STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of MADISON METROPOLITAN SCHOOL DISTRICT Requesting a Declaratory Ruling Pursuant to Section 111.70(4)(b), Wis. Stats., Involving a Dispute Between Said Petitioner and MADISON TEACHERS INCORPORATED	Case CXXVI No. 29960 DR(M)-226 Decision No. 22129
In the Matter of the Petition of MADISON METROPOLITAN SCHOOL DISTRICT Requesting a Declaratory Ruling Pursuant to Section 111.70(4)(b), Wis. Stats., Involving a Dispute Between Said Petitioner and MADISON TEACHERS INCORPORATED	Case CXXX No. 30344 DR(M)-244 Decision No. 22130

Appearances:

Davis, Kuelthau, Vergeront, Stover, Werner & Goodland, S.C., Attorneys at Law, by Mr. Mark F. Vetter, Suites 901 and 1800, First Savings Plaza, 250 East Wisconsin Avenue, Milwaukee, Wisconsin 53202-4285, and Ms. Susan Hawley, Labor Contract Manager, Madison Metropolitan School District, 545 West Dayton Street, Madison, Wisconsin 53703, appearing on behalf of the Madison Metropolitan School District.

Kelly, Haus & Katz, Attorneys at Law, Lake Terrace, 121 East Wilson Street, Madison, Wisconsin 53703-3213, by Mr. Robert C. Kelly, appearing on behalf of Madison Teachers Incorporated.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECLARATORY RULING

On April 26, 1982, Madison Metropolitan School District filed a petition (Case CXXVI) for a declaratory ruling with the Wisconsin Employment Relations Commission pursuant to Sec. 111.70(4)(b), Stats., wherein it sought a determination as to whether certain proposals made by Madison Teachers Incorporated (MTI) during negotiations on behalf of school aides were mandatory subjects of bargaining. Hearing in the matter was conducted on August 18th, 19th, 20th and 26th, 1982, at Madison, Wisconsin, before Dennis P. McGilligan, Examiner. On September 3, 1982, the District filed a second petition (Case CXXX) for a declaratory ruling with the Commission pursuant to Sec. 111.70(4)(b), Stats., wherein it sought a determination as to whether certain proposals made by MTI during negotiations on behalf of certain clerical and technical employes were mandatory subjects of bargaining. The parties thereafter agreed that the evidence and arguments in the school aides petition (Case CXXVI) would be the evidence and argument utilized by the Commission in the second petition (Case CXXX). The parties also successfully resolved the status of all but two of the proposals in dispute. The parties thereafter filed briefs the last of which was received on March 17, 1983 and supplemental citation updates the last of which was received on February 1, 1984. The Commission, having considered the entire record and being fully advised in the premises, makes and issues the following Findings of Fact, Conclusions of Law and Declaratory Ruling.

FINDINGS OF FACT

1. That the Madison Metropolitan School District, hereinafter referred to as the District, is a municipal employer having its principal offices at 545 West Dayton Street, Madison, Wisconsin 53703.

2. That Madison Teachers Incorporated, hereinafter referred to as MTI, is a labor organization having its principal offices at 821 Williamson Street, Madison, Wisconsin 53703 and functioning as the exclusive collective bargaining representative of, among others, two bargaining units which consist of certain individuals employed by the District as aides and as clerical and technical employes, respectively.

3. That during bargaining between the parties over the terms of a successor collective bargaining agreement covering the wages, hours and conditions of employment of the aides represented by MTI, there arose and remains a dispute between the parties as to the District's duty to bargain over the following proposal:

. . .

C. Section VII, Paragraph B - Health Insurance.

1. Coverage shall be optional and shall be the Dane County Health Maintenance Program (HMP) or conventional insurance coverage, which is currently in effect for those electing such coverage other than HMP.

. . .

