

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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

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

Complainants,

vs.

GREEN LAKE COUNTY,

Respondent.

Appearances:

Lawton & Cates, Attorneys at Law, by Mr. Richard V. Graylow, 214 West Mifflin Street, Madison, WI 53203-2594, appearing on behalf of AFSCME.
Mr. David A. Sierleja, District Attorney, Green Lake County, Green Lake, WI 54941, appearing on behalf of the County.

ORDER AFFIRMING EXAMINER'S FINDINGS
OF FACT, CONCLUSIONS OF LAW AND ORDER

Examiner Andrew M. Roberts having, on June 13, 1986, issued Findings of Fact, Conclusions of Law and Order, with Accompanying memorandum in the above entitled proceeding, wherein he concluded that the Respondent had not committed any prohibited practices within the meaning of Sections 111.70(3)(a)1, 3 or 4, Stats., and further concluded that the Complainants had not committed prohibited practices within the meaning of Sec. 111.70(3)(b)4, Stats., in connection with the distribution of cost savings from reduced insurance premiums; and the Complainants having, on July 2, 1986, timely filed a petition for Commission review of said decision; and the parties having filed briefs and reply briefs in the matter, the last of which was received on August 28, 1986; and the Commission having reviewed the record and the arguments of the parties and being satisfied that the Examiner's Findings of Fact, Conclusions of Law and Order should be affirmed,

NOW, THEREFORE, it is

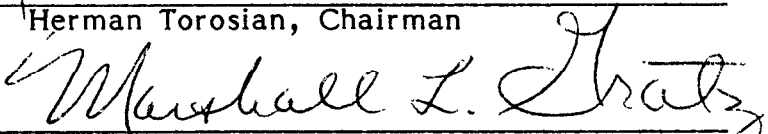
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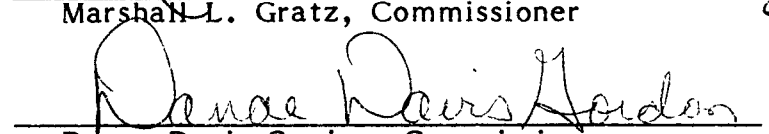
1. That Examiner's June 13, 1986, Findings of Fact, Conclusions of Law and Order shall be and hereby are affirmed and adopted as the Commission's.

Given under our hands and seal at the City of Madison, Wisconsin this 26th day of November, 1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner

1/ 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 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.

GREEN LAKE COUNTY

MEMORANDUM ACCOMPANYING ORDER AFFIRMING
EXAMINER'S FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

At issue here is whether the County was obligated to engage in bargaining with Complainant Unions during the term of an existing collective bargaining agreement with regard to the distribution of monies it saved by changing insurance carriers.

The Examiner dismissed the complaint on the grounds that the Unions had waived bargaining about that subject when it agreed to the insurance provisions of the collective bargaining agreements in effect at the time of the change in carrier, and we agree with that outcome.

The 1984-1985 agreements reached between the parties in the fall of 1983 provide that the County would pay 100% of the insurance premium and that the County could change carrier if but only if the change did not result in a reduction of coverage. The County bid out the insurance for 1985 after the existing carrier increased its proposed rate for that year. By changing to a different carrier, the County saved approximately \$64.56 family plan and \$23.44 single plan per month relative to the premiums in effect when the 1984-1985 agreements were negotiated.

Shortly thereafter, the Complainants demanded to bargain with Respondent County about the distribution of the monies saved; the County refused to enter into the requested negotiations; and the Unions filed the instant complaint.

The Unions acknowledge that the County had the right to change carriers as it did, and they acknowledge that it was foreseeable that a change in carrier might occur during the term of the 1984-1985 agreements. The Unions argue, however, that the anticipated cost of insurance was costed against the overall wage and benefit package in the negotiations, such that the monies saved by the premium reduction could have been used to increase wages or other benefits without affecting the total cost of the agreed-upon package. The Unions further argue that although the parties in effect agreed upon a means by which the County could seek to reduce the cost of insurance, the parties did not negotiate about or agree on how any such resultant savings would be allocated as between the County and the employes. Therefore, the Unions argue, the record does not contain the requisite clear and unmistakable evidence needed to support the Examiner's conclusion that the Unions had waived bargaining about that allocation.

In our view, the parties' agreements address the subject of the allocation of changes in insurance premiums, placing both the burden of any increase and the benefit of any decrease with the County. The agreements did not guarantee that the County would spend any particular amount of money on bargaining unit insurance. Rather, the bargain was that the County would arrange for the specified insurance protection from the carrier of its choice and pay 100% of whatever the cost of providing the specified insurance protection turned out to be.

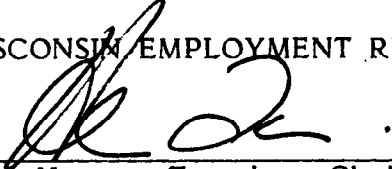
The Unions' reliance on the fact that insurance projections were used by the negotiators in developing the terms upon which they ultimately agreed does not establish that they were leaving unresolved the question of how any cost saving was to be allocated. While they could have expressly agreed to leave that question unresolved, absent strong evidence that the parties chose to deal with the allocation of cost decreases differently than with the issue of cost increases, we find that the agreements allocate exclusively to the County both the burden of any increase and the benefit of any decrease.

For those reasons, we have affirmed the Examiner's decision in all respects.

Dated at Madison, Wisconsin this 26th day of November, 1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Herman Torosian, Chairman



Marshall L. Gratz, Commissioner



Danae Davis Gordon, Commissioner