

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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**WISCONSIN COUNCIL 40, AFSCME, AFL-CIO**, Complainant,

vs.

**WALWORTH COUNTY**, Respondent.

Case 143  
No. 55356  
MP-3319

**Decision No. 29197-B**

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Appearances:

**Mr. Laurence Rodenstein**, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 8033 Excelsior Drive, Suite B, Madison, Wisconsin 53717, appearing on behalf of the Complainant.

vonBriesen, Purtell & Roper, S.C., Attorneys at Law, by **Mr. Charles Magyera**, 411 East Wisconsin Avenue, Suite 700, Milwaukee, Wisconsin 53202, appearing on behalf of the Respondent.

**FINDINGS OF FACT,**  
**CONCLUSIONS OF LAW AND ORDER**

Wisconsin Council 40, AFSCME, AFL-CIO filed a complaint on July 14, 1997 with the Wisconsin Employment Relations Commission which alleged that Walworth County had committed prohibited practices within the meaning of Secs. 111.70(3)(a)1, 2 and 3, Stats., when it decided, while an election petition was pending, that the unrepresented employees covered by the election petition would henceforth pay 10% of their health insurance premium. Thereafter, hearing on the complaint was held in abeyance pending efforts to settle the dispute. On September 26, 1997, the Commission appointed Raleigh Jones, a member of its staff, to act as Examiner in this matter and to make and issue Findings of Fact, Conclusions of Law and Order, as provided in Sec. 111.07(5), Stats. On October 31, 1997, the County filed an answer to the

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complaint. A hearing was held in Elkhorn, Wisconsin on November 18, 1997, at which time the parties were given full opportunity to present their evidence and arguments. The parties later filed briefs whereupon the record was closed March 31, 1998. Having considered the record evidence and the arguments of the parties, I make and issue the following Findings of Fact, Conclusions of Law and Order.

**To maximize the ability of the parties we serve to utilize the Internet and computer software to research decisions and arbitration awards issued by the Commission and its staff, footnote text is found in the body of this decision.**

### **FINDINGS OF FACT**

1. Wisconsin Council 40, AFSCME, AFL-CIO, hereinafter referred to as the Union, is a labor organization within the meaning of the Municipal Employment Relations Act (MERA). It maintains its principal office at 8033 Excelsior Drive, Madison, Wisconsin 53717. The Union is the exclusive collective bargaining representative for four bargaining units in Walworth County: Highway, Courthouse, Human Services and Lakeland Nursing Home. There are about 600 employees in these four units. At all times material herein, Laurence Rodenstein has served as its Staff Representative and has acted on its behalf.

2. Walworth County, hereinafter referred to as the County, is a municipal employer within the meaning of MERA. It maintains its offices at P.O. Box 1001, 100 West Walworth Street, Elkhorn, Wisconsin. At all times material herein, Janice St. John has served as its Personnel Director and has acted on its behalf.

3. Between 1989 and 1996, the County adjusted the wages and benefits of its unrepresented employees after bargaining with AFSCME and the other units had concluded and a settlement pattern had been established. Thus, during this timeframe, the County waited to implement the economic package for its unrepresented employees until after negotiations with its unions were finished. As an example, in 1992 the Unions agreed to certain insurance changes. The County did not implement these changes for the unrepresented employees until after negotiations were completed.

4. In June, 1996, the County began an examination of its insurance program and the amount of money it was spending to maintain its existing self-insured health plan. As part of this budget review process, the County's Ways and Means Committee decided to begin the "Request for Proposals" process for the County's health insurance program.

5. In mid-July, 1996, County Personnel Director Janice St. John submitted an issue paper to the County's Ways and Means Committee concerning the setting of 1997 health and dental insurance rates. It provided as follows:

## ISSUE PAPER

DEPARTMENT: Personnel  
ISSUE: HEALTH AND DENTAL  
INSURANCE FUNDS

By: Janice St. John 7-19-96  
Personnel Director

I. Decision to be Made:

Setting of 1997 health and dental insurance premium rates.