5. Effective January 1, 1979 school aides shall be included in WPS Group 1202.

4. That during bargaining between the parties over the terms of a successor collective bargaining agreement covering the wages, hours and conditions of employment of the clerical and technical employes represented by MTI, there arose and remains a dispute between the parties as to the District's duty to bargain over the following proposal:

1. The Wisconsin Physicians Service, Dane County Health Maintenance Program (HMP) or the conventional program under WPS Policy Group #1202 is available to the eligible employees.

. . .

3. The coverage and benefits shall be established by the parties to this agreement.

5. That the proposals set forth in Findings of Fact 3 and 4 primarily relate to wages, hours and conditions of employment.

Based upon the above and foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSIONS OF LAW

That the proposals set forth in Findings of Fact 3 and 4 are mandatory subjects of bargaining within the meaning of Sec. 111.70(1)(a), Stats. 1/

1/ Sec. 111.70(1)(d), Stats., was renumbered 111.70(1)(a), by Ch. 189, Laws of 1983.

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

DECLARATORY RULING 2/

That the District and MTI have a duty to bargain within the meaning of Sec. 111.70(3)(a)4 Stats., with respect to the proposals set forth in Findings of Fact 3 and 4.

Given under our hands and seal at the City of Madison, Wisconsin this 21st day of November, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Herman Torosian, Chairman

_____
Marshall L. Gratz, Commissioner

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Danae Davis Gordon, Commissioner

2/ Pursuant to Sec. 227.11(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.12(1) and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.16(1)(a), Stats.

227.12 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

227.16 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.15 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.12, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.11. If a rehearing is requested under s. 227.12, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the

(Footnote 2 continued on Page 4)

(Footnote 2 continued)

decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.20 upon which petitioner contends that the decision should be reversed or modified.

. . .

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

MADISON METROPOLITAN SCHOOL DISTRICT

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

Before entering into a specific consideration of each proposal, it is useful to set forth the general legal framework within which the issues herein must be resolved. Section 111.70(1)(a), Stats., defines collective bargaining as ". . . the performance of the mutual obligation of a municipal employer, through its officers and agents, and the representatives of its employees, to meet and confer at reasonable times, in good faith, with respect to wages, hours and conditions of employment with the intention of reaching an agreement, . . . the employer shall not be required to bargain on subjects reserved to management and direction of the governmental unit except insofar as the manner of exercise of such functions affects the wages, hours and conditions of employment of the employees . . .." (emphasis added)

When interpreting Sec. 111.70(1)(a), Stats., the Wisconsin Supreme Court has concluded that collective bargaining is required with regard to matters "primarily" related to wages, hours or conditions of employment. The Court also concluded that the statute required bargaining as to the impact of the "establishment of educational policy" affecting the "wages, hours and conditions of employment." The Court found that bargaining is not required with regard to matters primarily related to "educational policy and school management and operation" or to the "management and direction of the school system." Beloit Education Association v. WERC, 73 Wis.2d 43 (1976), Unified School District No. 1 of Racine County v. WERC, 81 Wis.2d 89 (1977) and City of Brookfield v. WERC, 87 Wis.2d 819 (1979).

It should be emphasized that a conclusion that a proposal is mandatory does not reflect approval of the merits of the proposal and that a conclusion that a proposal is permissive does not preclude a mutual agreement by the parties to bargain about the subject involved.

POSITIONS OF THE PARTIES:

The District

The District asserts that the insurance proposals proffered by MTI are permissive subjects of bargaining because the name of a specific insurance carrier or of a specific insurance program has no impact upon wages, hours and conditions of employment. The District contends that while the insurance benefits which are to be provided to employes are mandatory subjects of bargaining, the name of the insurance carrier utilized as the source of the mandatorily bargainable benefits is irrelevant to wages, hours and conditions of employment and thus is a permissive subject of bargaining. The District alleges that the theoretical possibility that a change in carrier could yield a change in benefits does not make the identification of a carrier a mandatory subject of bargaining. The District argues that MTI's remedies in those circumstances would be to litigate such a dispute either in the grievance arbitration or prohibited practice forum.

