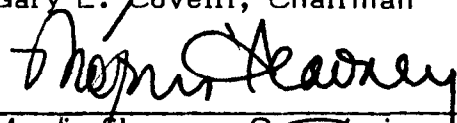
Dated at Madison, Wisconsin this 14th day of April, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Gary L. Covelli, Chairman



Morris Slavney, Commissioner



Herman Torosian, Commissioner