STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

BELOIT DPW EMPLOYEES UNION, LOCAL 643, AFSCME, AFL-CIO, Complainant, vs. CITY OF BELOIT, Respondent.	Case 75 No. 40010 MP-2058 Decision No. 25779-A

Appearances:

Mr. Jack Bernfeld, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 5 Odana Court, Madison, Wisconsin 53719, appearing on behalf of complainant, Beloit DPW Employees Union.

Mr. Daniel T. Kelley, City Attorney, Hansen, Eggers, Kelley, Blakely & Holm, S.C., Attorneys at Law, 416 College Avenue, P.O. Box 328, Beloit, Wisconsin 53511, appearing on behalf of Respondent, City of Beloit.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Beloit DPW Employees Union, Local 643, AFSCME, AFL-CIO, having filed a complaint with the Wisconsin Employment Relations Commission on January 14, 1988, alleging that the City of Beloit had committed prohibited practices within the meaning of Secs. 111.70(3)(a)4 and 5, Stats., by requiring a $25 deductible per hospital confinement and by refusing to fill the position of Maintenance Specialist, thereby refusing to execute a collective bargaining agreement previously agreed upon, and thereby violating the collective bargaining agreement; and the parties, on or about January 28, 1988, having agreed to hold scheduling of hearing on said complaint in abeyance pending an informal attempt to resolve the matter; and the Commission, on December 2, 1988, having appointed James W. Engmann, a member of its staff, as Examiner to make and issue Findings of Fact, Conclusions of Law and Order in this matter as provided in Secs. 111.70(4)(a) and 111.07, Stats.; and the Examiner on December 2, 1988, having scheduled hearing on said complaint for January 18, 1989; and the parties, on or about December 9, 1988, having agreed to postpone hearing on said complaint to January 31, 1989; and the City, on January 20, 1989, having filed its answer to said complaint in which it denied that it had violated Secs. 111.70(3)(a)4 and 5, Stats.; and the parties at hearing on January 20, 1989, having entered into settlement discussions and an agreement to continue said hearing on April 4, 1989, if settlement discussions failed; and the parties, on or about March 29, 1989, having agreed to postpone the hearing scheduled for April 4, 1989, to June 1, 1989; and hearing on said complaint having been held on June 1, 1989, in Beloit, Wisconsin, at which time the parties were afforded the opportunity to present evidence and make arguments as they wished; and the transcript of said hearing having been received on June 14, 1989; and the parties having filed briefs and having filed or waived the filing of reply briefs, the last of which was received on August 22, 1989; and the Examiner, having considered the evidence and arguments of the parties, makes and issues the following Findings of Fact, Conclusions of Law and order.

FINDINGS OF FACT

1. That Complainant Beloit DPW Employees Union, Local 643, AFSCME,

AFL-CIO, hereinafter Complainant or Union, is a labor organization within the meaning of Sec. 111.70(1)(h), Stats.; that said Union is the exclusive bargaining representative for the regular full-time employes of the Department of Public Works, Beloit Transit System and Wastewater Treatment Plant of the City of Beloit, including employes of the golf course, cemeteries, street department, park and forestry departments, refuse collectors and bus drivers, but excluding employes in central stores, city swimming pools, recreational programs, wastewater treatment laboratory, clerical personnel, supervisory and executive personnel; that the Union maintains its offices at 1722 St. Lawrence Avenue, Beloit, Wisconsin; and that the Union's principle representative and agent is Thomas Larsen, Staff Representative, Wisconsin Council 40, hereinafter Union Representative.

2. That Respondent City of Beloit, hereinafter Respondent or City, is a municipal employer within the meaning of Sec. 111.70(1)(j), Stats.; that the City maintains its offices at the Beloit City Hall, 100 State Street, Beloit, Wisconsin; and that the City's principle representative and agent is Lee Davis, Director of Administrative Services, City of Beloit, hereinafter City Representative.