To demonstrate that the name of the insurance carrier specified herein by MTI is a mandatory subject of bargaining, the District contends that the record must show that the District could never find another source to utilize when providing the mandatorily bargainable benefits and that a change in the source of benefits would automatically yield a change in the benefits themselves. The District contends that this is an impossible burden to meet given the ever changing insurance industry. The District further notes that under the foregoing analytical framework, the present status of the insurance industry would be irrelevant to a determination as to mandatory or permissive status because, if the District were ever to seek to change the source of benefits at some future time, a source might then be available which was not available at the time of the instant hearing. The District also asserts that the mandatory or permissive status of the source of benefits should not fluctuate from year to year depending upon the evidence presented as to the current state of the insurance industry. The District therefore contends that MTI has not met and indeed cannot meet the requirement that the Commission established in Walworth County Handicapped

Children's Education Board, Dec. No. 17433 (WERC, 11/79) wherein it was held that to be a mandatory subject of bargaining, the name of an insurance carrier must be shown by specific evidence to relate to benefits.

The District further argues that the selection of a particular source of benefits is a matter directly related to the District's statutory responsibility to "manage" its affairs. The District argues that once it has satisfied its obligation to negotiate a particular level of benefits with its employes, it must then assume the responsibility and obligation to provide those benefits in the most economic manner. To accomplish that goal, the District asserts that it must have the unfettered right to shop the insurance marketplace to secure the necessary coverage. The District contends that its ability to manage in this area would be severely restricted if it had to negotiate the identity of the insurance program and carrier as proposed by MTI. The District further argues that it has the responsibility to provide for the welfare of the public pursuant to Sec. 111.70(1)(a), Stats. It alleges that one of the primary means through which it can provide for said welfare is to control the District's tax levy. Generally speaking, the District argues that there is no issue of greater concern to the public than the issue of taxes. Thus, the District argues that if it can achieve a lower tax rate by shopping the insurance marketplace and acquiring coverage from a different insurance carrier at a lower premium rate, it must have the right to enter into such a contract. Given the impact which the choice of carrier has upon the management of the District and given the absence of impact upon employe wages, hours and conditions of employment, the District contends that the proposals before the Commission must be found to be permissive subjects of bargaining. The District maintains that such a conclusion would provide the employes with the right to negotiate benefits while at the same time protecting the District's right to provide those benefits in the most economical manner possible. The District asserts that its position is in conformance with that adopted by the Commission in Walworth, supra, and by the Court in Connecticut Light and Power Company v. NLRB, 476 F.2d 1079, (CA-2 1973).

In response to arguments made by MTI, the District asserts that even MTI has acknowledged that there may be cases where the District could select a different insurance carrier or administrator without affecting the employes' benefit levels. Given this admission and the burden upon MTI to demonstrate that the District could not change carriers or administrators at this time or at any time in the future without affecting benefits, the District contends that it cannot be concluded that the MTI's proposals are mandatory subject of bargaining. The District also asserts that if a carrier is capable of providing the same benefits but fails to do so, that failure is irrelevant to the mandatory or permissive status of the proposals herein because employes have recourse to grievance arbitration or prohibited practice forums to seek redress from the employer should the carrier not provide the contractually specified benefits.

The District admits that each master insurance policy is unique to the carrier that develops it and to the administrator that administers said policy. However, the District contends that because it is the employer that contracts for benefits with the carrier and administrator, and because the carrier and administrator are obligated to provide the coverage and administration specified by the contract with the employer, the carrier or administrator can be required to alter or adapt standard policies or procedures to conform to the terms of the collective bargaining agreement. Thus, the District argues that it does not necessarily follow that a change in carrier will automatically impact on coverage or benefits as claimed by MTI. For MTI to show that the unique character of a carrier or administrator impacts upon employe wages, hours and conditions of employment, the District asserts that MTI must be able to compare specific carriers and administrators and identify ascertainable differences between programs. The District contends that this process cannot be accomplished in the instant case since the District is not presently contemplating a change in carrier or administrator. In the absence of a contemplated change in carrier or administrator and in the absence of any relevant specific comparisons of carriers and administrators, the District asserts that it must be concluded that the so called uniqueness of the carrier and administrator does not per se impact on the employes' wages, hours and conditions of employment as contended by MTI.