II. Summary of Why This Decision is Before the Committee or Board:

In prior years premium rates have been set based on the recommendations of Personnel and Accounting staff and final rates were adopted by joint action of the Personnel Committee and Finance Committee prior to adoption of the next years budget. As a result of the reorganization, the Ways and Means Committee is required to act on the setting of premium rates.

On June 5, 1996, the Committee considered initial guidelines for the 1997 budget which have been used in preparing base budgets. The 1997 base budget for the health fund assumes no increase in premium rates for 1997 and the need to appropriate \$500,000 for the health fund to stabilize premium increases to replenish reserves. The 1997 base budget for the dental fund assumes a 14% premium increase in rates for 1997. Any changes in the initial guidelines will require changes in the base budget.

Based on further review of health and dental claims data through 7/18/96, the Committee is being asked to revisit the issue of 1997 premium rates. Current claims data indicates that an operating loss is expected in the health fund which will reduce reserves to a level at which a premium rate and additional appropriation are required. Dental claims data also indicates an operating loss, but the reduced level of reserves are still at an acceptable level and a premium adjustment is not necessary to maintain reserves.

III. Key Information for Developing Options for this Decision:

HEALTH FUND ASSUMPTIONS:

- No change in current enrollment of 1201
- No increase in 1997 premium rates

Additional appropriation of \$500,000  
 No increase in administrative expense  
 Medical inflation on claims for 1997 at 5%  
 Reinsurer expected claims level for 4/96-3/97 at \$5,526,760  
 Aggregate reinsurance level at 125% of expected claims.  
 Actual paid claims for 1/96-6/96 at \$3,410,429  
 Actual paid claims for 4/96-6/96 at \$1,453,655

Milliman & Robertson, Inc., actuarial consultant has recommended that the optimal reserve for the health insurance fund is an amount equal to the \$1.22 million claim lag (incurred but not billed) plus the \$1.38 million aggregate margin (25% of expected). However, it is expected that reserves be built over several years, with reserves fluctuating from year to year based on claims exposure. The actual reserve level and time frame for reaching a target reserve level remains a financial policy determination of the County.

**HEALTH FUND based on 6/5/96 guidelines:**

	<u>Estimated 1996</u>	<u>Estimated 1997</u>
Premium revenue	(6,011,200)	(6,011,200)
Estimated claims	6,317,739	6,160,372
Estimated administrative expense	<u>211,500</u>	<u>211,500</u>
 Total expenses	 <u>6,529,239</u>	 <u>6,371,872</u>
 Operating Loss or (Profit)	 518,039	 360,672
	-----	-----
Beginning fund balance	544,913	526,874
Operating loss	-518,038	-360,672
Additional appropriation	<u>500,000</u>	<u>0</u>
 Ending fund balance	 526,874	 166,202

1997 estimated claims of \$6,160,372 represents 106% of the actuarial expected claims as adjusted for medical inflation.

A 6% premium increase would be required to break-even in 1997 and reserves would then remain at \$526,874.

**DENTAL FUND ASSUMPTIONS:**

No change in current enrollment of 893  
 14% increase in premium rates  
 No increase in administrative expense  
 Medical inflation on claims for 1997 at 5%  
 Actual paid claims for 1/96-6/96 at \$221,190  
 Actual paid claims for 4/96-6/96 at \$102,247  
 No change in the monthly premium cap -- \$21.25 single and \$49.50.  
 Employee pays premium in excess of caps.

Milliman & Robertson, Inc., actuarial consultant has recommended that the optimal reserve for the dental insurance fund is an amount equal to the \$45,781 claim lag (incurred but not billed). It is expected that reserves be built over several years, with reserves fluctuating from year to year based on claims exposure. The actual reserve level and time frame for reaching a target reserve level remains a financial policy determination of the County.

