STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MENOMONIE EDUCATION ASSOCIATION, Complainant, vs. SCHOOL DISTRICT OF THE MENOMONIE AREA AND ITS AGENT THE BOARD OF EDUCATION OF THE SCHOOL DISTRICT OF THE MENOMONIE AREA, Respondent.	Case XXIII No. 23812 MP-197 Decision No. 16724-B

Appearances:
Kelly and Haus, Attorneys at Law, Suite 202, 302 E. Washington Ave., Madison, Wisconsin 53703 by Mr. Robert C. Kelly, for the Complainant.
Mulcahy & Wherry, S.C., Attorneys at Law, 110 E. Main St., Madison, Wisconsin 53703 by Mr. John T. Coughlin for the Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Menomonie Education Association having filed a complaint with the Wisconsin Employment Relations Commission on December 4, 1978 alleging that the School District of the Menomonie Area and its Board of Education had committed certain prohibited practices within the meaning of the Municipal Employment Relations Act; and the Commission having appointed Thomas L. Yaeger, a member of its staff as the Examiner in said matter; and prior to the hearing herein the parties having agreed to waive the requirements of Secs. 227.09(2) and 111.07, Stats. to permit the instant decision to be issued directly by the Commission; and hearing on said complaint having been held by the Examiner in Menomonie, Wisconsin on February 22, 1979 and April 24, 1979; and briefs having been exchanged by March 20, 1980; and the Commission, having considered the evidence and arguments of the parties, makes and issues the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That Menomonie Education Association, hereinafter referred to as the Association, is a labor organization representing municipal employes for the purposes of collective bargaining, having its offices at 105 North 21st Street, Menomonie, Wisconsin.

2. That the School District of the Menomonie Area, hereinafter referred to as the District, operates a public school system in about the area of Menomonie, Wisconsin, having its principal offices located at 718 North Broadway, Menomonie, Wisconsin; and that its Board of Education is responsible for the management and the operation of the District.

3. That at all times material herein the Association has been, and is, the exclusive collective bargaining representative of all certified employes of the District under contract 50% or more of the school day, including guidance personnel, librarians, psychologists, audio-video aids director, speech therapists, social workers, instructors of special learning disabilities, instructors of emotionally disturbed, nurses and teaching principals teaching 50% of the school

day; that the Association and the District have been parties to successive collective bargaining agreements covering the wages, hours and working conditions of the employes set forth above, from September 1, 1970; that from the latter date, and until September 1, 1976 said collective bargaining agreements contained provisions relating health insurance benefits for the employes represented by the Association; and in said agreements the parties specifically identified Wisconsin Physicians Group as the carrier of said insurance coverage; that in the collective bargaining leading up to the 1976-1977 collective bargaining agreement the District proposed that the insurance carrier not be specified in the agreement, and the District obtained such a concession from the Association; that since September 1, 1976, and continuing at all times material thereafter, the collective bargaining agreements existing between the parties did not identify any particular insurance carrier as being related to the group health benefits set forth in the collective bargaining agreements existing between the parties; that commencing on September 1, 1976 the Wisconsin Education Association Insurance Trust, hereinafter referred to as the Trust, became the carrier of the group health benefits provided for in the collective bargaining agreement of the parties; and that the Trust continued to remain such carrier to December 31, 1978; and that on January 1, 1979 the District unilaterally, and without bargaining collectively with the Association in regard thereto, despite having been requested to so bargain, effectuated a change in the insurance carrier from that of the Trust to a self funded insurance program administered by the Wisconsin Employer's Insurance Company, hereinafter referred to as WEIC; and that the District instructed WEIC to initiate a plan providing for the health insurance set forth in the collective bargaining agreement, as well as for the benefits premiums and the manner of processing claims, as had been in effect in the insurance plan administered by the Trust.

4. That, shortly after the WEIC plan became effective, the Association submitted to the District a detailed written analysis of the comparison of the WEIC plan with that of the Trust; that therein the Association directed the District's attention to some fifteen benefits, "which appear to be inferior to comparable Trust benefits or missing" from the WEIC plan; that such analysis was called to the attention of the WEIC by the District, who advised the WEIC to provide benefits and procedures identical to those which had existed in the Trust plan; and that the necessary changes were accomplished and made retroactive to January 1, 1979.

5. That the 1977-1979 collective bargaining agreement existing between the Association and the District also contained among its provision a grievance and arbitration procedure for the resolution of disputes arising with respect to the interpretation and application of the terms of said agreement and that at no time material herein has the Association ever filed a grievance with the District alleging that the District, by its unilateral determination to change insurance carriers during the term of said collective bargaining agreement, violated that agreement, nor has the Association requested the District to proceed to arbitration with respect thereto.