MTI

MTI asserts that the level and structure of benefits are contractually established and defined by a written insurance policy. Since the carrier interprets and applies that policy and thereby determines the nature and extent of benefits, MTI asserts that there is an inherent tie between the identity of the insurance carrier and the level and structure of benefits received by the employes. In this regard MTI cites the decision by the Iowa PERB in Sioux City Community School District, Case No. 1600 (1980). MTI further contends that even if it is assumed that the Commission's decisions in School District of Menomonie, Dec. No. 16724-B (WERC, 1/81) and Joint School District No. 1, City of Green Bay, Dec. No. 16753-B (WERC, 6/81) were aberrations and that Walworth reflects the current status of the law in Wisconsin, the rule of that case should be changed.

MTI asserts that it has proven herein how carriers supplying at least 70% of the health insurance coverage in Wisconsin function. MTI contends the record demonstrates that no two administrators of insurance policies interpret or apply identical language in the same manner. Thus, MTI argues that a change in carrier necessarily results in a change in benefits. Therefore, MTI asserts that the appropriate case law rule should be that the identity of the insurance carrier is a mandatory subject of bargaining, due to the above-noted impact upon employe benefits, except where it can be shown by specific evidence that a change to another carrier can be made which will have no effect upon benefit levels.

MTI argues that the identity of an insurance carrier has no educational policy implications and does not significantly impact upon the management and direction of the school district. MTI asserts that the District's interest lies only in the cost of the benefits, i.e. the expense involved in obtaining the benefits, and not in the nature and extent of the benefits themselves. MTI asserts that the employer has far less interest in the identity of the carrier, once the level of premiums has been established, than does the employe. MTI contends that it is the bargaining unit employes who must rely upon the integrity, reputation and good faith of the carrier for accurate and proper claim payment. MTI argues that municipal employers have no corner on the market as concerns knowing what is, or what is not, best for the involved unit employes. MTI asserts that where an employer seeks to duplicate benefits for a lesser premium cost, less money is available for the payment of claims. Where less money is available for the payment of claims, MTI alleges that there inevitably are less benefits provided for the employes if the level of claims remains constant.

MTI contends that grievance arbitration does not provide a viable method for resolving disputes concerning coverage or benefit levels. It argues that in order to prevail in these cases, a grievant must show what the administrative determinations of the previous carrier would have been. Given the competitive nature of the insurance industry, MTI asserts that this is an impossible task. Thus, while, in its view, a change in carriers virtually without exception will yield a change in benefits, MTI asserts that employes will not be able to demonstrate that change and have effective redress therefore.

MTI asserts that the existing WPS insurance policy is unique in the state of Wisconsin and thus cannot be fully duplicated by any other insurance carrier. As a result, MTI asserts that proposals, such as those in dispute herein, which identify WPS as the carrier should be found to be a mandatory subject of bargaining. MTI asserts that employes should not be deprived of the opportunity to bargain over carrier with the concomitant impact upon benefits based upon a mere assertion by the District that someone may promise in the future to duplicate existing benefits and administration.

In summary, MTI contends that it has shown by specific proof that there are substantial differences between each and every one of the twelve benefit providers referred to in the record. MTI argues that if these differences exist as to providers doing in excess of 70% of the available business in the state of Wisconsin, it stands to reason that it is the situation in the industry as a whole. MTI asserts that if the parties here were seeking to select a benefit provider from this group at the bargaining table, the identity of the carrier would be a mandatory subject of bargaining under these circumstances. MTI argues that since it has shown that each and every one of the benefit providers in this

state create, interpret, apply and administer their own benefit programs in ways which impact upon employe wages, hours and conditions of employment, the record establishes that the identity of the benefit provider is a matter which will virtually always impact upon employe wages, hours and conditions of employment. MTI asserts that this fact of life should now be recognized and the law should be made to conform to this proof.