3. That the Union filed a complaint with the Commission on January 14, 1988; that said complaint alleged that the City had committed prohibited practices within the meaning of Secs. 111.70(3)(a)4 and 5, Stats. by, first, requiring a $25 deductible per hospital confinement and, second, refusing to fill the position of maintenance Specialist; that the Union alleged that by these actions or inactions the City was refusing to execute a collective bargaining agreement previously agreed upon and was violating the collective bargaining agreement; that the City filed its answer to said complaint on January 20, 1989; that in its answer the City denied that it had committed prohibited practices within the meaning of Secs. 111.70(3)(a)4 and 5, Stats.; that at hearing on June 1, 1989, the Union moved to amend its complaint by withdrawing the allegation that the City had committed prohibited practices within the meaning of Secs. 111.70(3)(a)4 and 5, Stats., by refusing to fill the position of Maintenance Specialist; that the City did not object to said motion; that the Examiner granted said motion; that at hearing on June 1, 1989, the Union moved to amend its complaint by adding that the City had also committed a prohibited practice within the meaning of Sec. 111.70(3)(a)1, Stats., by requiring a $25 deductible per hospital confinement; that the City objected to said motion as being untimely; and that the Examiner overruled said objection and granted said motion.

4. That from January 1, 1985, through December 31, 1986, the City and the Union were parties to a collective bargaining agreement; that said agreement contained provisions for a grievance procedure that culminated in final and binding arbitration; that the Union did not submit this dispute to the grievance procedure; that said agreement also contained the following:

ARTICLE XIII

INSURANCE, RETIREMENT, EMPLOYEE WELFARE

. . .

> 13.02 Health and Accident Insurance. During any illness, the City shall continue to pay the employee's insurance policies.
>
> The City agrees to pay a maximum of two hundred twenty-four dollars ($224.00) per month during 1985 towards the cost of the monthly premium for hospital, surgical, major medical and zero (0) dollar deductible dental

> insurance coverage provided under a policy held by the City for its employees and their dependents, plus any increase in monthly premium during the term of this Agreement.

that the insurance policy held by the City for its employes and their dependents was a self-funded plan called the City of Beloit Health Care Plan; that said plan had been in effect since 1982; that the Plan Document for said plan contained the following provisions, among others:

SCHEDULE OF BENEFITS

Basic Medical Expense Benefits

Hospital Expense Benefits:

Inpatient Deductible per Confinement	$25

. . .

Maximum Period of Confinement:

Alcoholism and Drug Abuse ..... Per Calendar Year	30 days
Mental and Nervous Disorders	70 days
All other Conditions	365 days

. . .

Surgical/Medical Expense Benefits:

. . .

All Surgical/Medical Expenses subject to Maximum per Cause	$25,000

. . .

Major Medical Expense Benefits

Individual Deductible Amount

Per Cause, per Lifetime ..... (to be met in 30 consecutive calendar days)	$25

. . .

Maximum Benefit

Per Cause, per Lifetime	$25,000

. . .

that the Union had a copy of said Plan Document; that individual members were provided with a booklet called the Summary Plan Document; and that said Summary Plan Document contained the following provisions, among others:

HOSPITAL PLAN BENEFITS

DEDUCTIBLE

Hospital impatient benefits as outlined below are subject to a $25 deductible. Outpatient and maternity benefits are not subject to the deductible feature. The deductible applies to the infant's hospital charges if the mother leaves the hospital and the infant remains confined.

. . .

3. Duration of Benefits

Room, board and miscellaneous expense benefits will be available up to a maximum of 365 days per confinement for physical illness or accident.

. . .

SURGICAL-MEDICAL PLAN BENEFITS

Payment of physician's customary, usual and reasonable charges for the following professional services rendered will be subject to a Plan maximum of $25,000 for any one illness or accident for the services covered by The Plan.

. . .

MAJOR ILLNESS PLAN

1. Deductible

$25-Applicable Expense. Each participant is responsible for covered Major Illness charges in excess of the basic surgical-medical hospital benefits. This deductible applies to each illness and must be satisfied within any consecutive 30 day period.