6. That under the circumstances described above, the District, its Board of Education, or any other agent thereof, did not violate the collective bargaining agreement existing between it and the Association, by changing the carrier responsible for the administration and coverage of health insurance program and benefits set forth in said agreement.

Upon the basis of the above and foregoining Findings of Fact, the Commission makes and issues the following

CONCLUSIONS OF LAW

1. That, inasmuch as the unilateral change in insurance carriers, effective January 1, 1979, did not alter, modify, eliminate,

improve or otherwise affect any wages, hours or working conditions of the employes of the School District of the Menomonie Area represented by the Menomonie Education Association, the School District of the Menomonie Area, its officers and agents, including its Board of Education, had no duty to bargain collectively, with the Menomonie Education Association, within the meaning of Sec. 111.70(1)(d) of the Municipal Employment Relations Act, with regard to said unilateral change, and therefore, the School District of the Menomonie Area, its officers and agents, including its Board of Education, did not refuse to bargain collectively with the Menomonie Education Association in said regard in violation of Sec. 111.70(3)(a)4 of the Municipal Employment Relations Act; and, further by said unilateral action, the School District of the Menomonie Area, its officers and agents, including its Board of Education, did not interfere with, restrain or coerce any of its employes in violation of Sec. 111.70(3)(a)1 of the Municipal Employment Relations Act.

2. That, inasmuch as the unilateral change of insurance carriers, effective January 1, 1979, by the School District of the Menomonie Area, its officers and agents, including its Board of Education, did not violate the collective bargaining agreement in effect between it and the Menomonie Education Association, therefore, the School District of the Menomonie Area, its officers and agents, including its Board of Education, did not commit a prohibited practice within the meaning of Sec. 111.70(3)(a)5 of the Municipal Employment Relations Act.

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

ORDER

That the complaint filed herein be, and the same hereby is, dismissed.

Given under our hands and seal at the City of Madison, Wisconsin this 2nd day of January, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By ______________________________
Morris Slavney, Chairman

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Herman Torosian, Commissioner

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Gary L. Covelli, Commissioner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The Association, in the complaint initiating the instant proceeding, alleged the District committed prohibited practices within the meaning of the provisions of the Municipal Employment Relations Act (MERA) by not bargaining with the Association, and without the latter's agreement, changing the insurance carrier responsible for the health insurance program set forth in an existing collective bargaining agreement covering the wages, hours and working conditions of the District's employes represented by the Association. The Association specifically alleged that by such action the District interfered with, restrained and coerced such employes in the exercise of their MERA rights, refused to bargain collectively with the Association, and violated the provisions of the collective bargaining agreement existing between the parties, all in violation of Sections 111.70(3)(a) 1, 4 and 5 of MERA.

In its answer the District admitted that it did not collectively bargain with the Association or obtain the latter's agreement with respect to the District's decision to change the insurance carrier, and it denied any violation of MERA. 1/

The pleadings, the evidence and the arguments of the parties present the following issues to be determined by the Commission in the instant proceeding:

1. Did the District violate its statutory duty to bargain with the Association with respect to the change of insurance carriers?

2. Should the Commission exercise its jurisdiction to determine whether the District violated the collective bargaining agreement by unilaterally changing insurance carriers, in light of the fact that the agreement contains a grievance procedure providing for final and binding arbitration of alleged violations thereof, and if so, was there a violation in said regard?

Basically the Association argues that the identity of the insurance carrier relates to a mandatory subject of bargaining since (1) carriers are created and operate in different ways, (2) amounts allowed for various claims varies under different carriers, (3) the time in processing claims varies among different carriers, and (4) as does the procedure for reviewing claims which are denied. The Association also contends that the change in carriers herein actually resulted in a change in the level of benefits called for in collective bargaining agreement.

1/ Following the filing of said answer, and prior to the conduct of the hearing on the complaint, the District filed a petition with the Commission requesting a declaratory ruling determining whether the change of the insurance carrier by the District under the circumstances involved herein related to a mandatory subject of bargaining. The instant complaint proceeding and the declaratory ruling proceeding were consolidated for the purposes of hearing. The Commission is also today issuing its declaratory ruling in the matter.

