

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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GREEN LAKE COUNTY COURTHOUSE  
EMPLOYEES, LOCAL 514C, LAW  
ENFORCEMENT EMPLOYEES, LOCAL  
514D, HIGHWAY EMPLOYEES,  
LOCAL 514, AFSCME, AFL-CIO,

Complainants,

vs.

GREEN LAKE COUNTY,

Respondent.

Case 36  
No. 35720 MP-1768  
Decision No. 23076-B

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GREEN LAKE COUNTY,

Complainant,

vs.

GREEN LAKE COUNTY COURTHOUSE  
EMPLOYEES, LOCAL 514C, LAW  
ENFORCEMENT EMPLOYEES, LOCAL  
514D, HIGHWAY EMPLOYEES,  
LOCAL 514, AFSCME, AFL-CIO,

Respondents.

Case 37  
No. 35900 MP-1783  
Decision No. 23075-B

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Appearances:

Lawton and Cates, Attorneys at Law, by Mr. Richard V. Graylow, 110 East Main Street, Madison, Wisconsin 53703-3354, appearing on behalf of the Union.

Mr. David A. Sierleja, District Attorney, Green Lake County, Green Lake, Wisconsin 54941, appearing on behalf of the County.

FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

The above-named Union filed a complaint on September 30, 1985, with the Wisconsin Employment Relations Commission, herein the Commission, wherein it is alleged that the above-named County has committed prohibited practices within the meaning of the Municipal Employment Relations Act (MERA). The County filed an answer to said complaint of prohibited practices on October 25, 1985, and the County filed a counter-complaint on October 25, 1985 wherein it is alleged that the above-named Union has committed prohibited practices within the meaning of MERA. The Commission on November 25, 1985, appointed Andrew Roberts, a member of its staff, to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order as provided in Sec. 111.07(5), Stats. The Examiner on November 25, 1985 ordered the above-described cases consolidated. A hearing on said complaint and counter-complaint was conducted in Green Lake, Wisconsin on March 4, 1986 before the Examiner. The parties filed initial briefs by April 17, 1986, and the County filed a reply brief by May 7, 1986. The Union notified the Examiner on May 23, 1986 that it chose not to file a reply brief. The Examiner considered the evidence and arguments and being fully advised in the premises, makes and issues the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Green Lake County Courthouse Employees, Local 514C; Law Enforcement Employees, Local 514D; and Highway Employees, Local 514, AFSCME, AFL-CIO, hereinafter referred to as the Union, are labor organizations having their principal offices located in c/o James L. Koch, Route 5, Box 234, Highway 151, South, Fond du Lac, Wisconsin. At all times material herein Koch was the Staff Representative for the Union.

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2. Green Lake County, hereinafter referred to as the County, is a municipal employer having its principal offices at Green Lake, Wisconsin. The courthouse, sheriff's department, and highway department are all departments of the County. At all times material herein Corporation Counsel John B. Selsing was the principal representative for the County.

3. Each of the above-cited Unions was a party with the County to 1984-1985 collective bargaining agreements. The parties negotiated such agreements during the fall of 1983 and reached settlement with respect to the Courthouse and Highway bargaining units in approximately January, 1984. With respect to the Law Enforcement bargaining unit an interest arbitration award was issued in October, 1984 for the 1984-1985 collective bargaining agreement. During negotiations for the 1984-1985 collective bargaining agreements both parties mentioned that the health insurance premium might increase for 1985, though no specific figures were mentioned.

4. The health insurance provisions in each of the 1984-1985 collective bargaining agreements state as follows:

The present hospital and surgical insurance with attached riders shall be provided for each full-time Employee with the County paying 100% of the family premium and 100% of the single premium. The County will pay three (3) months insurance premium for health insurance in the event of absence due to serious illness. The County may, from time to time change the insurance carrier so long as Employees do not suffer any reduction of coverage thereby.

Upon retirement, the Employee and eligible dependents may continue in the present group plans provided; however, the premium is paid each month in advance to the Employer.

5. For 1984, and for a few years prior to 1984, the County had Blue Cross-Blue Shield as its health insurance carrier. The 1984 Blue Cross-Blue Shield monthly premiums were \$176.26 for family coverage and \$63.10 for single coverage. In the fall of 1984, Blue Cross-Blue Shield informed the County that it expected the 1985 rates to increase over the 1984 rates by approximately thirty percent. The County then decided to have insurance companies bid for the 1985 year. Wisconsin Physicians Service's bid was \$158.72 for a family monthly premium and \$56.82 for a single monthly premium. The County then informed Koch that it intended to switch to WPS for 1985. Koch did not object to switching to WPS, though he had certain concerns.