2. Maximum Benefit and Units - $25,000 per illness. The maximum liability of $25,000 per illness. This is a combined maximum for benefits payable under both the Surgical-Medical Plan and Major Illness Plan.

. . .

5. That in a letter from the Union Representative to the City Representative dated June 16, 1986, the Union notified the City that the Union wished to negotiate changes in wages, hours and conditions of employment to become effective January 1, 1987; that the City and the Union met on October 17, 1986, to exchange preliminary proposed changes to the collective bargaining agreement; that the Union's initial proposal contained the following:

16. Provide for an increase of major medical maximum to $500,000.

that the City's initial proposal contained the following:

31. Modify existing health care program in the following manner

1. Change deductible from $25.00 per cause to $100.00 per person per year all cause with a maximum of 3 per family.

2. Modify maximum coverage from $25,000 to $150,000

3. Employees to contribute 10% of health care cost

that the parties met for the purpose of collective bargaining on November 5 and 11, 1986; that on November 11, 1986, the City proposed five modifications to the health care plan; that the parties met for the purpose of collective bargaining on November 20, 1986; that at that meeting the parties entered into a tentative agreement on insurance as follows:

Modified Proposal to AFSCME Local 643

City proposal 31

1. Modify deductible from $25 per cause per person to $75.00 all cause per person per year with a maximum of 3 per family. Modify maximum from $25,000 to $500,000.

2. Cost containment items as per attached sheets.

that the cost containment items stated above were four of the five modifications proposed by the City on November 11, 1986; that the parties met several times after November 11, 1986, and reached an overall tentative agreement on a successor agreement; that unit members were given a summary of tentative agreements on December 22, 1986; that said summary was prepared by the Union Representative and stated in part:

> INSURANCE: 1. Modify deductible from $25 per cause/per person to $75 all cause per person/per year with a maximum of 3 per family. Modify maximum from $25,000 to $500,000.
>
> 2. Cost containment items as per attached sheets.

that the Union voted on the overall tentative agreement on December 22, 1986; that the Union rejected the tentative agreement; that the parties entered into subsequent negotiations and reached a new tentative agreement; that the tentative agreement regarding insurance was not changed; that the Union Representative prepared a summary of the new tentative agreement; that the language regarding insurance was not changed in this second summary; that the Union Representative explained the overall tentative agreement to the bargaining unit at a meeting on March 16, 1987; that the Union approved the tentative agreement by a vote of 30 to 20 on March 17, 1987; that the Beloit City Council ratified the tentative agreement at its regular meeting on April 6, 1987; that the parties met on July 29, 1987, to sign the collective bargaining agreement to be effective from January 1, 1987 through December 31, 1988; that Section 13.02 Health and Accident Insurance of the collective bargaining agreement was not changed as a result of the agreement to change the major medical deductible and maximum coverage; and that the changes in deductible and maximum coverage were made in the Plan Document which was incorporated by reference in the collective bargaining agreement.

6. That the Union Representative was advised by the Union in late

September or early October, 1987, that there was a problem relating to the deductibles of the insurance plan; that in a letter dated October 13, 1987, the Union Representative wrote to the City Representative in part as follows:

> We have been informed that the City's insurance plan is continuing to apply a twenty-five dollar ($25.00) deductible over and above the seventy-five dollar ($75.00) all cause (front-end) deductible for hospital admittances. It is our understanding that the new deductible ($75) replaced all other deductibles. Could you please advise us the nature of this additional deductible and the reason it is not included in the all cause deductible.

that prior to late September or early October, 1987, the Union Representative knew that prior to 1987, the City health insurance plan contained a $25 deductible per cause per lifetime under major medical; and that prior to late September or early October, 1987 the Union Representative did not know that prior to 1987 the City health insurance plan contained a $25 deductible per hospital confinement.

