STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

RACINE EDUCATION ASSOCIATION, Complainant,

vs.

RACINE UNIFIED SCHOOL DISTRICT and THE BOARD OF EDUCATION OF THE RACINE UNIFIED SCHOOL DISTRICT, Respondents.

Case 155
No. 55521
MP-3335

Decision No. 29195-A

Appearances:

Kelly & Kobelt, Attorneys at Law, by **Mr. Robert C. Kelly**, 122 East Olin Avenue, Suite 195, Madison, Wisconsin 53713, appearing on behalf of the Racine Education Association.

Melli, Walker, Pease & Ruhly, S.C., Attorneys at Law, by **Mr. Jack D. Walker** and **Mr. Dana J. Erlandson**, 119 Martin Luther King, Jr. Boulevard, P. O. Box 1664, Madison, Wisconsin 53701-1664, appearing on behalf of the Racine Unified School District and the Board of Education of the Racine Unified School District.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

Racine Education Association filed a complaint with the Wisconsin Employment Relations Commission on August 26, 1997, and amended it on January 6, 1998, alleging that the Racine Unified School District and the Board of Education of the Racine Unified School District had committed prohibited practices in violation of Secs. 111.70(3)(a)4 and 1, Stats., by unilaterally changing the provider of the group long term disability plan during a contract hiatus. On September 23, 1997, the Commission appointed Lionel L. Crowley, 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. Hearing on the complaint was held on October 8 1997, in Racine, Wisconsin. The parties filed post-hearing briefs and reply briefs, the last of which were received on January 23, 1998. The Examiner, having considered the evidence and arguments of counsel, makes and issues the following Findings of Fact, Conclusion of Law and Order.

No. 29195-A

FINDINGS OF FACT

1. Racine Education Association, hereinafter referred to as the Association, is a labor organization within the meaning of Sec. 111.70(1)(h), Wis. Stats., and has its principal office at 1201 West Boulevard, Racine, Wisconsin 53405-3021. James J. Ennis is the Executive Director of the Association and has acted on its behalf.

2. The Racine Unified School District, hereinafter referred to as the District, and the Board of Education of the District, hereinafter referred to as the Board, is a municipal employer within the meaning of Sec. 111.70(1)(j), Stats., and its principal office is located at 2220 Northwestern Avenue, Racine, Wisconsin 53404. Frank L. Johnson is the District's Director of Employee Relations and Keri Paulson is the District's Supervisor of Employee Relations and they have acted on behalf of the District.

3. At all times material to this proceeding, the Association has been the certified exclusive bargaining representative of all regular full-time and regular part-time certified teaching personnel employed by the District, excluding on-call substitute teachers, interns, supervisors, administrators, and directors.

4. The Association and the District have been parties to a 1992-93 collective bargaining agreement which provided in pertinent part as follows:

19 INSURANCE & RETIREMENT

. . .

"19.3 Disability Benefit

Within a reasonable period of time after this agreement is approved, the District shall provide disability benefits comparable to the revised CNA insurance policy as proposed by the Association."

5. Section 19.3 was negotiated into the 1990-92 collective bargaining agreement between the parties which went into effect on January 15, 1992. During the negotiations leading up to this agreement, on or about December 10, 1991, the Association made a Group Long Term Disability Proposal which provided the following:

Percent of Salary	66 2/3% of current salary
Benefit Period	2 years
Elimination Period	60 days

Employer Contribution	100%
Minimum Benefit	$100 - 10%
Partial Rehab	Residual
Pre-existing Conditions	Prior 3 months (12 months wait)
Mental & Nervous	24 months
Survivor Income Benefit	6 months
Other Provisions	Alcohol & Drugs Fully Covered

The Association also submitted "A Proposal of Group Long Term Disability Insurance" by CNA Insurance Companies. This was not a policy but a proposal which incorporated the items listed in the Association's proposal set out above. The District did not agree to the Association's proposal. On December 11, 1991, the Association made the following proposal:

7. Disability Insurance:

a. Effective February 1, 1992 teachers shall be covered by the CNA Insurance Companies policy attached and the Board shall pay the full premium.

The District made the following counterproposal:

7. Disability Benefits:

a. As soon as possible after agreement, teachers shall be covered by CNA Insurance Co. disability benefits. District pays 50%. Sunset name only not benefit.

On December 12, 1991, the Association made the following counterproposal:

7. Disability Benefits:

a. Effective February 1, 1992 the District shall provide disability benefits comparable to the revised CNA Insurance policy proposed by the Association.