6. On January 14, 1985 Koch sent Selsing the following correspondence:

As per our recent conversations, please be advised that the Union is making a formal request that all savings generated from the recent change in Health Insurance carriers be placed into a segregated fund, including interest at the statutory rate, for use in containing increased premium costs or benefit improvements in the future.

Over the past years, the entire cost of negotiated settlements includes any increases in premiums, as follows:

	<u>1982</u>	<u>1983</u>	<u>increase</u>
Family	116.54	155.32	38.68
Single	41.50	55.32	13.82
	<u>1983</u>	<u>1984</u>	<u>increase</u>
Family	155.22	176.26	21.04
Single	55.32	63.10	7.78
	<u>1984</u>	<u>1985</u>	<u>increase</u>
Family	176.26	222.56	46.30
Single	63.10	80.26	17.16

Note: Changed Insurance Carriers

	<u>1985</u> projected	<u>1985</u> actual	<u>increase</u>
Family	222.56	158.00	64.56
Single	80.26	56.82	23.44

As is evidenced, \$46.30 was charged against our package as a cost for the increase in the Family Health Insurance premium and \$17.16 for Single premium for contract year 1985.

The savings of \$64.56 for each Family premium and \$23.44 for each Single premium that was generated by a change of insurance carrier, is money that we negotiated for in 1985, and it was in fact costed against each Employee.

Because the negotiated amounts as set forth herein are part of the settlement package, the Union is requesting that said amounts be placed into the segregated fund as explained earlier with a semi-annual status report sent to respective Presidents of the Unions and myself.

Your immediate cooperation in the proper handling of these funds will be greatly appreciated.

If you should have any further questions, please do not hesitate to contact me.

Koch also requested that any savings from the decrease in the health insurance premiums from 1984 to 1985 be rebated to the employees in their wage checks. Both such requests were denied by the County.

7. Prior to the instant complaint on May 15, 1985 Koch previously filed a different complaint on behalf of the Union alleging prohibited practices against the County. Said complaint alleged that the County: demoted certain employees and promoted another employee, denied a grievance with respect to the demotions and promotion, denied a unit clarification request of the law enforcement employees, attempted to settle said unit clarification request, and acted in retaliation to the unit clarification request by demoting another employee. Said complaint further alleged that such actions were done in an arbitrary and capricious manner and were intended to discipline union members and interfere with union activities. Attached to said complaint that was submitted at hearing herein was an exhibit upon which was typed "Petitioning Unions' Exhibit No. One (1)" and which had a date of filing with the Commission of May 16, 1985. That exhibit states in pertinent part as follows:

WHEREAS the Additional Health & Accident Insurance, Account #51963 is no longer necessary.

BE IT RESOLVED that the amount \$30,000.00 be transferred from Additional Health & Accident Insurance, Account #51963 to the newly established Computer Study, Account #51434 for Computer Study.

The \$30,000 health insurance account was created by the County as a contingency budgetary account to develop a cushion in case there was an increase in health insurance premiums. Koch testified at hearing that such exhibit was not appended, or filed by him with the Commission to be appended, to said complaint. On all other appended exhibits to said complaint Koch had hand written denotations, such as: "Exhibit K".

8. On August 16, 1985 the parties then entered into a settlement agreement as to various issues, including the following:

B. DEMOTED DEPUTIES COMPLAINT:

The Union will withdraw its complaint and the County will agree to:

1. Reclassify Mary Ann Nickel and Donna Lyons to their previous classification of Deputy Clerk, and

2. Reassign them to the duties and responsibilities of a Deputy Clerk except that; the County has the right to remove from their Job Descriptions the statement that they act in the absence of the County Clerk and
3. Restore the ten dollars (\$10.00) per month demotion to their salaries retroactive to January 1, 1985.

C. UNFAIR LABOR PRACTICE COMPLAINT:

The Union agrees to withdraw this complaint in its entirety.

At the same time said complaint (i.e., the complaint previously filed on May 15, 1986) was pending, there was also a declaratory ruling petition that had been filed by the Union with respect to the health insurance decrease in 1985. 1/

9. When the health insurance premiums decreased for 1985 and the County did not bargain with the Union over such decrease, or rebate the difference to the employees, the County did not individually or in concert with others interfere with, restrain or coerce municipal employees from exercising their rights; encourage or discourage membership in said labor organizations by discrimination in regard to hiring, tenure, or other terms or conditions of employment; or refuse to bargain collectively with a representative of a majority of its employees.

10. Because the dispute over the health insurance premium reductions was not resolved by the August 16, 1985 settlement agreement, when the Union filed and pursued its prohibited practice complaint herein it did not violate any collective bargaining agreement previously agreed upon by the parties with respect to wages, hours, and conditions of employment affecting municipal employees.

