STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

PRENTICE EDUCATION ASSOCIATION, Complainant, vs. SCHOOL DISTRICT OF PRENTICE AND ITS AGENT, THE BOARD OF EDUCATION OF THE SCHOOL DISTRICT OF PRENTICE, Respondent.	Case VI No. 24274 MP-958 Decision No. 16925-B

Appearances:

Ms. Priscilla Ruth MacDougall, Staff Counsel, Wisconsin Education Association Council, on behalf of the Association.
Mr. Peter Thompson, Attorney at Law, and Mr. Norris S. Erickson, District Administrator, on behalf of the District.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Prentice Education Association, herein the Association, filed the instant complaint with the Wisconsin Employment Relations Commission, herein the Commission, wherein it alleged that the School District of Prentice and its agent, the Board of Education of the School District of Prentice, herein the District, had committed certain prohibited practices. The Commission on March 22, 1979, appointed Hearing Examiner Michael F. Rothstein to make and issue Findings of Fact, Conclusions of Law and Order, as provided for in Section 111.07(5) of the Wisconsin Statutes. On June 4, 1979 the Commission issued an Order Substituting Examiner, wherein it named the undersigned to make and issue Findings of Fact, Conclusions of Law and Order. Hearing was held in Phillips, Wisconsin, on June 26, 1979. The parties waived the filing of briefs, after the Examiner, pursuant to their joint request, issued an oral decision on the issues herein.

Having considered the arguments and the evidence, the Examiner makes and files the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. The Association is a labor organization which represents certain teaching personnel and librarians employed by the District.

2. The District, a Municipal Employer, operates a school system in the Prentice, Wisconsin area. The District's Administrator is Norris Erickson who, at all times material herein, has acted on the District's behalf.

3. The parties are privy to a 1978-1979 collective bargaining agreement which does not provide for final and binding arbitration. Said agreement in Article XVIII, entitled "Insurance", provides in part:

A. The School District shall pay one hundred percent (100%) of the single and a maximum of $75 per month of the family plan, for those who choose it, of an approved hospital-surgical insurance program acceptable to the Board after consultation with the PEA for the 1978-79 school year.

. . .

4. For about the last seven years, prior contracts between the parties contained language which was substantially similar to the insurance provision noted above.

5. In 1977, the District, after discussions with the Association in collective bargaining negotiations, selected the Wisconsin Education Association Insurance Trust (WEA) as its insurance carrier. It maintained said carrier at the outset of the 1978-79 school year.

6. The parties in November, 1978 1/ tentatively agreed to the terms of a successor contract which contained the insurance carrier provision noted above. During the course of those negotiations, the question of changing carriers arose, with the Association maintaining in a mediation session that the District could not change the carrier.

7. By memorandum dated November 27, Erickson sent the following letter to Dorothy Burcaw, the Association's President:

> We are requesting that your organization meet with us on Thursday afternoon, November 30, at 4:15 P.M., in the Prentice cafeteria, in regard to health insurance coverage.
>
> At that time, we will have a representative from the Wisconsin Employers Insurance Company to present a policy which is reportedly the same as our present coverage.

Erickson sent a copy of said letter to UniServ Director, Eugene Degner, who at that time was out of town.

8. On November 28, Erickson sent the following memorandum to all teachers:

> Last week, a tentative agreement was reached between the Board of Education and the Prentice Education Association, covering the master agreement for the 1978-79 school term. There is a possibility that there will be a change in your health insurance carrier.
>
> On Thursday, November 30, at 4:15 P.M. in the Prentice Cafeteria, Don White, repre-

> Company, will present his company's plan for health insurance. The policy coverage from this company is reported to be the same as your present policy.

9. On November 30, several teachers attended a meeting where the insurance situation was dismissed. Also present were Erickson and Donald White, a representative for the Wisconsin Schools Insurance Fund, an insurance carrier. There, White discussed the health insurance coverage provided for by his firm. White also stated that the District was considering utilizing his firm's insurance coverage as of January 1, 1979. Thereafter, one of the teachers present asked Erickson whether the District was proposing said insurance, to which Erickson replied: "No, no, we don't care what insurance you have. The Board is going to pay seventy-five dollars regardless. We don't care."