7. That the phrase "per cause per person" refers specifically to the major medical deductible; that the phrase "all cause per person" refers only to the major medical deduction; that neither the phrase "per cause per person" nor "all cause per person" refers to the hospital deductible; that the tentative agreement regarding the insurance deductible does not refer to the hospital deductible but only to the major medical deductible; that the intent of the parties in negotiations regarding the deductible was to change the major medical deductible from a $25 per cause per person per lifetime deductible for each member of the family to a $75 all cause per person per year deductible with a maximum of three per family; that this is the change that the City implemented; that this change is consistent with the agreement of the parties; and that this is the change that is incorporated into the 1987-88 collective bargaining agreement between the parties.

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

CONCLUSIONS OF LAW

1. That the City, by continuing to include a $25 deductible per hospital admittance in its Health Care Plan, did not refuse to execute a collective bargaining provision previously agreed upon and, therefore, did not violate Sec. 111.70(3)(a)4, Stats., or, derivatively, Sec. 111.70(3)(a)1, Stats.

2. That the City, by continuing to include a $25 deductible per hospital admittance in its Health Care Plan, did not violate the collective bargaining agreement previously agreed upon and, therefore, did not violate Sec. 111.70(3)(a)5, Stats., or, derivatively, Sec. 111.70(3)(a)1, Stats.

3. That the City, by continuing to include a $25 deductible per hospital admittance in its Health Care Plan, did not interfere with, restrain or coerce municipal employes in the exercise of their rights guaranteed in Sec. 111.70(2), Stats., and, therefore, did not independently violate Sec. 111.70(3)(a)1, Stats.

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

ORDER 1/

IT IS ORDERED that the complaint be, and the same hereby is, dismissed in its entirety.

Dated at Madison, Wisconsin this 19th day of October, 1989.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By James W. Engmann /s/
James W. Engmann, Examiner

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, CONCLUSIONS OF LAW AND ORDER

Complainant's Position

On brief, the Union argues that the facts clearly demonstrate that the City has, and continues to violate Secs. 111.70(3)(a)1, 4 and 5, Stats. In regard to Secs. 111.70(3)(a)1 and 4, Stats., the Union asserts that prior to 1987, the health insurance program contained two separate deductible categories; that these categories were a $25 deductible for impatient confinement in a hospital, and a $25 deductible relating to major medical coverage; that in negotiations the City proposed that the insurance program require a single $75 all cause deductible rather than the $25 deductible for each cause; that the facts do not limit this proposal to major medical; that hospitalization can be considered nothing other than a cause for deductible purposes; and that on its face the City's proposal does not limit the proposed deductible change or the proposed change in the maximum coverage to major medical.

In addition, the Union argues that it was the Union which clearly proposed that the major medical Cap be increased to $500,000; that in exchange for increasing the major medical cap, the Union agreed to alter the deductible structure and to provide for significant cost containment procedures; that the City repeatedly represented to the Union that the revision in the insurance program proposed by the City would result in a single $75 deductible; and that this position by the City was clearly expressed at the bargaining table and at the signing of the agreement.

Also, the Union argues that there was a meeting of the minds on the deductible issue; that even though the Union Representative did not know about the separate hospital deductible at the time of the tentative agreement, this does not detract from his clear understanding of the bargain in which he participated; that other members of the Union's bargaining team were keenly aware of the different deductible components; that they repeatedly asked the City to explain its proposal; and that they were told that the insurance plan would contain a unitary deductible structure.

Finally, the Union argues that the City is applying the agreement in a fashion other than that intended by the parties; that if the City did not mean to eliminate the hospital deductible, then the City deliberately mislead the union about its intentions regarding insurance; that the City's bargaining conduct was nothing less than reprehensible; that the City bargained in bad faith; that this action violated Secs. 111.70(3)(a)1 and 4, Stats.; that the Commission should order that the health insurance program be implemented in accordance with the bargain struck by the parties; and that the Commission should order the City to cease and desist from bargaining in bad faith.