There was no policy but the "revised" proposal was that the percentage benefit paid was reduced to 60 percent and the premium per thousand was reduced to .24.

Later on December 12, 1991, the Association submitted the following counteroffer:

7. Disability Benefits:

a. Effective February 1, 1992 the District shall provide disability benefits comparable to the revised CNA Insurance policy proposed by the Association.

b. The name CNA shall not appear in the document, but the plan will be the CNA plan as presented by the Association.

On December 12, 1991, the District made the following proposal:

7. Disability Benefits:

a. Effective February 1, 1992 the District shall provide disability benefits comparable to the revised CNA insurance policy proposed by the Association.

Thereafter, the parties reached agreement on the language of Section 19.3 as set out above.

6. On or about January 24, 1992, Robert Stepien, the District's Assistant Superintendent for Business Services, sent a request for proposals for long term disability insurance to perhaps fifteen (15) carriers. The request consisted of the Specifications and Definitions. Of those carriers submitting bids, Fortis Benefits Insurance Company, hereinafter Fortis, was selected as the carrier.

7. The parties then commenced negotiations over the 1992-93 collective bargaining agreement and the parties signed the agreement on November 14, 1995. Section 19.3 remained unchanged from the 1990-92 contract.

8. In August, 1996, the District changed the long term disability insurance carrier from Fortis to Unum Life Insurance Company of America, hereinafter Unum. This change in carriers became effective on September 1, 1996, and was during the hiatus period as no agreement between the parties had been reached since the expiration of the 1992-93 agreement. The Association requested a copy of the Unum contract and one was provided on or about November 12, 1996. The Association reviewed the contract and filed a grievance on January 15, 1997, alleging the Unum contract violated Section 19.3 as it was not "comparable." The grievance was denied and on August 26, 1997, the Association filed the instant complaint, as amended, alleging a violation of

Secs. 111.70(3)(a)4 and 1, Stats.

9. The District by its change of carriers to Unum provided disability benefits comparable to the revised CNA insurance policy proposed by the Association.

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

CONCLUSION OF LAW

1. The Racine Unified School District did not commit any prohibited practices within the meaning of Secs. 111.70(3)(a)4 and 1, Stats., by unilaterally changing its long term disability insurance carrier from Fortis to Unum during the hiatus period between the 1992-93 contract and its successor.

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

ORDER

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

Dated at Madison, Wisconsin, this 9th day of March, 1998.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Lionel L. Crowley /s/
Lionel L. Crowley, Examiner

RACINE UNIFIED SCHOOL DISTRICT

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

In its complaint, as amended, the Association alleged that the District violated Secs. 111.70(3)(a)4 and 1, Stats., by providing long term disability benefits pursuant to a Unum insurance contract which is not comparable to the requirements of Section 19.3 of the expired contract, thereby violating the status quo. The District answered the complaint denying that it had violated any provision of Sec. 111.70, Stats.

ASSOCIATION'S POSITION

The Association contends that the Unum Insurance Company's long term disability plan is not comparable to the "revised CNA insurance policy as proposed by the Association" and thus violates the status quo and is a prohibited practice. It submits that insurance benefits including disability benefits are wages and are mandatory subjects of bargaining and during a hiatus period the District is obliged to maintain the status quo. It notes that the status quo during a hiatus period is determined from the relevant contract language as historically applied or as clarified by bargaining history. The Association contends that the language "revised CNA insurance policy as proposed by the Association" set forth in Section 19.3 is the document entitled "A Proposal of Group Long Term Disability Insurance," prepared by CNA (Ex. 21). It insists that the District's status quo obligation is to provide bargaining unit employes disability benefits comparable to those available under the revised CNA insurance policy proposed by the Association (Ex. 21).

The Association argues that the long term disability plan by Unum does not provide benefits comparable to the revised CNA insurance policy as proposed by the Association. The Association points out that it had CNA review the Unum contract with the bid specifications and an independent comparability analysis by Huttleston & Associates, Inc., and it was concluded that the Unum contract was not comparable in that several areas did not meet the bid specifications. The Association insists that there is not a shred of credible evidence on which to base a contrary conclusion. It claims that the District by unilaterally changing to Unum as the long term disability plan carrier during the hiatus period altered the status quo in violation of Sec. 111.70(3)(a)4, Stats., and derivatively, of Sec. 111.70(3)(a)1, Stats.