10. On December 19, the District's Board of Education formally ratified the 1978-1979 tentative contract with the Association. Later on in the meeting, the Board voted to drop its health insurance coverage with the WEA trust and, instead, to retain the Wisconsin Schools Insurance Fund effective January 1, 1979. Representatives from the Association voluntarily left the Board meeting before the latter vote was taken, as they were then unaware that the Board would be discussing a change of carrier later on in the evening.

11. On December 20, Erickson sent the following memorandum to all teachers:

> Last night the Board of Education and the Prentice Education Association signed an agreement covering this school year. The administrative office will be working on your retroactive adjustment and we'll attempt to get that to you as soon as we can.
>
> Last night your insurance carrier was also changed, so if you want health insurance through the school you'll need to make out a new enrollment card today. This change will take place January 1, 1979. According to our agreement, the Board of Education will be paying the single policy and if you have the family plan your cost will be $5.61 per month. With the other policy, your cost would have been $13.78 per month.
>
> I'd like also to take this opportunity to wish you a happy holiday season. I think we have had a very successful beginning to the 1978-79 school year and I hope that the new year will be a good too.

12. By letters dated December 20 and 28, Degner advised Richard Holm, the Director of the District's Board of Education, that he was protesting the proposed change in insurance carriers and that the District was required to retain its coverage with the WEA Trust. The District never responded to said letters.

13. Degner thereafter filed a complaint with the District Attorney of Price County, wherein he alleged that the District's actions on December 19 were violative of the State's open meeting law. By letter dated March 6, 1979, Douglas T. Fox, who had been appointed as District Attorney _pro tempore_ in said matter, advised Degner that:

I believe Mary Liedtke, the Price County District Attorney, sent you a letter under date of March 1, 1979, a copy of which I am in receipt, informing you that I have been appointed as District Attorney pro tempore in this matter.

I have reviewed the verified Complaints which you sent to the Price County District Attorney and I have spoken with an official of the Prentice School Board and the attorney for the Prentice School Board, Mr. Peter J. Thompson.

While the violations of Wisconsin's open meeting law which you allege in your two verified Complaints may indeed have occurred, I do not feel that the gravity of these alleged offenses warrants too much expenditure of time or money by Price County. From my discussions with Mr. Thompson and the school board representative, I believe that any violations of the open meeting law which may have occurred were unintentional and due to a lack of understanding of the requirements of that law.

Mr. Thompson and the school board have agreed that they should meet so that Mr. Thompson may review the requirements of the open meeting law with the board in order to avoid any future violations of that law such as are alleged in your verified Complaints. In addition, Mr. Thompson and the representative from the board have given me assurances that the matters considered in the meetings of December 19, 1978 and January 15, 1979 will be brought up at a properly noticed meeting sometime in the future, at which time the board can ratify and confirm its prior actions and, if necessary, reconsider any items of business that may not have been properly handled in the first instance.

I intend to hold this matter open pending the receipt by me of minutes of a Prentice School Board meeting which has been properly noticed and in which the matters taken up in the meetings referred to in your Complaints have been ratified and confirmed. Assuming that this is done, and assuming that the school board seems to be properly noticing its meetings, I shall then close my file and take no further action in this matter.

I trust that my proposed handling of this matter meets with your approval. In the event that it does not, I point out that you still have other remedies available, as set forth in Section 19.97(4) of the Wisconsin Statutes.

If you have any questions or comments regarding my handling of this matter, please feel free to contact me.

14. Subsequent to the mailing of said letter, no one on behalf of the District advised Degner as to when the District would reconsider those matters, including the question of insurance coverage, which it had earlier discussed on December 19, 1978 and January 15, 1979.

15. On March 13, 1979, the District reconsidered said matters and there decided that it would retain Wisconsin Schools Insurance Fund as its health insurance carrier.

16. Wisconsin Schools Insurance Fund became the District's health insurance carrier on January 1, 1979, and has continued to cover the employes herein up to the time of the instant hearing. There are no differences in the health benefits formerly offered by the WEA Trust and those presently provided for by the Wisconsin Schools Insurance Fund. In addition, whereas the monthly premium for family coverage under the WEA Trust was $13.78, said premium under Wisconsin Schools Insurance Fund is $5.61. Thus, teachers under family coverage are saving $8.17 per month in health insurance premiums for the identical benefits which they previously received.

