

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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GREEN BAY EDUCATION ASSOCIATION,	:	
	:	
Complainant,	:	Case XXX
	:	No. 23932 MP-924
	:	Decision No. 16753-B
vs.	:	
	:	
JOINT SCHOOL DISTRICT NO. 1, CITY OF	:	
GREEN BAY and TOWNS OF ALLOUEZ,	:	
BELLEVUE, DE PERE, EATON, GREEN BAY,	:	
HUMBOLDT and SCOTT and BOARD OF	:	
EDUCATION OF JOINT SCHOOL DISTRICT	:	
NO. 1, CITY OF GREEN BAY et. al.,	:	
	:	
Respondent.	:	
	:	

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

Examiner Thomas L. Yaeger having on December 6, 1979, issued Findings of Fact, Conclusions of Law and Order, as well as Memorandum Accompanying same in the above-entitled matter, wherein the Examiner concluded that the above-named Respondent had not committed any prohibited practices pursuant to Sections 111.70(3)(a) 1, 4 or 5 of the Municipal Employment Relations Act by unilaterally changing the dental insurance carrier for teachers in its employ from Connecticut General Life Insurance Company to Blue Cross/Blue Shield as of January 1, 1979, and on the basis thereof having dismissed the complaint filed in the instant matter; and the Complainant having on December 21, 1979 timely filed a petition for Commission review of the Examiner's decision, pursuant to Section 111.07(5) Wis. Stats., and the parties thereafter having filed briefs in support of and in opposition to said petition, and the Commission having considered the matter and having reviewed the entire record, including the decision of the Examiner, the petition for review and the briefs of the parties, and being satisfied that the decision of the Examiner be affirmed in its entirety;

NOW, THEREFORE it is

ORDERED

That the Examiner's Findings of Fact, Conclusions of Law and Order in the above-entitled matter be, and the same hereby are, affirmed in their entirety.

Given under our hands and seal at the City of Madison, Wisconsin this 4th day of June, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By *Gary L. Covelli*  
 Gary L. Covelli, Chairman

*Morris Slavney*  
 Morris Slavney, Commissioner

*Herman Torosian*  
 Herman Torosian, Commissioner

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

In its complaint instituting this proceeding, the Association alleged that the District committed prohibited practices in violation of Sections 111.70(3)(a) 1, 4, and 5 of the Municipal Employment Relations Act, by unilaterally changing the dental insurance carrier applicable to a collective bargaining unit represented by it and comprised of all full-time and regular part-time certificated teaching personnel in its employ, from Connecticut General Life Insurance Company to Blue Cross/Blue Shield. The Association requested an Order requiring the District to cease and desist therefrom, and to reinstate its dental insurance program with Connecticut General Life Insurance Company, hereinafter referred to as Connecticut. In its answer, the District denied it committed any prohibited practices and alleged that it had no duty to bargain the change in dental insurance carrier with the Association, and in any event the Association has never requested to bargain with respect to the change in dental insurance carrier and thereby waived whatever rights it may have had in that regard.

Following a hearing conducted in the matter, Examiner Thomas L. Yaeger issued Findings of Fact, Conclusions of Law and Order, wherein he concluded that this proceeding was properly within the jurisdiction of the Commission, that the applicable collective bargaining agreements in effect between the parties did not require the continuation of Connecticut as the dental insurance carrier, and that the Association had never requested that the District bargain with respect to the change of dental insurance carrier and therefore waived whatever rights it may have had to bargain such a change prior to its implementation. The Examiner concluded that the District had not committed any prohibited practices and dismissed said complaint.

On December 21, 1979, the Association timely filed a petition for review of the Examiner's decision, alleging that the Examiner erred in failing to find: (a) that the change of dental insurance carrier constituted a mandatory subject of bargaining; (b) that the District violated the collective bargaining agreement then in force between the parties by changing dental insurance carriers during the term thereof; and (c) that the District thereby committed the prohibited practices as alleged in the complaint. The Association also alleged that the Examiner erred in finding that it had waived its right to bargain said change in dental insurance carriers. The parties filed briefs in support of, and in opposition to, said petition for review.

In support of its petition, the Association advanced the following arguments:

- a. The change of dental insurance carriers had a substantial and vital effect on wages, and working conditions of employment and therefore constituted a mandatory subject of bargaining. In this regard, the Association notes differences between the two carriers in regard to speed of claim processing, methods by which claims were paid and amounts allowed for particular types of claims.
- b. The Association did not waive its right to bargain said change in dental insurance carriers since the subject had been thoroughly discussed in prior collective bargaining and therefore neither it nor the District was compelled to bargain on that subject during the term of an agreement.

- c. The District both failed in its duty to bargain and violated the applicable collective bargaining agreement by changing the dental insurance carrier. In this regard, the Association cites the aforementioned differences between the two carriers at issue in support of its view that the District unilaterally reduced the level of dental insurance benefits available to affected employes and thus altered wages and conditions of employment that had been previously bargained over and agreed upon.

