

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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CITY OF WAUKESHA SEWER TREATMENT PLANT EMPLOYEES, LOCAL 97, AFSCME, AFL-CIO,	:	
	:	
Complainant,	:	Case LIII
	:	No. 31428 MP-1459
vs.	:	Decision No. 20585-B
	:	
CITY OF WAUKESHA,	:	
	:	
Respondent.	:	

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CITY OF WAUKESHA STREET AND PARKS DEPARTMENT EMPLOYEES, LOCAL 97, AFSCME, AFL-CIO	:	
	:	
Complainant,	:	Case LIV
	:	No. 31429 MP-1460
vs.	:	Decision No. 20586-B
	:	
CITY OF WAUKESHA,	:	
	:	
Respondent.	:	

Appearances:

Lawton & Cates, Attorneys at Law, by Mr. Richard V. Graylow, Esq., on behalf of Complainant, 110 East Main Street, Madison, WI 53703  
Michael, Best & Friedrich, Attorneys at Law, by Mr. Thomas P. Godar, Esq., on behalf of Respondent, 250 East Wisconsin Avenue, Milwaukee, WI 53202

FINDINGS OF FACT,  
CONCLUSION OF LAW AND ORDER

AMEDEO GRECO, Hearing Examiner: The City of Waukesha Sewerage Treatment Plant Employees, Local 97, AFSCME, AFL-CIO, and the City of Waukesha Street and Parks Department Employees, Local 97, AFSCME, AFL-CIO, herein the Union, filed separate prohibited practices complaints with the Wisconsin Employment Relations Commission on April 8, 1983, alleging that the City of Waukesha, herein the City, had committed prohibited practices within the meaning of Secs. 111.70(3)(a)1 and 4 of the Municipal Employment Relations Act, herein MERA, by refusing to bargain over the increased cost of health insurance coverage. The Commission originally appointed Stephen Schoenfeld to act as Examiner to make and issue Findings of Fact, Conclusion of Law and Order, as provided for in Sec. 111.07(5), Stats., and the undersigned was subsequently substituted as the Examiner. A hearing was held on the matter on March 12, 1984, at Waukesha, Wisconsin, and the parties thereafter filed briefs and reply briefs which were received by June 19, 1984.

Having considered the arguments and factual stipulation, the Examiner makes and files the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. The Union is a labor organization whose post office address is at 2216 Allen Lane, Waukesha, Wisconsin 53186. At all times material hereto, the Union has been the recognized exclusive collective bargaining representative of certain employees employed by the City in its sewerage plant and street and parks department.

2. The City is a municipal employer with its principal offices located at the City Hall, 201 Delafield, Waukesha, Wisconsin 53186.

3. The Union and the City were signatories to separate 1981-1982 bargaining agreements covering sewerage plant and street and park department employes which expired on December 31, 1982. Article XX of the sewerage plant contract and Article XVIII of the street department contract provided that the City would provide insurance by virtue of the following language which was contained in both contracts:

Health Insurance. The City will pay toward the cost of the group hospital, surgical, out-patient and diagnostic coverage under the plan provided by the City sums up to and including:

Single Plan -- \$ 48.12 per month  
Family Plan -- \$131.96 per month

In 1982, if the Blue Cross-Blue Shield premium increases above the stated amounts, the City and employee will each pay one-half (1/2) of such increased premium. If the employee's contribution increases by more than five dollars (\$5.00) per month, the parties agree to meet upon request to consider alternate coverage or carriers. The City has right to change carriers or self-insure providing coverage is equal to or better than the coverage now in effect.

. . .

4. During the term of these contracts, the City explored ways of keeping down its rising health care costs. On February 2, 1982, the City advised all City employes that its existing insurance carrier, Blue Cross-Blue Shield, planned to increase its insurance rates by 29 percent and that in order to avoid that increase the City was converting to a self-insurance plan to be administered by Wisconsin Life Company (whose name was later changed to Central Life) and that the monthly rates effective as of March 1, 1982, would be:

<u>Category</u>	<u>Self-funded Rate</u>	<u>Shared Costs</u>
single	\$ 55.61	\$ 3.84
family	\$153.07	\$10.56

The City then also stated that all health benefits levels under its self-funded plan would be identical to the prior Blue Cross-Blue Shield coverage. The Union at that time voiced no objection to any of these changes.