In regard to Secs. 111.70(3)(a)1 and 5, Stats., the Union asserts that the complaint proceeding is an appropriate forum for a determination of whether or not the City has and continues to violate the contract; that the parties fully litigated the merits of the contractual violation at the hearing in this matter; that even though the collective bargaining agreement contains a grievance procedure culminating in final and binding arbitration, the Commission should assert jurisdiction and render a decision over the contractual violation alleged in the complaint; that in doing so, the record clearly demonstrates that the City's application of the contract is in error; and that, therefore, the City violated the collective bargaining agreement and Secs. 111.70(3)(a)l and 5, Stats.

In conclusion, the Union requests that the Commission find that the City

has and is committing prohibited practices and has, therefore, violated Secs. 111.70(3)(a)1, 4 and 5, Stats.; that the Commission order the City to comply with the terms of the agreement reached by the parties; that the Commission order the City to cease and desist from bargaining in bad faith; that the Commission order the City to make all employes injured by its actions whole for any losses suffered; and that the Commission order other and further relief as may be appropriate.

The Union waived its right to file a reply brief.

Respondent's Position

On brief, the City denies that it violated Secs. 111.70(3)(a)1, 4 and 5, Stats. In regard to Sec. 111.70(3)(a)1, Stats., the City argues that the record is devoid of any evidence that the City has in any way attempted to interfere with, restrain or coerce bargaining unit members of their rights as municipal employes guaranteed under Sec. 111.70(2), Stats.; and that absent such evidence, the Commission should find and conclude that the City has not committed a prohibited practice in violation of Sec. 111.70(3)(a)1, Stats.

As to the alleged violation of Sec. 111.70(3)(a)4, Stats., the City argues that it never refused to bargain; that it bargained at all times after the June, 1986 letter from the Union to the City requesting negotiations until agreement was reached in April 1987; that the record is replete with the history of the bargaining between June 1986 and July 1987 when the agreement was signed; that there is no testimony that any City official refused to meet to discuss or even to bargain over the issue of insurance; that there is no basis for any claim that there has been a refusal to bargain; and that, therefore, the Commission should find and conclude that the City has not refused to bargain in violation of Sec. 111.70(3)(a)4, Stats.

In regard to Sec. 111.70(3)(a)5, Stats., the City argues that the health care plan contains an appeal process; that the Union did not utilize the health care plan appeal procedure; that the collective bargaining agreement contains a grievance procedure to deal with any difference of opinion or misunderstanding in regard to the interpretation, application or enforcement of the agreement; that the Union did not utilize the grievance procedure regarding this matter; that the Union testified that it did not use the grievance procedure because the question did not deal with the interpretation of the contract but rather as to the interpretation of the results of the bargaining process; that the City was available for any grievance as provided under the agreement to arbitrate questions arising as to the meaning or application of the terms of the agreement and to accept the terms of an arbitration award; and that the Union neglected to even ask for arbitration so the matter could be interpreted and resolved.

In addition, the City argues that the insurance changes provide substantial additional benefits to the unit members; that the City is honoring its contractual obligations in that regard; that the City made no change in the hospital deductible; that it is not obligated to do so; that the Union is attempting to boot strap itself into additional benefits by choosing to ignore the limits for the hospital or surgical benefits; that the Union is attempting to fold these benefits into the revised limits for the major medical plan; that the City never agreed to any changes in the hospital or surgical benefits; that the City only agreed to afford the additional benefits under the major medical plan; that the City is providing those benefits; and that the City has not violated the collective bargaining agreement and, therefore, has not violated Sec. 111.70(3)(a)5, Stats.

On reply brief, the City argues that the phrase "per cause" only has relationship to and was utilized only in the context of the major medical plan; that the hospital deductible is "per confinement"; that the bargaining

proposals of both parties related only to the major medical plan; that the Union representative did not know there was a separate deductible for hospital benefits until three months after the contract was signed; that therefore, he could not have been bargaining to combine the deductibles; that he was only bargaining for and understood the deductibles in terms of the major medical plan; and that, contrary to the Union, hospitalization is not a "cause" for deductible purposes.

DISCUSSION

The Union argues that by continuing to include a $25 deductible per hospital admittance in its Health Care Plan, the City commits prohibited practices within the meaning of Secs. 111.70(3)(a)1, 4 and 5, Stats. The City denies that it is in violation of said statutes.