The Association maintains that the District's affirmative defenses do not deprive the Commission of jurisdiction or otherwise prevent a decision on the merits. The Association alleges that the two affirmative defenses, the grievance not being timely filed and the complaint barred by res judicata, are not meritorious. The Association submits that the grievance was
timely filed and even if it wasn't, the Commission is not deprived of jurisdiction over the Association's claims which are founded in the law rather than in the contract. It observes that it did not get the Unum contract until about two months after it asked for it and was apprised that it was not comparable on December 17, 1996, after which it had twenty (20) school days

or until January 28, 1997, to file a grievance and the grievance was filed on January 15, 1997, well within the deadline. Furthermore, it takes the position that a failure to maintain the status quo during a hiatus is a statutory violation and under Sec. 111.07(14), Stats., a complaint must be filed within one (1) year and the Association's August 25, 1997 complaint was within the one year period. It concludes that the District's first affirmative defense must fail. As to the res judicata or collateral estoppel defense, the Association insists that these too must fail because no claim or issue has been adjudicated. It notes that the District's denial of a grievance does not trigger these theories nor does withdrawal of the grievance. It insists that these defenses must fail.

In conclusion, the Association states that Section 19.3 of the parties' agreement obligated the District to provide ". . . disability benefits comparable to the revised CNA insurance policy" which became the status quo upon expiration of the agreement. It contends that the District's unilateral change of carrier, which affected the substance of its insurance plan, constituted a refusal to bargain in violation of Sec. 111.70(3)(a)4 and derivatively Sec. 111.70(3)(a)1, Stats. It seeks termination of the Unum contract and its replacement by Fortis or a carrier that will provide comparable benefits and a make-whole order for any out-of-pocket losses suffered by reason of the District's change of carrier to Unum.

DISTRICT'S POSITION

The District contends that Section 19.3 is void because the Association has never provided it with the revised CNA insurance policy. It asserts that the language is not ambiguous and requires "a revised CNA insurance policy" not revised "specs." It notes that there is no CNA insurance policy of any kind in the record, thus it claims it could not have violated this language. The District refers to CNA's letter of comparison between the Unum policy and the CNA specs and avers that CNA never stated there was any change in the level of benefits, merely subtle changes which gave Unum increased power to deny or terminate claims and the full impact of Unum is not felt because the disability plan has a maximum benefit of 24 months. The District notes that CNA's position is not that there is a change in benefits but that there are merely changes in the level of claim payment, and this does not violate the "comparability" standard.

The District argues that Section 19.3 is void because the parties give materially different meanings to the language so a mistake existed which prevented the formation of a contract. The District insists that even if Section 19.3 is not void, the language "comparable" allows it to change carriers provided the general level of benefits is maintained. It notes the term, "comparable," does not mean "equal" or "identical" or even "substantially equal" and does not guarantee the same kind of benefits. It contends that a comparable plan is not required; only comparable benefits and a mere change in the level of claim payment or coverage of certain procedures does not violate the comparability standard. The District observes that the Association presented no evidence that the actual level of claim payment differed under Unum. The District maintains that the language is plain on its face but negotiating history allows the District to change carriers and benefits.

The District claims that Unum benefits are comparable to the revised CNA insurance policy. It states that the Unum policy is more than comparable to the "specs" set forth in Exhibit 28. The District takes the position that neither Exhibits 3 nor 21 are the "revised CNA policy" as these are "specs" and not insurance policies. It argues that comparison of the Unum policy with "specs" is questionable. It submits that the Association's analyst does not understand the meaning of the term "comparable" which he equates with "equal," and besides his "expert" testimony is less than credible. It points out that he was willing to get an answer from CNA whether "other compensation" covered coaching but did not ask Unum that question even though the language on "other compensation" was the same. It observes a lack of reference to Fortis in the analyst's direct examination but notes he admitted on cross-examination that Fortis was roughly comparable to the "specs," although Fortis contains the same major provisions he objected to in Unum. It also points out that he failed to mention Unum's broader eligibility standards.

It submits that even if the Association's "expert's" testimony is credited, the evidence shows that the Unum policy is comparable to the level of benefits in Exhibit 3 and in many ways better. It asserts that the main objection to Unum does not focus on benefits but on language that might allow Unum to deny or reduce benefits. It observes that three Unum provisions considered to be "significant" differences (maximum capacity, benefits ending if one can work but chooses not to, and the requirement to obtain the most "appropriate treatment and care) are also in the Fortis policy which is believed to be comparable. The District repeats its argument that a difference in the level of claim payment does not violate the "comparability" standard.