5. Although called a self-insurance program, the City's new health insurance plan was a hybrid stop-loss plan whereby the City agreed to cover its own health insurance costs up to a certain set figure, after which they were paid for by the insurance carrier. In addition, the City paid an administrative fee for the administration of its plan. As a result, the City did not have complete control over what the plan would cost once it was implemented. This is why Wisconsin Life Company advised the City by letter dated November 24, 1982:

City of Waukesha  
Waukesha City Hall  
201 Delafield Avenue  
Waukesha, WI 53186

Re: Group Insurance Account G-707

Gentlemen:

Enclosed are the expected premium rates effective for the twelve month period beginning January 1, 1983. They represent a 26.7% increase over the current funded premium level, or an increase of 1.5% over the expected premium rates shown in your contract.

We have also indicated deferred funding premium rates which can be paid during the upcoming policy year, subject to interest of 7.5% of such deferral. If deferred funding is desired, there are two interest options available. Examples of the results of these options is (sic) enclosed.

The individual pooling limit, or Specific Stop-Loss for the upcoming policy year will be \$20,000 per individual, for a charge against the year-end results of 6.5% of the expected premium limit. The Aggregate Stop-Loss Attachment Point will be 120% of the expected premium limit. The Cost Factor which was used to calculate your new premium rates is 7.5% of expected incurred claims. This charge covers all administrative expense, including the charge for Aggregate Stop-Loss protection. The Cost Factor was previously expressed as a percentage of paid claims. This change is due to a change in internal procedures, and should not adversely affect the actual expense dollars charged to your policy.

Please sign and return the enclosed acknowledgement of our renewal action. We will forward new policy pages as soon as possible, and will complete your year-end accounting within a few weeks after the completion of your policy year. Thank you for continuing to allow Central Life to serve your insurance needs.

Sincerely,

Cheryl C. Searls  
Manager, Group Underwriting

cc: E. Thomas Powers

6. The City a short time later informally advised the Union that its health insurance costs had increased and that employes henceforth would have to increase the amount of money they contributed towards health insurance coverage. By letter dated January 19, 1983, City Personnel Director Thomas H. Wisniewski advised the Union's Business Representative Richard Abelson:

Dear Mr. Abelson:

This letter will act as a confirming memo following a recent telephone conversation with the City's Chief Negotiator, Mr. Marshall Berkoff, relative to health insurance.

You were advised that without a labor agreement for the year 1983 the City would continue to pay it's (sic) share of the monthly health insurance cost paid by the City in December 1982:

Single \$ 51.96  
Family \$142.52

The new cost for health insurance effective 1/1/83 is:

Single \$ 66.73  
Family \$183.06

This means that because of the increase health insurance cost Local 97 members will be contributing the following monthly amounts for their respective policies:

Single \$14.77  
Family \$40.54

. . .

The City, on or about January 1, 1983, therefore deducted from employe pay checks their share of these increased rates, per Wisniewski's letter. Thus, whereas employes previously paid \$10.55 and \$3.65 per month for family and single coverage respectively, they henceforth were required to pay \$40.54 and \$14.77 for that same coverage.

7. The City during the contractual hiatuses following the expiration of the 1977-1978 and 1979-1980 contracts for both bargaining units herein also passed along to its employes the increased costs of their health insurance premiums with no objection from the Union. The 1977-1978 and 1979-1980 contracts covering the employes herein contained identical language regarding health insurance which provided in pertinent part:

Health Insurance: The City will pay toward the cost of the group hospital, surgical, out-patient and diagnostic coverage under the plan now provided by the City sums up to and including:

Single Plan -- \$ 42.01  
Family Plan -- 114.95

In 1978, if the Blue Cross-Blue Shield premium increases above the stated amounts, the City and employee will each pay one-half (1/2) of such increased premium. If the employee's contribution increases by more than five dollars (\$5.00) per month, the parties agree to meet upon request to consider alternate coverage or carriers.

