

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of :
SCHOOL DISTRICT OF THE MENOMONIE AREA :
Requesting a Declaratory Ruling : Case XXIV
Pursuant to Section 111.70(4)(b) : No. 24124 DR(M)-116
Wis. Stats., Involving a Dispute : Decision No. 16849-A
Between Said Petitioner and the :
MENOMONIE EDUCATION ASSOCIATION :

Appearances:

Mulcahy & Wherry, S.C., Attorneys at Law, by Mr. John T. Coughlin,
Esq., appearing on behalf of the Petitioner.
Kelly & Haus, Attorneys at Law, by Mr. Robert C. Kelly, Esq.,
appearing on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSION OF
LAW AND DECLARATORY RULING

School District of the Menomonie Area having, on February 20, 1979, filed a petition requesting the Wisconsin Employment Relations Commission to issue a declaratory ruling, pursuant to Sec. 111.70(4)(b) of the Municipal Employment Relations Act, to determine whether it has the duty to bargain collectively with the Menomonie Education Association, as the representative of certain employees of the District, with respect to changing the insurance carrier administering health insurance benefits set forth in the collective bargaining agreement covering wages, hours and working conditions of said employees; and hearing in the matter having been conducted at Menomonie, Wisconsin on February 22 and April 24, 1979 1/ by Thomas L. Yaeger, a member of the Commission's staff, during which the parties present evidence and argument in the matter; and post hearing briefs having been received by March 20, 1980; and the Commission, having considered the evidence and briefs of Counsel, and being fully advised in the premises, makes and issues the following Findings of Fact, Conclusion of Law and Declaratory Ruling.

FINDINGS OF FACT

1. That Menomonie Education Association, hereinafter referred to as the Association, is a labor organization representing municipal employees 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.

1/ The instant proceeding was consolidated with a hearing on a complaint filed by the Association, alleging that the District had committed prohibited practices by unilaterally, and without bargaining with the Association, changing insurance carriers during the term of an existing collective bargaining agreement. (Case XXIII)

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 at least 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; that 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 the same health insurance benefits, set forth in the collective bargaining agreements, as well as the premiums and the manner of processing claims, as had been in effect in the 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; that, as a result, the District's unilateral change in insurance carriers did not primarily relate to, or have a significant effect upon, wages, hours or working conditions of the employes of the District employed in collective bargaining unit represented by the Association.

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

CONCLUSION OF LAW

1. That, inasmuch as the activity of the School District of the Menomonie Area in unilaterally changing the carrier of the health insurance program and benefits set forth in the collective bargaining agreement between the District and the Menomonie Education Association, did not primarily relate to, or have any significant effect upon, the wages, hours and working conditions of the employes covered

by said agreement, the District had no duty, within the meaning of Sec. 111.70(1)(d) of the Municipal Employment Relations Act, to collectively bargain with the Association with respect to such change in carriers.

Upon the basis of the above and foregoing Findings of Fact and Conclusion of Law, the Commission makes and issues the following

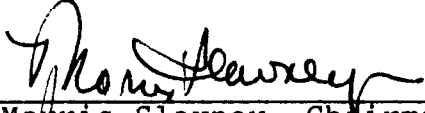
DECLARATORY RULING

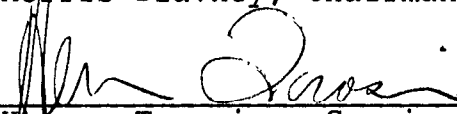
1. That the School District of the Menomonie Area, its officers, and agents, including its Board of Education, has no duty to bargain with the Menomonie Education Association with respect to the change of insurance carriers which was implemented on January 1, 1979.

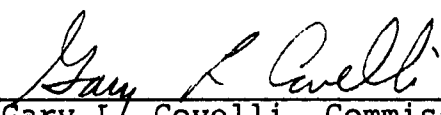
Given under our hands and seal at the
City of Madison, Wisconsin this 2nd
day of January, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Herman Torosian, Commissioner


Gary L. Covelli, Commissioner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSION OF LAW AND DECLARATORY RULING

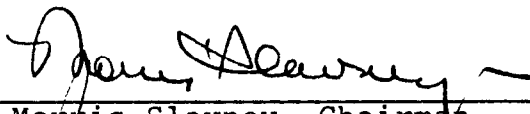
The instant proceeding was initiated by a petition for declaratory ruling filed by the District, requesting the Commission to determine whether the District has the duty to collectively bargain with the Association with respect to changing the carrier responsible for administering health insurance benefits set forth in the collective bargaining agreement between the parties. The District, without bargaining with the Association, caused such change to be made during the existence of the collective bargaining agreement. While the agreement set forth the nature of the insurance benefits, it did not identify any particular carrier of the program.

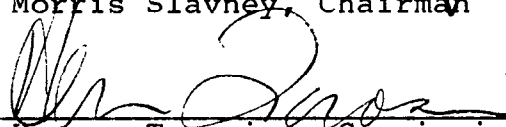
Prior to the filing of the petition herein, the Association had filed a complaint alleging that the District had committed certain prohibited practices by unilaterally changing the insurance carriers. The Association also alleged that the change in carriers resulted in a change in actual and procedural benefits previously enjoyed by the employees covered by said insurance. The instant proceeding was consolidated with the complaint proceeding, and both were heard on the same dates. The issues herein and the facts relevant thereto were also material to the issues in the complaint proceeding, especially those relating to the respect to its unilateral decision to change insurance carriers and the alleged change of insurance benefits. Likewise the positions of the parties with regard to District's duty to bargain the change in carriers are also set forth in the complaint decision, as is our rationale in support of our determination that the District, under the circumstances involved herein, had no duty to bargain the change in insurance carriers. 2/


In this proceeding the Commission is also confronted with the Association's assertion that the District lacked legal authority to self insure and thus that the matter of self funding health insurance was, and is, an illegal subject of bargaining. When determining whether a matter is a prohibited subject of bargaining, a subject is deemed illegal only if its implementation would require the violation of an "express command of law". 3/ As there has been no showing that the District is expressly precluded from self insuring, the Association's argument has been rejected.

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

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Slavney, Chairman


Herman Torosian, Commissioner


Gary L. Covelli, Commissioner

2/ Decision No. 16724-B.

3/ Glendale Policeman's Association v. City of Glendale 83 Wis. 2d
90, 102 (1978); Madison Metropolitan School District 16598 (10/78).