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

CONCLUSIONS OF LAW

1. That when the County did not bargain with the Union over a decrease in health insurance premiums between 1984 and 1985, or rebate the difference in premiums to the employees, the County did not violate Sec. 111.70(3)(a)1, 3 or 4, Stats.

2. That when the Union filed and pursued its prohibited practice complaint herein, the Union did not violate Sec. 111.70(3)(b)4, Stats.

On the basis of the above and foregoing Findings of Fact and Conclusions of Law, the Examiner makes and issues the following

ORDER 2/

IT IS ORDERED that the complaint filed herein by the above-cited Union and the counter-complaint filed herein by the above-cited County be, and the same hereby are, dismissed in their entirety.

Dated at Madison, Wisconsin this 13th day of June, 1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Andrew Roberts  
Andrew Roberts, Examiner

1/ Green Lake County, Dec. No. 22820 (WERC, 8/85).

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

(Footnote 2 continued on Page 5)

(Footnote 2 continued)

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.

GREEN LAKE COUNTY

MEMORANDUM ACCOMPANYING  
FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND ORDER

UNION'S POSITION

At the outset the Union maintains that health insurance and health insurance premiums are mandatory subjects of bargaining and the cost savings secured because premium rates have decreased is also a mandatory subject. The County is obligated to bargain over the cost savings generated when the premiums decreased in 1985. In that regard the Union points to Mid-State VTAE, Dec. No. 14958-B (Yaeger, 5/77), and Milwaukee County, Dec. No. 16713-D (WERC, 4/82), in support of its position. With respect to the County's counter-complaint the Union responds that the issues raised in the Union's complaint were never settled, contrary to the County's contention.

COUNTY'S POSITION

The County asserts that the Union violated Sec. 111.70(3)(b)4, Stats., because the parties previously settled this matter. With respect to the Union's complaint, the County contends that the savings from the 1985 premium reduction is not a mandatory subject of bargaining, for the method by which health insurance is funded is unrelated to wages, hours or conditions of employment. Because it is not a bargaining subject the County contends that it is then necessary to review the pertinent provisions of the bargaining agreements which state that health insurance premiums will be paid at 100%. In negotiating that provision the parties were aware health insurance premiums may go up but they did not agree to a reopener provision. In any event, the County argues the negotiations history is irrelevant under the parole evidence rule, where, as here, the contract is clear, and the parties are bound by the contract that was reached. The County additionally notes that under the Union's theory the County would be obligated to return to the bargaining table only if premiums go down during the contract's term but not if the premiums went up.

DISCUSSION

County's Counter-complaint

Because the County contends the matter was previously settled, it must first be determined whether the matter had been so resolved. The County points to an August 16, 1985 settlement agreement which references the Union's prohibited practices complaint that it filed on May 15, 1985. It was undisputed that settlement agreement referred to and resolved that prohibited practices complaint. After carefully reviewing the body of that complaint it quickly becomes apparent that the allegations are unrelated to the 1985 health insurance decrease. The County, however, points to an exhibit appended to the complaint which states:

WHEREAS the Additional Health & Accident Insurance,  
Account #51963 is no longer necessary.

BE IT RESOLVED that the amount \$30,000.00 be  
transferred from Additional Health & Accident Insurance,  
Account #51963 to the newly established Computer Study,  
Account #51434 for Computer Study.

Union Representative Koch testified he never filed that document with the

Commission. Attorney Graylow states through post-hearing correspondence 3/ that his office filed that exhibit as part of a then pending declaratory ruling dispute. Whether or not that exhibit was properly, or improperly, attached to the settled complaint is not persuasive either way. That document alone, given the content of the body of that settled complaint (which alleged other matters) does not demonstrate the parties resolved the premium decrease dispute. Neither the allegations raised in that complaint nor the settlement agreement itself (which, inter alia, resolved that complaint) indicates the health insurance premium dispute herein was resolved at that time. 4/ Accordingly, because there is no demonstration that the August 16, 1985 settlement agreement included resolution of the health insurance premium decrease dispute herein, the County's counter-complaint has been dismissed in its entirety.

#### Union's Complaint

Turning to the Union's complaint, the facts are essentially undisputed. The parties negotiated all their 1984-1985 collective bargaining agreements in the fall of 1983, settling two of the contracts in January, 1984 with a third resulting from a mediation-arbitration award of October, 1984. During negotiations both the Union and the County expected health insurance premiums to increase both for 1984 and 1985. The Union settled for a particular wage increase over the two years based upon that assumption. The parties' collective bargaining agreements that they reached state the County shall pay 100% of health insurance premiums. The premiums would have increased for 1985 if the County had remained with Blue Cross-Blue Shield instead of switching to WPS in late 1984, effective 1985, and as a result premiums went down between 1984 and 1985.