Section 111.70(3)(a)4, Stats. makes it a prohibited practice for a municipal employer:

> 4. To refuse to bargain collectively with a representative of a majority of its employes in an appropriate collective bargaining unit . . . . The violation shall include, though not be limited thereby, to the refusal to execute a collective bargaining agreement previously agreed upon. . . .

The City's argument goes mainly to the first sentence of Sec. 111.70(3)(a)4, Stats., quoted above, but the heart of the Union's argument about this alleged violation rests in the second sentence quoted above. The Union argues that the City's proposal on the insurance deductible is not limited to the major medical deductible and that hospitalization is nothing other than a cause for deductible purposes. In many ways, this summarizes the confusion that underlies this complaint.

In its initial proposal, the City proposed in part to change the "deductible from $25.00 per cause to $100.00 per person per year all cause..." In its modified proposal to the Union the City proposed in part to "modify deductible from $25 per cause per person to $75.00 all cause per person per year. . . ". The terms "per cause and "all cause" are technical terms related to insurance and, in the City's Health Care Plan, related specifically to the major medical deductible. the hospital deductible is not "per cause" but "per confinement". While the City's proposal does not use the words "major medical deductible", the terms "per cause" and "all cause" limit its proposal to the major medical deductible.

The Union argues that the word "cause" and especially the term "all cause" means any cause for a deductible. Thus, moving from "per cause" to "all cause" means moving from two $25 deductibles (one for major medical and one for hospital) to a single $75 deductible. Herein lies the dispute. But in both its initial proposal and its revised proposal to the Union, the City proposed to modify the "deductible", a singular term. In addition, the City proposal did change the deductibles to a single $75 deductible in the sense that under major medical previously, the $25 deductible was for each and every cause, whereas now there was only one $75 deductible to be met.

Yet the Union argues that the City clearly expressed the inclusion of the hospital deductible in the $75 all cause deductible during negotiations. union witness and bargaining team member Pamela M. West testified to that as follows:

> Q (By Mr. Bernfeld) Particularly there were discussions that took place during the course of negotiations relating to the City's intentions with respect to their proposals?

A Yes, there was.

Q And in particular, I want to direct your attention to number 31 of Joint Exhibit 6 relating to health insurance. Now, did the city, representatives of the city at any time make representations as to the meaning of this proposal particularly with number 31, subparagraph (1) --

A Yes.

Q --involving the deductibles?

A Right.

Q And could you tell the examiner who said -- what was said and who said it?

A Well, it was a change in the deductible from $25 per cause to $75 per person all cause per year.

Q Okay. And continue on in terms of what --

A Well, it would be a front-end deductible where in the past we paid a $25 deductible for each different illness. This new deductible would be $75 per person for all cause with a limit of three per family.

Q Okay. And do you recall, were there any discussions relating to the relationship between the current---the deductible system in effect during the '85-'86 contract and the city's intentions with respect to '87-'88?

A Well, in the past we had a $25 deductible for the hospital, and with this new deductible, it would combine them so that there was not a separate deductible for the hospital.

(Transcript, pages 76-77.) Union witness and bargaining team member Daniel Jerry also testified to that as follows:

Q (By Mr. Bernfeld) Okay. And were there any discussions between the bargaining committee relating to the city's intentions in regard to the proposal number 31, particularly relating to the deductible which is subparagraph (1), I believe?

A Yeah, there has been some questions; yes.

Q What were the discussions that took place at the bargaining table relating to the meaning of that proposal?

A Well, this proposal's been changed, though, because it isn't $100.

Q And what -- it became $75, is that correct?

A Yes.

Q But in the course of bargaining about that, did the city explain what their intentions were with respect to the deductible?

A Yeah. The deductible would be -- $75 would cover the

hospitalization, doctors, and medical to add up to $75, whichever, if it took all three of them to make it.