The District argues that the scope of Commission review should not be de novo but should be limited to whether the District's judgment was a non-arbitrary act. It claims that any other conclusion would result in an incentive for the Association to not reach an agreement but to remain in a contract "hiatus" as long as possible. The District asserts the Union dropped the grievance and therefore its claim is barred. It argues that dropping the grievance has the effect of res judicata on a claim. The District also insists that there was an ad hoc agreement to arbitrate the grievance where Mr. Ennis used the word "we" in requesting a panel of arbitrators from the Commission. It submits the word "we" refers to the representatives of the Association and the District which is an ad hoc argument to arbitrate and the Association's later withdrawal of the grievance not only barred arbitration of the grievance but precluded litigating the merits in this proceeding. The District contends that the Association waived the right to bargain the impact of the decision to implement Unum as the carrier as no demand to bargain was ever made. The District asks that the complaint be dismissed.

ASSOCIATION'S REPLY

The Association contends that Section 19.3 is not void because a CNA policy was not provided because the language used by the parties was a shorthand manner of describing the benefits described in CNA's proposal. It observes the parties understood Section 19.3 because after agreement was reached, the District selected Fortis as the carrier to provide the benefits specified in CNA's proposal. It claims that the District's arguments based on no CNA policy are absurd.

The Association maintains that comparable is not a meaningless term and although the District can change the carrier, it cannot do whatever it wants under the "comparable to" standard. It argues that the District ceased to provide benefits comparable to those set forth in the specifications. It claims that the evidence presented by its expert as well as a CNA analysis prove the benefits are not comparable and the District offered no evidence otherwise. It concludes that the District's unilateral change violated the status quo.

The Association takes the position that the "revised CNA insurance policy" as proposed by the Association is described in the CNA proposal (Ex. 21), the specifications of which are set forth in the District's Request for Proposals (Ex. 20). The Association rejects the District's contention that the revised chart (Ex. 28) is the revised CNA policy. It insists that the parties understood the term "revised CNA insurance policy" meant the policy described in CNA's proposal (Ex. 21). The Association maintains that its expert properly compared the benefit specifications under Exhibit 3 with the Unum policy and found it was not comparable because Unum's wording gave it extreme control as to the handling of the disability far more than CNA. Contrary to the District's arguments, the Association states that based on the evidence presented, the Unum contract is not comparable to the CNA contract.

With respect to the scope of the Commission's review, the Association posits that it is not limited nor should it be. It points out that the District cites no authority for its argument that a certiorari rather than a de novo hearing should be held by the Commission. It maintains that no "hiatus penalty" should be imposed on the Association as it is the District that has the incentive to remain in hiatus if its actions were immune from substantive review, thus policy considerations strongly favor the Association. It asserts that acceptance of the District's proposition would allow it to neatly escape its status quo obligations. It recalls that the status quo exists to continue the allocation of rights and opportunities reflected by the terms of the expired contract while the parties bargain a successor agreement. It submits that employes are entitled to enjoy the fruits of the agreement during the hiatus.

The Association insists that its claim is not barred because the grievance which first presented the instant claims was withdrawn. It states that the principles of res judicata and collateral estoppel only apply to claims that have already been adjudicated and here no adjudication of any claim or issue has been made. It insists that withdrawal does not equate with final adjudication.

The Association insists that there was no ad hoc agreement to arbitrate the matters. It characterizes the District's argument as poppycock and questions whether the District is really saying that Mr. Ennis in his sole discretion could bind the District to an ad hoc agreement. It thinks not. The Association contends that it did not waive its right to bargain the impact of the District's decision to change to Unum. It observes that it has no obligation to bargain over changing the status quo during a contract hiatus and it did not waive its status quo rights by inaction. In conclusion, the Association maintains that the District affected the substance of the long term disability plan by its unilateral change of carriers during the hiatus and thus violated Secs. 111.70(3)(a)4 and 1, Stats.

DISTRICT'S REPLY

The District contends that the revised CNA insurance policy is Exhibit 28. Additionally, it maintains that it has not altered the status quo and reiterates its arguments that Section 19.3 is void because no policy was presented and for mistake. It insists that the Unum benefits are comparable. It claims that it can change the carrier under the contract so long as the benefits are comparable and it reiterates its arguments that CNA's analysis fails to prove any lack of comparability and the Association's expert's opinion is flawed and suspect and he was not competent to give an opinion on legal issues. It submits that he did not even understand the term "comparable" but appears to believe it means "equal." It maintains that the testimony of the expert is simply that Unum has language that gives it extreme control on handling of a disability claim but this speculative difference does not violate the "comparability" standard. It alleges that the legal definition of "comparability" focuses on benefits, not on the degree of possible denial of claims. It suggests that the Unum policy is comparable to the Union's bargaining proposals (Exs. 26 and 28) in every way. It argues that even if the degree of claims denial was relevant, there was no evidence as to Unum's underwriting standards and practices as to denials, rather mere speculation. It maintains that the Association did not and could not meet its burden of proving that the benefits were not comparable. It observes that the benefits are comparable and in some ways better and no evidence was presented of any actual difference in the level of claim payment.

