STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

SHEBOYGAN CITY HALL EMPLOYEES LOCAL, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, Complainant, vs. CITY OF SHEBOYGAN, Respondent.	Case XL No. 26089 MP-1103 Decision No. 17823-A

Appearances:

Mr. Richard Abelson and Ms. Helen Isferding, District Representatives, WCCME, AFSCME, AFL-CIO, 5 Odana Court, Madison, Wisconsin 53719, appearing on behalf of Complainant.

Lindner, Honzik, Marsack, Hayman and Walsh, Attorneys at Law, 700 North Water Street, Milwaukee, Wisconsin 53202, by Mr. Roger E. Walsh, appearing on behalf of Respondent.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

Sheboygan City Hall Employees Local, American Federation of State, County and Municipal Employees, AFL-CIO, having filed a complaint on April 28, 1980 with the Wisconsin Employment Relations Commission alleging that the City of Sheboygan, Thomas W. Zengler, 1/ Personnel Director, City of Sheboygan, Wisconsin had committed certain prohibited practices within the meaning of Section 111.70 (3)(a)4 of the Municipal Employment Relations Act; and the Commission having appointed Stephen Schoenfeld, a member of its staff, to act as Examiner and to make and issue Findings of Fact, Conclusion of Law and Order as provided in Section 111.07(5) of the Wisconsin Statutes; and hearing on said complaint having been held at Sheboygan, Wisconsin on July 11, 1980, before the Examiner, and briefs having been filed by both parties with the Examiner; and the Examiner having considered the arguments, evidence and briefs, and being fully advised in the premises, makes and files the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. That Sheboygan City Hall Employees Local, District Council 40, American Federation of State, County and Municipal Employees, AFL-CIO, hereinafter referred to as Complainant, is a labor organization which represents for collective bargaining purposes certain City Hall employes of the City of Sheboygan; and that Ms. Helen Isferding is the District Representative for the Complainant.

1/ At the conclusion of the Complainant's case in chief, Respondent moved that the complaint be dismissed against Zengler. Inasmuch as there wasn't a modicum of evidence that Zengler had done anything to constitute a prohibited practice, Respondent's motion was granted.

2. That the City of Sheboygan, also referred to as Respondent, is a Municipal Employer; and that Thomas W. Zengler is the Personnel Director for said Municipal Employer.

3. That in approximately October, 1979, negotiations between the Complainant and Respondent commenced for a successor collective bargaining agreement to the 1978-79 labor contract between the Respondent and the former representative of certain City Hall employes, the Association of City Hall Employees; and that the 1978-79 collective bargaining agreement expired on December 31, 1979.

4. That Article XI, Section (c) of the aforesaid contract dealt with life insurance and provided as follows:

> Life Insurance: The City agrees to continue the present Wisconsin Employe Group Life Insurance Plan in accordance with the Wisconsin State Statutes or comparable coverage for eligible employes in the bargaining unit who have satisfactorily completed six (6) months' service and who voluntarily choose to participate in said plan. In addition, full-time employes will have their share of the group life insurance premium paid for by the City for the last eleven (11) months of 1978 and the last eleven (11) months of 1979.

5. That during the course of collective bargaining between the parties, Respondent, contrary to the Complainant, took the position that paid life insurance for the last eleven months of 1978 and 1979 did not apply to 1980 and 1981 and that it did not intend to extend this coverage to the successor labor agreement.

6. After the expiration of the 1978-79 contract on December 31, 1979, Respondent stopped paying the above mentioned employe's contribution for the life insurance premium; that the Respondent paid only the statutorily required thirty-three per cent (33%) of said premium and the remaining amount of the monthly premium was deducted from the respective employe's pay checks.

7. That Respondent's duty to pay the employe's contribution for life insurance ended when the contract expired on December 31, 1979 and that it thereafter maintained the status quo when it did not subsequently pay said premiums during the contract hiatus; and the Respondent, by not paying said premium did not unilaterally change any wage, or condition of employment of any bargaining unit employe during the contract hiatus.

8. On June 17, 1980 Complainant and Respondent agreed to the terms of the successor agreement; and that pursuant to the terms of said agreement, effective the first pay period of July, 1980 and for the remainder of 1980 and the last eleven (11) months of 1981, full time employes will have their share of the group life insurance premium paid for by the Respondent.