. . .

The 1979-1980 contracts covering the employes herein contained identical language regarding health insurance which provided in pertinent part:

Health Insurance: The City will pay toward the cost of the group hospital, surgical, out-patient and diagnostic coverage under the plan provided by the City sums up to and including:

Single Plan -- \$ 48.12  
Family Plan -- 128.35

In 1980, if the Blue Cross-Blue Shield premium increases above the stated amounts, the City and employee will each pay one-half (1/2) of such increased premium. If the employee's contribution increases by more than five dollars (\$5.00) per month, the parties agree to meet upon request to consider alternate coverage or carriers.

. . .

8. During the latter part of 1982 and the beginning of 1983, the parties were engaged in negotiations over the terms of successor contracts for both bargaining units which included the question of health insurance costs. The Union in January and March 1983 filed petitions for mediation-arbitration with the Commission and a Commission staff member conducted informal investigations of the matters, and the parties subsequently agreed to a successor contract which provided that the City would pay the full health insurance premium costs. Pursuant to that agreement, the City reimbursed its employes for the premium costs they had paid after the expiration of the 1981-1982 contract.

Based upon the foregoing Findings of Fact, the Examiner issues the following

CONCLUSION OF LAW

The City did not violate Secs. 111.70(3)(a)1 or 4 of MERA when it passed along to its employes the increased cost of their health insurance during the contractual hiatus herein.

Upon the basis of the foregoing Findings of Fact and Conclusion of Law, the Examiner issues the following

ORDER 1/

It is hereby ordered that the complaint filed herein be, and it hereby is, dismissed in its entirety.

Dated at Madison, Wisconsin this 11th day of September, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Amedeo Greco /s/  
Amedeo Greco, Examiner

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1/ Any party may file a petition for review with the Commission by following the procedures set forth in Sec. 111.07(5), Stats.

Section 111.07(5), Stats.

(5) The commission may authorize a commissioner or examiner to make findings and orders. Any party in interest who is dissatisfied with the findings or order of a commissioner or examiner may file a written petition with the commission as a body to review the findings or order. If no petition is filed within 20 days from the date that a copy of the findings or order of the commissioner or examiner was mailed to the last known address of the parties in interest, such findings or order shall be considered the findings or order of the commission as a body unless set aside, reversed or modified by such commissioner or examiner within such time. If the findings or order are set aside by the commissioner or examiner the status shall be the same as prior to the findings or order set aside. If the findings or order are reversed or modified by the commissioner or examiner the time for filing petition with the commission shall run from the time that notice of such reversal or modification is mailed to the last known address of the parties in interest. Within 45 days after the filing of such petition with the commission, the commission shall either affirm, reverse, set aside or modify such findings or order, in whole or in part, or direct the taking of additional testimony. Such action shall be based on a review of the evidence submitted. If the commission is satisfied that a party in interest has been prejudiced because of exceptional delay in the receipt of a copy of any findings or order it may extend the time another 20 days for filing a petition with the commission.

MEMORANDUM ACCOMPANYING  
FINDINGS OF FACT,  
CONCLUSION OF LAW AND ORDER

The Union charges that the City acted unlawfully when it passed along to its employes the increased cost of their health insurance premiums during the contractual hiatus because that increase violated the Commission's status quo doctrine. The Union also claims that the City acted unlawfully because it implemented part of its final offer prior to impasse being reached. 2/ Disagreeing, the City maintains that it complied with the status quo doctrine because it adhered to the terms of the expired contracts. The City also contends that a past practice supports its position because the Union in the past did not object when it twice passed along such increases to its employes during two other contractual hiatuses.