The District denies any violation of Secs. 111.70(3)(a)4 or 1, Stats., because the Association waived its right to bargain the impact of the decision to change carriers. It reiterates its prior arguments that the Association made no proposals, thus waived its rights to bargain. The District claims that the one year statute of limitations has run because the act complained of is the District's August 5, 1996 vote to accept Unum as the carrier and no complaint was filed until August 26, 1997, which was beyond the one year statute of limitations. It asks that the case be dismissed with prejudice.

DISCUSSION

The District has argued that Section 19.3 is void because no CNA policy was given to the District and the parties had a mistaken understanding of this Section. These arguments are not persuasive. The language of the contract interpreted in the light of the parties' actions over the past five years as well as bargaining history establishes that the language is not void but is effective to both parties. The issue presented is whether the change in carrier from Fortis to Unum constituted a change in the status quo during a hiatus. A unilateral change in the status quo wages, hours or conditions of employment during a contractual hiatus is a per se violation of the employer's duty to bargain under the Municipal Employment Relations Act. Such unilateral changes are tantamount to an outright refusal to bargain about a mandatory subject of bargaining because they undercut the integrity of the collective bargaining process in a manner inherently inconsistent with the statutory mandate to bargain in good faith. CITY OF BROOKFIELD, DEC. NO. 19822-C (WERC, 11/84) AT 12; GREEN COUNTY, DEC. NO. 20308-B (WERC, 11/84) AT 18-19; and SCHOOL DISTRICT OF WISCONSIN RAPIDS, DEC. NO. 19084-C

(WERC, 3/85) AT 14. In addition, such an employer unilateral change evidences a disregard for the role and status of the majority representative which is inherently inconsistent with good faith bargaining. SCHOOL DISTRICT OF WISCONSIN RAPIDS, SUPRA, AT 14.

When determining the status quo in the context of a contract hiatus, the Commission considers relevant language from the expired contract as historically applied or as clarified by bargaining history, if any. MAYVILLE SCHOOL DISTRICT, DEC. NO. 25144-D (WERC, 5/92); SCHOOL DISTRICT OF WISCONSIN RAPIDS, SUPRA

Section 19.3 of the collective bargaining agreement provides as follows:

> 19.3 Disability Benefit
>
> Within a reasonable period of time after this agreement is approved, the District shall provide disability benefits comparable to the revised CNA insurance policy as proposed by the Association.

This language provides that the District shall provide disability benefits comparable to the revised CNA insurance policy as proposed by the Association. The evidence indicates that the Association did not propose an actual CNA insurance policy but the Association in negotiations made a proposal for a long term disability plan with certain specifications (Ex. 26) as well as a proposal for group long term disability insurance from CNA Insurance Companies (Ex. 21). Although there was a reference to the CNA insurance policy, there was no policy, only a proposal (Ex. 27). The District did not agree to this proposal (Ex. 30) and the Association changed one specification for 66.6 percent benefit paid to 60 percent benefit paid (Ex. 28). This then became referred to as the revised CNA insurance policy and was referred to as such by both parties (Exs. 29 and 31). The parties reached final agreement on Section 19.3 and both understood the meaning although it was not expressed in the most precise terms. After agreement was reached, Mr. Stepien, the District's Assistant Superintendent for Business Services, took the specs as revised as well as CNA's proposal (Ex. 21) and created the District's request for proposals (Ex. 20). Fortis was selected. No objection or grievance was received with respect to the selection of Fortis and no bargaining proposal was made in the next round of negotiations to change Fortis or the benefits provided under the long term disability plan. Thus, the parties understood what they had agreed to and Fortis remained the carrier for approximately 4 1/2 years.