In any event, MTI argues that its references to benefit plans define benefits so as to be a mandatory subject regardless of the Commission's conclusions as to the balance of the case.

DISCUSSION:

We commence our analysis of the specific proposals at issue herein by noting that the scope of insurance benefits available to employes as well as the cost, if any, of such benefits to employes are "wages" 3/ within the meaning of Sec. 111.70(1)(a), Stats., and thus are mandatory subjects of bargaining. Mid-State VTAE, Dec. No. 14958-B,D (WERC, 4/78); Sewerage Commission of the City of Milwaukee, Dec. No. 17302 (WERC, 9/79). See also, Allied Chemical & Alkali Workers Local 1 v. Pittsburgh Plate Glass Co., 404 U.S. 157 (1971); Labor Board v. General Motors Corp., 179 F.2d 221 (CA-2 1950); W.W. Cross & Co. v. Labor Board, 174 F.2d 875 (CA-1 1949); Inland Steel Co. v. Labor Board, 170 F.2d 247 (CA-7 1948). Mandatorily bargainable insurance benefit issues have been said to include not only the type and level of expenses to be covered by insurance but also the manner in which the insurance policy or plan is administered when said administration impacts upon wages, hours and conditions of employment. School District of Menomonie, supra; Keystone Steel and Wire v. NLRB, 606 F.2d 171 (CA-7 1974). Thus administrative matters such as speed of claims processing, availability of a labor consultant and claim filing procedures have been held to be mandatory subjects of bargaining because they determine the speed and ease with which employes may procure the bargained for benefits. Keystone, supra.

When bargaining matters of insurance benefits, a labor organization could choose to propose that all benefits and bargainable administrative matters be placed in the contract either by specific reference or by reference to a specific existing insurance benefit/administrative package. Thus, contrary to the District's assertions herein, if MTI's proposal simply stated that all unit employes will be provided with the same insurance benefits as are currently provided under WPS Policy Group #1202 or under WPS Dane County HMP (we find, contrary to MTI's assertions, that it does more than that) such a proposal would be a mandatory subject of bargaining because it would be a shorthand manner of listing benefits. Here, however, MTI's proposals also mandate that the benefits be procured from a specific carrier-administrator. MTI asserts that its proposal is also mandatory in that respect because the identity of the carrier-administrator directly affects the level of benefits that will be provided to the employes.

In other jurisdictions, the identity of the insurance carrier and/or administrator has been found to be a mandatory subject of bargaining when the choice of one carrier over another or of one administrator over another yields different benefits or yields additional costs for the employes. Thus, an employer typically has been held to have a duty to bargain with the bargaining representative of its employes in instances where (1) the bargaining representative proposes to have the employer provide coverage from a new carrier whose benefit plan and manner of administrating same differ from that currently enjoyed by the employes, Houghton Lake Education Association v. Houghton Lake Community Schools, Board of Education, Case No. C79 I-250 (MERC, 7/80) aff'd 109 Mich. App. 1 (Mich. Ct. App. 8/81), cert. denied (Mich. Sup. Ct., 6/82); City of Roseville v. Local 1614, IAFF, AFL-CIO, 53 Mich. App. 547 (1974), or where (2) the employer alters the identity of the carrier or administrator and thereby alters the level of benefits or the cost of same to the employes.

3/ While it can reasonably be concluded that such matters are also "conditions of employment", such a distinction is unnecessary and irrelevant to our task herein. See e.g., Pittsburg Plate Glass, supra; Keystone, supra.

Bastian-Blessing v. NLRB, 474 Fed.2d 49, (CA-6 1973); Keystone, supra; Oilworkers (Kansas Refined Helium Co.) v. NLRB, 547 Fed.2d 575 (CA-DC 1976), cert. denied sub. nom. Angle v. NLRB, 431 US 966 (1977). However, where the employer has bargained over the benefits as well as the cost of same to the employes or where there has been no showing that the identity of the carrier and/or administrator will impact upon these mandatorily bargainable matters, the employer has been found to have no duty to bargain with the bargaining representative over the identity of the insurance carrier and/or administrator. Connecticut Light, supra; Sioux City Community School District, supra.