**DENTAL FUND based on 6/5/96 guidelines:**

	<u>Estimated 1996</u>	<u>Estimated 1997</u>
Premium revenue	(447,558)	(510,216)
Estimated claims	445,571	467,850
Estimated administrative expense	<u>19,825</u>	<u>19,825</u>
 Total expenses	 465,396	 487,675
 Operating Loss or (Profit)	 17,838	 22,541
	-----	-----
Beginning fund balance	221,752	203,914
Operating loss	-17,838	22,541
Additional appropriation	<u>0</u>	<u>0</u>
 Ending fund balance	 203,914	 226,455
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The additional \$62,658 in premium revenue is allocated as follows:

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Paid by County	\$7,998
Paid by employee	52,195
Paid by retiree, etc.	2,465

**IV. Conclusions.**

**Health Fund:**

Based on actuarial recommendations reserves are not sufficient.  
Estimated claims exceed actuarial expected levels.  
Based on the above assumptions an operating loss is expected for 1996 and 1997  
The \$500,000 appropriation is required in 1996 and a premium increase is required for 1997.

**Dental Fund:**

Based on actuarial recommendations reserves are sufficient  
Based on the above assumptions an operating loss is expected for 1996 and 1997  
A premium increase is not required to maintain reserves.

**V. Options/Recommendations for 1997 premiums:**

- (1) Health -- increase health premiums by a minimum of 6% for 1997.  
Accelerate additional appropriation to health fund
- (2) Dental -- do not increase dental premiums for 1997.
- (3) Expand utilization and cost management controls in both funds.

6. On July 24, 1996, the County's Ways and Means Committee considered the above-noted issue paper. After doing so, the Committee unanimously approved all the recommendations contained in Subsection V of that document.

7. In August and September, 1996, the County's Ways and Means Committee discussed their collective bargaining strategies for the upcoming labor negotiations with their bargaining units.

8. On September 30, 1996, the County submitted its initial bargaining proposals to its AFSCME units for a successor to the 1994-96 collective bargaining agreements. The County's

proposal concerning health and dental insurance was as follows:

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Health and dental benefits represent a significant part of the compensation package. It is necessary that escalating health and dental care costs be contained through more effective cost management options and employee participation in costs.

9. On October 8, 1996, the County Board approved the appropriation of \$500,000 from the general fund to the health insurance fund to offset insufficient health insurance fund reserves. This action was taken to implement the Ways and Means Committee's decision of July 24, 1996 to accelerate an appropriation to the health insurance fund.

10. In November, 1996, St. John and other administrative staff met with County labor counsel James Korom and discussed health insurance cost containment strategies. Afterwards, St. John submitted the following issue paper to the County's Ways and Means Committee concerning same:

#### **ISSUE PAPER**

DEPARTMENT: Personnel

ISSUE: HEALTH INSURANCE COST CONTAINMENT STRATEGY

I. Decision to be Made:

Does the W&M Committee support staff recommendations for the final development of health insurance cost containment proposals?

II. Summary of Why This Decision is Before the Committee or Board:

Health insurance expenses are escalating at 18% but funding assumes a 6% premium increase. To achieve the 1997 budget projections it is necessary that greater cost containment be achieved through plan design and greater employee involvement in cost sharing and their taking responsibility for health care choices. It is not realistic to expect a significant decrease in claims without greater cost management mechanisms being introduced into the plan design.

III. Key Information for Developing Options for this Decision:

Staff has completed the following preliminary data analysis in preparation for proceeding with requests for proposals and actuarial consultation:

- (1) Comparable counties health care benefits -- of 8 counties, 6 counties require that the employee pay a percent of premium. Plan designs vary.
- (2) Prescription drug utilization analysis -- voluntary generic substitution savings are good. Implementing a copayment drug card may be feasible, but requires negotiated changes in the plan. Actuarial evaluation of cost impact required.
- (3) Health claims reviewed by benefit descriptions -- hospital claims are too high (55% actual v. 35% norm); added chiropractic benefit impact is 0.7%; added vision benefit impact is 0.2%; large case experience high and continues at present.
- (4) Health claims reviewed by provider -- 33% of claims are within the Aurora group, leaving 67% of claims without any managed care or provider discounts. 35% of claims are in the Milwaukee area, the highest priced area in the state. Significant hospitalization claims are out-of-area and outside the current preferred provider. It is necessary that we obtain a much larger provider network with discounts that are cost efficient.
- (5) Other concerns -- coordination of benefits, working spouse provisions, pre-existing conditions.
- (6) Collective bargaining -- recent interest arbitration decisions in the state concerning health care benefits have been reviewed and will be used as a guide in developing bargaining proposals.
- (7) Lakeland Preferred Health Plan -- the LPHP option implemented in 1994 was implemented to encourage greater participation in Lakeland providers and to reduce claims dollars. The LPHP has not proven to be cost effective. Lakeland has also advised us that the LPHP plan as it now exists will be phased out in the next year or so. The LPHP option should be discontinued.