The status quo doctrine, which both parties agree governs the instant dispute, generally requires an employer to adhere to the terms of an expired contract during the hiatus period before a successor agreement is reached. The Commission expressed this view in Menasha Joint School District 3/ by stating that the status quo doctrine centers on the

"concept that the absence of change in wages, hours and working conditions is the best and most neutral atmosphere in which the realities of the collective bargaining process may take their course after a contract has expired. The maintenance of the status quo during the contract hiatus is not dependent upon the continuation of a contractual obligation in a pre-existing contract, but in the continuation of the wages, hours, and conditions of employment which existed at the time when said agreement was in effect."

Here, the pertinent contractual provisions provided that the City in 1981 would pay "up to and including" \$131.96 per month and \$48.12 per month for family and single health insurance respectively and that the City in 1982 would pay for half of any increases over those amounts. Thereafter, when the City converted to its own self-funded stop loss insurance program in 1982, the City and employes equally paid half of the increased insurance premiums when they rose to \$153.07 and \$55.61 for family and single coverage respectively.

By forcing employes to pick up the increased cost of their insurance coverage after the contracts' termination, the City thereby changed the amount that its employes had previously paid under the 1981-1982 contracts. The contracts on their face, however, fail to address this question because the pertinent language only refers to 1981 and 1982 and it does not discuss what is to happen upon the contracts' termination. Thus, whereas the contracts place a strict cap on the City's insurance contributions for 1981, they go on to provide that the City and employes will equally share the costs of any premium increases in 1982. It therefore can be argued that the City: (1) was free to pass along to employes the increased costs of their 1983 insurance because those costs exceeded the dollar cap agreed to by the parties for 1981 and the shared cost proviso for 1982; or (2) was not free to do so because the City had to pay at least half of those increased costs under the language covering 1982 or that it at least had to bargain over the matter before it increased employe contributions. Given this inherent ambiguity, it is necessary to consider parol evidence in order to understand what this disputed language means.

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2/ Although the Union at the hearing tried to prove that the increased health insurance costs were unnecessary and that it was possible to retain the health insurance coverage herein at a lower cost, the record establishes that the increases in fact were justified and that the City throughout this matter has acted in good faith.

3/ Menasha Joint School District, Dec. No. 16589-B (WERC, 9/81).

Here, the record shows that the 1977-1978 and 1979-1980 contracts contained language which was nearly identical to that herein and that the City during those two contractual hiatuses unilaterally passed on to its employes the increased cost of their health insurance coverage. Since the Union knew or should have known of those unilateral increases and acquiesced to them, a past practice has arisen to that effect. Accordingly, the City was entitled at the expiration of the 1981-1982 contracts to again pass along its increased health insurance costs to its employes, as the parties have tacitly agreed that that constituted one of the wages, hours, and terms and conditions of employment governing the employer-employee relationship until a successor agreement was reached. That being so, it must be concluded that the City's actions were consistent with the status quo doctrine.

The Union also alleges that the City acted improperly because it unilaterally imposed part of its final offer. There is no merit to this claim because the City in fact only complied with a past practice on this subject. The Union's reliance on a number of Cases -- Green County, Dec. No. 20308-A (L. Crowley, 8/83), Northwest United Educators v. Winter Joint School District, Dec. No. 14482-C (WERC, 4/77), and Office and Professional Employees, Local 95 v. Mid-State Vocational, Technical and Adult Education District, Dec. No. 14958-C (WERC, 5/77) -- are all inapposite because, unlike here, they did not involve changes which were predicated upon past practice. 4/

In light of the foregoing, which shows that the City adhered to a past practice and the status quo doctrine when it passed along the increase health insurance costs to its employes, the complaints herein are dismissed in their entirety.

Dated at Madison, Wisconsin this 11th day of September, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Amedeo Greco /s/  
Amedeo Greco, Examiner

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4/ The Union also relies upon City School District of the City of Corning and Corning Teachers Association, NYSUT, AFT, AFL-CIO, Local 2589, Case No. U-6172 which involved an employer's unilateral change to a self-funded insurance plan. That case, too, is not on point since the Union here has agreed to contractual language which expressly gave the City the right to convert to its self-funded plan.