With that background we turn to the contentions of the parties. The Union maintains the health insurance premium decreases are a bargainable subject, while the County contends otherwise. Thus, it must initially be decided whether the issues in fact are bargainable. Health insurance premium payment has been held to be a mandatory subject:

"Herein, no claim was made that the cost of health insurance is not a mandatory subject of bargaining. Clearly, it is a economic benefit flowing from the employment relationship and, as such, a matter of wages and a mandatory subject of bargaining." 5/

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- 3/ At hearing it was agreed the Examiner would review Commission case files: Green Lake County (Courthouse), Dec. No. 22933 (WERC, 9/85) and Green Lake County, supra, and would then notify the parties of any pertinent contents. Based upon the Examiner's notification, Attorney Graylow wrote the following March 12, 1986 correspondence:

I respond herewith to your letter to the parties of March 10, 1986.

Based upon the information contained therein, I conclude tht the Resolution identified as Petitioning Unions' Exhibit No. One (1) referred to and was part of the now dismissed Declaratory Ruling (DR) proceedings.

As such, as far as the Complainants are concerned, the record herein may be closed.

In light of the foregoing, I inquire as to the precise date for filing Briefs-in-Chief.

- 4/ County witness Sierleja testified that the health insurance premium dispute involved herein was mentioned during settlement talks that resulted in the August 16, 1985 settlement agreement. That, without more, does not demonstrate that this dispute here was then settled.
- 5/ Mid-State VTAE, supra, at p. 7 (footnotes omitted).

If the Employer pays the full amount, then there is potentially less money that can be paid employees in the form of wages. If the employer pays only a portion, then the employee has less take home pay, for he or she must then pay a portion. Likewise, if the premiums go down then there is potentially more money for wages that an employee could receive. I therefore find that the issue of premium decreases is clearly a mandatory subject of bargaining.

Having found that the decrease in premiums for 1985 is a bargainable subject does not necessarily require that the County was mandated to bargain mid-term of the 1984-1985 collective bargaining agreements:

The duty to bargain to agreement or impasse during the term of an existing collective bargaining agreement extends to any mandatory subject of bargaining which the Union has not waived its right to bargain over or which is not addressed in the existing agreement. 6/

It must therefore be determined whether the parties have addressed the subject in their 1984-1985 collective bargaining agreements. All collective bargaining agreements have the following health insurance clause:

The present hospital and surgical insurance with attached riders shall be provided for each full-time Employee with the County paying 100% of the family premium and 100% of the single premium. The County will pay three (3) months insurance premium for health insurance in the event of absence due to serious illness. The County may, from time to time change the insurance carrier so long as Employees do not suffer any reduction of coverage thereby.

Upon retirement, the Employee and eligible dependents may continue in the present group plans provided; however, the premium is paid each month in advance to the Employer.

I find that provision encompasses this situation because it is apparent from such language that the Union has contractually waived its right to bargain premium decreases. It indicates that the County can switch health insurance carriers so long as the "Employees do not suffer any reduction of coverage" and the County continues to pay 100% of the premium. It is implicit that a new carrier may have lower premiums. No party was aware during the negotiations over the 1984-1985 bargaining agreements what the 1985 premiums would be; the parties simply assumed the rates would increase. Without specific knowledge as to the 1984 premiums, the parties could have negotiated and included such provisions as: a reopener on health insurance premium payment, a reopener contingent upon a premium decrease, or rebate provision contingent upon a premium decrease. No such provisions were included in any of the collective bargaining agreements. The undersigned thus concludes that the parties have bargained to agreement with respect to the issue of health insurance premium payments (both as to increases or decreases in premiums) and have waived any form of health insurance premium rebate during the term of the 1984-1985 collective bargaining agreements.

The Union's reliance on Mid-State, supra, is misplaced to support a mid-term bargaining dispute such as is claimed here. That decision dealt with the unilateral change in status quo prior to reaching a first contract where the employer required employees to pay the increase in the health insurance premium. Similarly, the Union's reliance on Milwaukee County, supra, is also inapposite, for that case dealt with bargaining over a unilateral change by the employer in health insurance benefits during the term of the contract to comply with State legislation, which is not the dispute here.

Accordingly, the County did not violate Sec. 111.70(3)(a)1 or 4, Stats., when it failed to bargain over the health insurance premium decrease upon the Union's request to do so or when it failed to rebate money to employees because of the health insurance premium decrease upon the Union's request to do so. Because the

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6/ Brown County (Department of Social Services), Dec. No. 20623 (WERC, 5/83) (footnote omitted).



Union did not present any evidence to support a finding that the County violated Sec. 111.70(3)(a)3, Stats., that allegation has also been dismissed.

Accordingly, the complaint filed by the Union has therefore been dismissed in its entirety.

Dated at Madison, Wisconsin this 13th day of June, 1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Andrew Roberts  
Andrew Roberts, Examiner