The District argues that the Association seeks to persuade the Commission to reject its "primarily related" test, and instead establish that the identity of the insurance carrier, under any circumstances, is a mandatory subject of bargaining. It further contends that the Association did not establish that the change in carriers primarily related to, or had any significant effect upon, the contractual health insurance benefits, and that in any event, bargaining history establishes that the Association effectively waived the right to bargain the identity of the insurance carrier.

In determining whether a subject matter constitutes a mandatory subject of bargaining within the meaning of Sec. 111.70(1)(d), MERA, the Commission has adopted the primarily related test - subject matters that are primarily related to wages, hours and conditions of employment are mandatory subjects of bargaining. There must be a showing that the subject is "primarily" related, or "fundamentally", "basically", or "essentially" related to wages, hours or conditions of employment. Where it can be shown, by specific evidence that the identity of the insurance carrier has a "significant effect" or "primarily relates" to wages, hours and working conditions, the identity of the carrier becomes a mandatory subject of bargaining, absent such evidence the determination of the carrier is a permissive subject of bargaining. 2/

Prior to the implementation of the new carrier, the District instructed WEIC to implement a plan providing for the same benefits and procedures which had existed under the plan administered by the Trust. After the self-insured plan, administered by WEIC became effective, and prior to the first day of the hearing on the instant complaint, February 22, 1979, the Association had completed an analysis of the "new" plan, and had advised the District that differences appeared in some fifteen benefits between the Trust plan and the "new" plan. The second and last day of the hearing occurred on April 24, 1979, and by that date the District had taken steps to require WEIC to conform its plan to that administered previously by the Trust. Such corrections were to be retroactive to the date on which the "new" plan was initiated. There was no evidence adduced that any person covered by the "new" plan suffered any loss of benefits as a result of the delay in correcting the "new" plan. Thus the record does not establish that the District intended to change the benefits or procedures for obtaining same by instituting the "new" plan, and in light of the conformance of the "new" plan, we cannot, under such circumstances, conclude that the District had a duty to bargain with the Association with respect to the change of insurance carriers.

The Association alleged and argues that the Commission should exercise its jurisdiction to determine its complaint allegation that the District violated the collective bargaining agreement unilaterally changing both the identity of the carrier and the level of the health insurance benefits set forth in the collective bargaining agreement. The District opposes the exercise of the Commission's jurisdiction with respect to determining whether it has violated the collective bargaining agreement contending that the agreement provides a procedure for such a determination through final and binding arbitration.

Generally, where the complaint alleges an independent violation of a refusal to bargain in good faith, pursuant to Sec. 111.70(3)(a)4 of the Municipal Employment Relations Act, and the collective bargaining agreement contains a provision which provides that the alleged activity may also constitute a violation of the collective bargaining agreement, the Commission will defer to arbitration in such instances, except where the issue involves a determination as to whether the

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2/ Walworth County Handicapped Children's Ed. Bd. (17433) 11/79.

matter involved cannot be determined by the criteria contained in the pertinent provisions of the collective bargaining agreement, or where the matter involved is of such importance that the Commission determines it is necessary to establish a policy as to whether such matter requires a determination as to the duty to bargain on such matter within the meaning of MERA. (Emphasis added) 3/ The issues involved herein fall within the exception emphasized above. In this proceeding, as well as in the companion declaratory ruling, we are called upon to determine whether the District has a statutory duty to collectively bargain with the Association with respect to the change of insurance carriers. The Association also alleges that the District violated the collective bargaining agreement existing between the parties by not only changing the carrier, but as a result, changing the insurance benefits. In their collective bargaining agreement the parties set forth the insurance benefits. A change by the District in such agreed-upon insurance benefits would arguably violate the collective bargaining agreement and, standing alone, an allegation with regard thereto would be deferred to the contractual arbitration procedure. However, in order to determine whether there exists a statutory duty to bargain with respect to the change in carriers, we must first determine whether such change effectively changed any of the insurance benefits or procedures relating to claims. Under such circumstances we conclude that it would effectuate the policies of the Municipal Employment Relations Act for the Commission to exercise its jurisdiction to also determine whether the District violated the collective bargaining agreement as alleged by the Association. Consistent with our rationale previously expressed herein, we conclude that the District did not violate the agreement, since the agreement between the parties neither restricted the right of the District to change carriers, nor did such change in carriers result in changing the insurance benefits. We have, therefore, dismissed the complaint in its entirety.

Dated at Madison, Wisconsin this 2nd day of January, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By ______________________________
Morris Slavney, Chairman

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Herman Torosian, Commissioner

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Gary L. Covelli, Commissioner

3/ Milwaukee Board of School Directors (11330-B) 6/73.