Based on the above Findings of Fact, the Examiner makes the following

CONCLUSION OF LAW

1. That Respondent, by its ceasing to pay the full-time employe's contribution for life insurance premiums during the hiatus between the expiration of the 1978-79 collective bargaining agreement and July,

1980, has not committed a prohibited practice within the meaning of sec. 111.70(3)(a)4 of the Municipal Employment Relations Act.

ORDER

IT IS ORDERED that the complaint filed in the instant matter be, and the same hereby is, dismissed.

Dated at Madison, Wisconsin this [illegible] day of [illegible] 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Stephen Schoenfeld, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

The positions of the parties are straightforward. On the one hand, Complainant contends that the City of Sheboygan, when it refused to pay the bargaining unit employe's contribution for life insurance premiums during the hiatus between the expiration of the 1978-79 collective bargaining agreement and when the parties agreed to a successor agreement, violated its statutory duty to bargain. On the other hand, the Respondent avers that it maintained the status quo during the contract hiatus by not paying said insurance premiums and because its conduct did not constitute a unilateral change in the status quo, the complaint should be dismissed.

Section 111.70(1)(d) of MERA states, inter alia, that:

> "'collective bargaining' means the performance of the mutual obligation of a municipal employer, through its officers and agents and the representatives of its employes, to meet and confer at reaonsable times, in good faith, with respect to wages, hours and conditions of employment. . ."

The Commission has held that a municipal employer must bargain on mandatory subjects of bargaining prior to implementing any change in said subjects or be found to have refused to bargain in good faith. 2/ A unilateral change in a mandatory subject of bargaining without first bargaining said change to impasse, is a per se refusal to bargain in good faith. 3/

Whether Respondent breached its statutory duty to bargain with Complainant depends initially upon an analysis of whether Respondent maintained or altered the status quo of the terms of the expired agreement relating to the obligation of Respondent to pay the bargaining unit employe's contribution towards life insurance. Unilateral changes in mandatory subjects of bargaining after a contract has expired was addressed by the Commission in Greenfield Education Association vs. School Board, School District No. 6, City of Greenfield (14026-B) 11/77:

> First, employers already have an obligation, relative to most mandatory subjects of bargaining, to maintain the status quo of employment conditions after expiration of the agreement, pending discharge of its bargaining obligation, . . . Second, most mandatory subjects of bargaining must remain intact per the terms of the expired contract, not because the Commission sua sponte extends contractual terms, but as

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2/ See, Madison Jt. School Dist. (12610) 4/74; City of Oak Creek (12105; -A, B) 7/74; City of Madison (15095) 12/76.

3/ Fennimore Jt. School Dist. (11865-A) 6/74, aff'd Comm. (11865-B) 7/74; Winter Jt. School Dist. No. 1 (14482-B) 3/77. Herein, no claim was advanced that the cost of life insurance premiums is not a mandatory subject of bargaining. Clearly, it is an economic benefit derived from the employment relationship and constitutes a mandatory subject of bargaining.

> a result of the employer's duty to maintain the status quo at least to the point of impasse, in respect to such mandatory subjects as being an inseparable part of the employer's duty to bargain over changes in mandatory subjects of bargaining.
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> . . .we begin with the general rule that an employer must, pending discharge of its duty to bargain, maintain the status quo of all terms of the expired agreement which govern mandatory subjects of bargaining.

In the case at bar, the language at Article XI (c) of the 1978-79 labor agreement established the obligation of the Respondent with respect to the payment of life insurance premiums. The Respondent was only obligated to pay the employe's contribution for life insurance premiums for the last eleven (11) months of 1978 and the last eleven (11) months of 1979. The contract did not state that Respondent was required to pay the employe's contributions for life insurance premiums for the last eleven months of the year or for the period of February through December. Rather, the language set forth at Article XI (c) specifically limits the Respondent's obligation to pay said insurance premiums only for the last eleven (11) months of 1979. Inasmuch as the contract specifically limited the Respondent's obligation to pay said insurance premiums only through December, 1979, absent some agreement to the contrary, which did not exist herein, the Respondent wasn't obligated to continue to pay the insurance premiums during the contract hiatus.

