

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MILWAUKEE DISTRICT COUNCIL 48, AFSCME,
AFL-CIO and its affiliated LOCAL 1486,

Complainants,

vs.

VILLAGE OF BROWN DEER,

Respondent.

Case XVI
No. 24095 MP-938
Decision No. 16835-B

Appearances:

Podell, Ugent & Cross, S.C., by Ms. Nola J. Hitchcock-Cross,
appearing on behalf of the Complainants.
Hayes & Hayes, Attorneys at Law, by Mr. Thomas Hayes, appearing
on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER

A complaint of prohibited practices having been filed with the Wisconsin Employment Relations Commission, hereinafter referred to as the Commission, and the Commission having appointed Timothy E. Hawks, a member of the Commission's staff, to act as Examiner to make and issue Findings of Fact, Conclusions of Law and Order as provided in Section 111.07(5), Stats.; and hearing on said complaint having been held on June 19, 1979, at Brown Deer, Wisconsin, and the parties having filed post-hearing briefs by July 31, 1979; 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. Milwaukee District Council 48, AFSCME, AFL-CIO, hereinafter referred to as the Union, is a labor organization within the meaning of Section 111.70(1)(j) of the Municipal Employment Relations Act (MERA), which is the exclusive bargaining representative for certain employees employed by the Department of Public Works of Respondent, Village of Brown Deer. The Union has its principal office located at 3427 West St. Paul Avenue, Milwaukee, Wisconsin 53208.
2. Local 1486 is a labor organization affiliated with Milwaukee District 48, representing certain employees employed by the Department of Public Works of the Village.
3. The Village of Brown Deer, hereinafter referred to as the Village, is a Municipal Employer within the meaning of Section 111.70(1)(a), with its principal office located at 4800 West Greenbrook Drive, Brown Deer, Wisconsin 53223.
4. The Village and the Union are parties to a collective bargaining agreement covering the bargaining unit referred to in Findings of Fact 1 and 2 above. The term of said collective bargaining agreement ran from on or about the first pay period of the year 1977, through and including December 31, 1978.

5. Section 1 of Article XV, page 14 of said collective bargaining agreement reads as follows:

The Village shall provide and pay for existing coverage for hospitalization and surgical care insurance for all employees covered by this Agreement and their families, with the employees to pay by payroll deduction, \$3.50, of the monthly premium for family coverage. The insurance coverage during this agreement shall be provided by Blue Cross-Blue Shield. The coverage shall be: Blue Cross Series 2000-365 days hospital care, blood, home care, sanitarium at \$10.00 per day, \$200.00 mutualized diagnostic, students to 25, surgical care SM-100, \$1,000 maximum, \$100.00 maternity care contract, \$200.00 mutualized diagnostic, students to 25 major medical, \$25,000 maximum, \$100.00 deductible, students to 25. The Village shall have the right to designate another insurer to provide the above coverage, but benefits shall not be significantly reduced nor shall there be any lapse in coverage.

6. During the period from April 8, 1977 through December 28, 1978, Respondent deducted from the paycheck of each employe within said bargaining unit who elected family health and hospitalization insurance coverage, \$3.50 monthly, which amount represented the employe's portion of the monthly health and hospital insurance premium.

7. On or about December 29, 1978, the Village deducted from the paycheck of each employe within said bargaining unit who elected family health and hospitalization insurance coverage, \$3.50, which amount represented the employe's portion of the monthly health and hospitalization insurance premium, and further deducted in addition, \$8.05 from the paycheck of such employes, as additional payment for said premium.

8. The Village's action to deduct the additional monies from the paychecks of such employes as above described in Finding of Fact No. 7 herein was taken unilaterally, without prior negotiations with Complainants.