In 1996, the District unilaterally changed the long term disability carrier to Unum. The language of Section 19.3 does not specify a carrier and merely requires the District to provide benefits; therefore, the District retained the right to change carriers at any time during the contract or a hiatus. The change to Unum itself was not a violation of the status quo. The crux of the instant complaint is whether after the change in carriers, was the District providing disability benefits comparable to the revised CNA insurance policy as that term was understood by the parties. Section 19.3 provides that the disability benefits must be "comparable to" the

revised CNA insurance policy. The term "comparable to" does not mean equal to or better or substantially equal or better. RACINE UNIFIED SCHOOL DISTRICT, DEC. NOS. 26816-B AND 26817-B (HONEYMAN, 4/92) The term as defined in a dictionary is in a circular fashion as having enough like characteristics or qualities to make comparison appropriate. In other words, there can be differences in benefits and the plans can still be comparable. The issue is whether the change in carriers affected the benefits sufficiently such that the benefits are no longer comparable.

The Association claims that the benefits are not comparable to those required under the contract. The Association has the burden of proving by a clear and satisfactory preponderance of the evidence that the disability benefits under Unum are not comparable. A review of the evidence leads to the conclusion that the Association failed to meet its burden of proof.

With respect to CNA's letter of December 16, 1996 (Ex. 11), it contains a significant error in the definition of monthly earnings. It further points out that the limitations on "any occupation," "work incentive benefit" and "self reported symptoms limitation" are not felt because the maximum benefit is 24 months. CNA's analysis simply states that there are subtle changes which give Unum increased power to deny or terminate claims. No evidence was presented that Unum denied any claim. The mere ability to deny a claim does not mean that the benefits are not comparable. If legitimate claims are improperly denied, a grievance can be filed to correct that situation but mere speculation on ability to deny a claim is not a change in benefits and, at most, could be merely a change in administration of the plan that goes hand in hand with a change in carrier, a right the District retained. This change was not shown to be significant enough to demonstrate that the benefits were not comparable. Thus, the analysis by CNA fails to prove that the disability benefits provided under the Unum contract are not comparable.

The Association, by the testimony of its expert, Mr. David Huttleston, also failed to establish that the disability benefits provided under the Unum contract are not comparable. The expert compared the Unum contract with the bid specs (Exs. 3 and 5). An inherent problem with this methodology is that the expert had the Unum contract with all its attendant language versus the bid specs which is like comparing apples and oranges. His concern was that Unum had wording that gave it extreme control as to the handling of disability claims. He felt that one whole section on fraud just blatantly says we are going to watch everything you do and we are going to monitor everything and if you step close to the line we will deny benefits (Tr. 77-78). First, no employe is entitled to obtain benefits from a fraudulent claim and the District can be blatant about telling employes that a fraudulent claim is not a benefit under the long term disability plan. Without a CNA policy to compare, CNA could be just as blatant because no insurance company sanctions fraudulent claims. Mr. Huttleston also testified that CNA includes coaching pay in the definition of earnings inferring that Unum did not; however, he got this information outside the specs in a letter provided by CNA (Tr. 66, 92). He did not seek any clarification from Unum. Apparently unknown to Mr. Huttleston, the District had the loss of license or certification removed from the contract. As Mr. Huttleston did not know this, he properly noted this difference from the specs. The major objection to Unum was language giving Unum control over claims (Tr. 77); however, this does not prove that the disability

benefits are less or that it does not meet the specs. This all goes to administration of the plan and speculation as to what that might be. Here again, there was no evidence of a change in benefits that was so significant as not to be comparable to the specs. Thus, the testimony of Mr. Huttleston failed to prove anything except his concern over language giving the administrator possible grounds to improperly deny a claim. This proves nothing. If a claim is improperly denied, and no evidence was presented that such was the case, then a grievance may be filed and the problem resolved. The evidence simply failed to show any change in benefits or in the level of claim payment and thus there was no proof of a violation of the "comparability" standard. See RACINE UNIFIED SCHOOL DISTRICT, DEC. NOS. 26816-C AND 26817-C (WERC, 3/93. Therefore, there was no improper change in the status quo and the complaint has been dismissed.

The District raised a number of issues related to the scope of review, the withdrawal of the grievance, an ad hoc agreement to arbitrate and a waiver of bargaining. None of these have any merit and have been dismissed.

Inasmuch as the District did not impermissibly alter the status quo during the hiatus, the alleged violation of Sec. 111.70(3)(a)4, Stats., has been dismissed and the alleged violation of Sec. 111.70(3)(a)1, Stats., must fail because it is derivative.

Dated at Madison, Wisconsin, this 9th day of March, 1998.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Lionel L. Crowley /s/
Lionel L. Crowley, Examiner

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29195-A.D