STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

WISCONSIN STATE EMPLOYEES UNION (WSEU), AFSCME, (American Federation of State, County and Municipal Employees), Council 24, AFL-CIO,	:	
Complainant,	:	Case CLXXXIX No. 31561 PP(S)-96
vs.	:	Decision No. 20711-B
STATE OF WISCONSIN, DORIS HANSON, LINDA REIVITZ, ERIC STANCHFIELD, and HOWARD KOOP, Individually and as State Employees,	:	
Respondents.	:	

Appearances:

Lawton & Cates, Attorneys at Law, 110 East Main Street, Madison, Wisconsin 53703, by Mr. Richard V. Graylow, appearing on behalf of Complainant.

Mr. Edward Corcoran and Mr. Sanford Cogas, Attorneys, Department of Employment Relations, 149 East Wilson Street, Madison, Wisconsin 53707, appearing on behalf of Respondents.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

Wisconsin State Employees Union, AFSCME, Council 24, AFL-CIO having, on May 9, 1983, filed a complaint with the Wisconsin Employment Relations Commission alleging that the State of Wisconsin, Doris Hanson, Linda Reivitz, Eric Stanchfield, and Howard Koop had committed unfair labor practices within the meaning of Sec. 111.80, Wis. Stats.; and the Commission having appointed Christopher Honeyman, a member of its staff, to act as Examiner in this matter and to make and issue Findings of Fact, Conclusions of Law and Order, as provided in Sec. 111.07(5), Wis. Stats.; and hearing having been held on July 19, 1983 at Madison, Wisconsin; and briefs having been filed by both parties, and the record having been closed on January 10, 1984; the Examiner, having considered the evidence and arguments and being fully advised in the premises, makes and files the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. Wisconsin State Employees Union, AFSCME, Council 24, AFL-CIO, herein Complainant, is a labor organization within the meaning of Sec. 111.81(9), Wis. Stats., and has its offices at 5 Odana Court, Madison, Wisconsin 53719. Its president at all material times was Martin Beil.

2. The State of Wisconsin is an employer within the meaning of Sec. 111.81(16), Wis. Stats., and its principal address concerned in this matter is the Department of Employment Relations, 149 East Wilson Street, Madison, Wisconsin 53707. Doris Hanson is Secretary of the State Department of Administration; Linda Reivitz is Secretary of the Department of Health and Social Services; Eric Stanchfield is Deputy Secretary of the State Department of Employment Relations; and Howard Koop is Executive Assistant to the Attorney General.

3. Complainant is the exclusive bargaining representative for approximately 26,000 state employes in various bargaining units, and was engaged in collective bargaining over the terms to be included in 1983-85 collective bargaining agreements for said units with the State of Wisconsin from January, 1983 through all material times.

4. The State of Wisconsin, pursuant to statute, maintains a Group Insurance Board, which has trust administrative responsibilitites for state employes' insurance plans, including both employes represented by labor organizations and other employes. The members of the Group Insurance Board at all material times were Howard Koop, Sandra Bloomfield, Anthony Dufek, Thomas Fox, Donald Gonring, Doris Hanson, Linda Reivitz, Eric Stanchfield, and E. Keith Swanson. Thomas Korpady is Director of Health and Disability Benefits for the State's Department of Employe Trust Funds and is principal staff officer to the Group Insurance Board.

5. On April 28, 1983, the Group Insurance Board met and discussed, among other matters, the issuance of a contract with an insurer to cover administrative services only for State employes' standard health insurance plan. Sandra Bloomfield, the Complainant Union's representative on the Group Insurance Board, and its president, Martin Beil, spoke in opposition to any action being taken on the administrative services only (herein ASO) contract while bargaining with Complainant Union was in progress. The Group Insurance Board then voted by a vote of 8-1 to approve certain guidelines for a request for proposals for the ASO contract and instructed its staff to circulate the request to prospective bidders. The sole dissenting vote on the Board was cast by Bloomfield.

6. At the time of the Group Insurance Board's April 28, 1983 vote, proposals regarding health insurance had been made during the collective bargaining process by both Complainant Union and the State, but neither party's proposals had been discussed in detail and the parties were not at impasse.

7. By its vote of April 28, 1983, the Group Insurance Board did not commit the Employer to any particular insurance contract or level of benefits, nor did it preclude the Employer from adopting any particular insurance contract or level of benefits, and therefore the Employer did not take any final action by, or as a direct result of, said vote.

8. By the Group Insurance Board vote of April 28, 1983 the Employer did not interfere with, restrain or coerce State employes in the exercise of their right to bargain collectively, did not discriminate against employes because of their Union activity and did not refuse to bargain collectively with Complainant Union.

Upon the basis of the foregoing Findings of Fact, the Examiner makes and files the following

CONCLUSION OF LAW

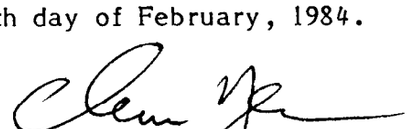
That Respondents, by the actions specified above in Findings of Fact Nos. 5 through 8, have not committed and are not committing unfair labor practices within the meaning of Secs. 111.84(1)a, c and d, Wis. Stats.

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

ORDER

That the complaint filed in this matter be, and the same hereby is, dismissed. 1/

Dated at Madison, Wisconsin this 29th day of February, 1984.

By 
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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

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1/ (Continued)

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, CONCLUSIONS OF LAW AND ORDER

The complaint alleges that the State, by the Group Insurance Board vote of April 28, 1983, unilaterally altered State insurance plans applicable to employes represented by Complainant Union, that by "setting the stage" for such changes the vote restrained and coerced employes, and that employes represented by Complainant were also discriminated against by the vote. The complaint alleges that the individual named Respondents have liability for this action as "persons" pursuant to Sec. 111.84(3), Wis. Stats.