9. After the 1973-74 collective bargaining agreement between the Village and the Union expired, an additional premium for family health and hospitalization coverage of \$3.90 was deducted from the paychecks of employes in the bargaining unit. After the expiration of the 1975-76 collective bargaining agreement, an additional premium for health and hospitalization family coverage of \$10.37 was deducted by the Village from the paychecks of employes in the bargaining unit represented by the Union.

10. During the term of the 1973-74 collective bargaining agreement, the 1975-76 collective bargaining agreement and the 1977-78 collective bargaining agreement, any rate increase in health and hospitalization premiums was paid by the Employer in accordance with the terms of the collective bargaining agreement then in effect.

11. During the collective bargaining negotiations between the parties for the 1979-80 collective bargaining agreement, the Village of Brown Deer made no proposal to alter the provisions of Article XV, which is contained in the parties' 1977-78 collective bargaining agreement. The Union, during the course of said negotiations, proposed that the Employer pay the full cost of health and hospitalization premiums.

12. After the expiration of a particular collective bargaining agreement, the Village continued to pay exactly the same dollar amount toward hospitalization during the calendar for the employes that had been paid during the last days of the term of the contract. Such payment would have the effect, if there was an increase in the premium, that the employe participation would be greater.

Upon the above Findings of Fact, the undersigned makes the following

CONCLUSIONS OF LAW

1. By refusing to bargain with the Union regarding the payment for increased cost of the insurance premium, the Village of Brown Deer violated Section 111.70(3)(a)1 and 4, Municipal Employment Relations Act.

2. By unilaterally increasing the amount deducted from the paychecks of employes represented by the Union and subject to the terms of the collective bargaining agreement between the Village and the Union, the Village of Brown Deer breached said collective bargaining agreement, and, therefore, violated Section 111.70(3)(a)5, MERA, in that the Respondent increased the amount deducted from \$3.50 to \$11.55 on December 29, 1978, prior to the date that the collective bargaining agreement between the parties expired.

Based on the foregoing Findings of Fact and Conclusions of Law, the Examiner makes and enters the following

ORDER

IT IS ORDERED that the Village of Brown Deer, its officers and agents, shall immediately:

Take the following affirmative action which the Examiner finds will effectuate the policies of the Municipal Employment Relations Act.

(a) Immediately reimburse those employes who had \$11.55 deducted from their paychecks from the period beginning December 29, 1978 until such time as the successor collective bargaining agreement was implemented, \$8.05, such amount constituting that above the amount the parties agreed would be deducted from the employes' paychecks to pay for family insurance.

(b) Before instituting future changes in the amount deducted from the employes' paychecks for family insurance, give notice of intent to make changes, and, if requested by Union, bargain regarding same.

(c) Notify all of its employes represented by the Union of its intent to comply with the Order herein by posting in a conspicuous place on the premises, where notices to the employes are usually posted, copies of the notice attached hereto and marked Appendix A. Such copies shall be signed by the Mayor of the Village and shall be posted immediately 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 material.

(d) 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.

Dated at Madison, Wisconsin this 9th day of January, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Timothy E. Hawks
Timothy E. Hawks, Examiner

APPENDIX "A"

NOTICE TO ALL EMPLOYEES REPRESENTED BY
MILWAUKEE DISTRICT COUNCIL 48, AFSCME,
AFL-CIO AND ITS AFFILIATED LOCAL 1486

Pursuant to Order of the Wisconsin Employment Relations Commission, and in order to effectuate the policies of the Municipal Employment Relations Act, we hereby notify our employes that:

1. WE WILL IMMEDIATELY REIMBURSE THOSE EMPLOYEES WHO HAD \$11.55 DEDUCTED FROM THEIR PAYCHECKS FROM THE PERIOD BEGINNING DECEMBER 29, 1978 TO THE COMMENCEMENT OF IMPLEMENTATION OF THE SUCCESSOR COLLECTIVE BARGAINING AGREEMENT, THE AMOUNT OF \$8.05, SUCH AMOUNT CONSTITUTING THE INCREASE IN THE PREMIUM FOR FAMILY HOSPITALIZATION AND SURGICAL COVERAGE.