IV. Options/Recommendations:

- (1) Authorize staff and our independent health insurance consultant to solicit proposals from HMO's, PPO's and insurance providers; evaluate the effectiveness of the County's decision to self-insure; and prepare final recommendations on the optimal health care delivery system for Walworth



County employees. It will also be necessary to retain an actuarial

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consultant to project the cost impact of any modifications. If the county remains self-insured, a request for proposals for third party administration services would follow.

- (2) Discontinue LPHP (date not determined at this time).
- (3) In addition to the health care delivery system, the committee will be asked at a later date to approve the county's strategy for collective bargaining.

### HEALTH CARE DELIVERY SYSTEMS

#### SELF-INSURED STANDARD PLAN (COMPREHENSIVE MAJOR MEDICAL PLAN)

##### Advantages:

- County retains administrative control over the plan
- County retains insurance reserves which would otherwise be held by an insurer
- Standard benefits at all times
- Limited regulation by the OCI
- Not required to offer all state mandates
- Employee freedom of choice of provider

##### Disadvantages:

- County retains full financial risk for the plan (may be limited by reinsurance)
- Current reserves are not adequate -- significant cost impact to restore
- Employee exposed to balance billing for charges in excess of UCR
- Employee required to do claims paper work

#### LAKELAND PREFERRED HEALTH PLAN

##### Advantages:

- Reduced OOP to employees

##### Disadvantages:

- Increased cost to claims paid by county
- No apparent utilization management

### PREFERRED PROVIDER OPTION IN GENERAL

#### Advantages:

- Discount on claims billed
- Steerage to preferred providers
- Possible utilization management
- Employee benefit level never less than the standard plan
- Employee has freedom to choose providers at any time
- Employee enjoys a reduced OOP exposure and no balance billing

#### Disadvantages:

- May cost the County more if not properly designed
- County retains full financial risk for the plan (may be limited by reinsurance)
- Employee required to do claims paper work

POINT OF SERVICE PLAN -- employees choose between the standard plan and HMO or PPO providers at the time they need services.

#### Advantages:

- Combination of standard and PPO advantages

#### Disadvantages:

- The more severe claims may be at an unmanaged standard benefit level
- Requires greater steerage mechanisms for cost management

### HMO PLAN OPTION

#### Advantages:

- Voluntary employee option
- Possibly greater benefits
- Reduced employee cost if remain with the plan's providers
- Reduced employer cost if monthly premium is less than standard plan
- Employee not required to do claims paper work
- Financial risk borne by the HMO, not the County
- County cost is known (equal to monthly premium)

#### Disadvantages:

- HMO option applies to the family
- Employee may only select a different plan once per year
- May be advantageous for dependents or retirees out-of-area

Limitations on choice of providers  
Greater financial risk to employee for out-of-plan providers  
Increased financial risk to standard plan -- premium caps essential  
Any profit remains with the HMO

The County's Ways and Means Committee discussed the above-noted issue paper at its December 4, 1996 meeting.

11. On January 20, 1997, the bargaining subcommittee of the Ways and Means Committee discussed their collective bargaining strategies concerning health and dental insurance.

12. On February 14, 1997, the Ways and Means Committee approved St. John's request to change the health insurance Preferred Provider Organization (PPO) vendor. Following this action, St. John issued the following memo to department heads and bargaining representatives informing them of this change:

TO: All Department Heads  
Deputy Sheriffs' Association  
Human Services Professionals Association  
Lakeland Education Association  
AFSCME Locals 1925, 1925A, 1925B, 1925C

FROM: Janice St. John, Personnel Director

DATE: February 14, 1997

Walworth County hereby gives notice that effective March 31, 1997 the County will terminate its contract with Lakeland Preferred Health Plan.