There is no dispute as to the facts. The Group Insurance Board is established by statute to manage and control the State's insurance dealings on behalf of both represented and non-represented employes, and its terms provide for one Union representative on the Board. On April 28, 1983 the Board considered a set of guidelines for self-insurance of the standard state health plan 2/, in particular guidelines for the awarding of a contract for insurance administrative services such as the payment of claims. The Employer and Union were then engaged in collective bargaining for new contracts and it is undisputed that the parties were in the initial stages of bargaining concerning health insurance. At the April 28 meeting, the Union's Insurance Board representative, Sandra Bloomfield, and the Union's President both objected to consideration of or voting on such guidelines, contending that these were matters properly reserved to collective bargaining in the first instance. The Board then voted to approve the guidelines for issuance to prospective insurance bidders as a "request for proposals." Bloomfield's was the only vote against this proposal.

Thomas Korpady, the Board's principal staff officer, testified that the guidelines, as written, applied to represented and non-represented employe groups alike, and that the reason for their passage at that time was that a substantial amount of "lead time" was required for any possible insurance change.

The Complainant argues that the approval of the guidelines constituted a unilateral decision on a matter primarily relating to wages, hours and conditions of employment, and that the action therefore amounted to bad-faith bargaining by undercutting its right to represent exclusively some 26,000 employes. The Complainant argues further that the action discriminated against employes because it was taken immediately after Union representatives had objected to the proposed action. Complainant further argues that the vote interfered with, restrained or coerced represented employes in their efforts to bargain collectively. The Respondents denied these allegations, and further deny that the individual named Respondents may be properly charged as individuals under Sec. 111.84.

It is immediately apparent that no greater interference, restraint or coercion is necessarily involved in the taking of a vote which went against the desires of Union representatives in this instance than in any other of numerous instances when agents of the Employer fail to accede to Union demands. The alleged violation of Sec. 111.84(1)a can therefore have merit only as and if deriving from a violation of the duty to bargain, and not as an independent act of interference, restraint or coercion. Complainant also fails to demonstrate any basis for its claim that represented employes were discriminated against by the Insurance Board's vote; indeed, the salient fact is that the Board's vote applied precisely equally to represented and to non-represented employes.

The central question, however, is whether the Board's action of April 28 constituted a unilateral action on a matter primarily related to wages, hours and conditions of employment. 3/ The Commission has previously stated that, under the circumstances involved in the particular case then at hand, the choice of an

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2/ Other actions relating to the adoption of alternative health plans in the same biennial period are not complained of, though they took place on the same day.

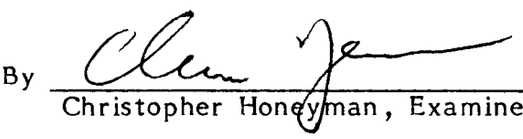
3/ See Beloit Education Association v. WERC, 73 Wis 2d 43 (1976).

insurance carrier was not a mandatory subject of bargaining, as distinct from the level of benefits provided for. 4/ It is unnecessary, however, to determine whether that reasoning would hold under the facts of this case, where the Employer proposed to self-insure its basic health insurance policy and to provide for an outside contract governing administrative services only. No actions of the Group Insurance Board or of other agents of the Employer occurring after April 28, 1983 are included within the ambit of this complaint; and I do not find, on these facts, that the State has taken any but the most preliminary of actions. In order for an action affecting wages, hours and working conditions to be considered "unilateral" it must first of all be an action, and not mere preparation. Were an employer to fail to prepare for the possible adoption of its bargaining position in whole or in part, the union might justifiably expect that position not to be taken seriously. Equally, only by developing the information crucial to an understanding of the possible success of an idea in practice can the employer satisfy itself as to whether its proposal is in fact well grounded. It is apparent from the record that the distribution of a "request for proposals" containing certain guidelines as to the ASO contract did not commit the State to acceptance of any of those proposals, and was the essential prerequisite to any serious bargaining concerning such proposals. Indeed, if the Employer failed to ask for such proposals but then addressed the matter vigorously at the bargaining table, it might face a charge from the Union of stalling in negotiations if it then insisted on the necessary delay while those proposals were obtained. The complaint of unilateral action can therefore have merit here only if the adoption of the guidelines so clearly committed the Employer to adoption of one or more of the proposals that all options that might have been bargained for by the Unions were plainly excluded.

Such a theory can, in certain cases, have merit, as it is not inconceivable that a party to negotiations might deliberately "paint itself into a corner" in order to secure a given outcome without genuine collective bargaining. But the facts of this case rise nowhere near that level. Not only did the Group Insurance Board have perfect freedom at any time to take action respecting the insurance coverage and administrative services with respect to non-represented employes, but there is nothing in the record to indicate that the approval of guidelines for the ASO contract was tantamount to a signature on one such contract, or that the course and conduct of collective bargaining could not have produced two or more entirely separate arrangements applicable to represented employes. 5/ I conclude, accordingly, that the State has not taken any action which could affect wages, hours or working conditions of represented employes without first bargaining with Complainant. In view of this result, it is unnecessary to address the question of whether the individual Respondents are appropriately charged personally with violation personally under the terms of SELRA.

Dated at Madison, Wisconsin this 29th day of February, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
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4/ Walworth County, 17433 (11/79).

5/ As in certain cases a unilateral act may so undermine the other party's position that only a restoration of the status quo can serve as a prelude to genuine collective bargaining, I place no reliance on the fact that since the hearing contracts have been agreed on and executed between the Employer and the Complainant Union. See City of Green Bay, 18731-B, (6/83).