Our decision in Walworth County, supra, is not inconsistent with the foregoing summary of the current status of the law in other jurisdictions.

Thus, it has been the presence or absence of a relationship of carrier/administrator identity to benefits or employe cost which has determined the mandatory or permissive status of that identity. Where the union has established that a change in carrier and/or administrator will result in a change in benefits or will affect the cost borne by the employes for the insurance benefits, the employer has been found to have a duty to bargain over the identity of the carrier and/or administrator. Conversely, where the union has not been able to demonstrate that there is a relationship to benefits or cost to employes, the identity of the insurance carrier and/or administrator has not been found to be a matter over which the employer is obligated to bargain.

The instant record presents information about carriers and/or administrators who collectively do in excess of seventy (70%) percent of the group health insurance business in Wisconsin at a specific point in time which is proximate to the time frame within which the parties' dispute arose. As such we are satisfied that this record presents a representative view of the health insurance industry for the time frame in question.

Our review of that record satisfies us that at the time in question, all insurance carriers and/or administrators involved herein provide unique benefit packages. We so find because, even where the policy provisions are identical, carriers and/or administrators frequently interpret and/or administer said provisions in different manners and these differing interpretations yield different benefits for employes. Tr. 101, 302, 320, 387-388, 425, 490-492, 516. For example, certain benefits in all policies are paid at a level specified as "usual, customary and reasonable" or "reasonable and customary." The evidence demonstrates that carriers utilize different procedures to generate the data upon which the "usual, customary and reasonable" payment level determinations are based, resulting in different payments for identical claims in at least some circumstances. Tr. 72, 86, 97, 129, 147, 173-177, 182-183, 223-224, 283-284, 326, 336, 364-365, 425-427, 496. Moreover, the record reveals that insurance policies typically limit certain benefits to medical procedures which are "medically necessary." The record establishes that the different decisionmakers for each carrier/administrator ultimately define the term "medically necessary" differently in at least some circumstances and thus the benefit levels related thereto are different from carrier to carrier. Tr. 64-65, 140, 318, 417, 488. MTI's proposals herein thus seek to maintain what are unique benefit packages and hence the proposals have a direct relationship to employe wages.

The record demonstrates not only that the definition of key terms such as "usual, customary and reasonable" and "medically necessary" will vary from carrier but also, of course, that payment levels made by a given carrier as regards a given claim vary from one point in time to another. In our view that further supports our conclusion that the employes in the instant bargaining units have been shown to have substantial economic interests in the integrity, reliability and responsiveness of the carrier/administrator that is selected to be responsible for fair, accurate and prompt payment of employe health insurance claims.

The District argues that there are management prerogatives and public policy interests which must be balanced against any impact upon employe wages and that the former predominate herein. No educational policy choices are specified nor do we find any to exist. The specific interest identified by the District is the need for freedom to shop the insurance marketplace to secure bargained benefits in the least expensive manner, thereby meeting the District's statutory obligation

under Chapter 120, Wis. Stats., to "manage" and to provide for the "welfare of the public" under Sec. 111.70(1)(a), Stats., through lowest possible tax levies.

Section 111.70(1)(a), Stats., which defines "collective bargaining" and is cited by the District as primary basis for the foregoing argument, explicitly makes the exercise of the public employer's powers for the welfare of the public "subject to those rights secured to public employes . . . by this subchapter." Thus, municipal employes' right to bargain, which is secured by said subchapter, serves as a limitation upon employer power to act for the public welfare. Equally as significant, in our view, is the reality that if cost became a basis for finding matters of employe compensation (i.e., "wages") to be permissive subjects of bargaining, municipal employes' right to bargain over the compensation they will receive for their services would be seriously undermined. Therefore, we have consistently held that the actual or potential cost of a compensation proposal and the implications of such costs on the employer's level of services are considerations which are relevant to the merits of the proposal but not to its mandatory or permissive nature. City of Wauwatosa, Dec. No. 15917 (WERC, 11/77); City of Brookfield, Dec. No. 17947 (WERC, 7/80); School District of Campbellsport, Dec. No. 20936 (WERC, 8/83); Racine Unified School District, Dec. No. 20653-A (WERC, 1/84) aff'd (CirCt Racine, 10/84) subject to appeal; School District of Janesville, Dec. No. 21466 (WERC, 3/84).