(Transcript, page 103). But the City Representative testified that there was no discussion at the bargaining table as to the change in a deductible applying to the hospital insurance. The City's testimony has to be credited in this matter. The reason for this is that the Union Representative was present at all negotiation sessions and he testified unequivocally that he did not know there was a hospital deductible until several months after the contract was signed. The City Representative testified the City never discussed nor negotiated in regard to the hospital deductible. The Union representative testified he did not know about the hospital deductible. If the City had discussed or negotiated in regard to the hospital deductible, the Union Representative would have known about it.

Yet the Union argues that even though the Union Representative did not know about the hospital deductible, the local bargaining team members did know, and there was a meeting of the minds on the deductible issue eliminating the hospital deductible. But to determine the meeting of the minds, the mind is not explored but the spoken and written words are evaluated. Here the local bargaining team members never discussed the hospital deductible with the City at the bargaining table nor did they talk about it with their Union Representative. Otherwise, he would have known about it. No meeting of the minds can exist here, as the Union suggests, where no discussion of the issue has taken place.

The Union also argues that at the signing of the agreement, at which the Union Representative was not present, the City Representative clearly expressed that the hospital deductible was included in the $75 deductible. Union witness Pamela M. West testified as follows:

Q (By Mr. Bernfeld) Okay. Did you -- was there a conversation between the different people who were there that day?

A Well, when we were signing the contract, there was several copies that we had continuously signed, and it was again mentioned to (the City Representative) if all three, meaning the doctor, medical and hospital were included in the $75 deductible.

Q And you said it was mentioned. Who mentioned it?

A Daniel Jerry asked the question. He directed it to (the City Representative).

Q Okay. And what -- did you hear that question being asked?

A Yes, I did.

Q And did you hear the response?

A Yes. (The City Representative) says it was all three combined and that it was a very poor place to bring it up.

Q Okay. And did anybody else ask any questions relating to the health insurance?

A Bud asked for clarification of it, and again, (the City Representative) said that all three were combined.

(Transcript, p. 79). Union witness Daniel Jerry testified as follows:

Q (By Mr. Bernfeld) Okay. And during the course of this get together, did you raise any questions relating to elements of the settlement?

A Yes, I did.

Q And what did you say?

A I asked (the City Representative) did this cover hospitalization, medical and the doctors, and he said yes.

Q How did (the City Representative) react to you asking the question?

A Well, before he answered yes, he said it was a poor place to be asking it. I said, well, we're signing the contract here, so I figured it was okay.

Q And why did you think to ask that question?

A Because I had some questions in my mind about it.

Q And why did you have questions in your mind about it?

A Other employees had asked, so to get a straight answer, I thought before I signed it, well, I'd ask him again 'cause I didn't sign until after I asked him the question and he answered it.

Q Did anyone else ask any questions relating to health insurance at that meeting?

A Bud asked something about it.

Q Do you recall what that was, generally?

A A basic a verification on the same thing.

Q And how did (the City Representative) respond?

A "Yes."

Q Essentially the same answer he gave you?

A Yes.

(Transcript at pages 105-106). What is curious about this version of the story is that the question is not accurate. Even if the Union was correct in asserting that the hospital deductible was included in the new $75 deductible, the deductible did not cover the hospital, medical and doctor because there was no deductible for doctor or surgical, only for major medical and hospital. Thus, the question allegedly asked the City Representative is inaccurate and the City Representative's answer is incorrect, even if the Union's position on the deductibles in this case was correct. The reason for this is the misunderstanding over the phrase "all cause".

Union witness Harold "Bud" West presents a little different version of what happened at the signing. He testified as follows:

Q (By Mr. Bernfeld) And during the course of this get together, were any discussions had relating to the health insurance?

A Yes, there was. Dan Jerry had asked a question to (the City Representative) in referring to the insurance. He said that he asked again did it cover the medical, the doctor, and the hospitalization, and -

Q Do you recall what Mr. --

A I remember (the City Representative) said this is not the time to bring that up. I linked at Dan, and I looked over to (the City Representative).

Q Did (the City representative) then answer Mr. Jerry?