Effective April 1, 1997, the County intends to replace the Lakeland plan by expanding the county's current contract with Associates for Health Care, Inc. to include AHC's Preferred Provider Organization (PPO). The expanded PPO will include a much larger selection of preferred providers statewide, including Lakeland providers. The County will be holding informational meetings for all employees and distributing new PPO Directories in mid-March. There is a need to implement this expansion as soon as possible to avoid unnecessary costs which cannot be retroactively recouped by the County.

We have carefully examined this new PPO program and believe there is no reduction in any benefits to employees compared to the provisions of the basic

plan. If there is such a loss compared to the basic plan, the County agrees to make the affected employee whole.

Under the AHC contract, employee incentives to use the PPO will be maintained at the same level as the Lakeland plan. Incentives specifically include the following:

**Non-psychiatric incentive** -- coinsurance 90%/10% of the first \$2,000 after the deductible is met.

**Inpatient psychiatric incentive** -- coinsurance 95%/5%.

**Outpatient psychiatric incentive** -- coinsurance 90%/10%.

**No balance billing**

As you can see, choosing to use a PPO provider will result in monetary savings to all employees. We encourage you to support employees' use of PPO providers.

We will have an informational meeting on February 19, 1997 at 1:00 p.m. at the Human Service Center Gym with representatives of AHC to answer any questions their department heads or union representatives may have about this program. Union representatives are invited to attend.

If the Union wishes to discuss this matter further, please contact me to set up a date for a meeting.

c: Al Morrison, County Board Chair  
Larry Rodenstein

13. On February 28, 1997, the County made bargaining proposals concerning health and dental insurance to the Deputy Sheriffs' Association. One of the proposals included therein was that "all full time employes shall pay a 10% copayment on monthly premium."

14. On March 3, 1997, the County made the same health and dental insurance proposals to the Human Services Professional Association as it had made to the Deputy Sheriffs' Association. One of the proposals included therein was that "all full-time employes shall pay a 10% copayment on monthly premium."

15. On March 6, 1997, the County notified all its employees that effective April 1, 1997, the County was replacing the Lakeland Preferred Health Plan (LPHP) with the Associates for Health Care (AHC) PPO.

16. On March 12, 1997, the Ways and Means Committee discussed compensation for the County's unrepresented employees for 1997. They also discussed having the unrepresented employees pay part of their insurance premium. At that time, the County paid all of their insurance premium. The minutes of that meeting provide in pertinent part:

- F. Discussion of 1997 non-represented employees' wage increase and contribution towards health insurance premium - Committee decided to place this item on the March 26 agenda for further discussion with a request for more specifics.

17. On March 17, 1997, the County made the same health and dental insurance proposals to the four AFSCME units as it had previously made to its two non-AFSCME units. One of the proposals included therein was that "all full-time employees shall pay a 10% copayment on monthly premium."

18. On March 26, 1997, the Ways and Means Committee again discussed the 1997 economic package for unrepresented employees. The minutes of that meeting provide in pertinent part:

- VI. Discussion on 1997 non-represented employees' wage increase and contribution towards health insurance premium - discussion item; no action.

19. In April, 1997, the County disbanded its Ways and Means Committee and created, in its place, a new Personnel Committee.

20. In April, 1997, County administrative personnel discussed the timing for imposing the 1997 economic package on the unrepresented employees. Specifically, they discussed whether the 1997 unrepresented employees' economic package should be imposed on those employees before union negotiations finished or after union negotiations finished. They decided on the former. Thus, the County decided to impose the 1997 unrepresented employees' economic package on those employees before union negotiations finished.