While we have found no educational policy impact and have rejected the District's arguments based on cost, where (as here), the majority representative proposes that the municipal employer obtain health insurance for employes, there are management interests in having a carrier that will be reliable and cooperative with the District that must be balanced against the proposals' relationships to wages. On balance, however, we find that the proposals' relationships to wages predominate.

Our conclusion herein is not in conflict with the cases previously cited. 4/ Instead it would appear that the record before us represents the first attempt by a party to create an insurance industry-wide factual basis for the outcome we have reached herein. It is noteworthy that other decisions have recognized that the potential for such a conclusion exists. The Michigan Court of Appeals in Roseville, supra, when finding that a proposal which identified a specific carrier could properly be submitted to an interest arbitration panel, concluded that differences between carriers are "inherently tied to the identities of the specific carriers." 54 Mich. App. at 554. Similarly, in Sioux City, supra, although the Iowa PERB found the proposal before it to be a permissive subject of bargaining it noted:

> "it is possible, of course, that it will be the exceptional case where identity of the carrier does not affect the benefits, coverage or administration of an insurance program, particularly in the instance of a carrier." At p. 8.

Given the foregoing analysis and the specific record before us, we have found that MTI's proposals herein, which we are satisfied identify a unique set of

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4/ In City of Brookfield, Dec. No. 21808 (WERC, 6/84) the Commission found the following proposal permissive.

> The Employer shall not change to an insurance carrier that has not:
>
> 1. Been providing similiar coverage to a sizable number of insureds in Wisconsin for at least five (5) years;
>
> . . .

The Union therein presented no evidence of a relationship between its proposed limitation and employe wages, hours, and conditions of employment.

benefits, are mandatory subjects of bargaining. 5/ Our conclusions in this regard do not, of course, preclude the District from proposing in bargaining any of the following: different benefits than the existing agreement provides; removal of all specifications of carrier/administrator; or an express District right to change carrier/administrators. Nor does our holding herein mean that where a contract does not specify an insurance carrier and/or administrator, the employer necessarily commits a per se unilateral change refusal to bargain if, during the term of that contract, it chooses to purchase insurance from a different source. Whether such a change would be held unlawful in those circumstances, will depend on whether the union involved shows that a unilateral change in benefits (including coverage and/or administration) had occurred by means of specific proof. In the instant case, MTI has, to our satisfaction, demonstrated by specific proof that, within the time frame in question, the WPS plan benefits it proposes to maintain are unique.

It should also be emphasized that our holding herein does not necessarily render mandatory other health insurance proposals made in different time frames. Nor does our conclusion necessarily apply to carrier proposals for life, dental, disability or other types of insurances. Our conclusion herein is tied directly to this record and, while this record may well be a relevant consideration in future cases, proof as to change or lack thereof in the industry will be necessary.

Dated at Madison, Wisconsin this 21st day of November, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Herman Torosian, Chairman

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Marshall L. Gratz, Commissioner

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Danae Davis Gordon, Commissioner

5/ The District did not specifically litigate the basis upon which it believed the language in the proposal which stated "The coverage and benefits shall be established by the parties to this agreement" was permissive. We find that said language is mandatory. As we held in Milwaukee Board of School Directors, Dec. No. 20093-A (WERC 2/83) at 38 and Racine Unified School District, Dec. No. 20653-A (WERC 1/84) at 49 aff'd (CirCt Racine, 10/84), proposals, such as this, which restate existing statutory duty to bargain obligations and thereby create a contractual forum for redress are themselves mandatory subjects of bargaining.