17. At the time of the instant hearing, the parties were bargaining over a successor contract, including the question of who should be the insurance carrier.

Upon the basis of the above Findings of Fact, the Examiner makes the following

CONCLUSIONS OF LAW

1. The District did not violate Section 111.70(3)(a)4 of the Municipal Employment Relations Act (MERA) by refusing to bargain with the Association over changing its insurance carrier.

2. The District did violate Section 111.70(3)(a)5 of MERA by refusing to consult with the Association over its change of insurance carrier, as was required under Article XVIII of the Contract.

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

ORDER

1. It is ordered that the part of the Complaint which alleges that the District refused to bargain is hereby dismissed.

2. It is further ordered that the District, its officers and agents, shall immediately:

a. Cease and desist from refusing to adhere to that contractual provision which specifies that the District shall consult with the Association in selecting a health insurance carrier.

b. Take the following affirmative action which will effectuate the policies of MERA:

1. Adhere to any contractual requirement which requires the District to consult with the Association in selecting a health insurance carrier.

2. Notify all employes by posting in conspicuous places in its offices where employes are employed copies of the notice attached hereto and marked "Appendix A". That notice shall be signed by the District and shall be posted immediately upon receipt of a copy of this Order and shall remain posted for thirty (30) days thereafter. Reasonable steps shall be taken by the District to insure that said notices are not altered, defaced or covered by other material.

3. Notify the Wisconsin Employment Relations Commission, in writing, within twenty (20) days following the date of this Order, as to what steps have been taken to comply herewith.

Dated at Madison, Wisconsin this 15th day of January, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By
Amedeo Greco, Examiner

Appendix A

NOTICE TO ALL EMPLOYES

Pursuant to an 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 not violate that part of the collective bargaining contract which specifies that we shall consult with the Association over changing our health insurance carrier.

SCHOOL DISTRICT OF PRENTICE

By ______________________________

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The Association primarily contends that the District: (1) violated its statutory obligation to bargain over its change of insurance carrier; and (2) failed to consult with the Association over said change as it was required to do under Article XVIII of the contract. As a remedy, the Association seeks restoration of the WEA Trust Insurance.

The District, in turn, argues that it has no statutory duty to bargain over the identity of an insurance carrier, that here, in fact, it consulted with the Association before it changed carriers, and that, moreover, it is the Association which has acted unreasonably by complaining over the fact that teachers now pay less for the same coverage.

As to this latter point, the record indeed establishes that teachers are now paying lower insurance premiums for the same insurance coverage which they received under the WEA Trust. It is also clear that that situation came about because Erickson was genuinely concerned about providing the best coverage at the lowest possible cost. At the hearing, the Association requested restoration of the WEA Trust insurance even though that would result in higher costs for the same benefits. When, asked by the Examiner at the hearing as to why such a remedy was warranted, the Association offered no persuasive explanation.

The question of remedy, however, is a separate question of whether the District acted unlawfully in changing carriers. As to this latter question, the Examiner ruled at the hearing, pursuant to the joint request of the parties, that the District did violate its contractual duty to consult with the Association over said matter.

In so ruling, the Examiner first rejected the Association's assertion that the District had violated its statutory duty to bargain over the change of carriers. Thus, even if the District were otherwise required to bargain over said matter--a point which need not be decided herein--the contract clearly shows that the Association waived said duty by agreeing to Article XVIII which specifies that the District can select the carrier after "consultation" with the Association. For, it is universally understood in the field of labor relations that the obligation to "consult" does not require the parties to bargain. This point was specifically noted by the Commission in Sheyboygan Joint School District No. 1, 2/ wherein it found that an employer was not required to bargain with a teachers' association over its decision to reduce its teaching staff. There, the contract provided that such changes could be made after the union was "given the reason for such change, and provided an opportunity to discuss the matter". Commenting on said proviso, the Commission noted:

> We do not interpret the term "opportunity to discuss" as requiring bargaining. On the contrary, said term strongly supports a waiver of such statutory duty.

Since the word "discuss" is a synonym for the word "consult", 3/ the

2/ (11990-B) 1/76.