21. On April 17, 1997, the Personnel Committee again discussed the 1997 economic package for unrepresented employees. After doing so, it publicly voted to recommend to the County Board the following economic package for unrepresented employees for 1997: 1) a 2.75% wage increase retroactive to January 1, 1997; 2) a 25 cent per hour increase effective

on the June, 1997 payroll; 3) a 10% copayment on the health insurance premium for full-time employees, effective July 1, 1997. The minutes of that meeting provide in pertinent part:

E. Motion by Tilton/Holden to recommend 1997 non-represented employee compensation adjustments to include a 2.75% wage increase retroactive to 1/1/97, implementation of a 10% health premium co-payment for full-time employees effective with 7/1/97 coverage, and a \$0.25 per hour increase effective on the June 1997 benefit payroll. Motion carried 6-0. The Personnel Director was requested to notify all department heads of this recommendation and to invite department heads or other non-represented employees to submit written and oral comment to the Personnel Committee at the next meeting.

22. On April 21, 1997, St. John issued the following memo to all non-represented employees concerning the matter referenced in Finding of Fact 21:

TO: All Non-represented Employees

FROM: Janice St. John, Personnel Director

DATE: April 21, 1997

RE: 1997 Non-Represented Employee Compensation

The Personnel Committee voted on April 17, 1997 to proceed with making a recommendation on 1997 adjustments to compensation for non-represented employees. The Committee believes that it is important to proceed with making adjustments as soon as possible, and not wait until 1997 labor agreements are settled, which could take many months since the parties are proceeding to mediation/arbitration. The Personnel Committee is concerned about equitable treatment of non-represented employees and is prepared to address any subsequent equity adjustments which may be warranted after all labor contracts are settled.

The Personnel Committee is recommending the following 1997 adjustments:

- (1) General wage increase of 2.75% retroactive to 1/1/97 for current non-represented employees.
- (2) Effective with July 1997 health insurance coverage, all full-time non-represented employees are required to pay 10% of the health insurance premium for either a single or family plan.

- (3) Effective with the June 1997 benefit payroll, non-represented employees will receive an additional \$0.25 per hour.

It is the intent of the Committee that a resolution for implementing the 1997 pay adjustments will be on the May 13, 1997 County Board agenda.

The Personnel Committee has scheduled their next meeting for April 29, 1997 at 10:30 a.m. at the Highway Assignment room. You are invited to present either written or oral comments on 1997 compensation to the Committee at that meeting. Written comments should be sent to the Personnel Director by April 28th. You are required to make arrangements with your supervisor or department head if you would like to attend the meeting and present comments in person.

A similar letter was also sent to department heads. The letter to the department heads contained the following additional sentence: "It is the intent of the Committee that a resolution for implementing the 1997 pay adjustments will be on the May 13, 1997 County Board agenda."

23. At the April 21, 1997 Personnel Committee meeting, numerous unrepresented employees offered their comments concerning the proposed 1997 unrepresented employees' economic package. Their complaints about the proposed ten percent (10%) insurance co-pay indicated they viewed that insurance change very negatively. The minutes of that meeting contain the following summary of employee comments concerning the proposed economic package:

- Concern expressed as to the relationship of the proposal to the county's intent in negotiations and interest arbitration
- A co-payment on premium does not reduce claims.
- It is better to control health costs by modifying the plan structure, such as higher deductibles and a higher level of co-insurance (resulting in higher out-of-pocket maximums for those who actually use the insurance)
- Salaried-exempt employees do not receive pay for additional hours worked
- Salaried-exempt employees are subject to call 7 days a week, 24 hours a day without additional compensation
- The Personnel Committee removed the right for sworn officers to have a vehicle furnished by the County that they can use for commuting
- Sick severance benefits are less than those of union represented employees
- Pay compression between manager and subordinate staff
- What message is being sent to management staff??
- Forego 25 cent wage adjustment and do not require premium copayment. Would accept copayment if union agrees.

- What is the impact in future years of the copayment?
- 10% has a greater impact on the bottom of the pay scale than the top
- The proposal may impact on future employees' interest in promotion to management positions
- What about other insurance options? HMO's? Hold off on insurance issue until the union settle.
- Not happy with 10% copayment.
- Concern for how the proposal may impact on turnover
- Consider improvement on retiree insurance provisions; sick conversion plan.
- Copayment on premium will increase utilization.
- Bad timing. Food CPI up 2%.
- Extra pay for extra duties for salaried staff.
- Many employees not surprised by copayment proposal. No one likes it, but do understand that a copayment is common with other employers.
- Ability to use section 125 plan to cover premium payments pre-tax.
- If opt out of the health plan, what are the criteria to get back on the plan at a later time.
- Morale issue.