A Not that I recall. He just said this wasn't the tine to bring it up, but then I looked over, and I had mentioned, I says this is -- you mean this covers all cause because I had talked to (the City Representative) before over the phone, and in preparation with preparing this update for March 16th on this update, I'd talked to him, and I asked him if it was for all cause. We used the word "all cause.'

Q Okay. And did you ever specifically discuss about the hospitalization deductible as being part of that?

A Right, hospitalization, medical, and doctor.

Q And that's what you're referring to?

A As all cause.

Q And in your discussions with (the City Representative), that's what he assured you was included?

A Right; right.

(Transcript, pages 122-123). ibis witness has the City Representative answering that the deductible covers "all cause". The City Representative testified as follows:

Q (By Mr. Kelley) Can you recall having any conversation with Daniel Jerry at that signing?

A Only the most vague recollection of Dan stopping me beside the bar and saying, "Now this is an all cause plan," and my response was, "This is an all cause plan," but, you know, it didn't seem particularly momentous at the time.

Q Was there any articulation as to the parts of the plan he was talking about?

A No. No one asked anything about three parts to a plan. The words were, "Is this an all cause plan?"

(Transcript, pages 180-181). This version is consistent with the misunderstanding about the term "all cause". While the City used it in its technical insurance sense, the Union members took it to mean all of the deductibles. That explains somewhat why Pam West and Dan Jerry testified to asking a question that was inaccurate. They had changed "all cause", which is what the City Representative was asked about, to the specific deductibles, which is what they understood the term to mean, in their testimony. Harold West was more specific, stating that when he said "all cause", he was referring to hospitalization, medical and doctor deductibles. The deductible was "all

cause" for major medical, not for all deductibles. The hospital deductible was separate and unchanged.

Finally, in regard to Sec. 111.70(3)(a)4, Stats., the Union argues if the City did not mean to eliminate the hospital deductible, it deliberately mislead the Union and it bargained in bad faith. The record does not support this allegation by the Union. It its initial proposal to the Union, the City not only proposed a change in the deductible, but also in the amount of maximum coverage. Even though the proposal did not say so on its face, the parties understood that the maximum coverage which the City was talking about was the $25,000 on major medical, not the $25,000 on surgical. In its modified proposal to the Union which was agreed to, again the City did not specify it was proposing to change the maximum from $25,000 to $500,000 on the major medical, not the surgical, but it was clear that was what the proposal involved because that is what the parties talked about at the table.

So it is with the deductible. As noted above, the hospital deductible was never discussed in negotiations. The only deductible being discussed and negotiated, the only deductible the Union Representative was aware of, was the major medical deductible. That is the deductible which the parties agreed to change from a $25 per cause to a $75 all cause. The parties to an agreement are charged with full knowledge of its provisions. The parties are also charged with realizing the full implication of changes to which they are agreeing. Here, apparently, the change in the agreement did not meet the hopes of the Union. What the parties agreed to and what the Union would like to have agreed to are different. But if the words "all cause" are not the words the Union would have liked to have agreed to, they should have prevented their use. In any case, the Union's agreement was not obtained by fraud or deceit, nor was it coerced. If the Union made a mistake in agreeing to this change in deductible, it was a bargaining mistake that they can try to rectify at the next bargaining session.

As the City incorporated the agreement as the parties agreed, the City did not refuse to execute a collective bargaining agreement previously agreed to and, therefore, the City did not violate Sec. 111.70(3)J(a)4, Stats. As the City incorporated the agreement as the parties agreed, there is no violation of the agreement and, therefore, no violation of Sec. 111.70(3)(a)5, Stats. As there are no violations of Secs. 111.70(3)(a)4 or 5, Stats., there is no derivative violation of Sec. 111.70(3)(a)1, Stats. As the Union offered little or no evidence as to an independent violation of Sec. 111.70(3)(a)1, Stats., no violation is found.

For these reasons, the complaint is dismissed in its entirety.

Dated at Madison, Wisconsin this 19th day of October, 1989.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By James W. Engmann /s/
James W. Engmann, Examiner