In opposition to the Association's petition for review, the District noted the Examiner's conclusion that no agreement between the parties was ever reached requiring the continuance of Connecticut as the dental insurance carrier. It also noted the Examiner's finding that no past practice existed requiring the Association's concurrence or approval in changes of benefit carriers. The District further cited the Examiner's conclusion that the Association waived whatever bargaining rights that it may have possessed concerning the identity of the dental insurance carrier both by contract and by inaction. In this regard, the District noted both the absence of any reference to a named carrier in the collective bargaining agreement and the Association's failure to request to bargain the identity of the carrier, or the impact of a change in the carrier, at any time prior to its implementation of said change. It also claimed that the dental insurance policy in effect between it and Blue Cross/Blue Shield contains benefits identical to those contained in the former policy entered into with Connecticut, and is thus in conformance with the dental insurance specifications set forth by the parties' collective bargaining agreement. Thus, it contended that it did not change the level of benefits available to employes by changing the identity of the carrier, that the change in carrier did not in turn change the wages, hours and working conditions of employment affecting said employes and that it therefore could not have violated the parties' collective bargaining agreement by effectuating the change of carriers in question.

We have reviewed the entire record, including the various briefs which the parties have filed with the Examiner prior to the issuance of his decision, and the briefs which the parties have filed with the Commission in support of and in opposition to the petition for review. We conclude that the Examiner's findings are well-founded, both as to waiver by contract and as to waiver by inaction.

The applicable collective bargaining agreement (hereinafter, the "Agreement") which was effective from January 1, 1978 through June 30, 1979 (during the term of which the change in dental insurance carriers involved herein occurred) contains extremely detailed specifications respecting the level of dental insurance benefits to be provided thereunder. However, that Agreement does not contain any reference to a specific dental insurance carrier. Furthermore, it does contain specific language, at Article VIII Section F, concerning all insurance policies and stating that "[A]ny policies accepted by the Board shall be from a nationally recognized company". The import of said contractual provisions are clear and unmistakable. While the actual dental insurance policy specifications relating to the level of benefits to be provided are set forth by the Agreement, the Agreement grants full discretion to the District in selecting the insurance carriers; including dental insurance carrier. The only limitation upon that discretion is that the carriers selected be "nationally recognized companies". Blue Cross/Blue Shield, the dental insurance carrier selected by the District, clearly falls within this category. Thus, the parties in this instance have in fact bargained over that subject and have specifically agreed that in providing the negotiated benefits the selection of insurance carriers may be made unilaterally

by the Board, without the necessity of negotiating same with the Complainant, provided that the selected carriers be "nationally recognized companies". A waiver by contract of a duty to bargain on the subject could not be clearer. 1/ The District's change in carriers thus was in conformity with the Agreement and with the parties' past negotiations on the subject, and therefore neither constituted a failure to observe its obligation to bargain with the Association on the matter nor did it constitute a violation of the collective bargaining agreement as alleged by the Association. 2/

The record further reveals that the Association was made aware of the rebidding of the dental insurance policy and the impending likelihood of a change in the identity of the dental insurance carrier at some time in October, 1978. However, it did not make any demand to bargain as to the carrier at any time thereafter. Furthermore, it did not make known its opposition to the selection of Blue Cross/Blue Shield for a period of two months thereafter. In fact, it apparently never indicated a position on the matter to the District at any time prior to the opening of the bids for the dental insurance contract on December 12, 1978. Even at that time it never requested to bargain, preferring instead to persist in its opposition, and to file the instant complaint. The waiver by inaction of whatever bargaining rights the Association may have possessed with regard to the identity of the dental insurance carrier could not be clearer. 3/

In view of the above, it is not necessary to consider the Complainant's remaining contentions. We hereby adopt the Examiner's Findings of Fact, Conclusions of Law and Order, as well as the rationale set forth in the Memorandum accompanying said decision, in their entirety.

Dated at Madison, Wisconsin this 4th day of June, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

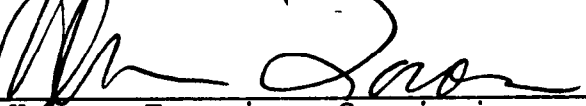
By

  
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Gary L. Covelli, Chairman

  
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Morris Slavney, Commissioner

  
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Herman Torosian, Commissioner

1/ See e.g. Milwaukee Bd. of School Directors (51826-B, 15828-B) 6/79; Madison Metropolitan School District (15629-A) 5/78.

2/ Since the change in carriers occurred during the term of an existing agreement as pointed out by the Examiner, any claim that the District by changing carriers has not maintained the contractual dental benefits is subject to the contractual grievance and arbitration procedure.

3/ See e.g. City of Jefferson (15482-A) 8/77; New Richmond Jt. School District (15172-B) 5/78.