Article XI (c) created the status quo with respect to the Respondent's obligation to pay the employe's contribution towards life insurance premiums after December, 1979. Said contractual provision did not obligate the Respondent to pay the life insurance premiums after December, 1979, and when the contract expired, the Respondent ceased paying said premiums consistent with the status quo in effect when the contract expired. The Respondent did not make any unilateral changes affecting the status quo during the contract hiatus. As a result, Respondent's conduct doesn't constitute a prohibited practice within the meaning of MERA. 4/

Complainant argues that Milwaukee District Council 48, AFSCME, AFL-CIO and its Affiliated Local 1486 vs. Village of Brown Deer, 16835-B, 1/80 and Office and Professional Employees, International Union Local No. 95 vs. Mid-State Vocational, Technical and Adult Education District, 14958-B, 8/77 are controlling in the instant dispute. The Examiner finds said cases to be distinguishable from the matter involved herein. In Mid-State the issue concerned whether the status quo was maintained by freezing a health insurance payment at a dollar amount or at a percentage and dealt with what constituted

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4/ Inasmuch as the Examiner has found that the Respondent did not unilaterally alter the status quo during the contract hiatus, there is no need to address the Respondent's arguments that an impasse existed which lawfully permitted the Respondent to implement its last offer to the Union and that the Complainant waived any legal obligation the Respondent might have had to pay the life insurance premium during the period of February through June, 1980 by agreeing to a contract requiring the Respondent to pay such premiums commencing in July, 1980.

the status quo pending negotiations for an initial collective bargaining agreement. Unlike the instant case, which involves the issue of status quo during a contract hiatus, in which the contract provision contains specific limiting language that establishes the terms of the status quo, Mid-States concerned a past practice that formed the basis of the status quo and the specific limiting contractual language issue wasn't a basis of the decision in said case.

Furthermore, the situation in this case is different from that found in Village of Brown Deer. There the contract provided in part:

> 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 Employer had, prior to the date the collective bargaining agreement between the parties expired, increased the amount deducted from $3.50 to $11.55. The Examiner said that "the language which stated 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 contract language involved in Village of Brown Deer, unlike the case at bar, did not contain specific limiting language. In fact, the Examiner stated that:

> In contrast, if the contract language established a specific amount which the Employer would contribute, with the employes to pay the remainder, then the Employer's maximum cost liability under the contract would be established.

Clearly, the Village of Brown Deer is distinguishable from this case.

Finally, the Complainant argues that the Respondent's disposition of holidays during the hiatus is relevant to the determination of the issues involved herein. The apposite contractual language concerning holidays in the expired contract states:

> Eligible full-time employees will receive nine (9) full holidays with pay and two (2) half holidays with pay in 1978. Time thus paid will not be counted as hours worked for purposes of overtime. The normal holiday schedule is as follows:
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> | New Year's Day | Day after Thanksgiving |
> | Good Friday P.M. | Christmas Eve Day |
> | Memorial Day | Christmas Day |
> | Independence Day | December 31 P.M. |
> | Labor Day | Floating Day |
> | Thanksgiving Day | |
>
> In 1979, eligible full-time employes shall also receive an additional one-half (1/2) holiday, namely Good Friday A.M., for a total of ten (10) full holidays with pay

> and one (1) half holiday with pay. New employes are not eligible to take the floating holiday until after the satisfactory completion of their six (6) month probationary period.

The Union contends that the above language also contains a time frame, but the employes nevertheless received their holidays during the hiatus of the 1978-79 labor agreement.

The holiday clause is certainly distinguishable from the life insurance provision. The holiday clause contained a time frame obviously because the benefits thereunder changed during the contract term. There was no benefit change from 1978 to 1979 relative to life insurance. Of paramount significance, the language set forth at Article XI, Section (c) specifically limited the obligation of the Respondent to pay the employe's contribution towards life insurance only through December, 1979. No such limiting language appears in the holiday benefit provision. Consequently, the Complainant's reliance on the holiday language is misplaced.

Based on the aforesaid, the Examiner has dismissed the complaint.

Dated at Madison, Wisconsin this 30th day of January, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Examiner

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