2. WE WILL NOT INSTITUTE CHANGES IN THE AMOUNT DEDUCTED FROM THE PREMIUM PAYMENT POLICY WITHOUT FIRST NOTIFYING MILWAUKEE DISTRICT COUNCIL 48, AFSCME, AFL-CIO, AND ITS AFFILIATED LOCAL 1486, OFFERING TO BARGAIN, AND, IF REQUESTED, BARGAINING WITH THE LOCAL.

VILLAGE OF BROWN DEER

By _____
Mayor

Dated this day of , 1980.

THIS NOTICE MUST REMAIN POSTED FOR SIXTY (60) DAYS FROM THE DATE HEREOF AND MUST NOT BE ALTERED, DEFACED OR COVERED BY ANY OTHER MATERIAL.

MEMORANDUM ACCOMPANYING FINDINGS OF
FACT, CONCLUSIONS OF LAW AND ORDER

The Respondent admitted at the time of hearing all allegations of the complaint, 1/ except those of paragraph 9 which alleged statutory violation. At hearing, the parties stipulated to the accuracy of the facts presented in the Findings of Fact 9 through 12. There being no factual dispute, the Examiner has been asked to apply Section 111.70 (3)(a)1, 4 and 5, MERA, to the facts presented above in order to determine whether the Respondent has breached those sections of the Municipal Employment Relations Act.

The collective bargaining agreement states that:

[t]he Village shall provide and pay for existing coverage for hospitalization and surgical care insurance for all employees covered by the agreement and their families, with the employees to pay by payroll deduction, \$3.50, the monthly premium for family coverage.

The Commissioners and its examiners have held in the past that a collective bargaining agreement which provides that the Employer shall pay "100%" or "full" insurance coverage requires that Employer to increase its contributions commensurate with premium increase during the term of the collective bargaining agreement. In the event that the premium increases occur subsequent to the expiration of a contract providing for such coverage, the Employer is required to bargain to impasse with the bargaining representative before unilaterally implementing a change in the amount paid for employees' premiums. 2/ In this case the Employer received notice of an increased premium cost of \$8.05 prior to the termination of the collective bargaining agreement. As a consequence, the Village increased the deduction from the employees' paychecks to \$11.55 on December 29, 1978 -- a date prior to the termination of the collective bargaining agreement then in effect, and then continued the increased deduction until the terms of the agreement were reached. The language of the contract which states that the Village "shall provide and pay for existing coverage" is tantamount to stating that it will pay the full amount of the insurance. The remainder of the provision which provides the employees are to pay by payroll deduction, \$3.50, sets the maximum chargeable to the employees. In contrast, if the contract language established a specific amount which the Employer would contribute, with the employees to pay the remainder, then the Employer's maximum cost liability under the contract would be established. As

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- 1/ The Respondent did note that paragraph 6 of the complaint inaccurately stated the initial date of the collective bargaining agreement. Rather than April 9, 1977, the contract commenced at the first pay period of 1977. The Complainants agreed with the Respondent's note of the inaccuracy.
 - 2/ Village of Grafton, (14424-A, B) 12/76; West Allis-West Milwaukee Joint School District #1 (11014-A, B) 4/73; Mayville Joint School District (11186-A, B) 10/74; and Wisconsin Rapids VTAL (14958-B, C) 5/77.

a consequence of the increased deduction by the Employer on December 29, 1978, during the contractual term, the Village violated Section 111.70 (3)(a)5, MERA. By continuing increased deduction without first bargaining to impasse with the Union regarding this matter, the Village violated Section 111.70(3)(a) 1 and 4, MERA. As a consequence, the Examiner made the above Conclusions of Law and Order.

Dated at Madison, Wisconsin this 9th day of January, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

BY

Timothy E. Hawks
Timothy E. Hawks, Examiner

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