3/ The New American Roget's College Thesaurus in Dictionary Form, p. 70 (Signet) 1962.

Commission's ruling in Sheboygan is likewise applicable herein. As a result, it must be concluded that the Association waived whatever right it may have had to bargain over the change in carrier when it agreed that the District was free to effectuate such a change after consultation with the Association. 4/

That leaves for consideration whether the District met its contractual duty to consult over said matter. As to that, the record shows that by letters dated November 27 and 28, Erickson advised the Association and the teachers that a meeting would be held on November 30 relating to health insurance coverage. Moreover, a representative of the Wisconsin Employers Insurance Company at that meeting advised those present that the District was considering using his firm's insurance coverage. Standing alone, such factors indicate that the District did attempt to consult with the Association over the change in carrier.

However, the record also reveals that Degner was then out of town and that he did not then know of the November 30 meeting. In addition, Association President Burcaw testified that she did not believe that there was much chance of the carrier being changed, since the parties had considered the question of the carrier in their recently concluded negotiations. More importantly, Burcaw testified that Erickson, at the November 30 meeting, was asked by one of the teachers present whether the District was proposing a new insurance plan, to which Erickson replied, "No, no, we don't care what insurance you have. The Board is going to pay seventy-five dollars regardless. We don't care." As a result of that exchange, Burcaw assumed that the question of changing carriers had been dropped.

Burcaw's testimony was uncontradicted, as other witnesses present testified that while it was possible that such an exchange may have happened, they had no independent recollection of it. Erickson, who handled the bulk of the District's defense at the hearing, did not testify. At the end of the hearing, when asked about this exchange, Erickson denied that he had made the statement attributed to him. Since Erickson did not make that denial under oath, at which time he could have been subjected to cross-examination, the Examiner cannot give that denial any weight. As a result, Burcaw's testimony stands uncontradicted and must be credited. In light of that exchange, then, Association representatives and the teachers present at the November 30 meeting had a legitimate basis for believing that the carrier would not be changed.

As a result, it must be concluded that the District on November 30 did not clearly advise the Association that it was thinking of changing carriers. Thereafter, although the District subsequently acted on the carrier issue on December 19 and March 13, 1979, there is no evidence that the Association knew or should have known that said issue would be considered at those times. Moreover, although Degner on December 20 and 28 protested the change of carrier to the District, the District never responded to said letters.

In light of the above, the record therefore shows that the Association was never given a meaningful opportunity to discuss a change in carrier. Thus, although the District under the contract can change the carrier after "consultation" with the Association, it is absolutely essential that meaningful consultations occur since that is the only right which the

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4/ Because the word "consultation" is a technical word of art in the field of labor relations which has a well-defined meaning, it is unnecessary to consider any parol evidence pertaining to negotiations concerning what that term may have meant to one of the parties, as such a subjective opinion cannot negate the clear meaning of what in fact was agreed to.

Association has over such an important subject to the teachers herein. Here, when Erickson advised the teachers on November 30 that the District did not intend to change carriers, the District precluded meaningful consultations from taking place it thereby violated Article XVIII.

That leaves for consideration the question of remedy. While the Association requests restoration of the WEA Trust Insurance, such a remedy is unwarranted as: (1) the teachers herein have not been harmed by the change in carrier; (2) in fact, teachers on the family plan are paying approximately one hundred dollars less per year for the same benefits they previously received; (3) there are no significant differences between the benefits provided for by the WEA Trust and the present carrier; (4) even if meaningful consultation had taken place, the District was nonetheless free to change carriers; and (5) the parties were bargaining over the identity of the carrier in their present negotiations. As a result of these unique facts, there is no reason to now require the District to restore the WEA Trust. Instead, the District will only be ordered to cease and desist from violating any contractual duty to consult with the Association before changing its health insurance carrier. 5/

Dated at Madison, Wisconsin this 15th day of January, 1980.

By Amedeo Greco
Amedeo Greco, Examiner

5/ At the hearing, the Examiner ordered the District to bargain over the identity of the carrier. However, since the parties are already bargaining over that issue, and as the District in fact has not refused to bargain, such an order is unnecessary and therefore withdrawn.