After receiving these comments, the Personnel Committee voted to place the topic of non-represented employe compensation adjustments on the agenda for the May 13, 1997 County Board meeting.

24. On or about April 30, 1997, the Personnel Committee's resolution covering 1997 non-represented employe compensation adjustments was placed on the agenda for the May 13, 1997 County Board meeting.

25. The Personnel Committee met again on May 5, 1997. At this meeting, they received further employe comments on the proposed 1997 non-represented employe compensation adjustments.

26. On May 7, 1997, Wisconsin Council 40, AFSCME filed an election petition with the Wisconsin Employment Relations Commission seeking an election to be held among all full-time and regular part-time professional employes in the Courthouse and other County departments not currently represented by a labor organization. The following cover letter was attached to St. John's copy of the election petition:



May 7, 1997

**CERTIFIED MAIL #Z 347 758 741 - RETURN RECEIPT REQUESTED**

Janice St. John  
Personnel Director  
Walworth County  
P.O. Box 1001  
Elkhorn, WI 53121

RE: Notice of Election Petition (Walworth County Professionals Unit)

Dear Ms. St. John:

Enclosed please find a copy of Council 40's petition for certain professional employees of Walworth County. Given the County and the Union's long-standing working relationship, we trust that this petition will be honored fully in light of the status quo doctrine governing our relations.

Very truly yours,

Laurence S. Rodenstein /s/  
LAURENCE S. RODENSTEIN  
Staff Representative

The Union's election petition and attached cover letter were received by the County on Friday, May 9, 1997. St. John was on vacation that day, so she personally did not get the election petition until Monday, May 12, 1997. St. John did not know prior to that date that the Union was going to file an election petition for the County's unrepresented professional employees.

27. A County Board meeting was held May 13, 1997. One of the items on the agenda for that meeting was the following resolution:

RESOLUTION NO. 17-05/97  
"AMENDED"

1997 COMPENSATION ADJUSTMENTS  
FOR CERTAIN NON-REPRESENTED EMPLOYEES

Moved by: Personnel Committee

WHEREAS, the Personnel Committee has completed a final review and evaluation of appropriate 1997 compensation adjustments for non-represented employees, and

WHEREAS, the Personnel Committee recommends that the revisions identified herein be adopted by the Walworth County Board.

NOW, THEREFORE, BE IT RESOLVED that the following compensation adjustments are approved:

1. Effective January 1, 1997, a general wage increase of 2.75% is approved for the following: management and administrative support pay plans (section 14.07 of the Personnel Code), Lakeland Farm regular-status employees, Clinical Director-Psychiatrist (Human Services) and Medical Director (Lakeland Nursing Home);
2. Effective with the June 1997 benefit payroll, all full-time non-represented employees (excluding elected officers) shall pay ten percent of the monthly health insurance premium for coverage in effect on and after July 1, 1997;
3. Effective with the June 1997 benefit payroll, the wage schedules for positions included under sub-paragraph 1 and salaried management staff at Lakeland School shall be increased by \$0.25 per hour;
4. Effective for coverage on and after January 1, 1998, elected officers with full-time health insurance benefits shall be required to pay the ten percent health premium copayment; and

BE IT FURTHER RESOLVED that the Personnel Code is amended to provide a "maintenance of insurability" provision, attached hereto and made a part hereof, which shall apply only to non-represented employees, and

BE IT FURTHER RESOLVED that any other general wage increase for salaried non-represented employees of Lakeland School for the school year 1997-98 shall be subject to approval by separate resolution; and

BE IT FURTHER RESOLVED that the County Board supports the Personnel Committee's concern for continued equitable treatment of non-

represented employees and is prepared to address any subsequent early adjustments which may be warranted after all labor contracts are settled, and

BE IT FURTHER RESOLVED that funds required to implement the above increases have been included in the 1997 budget.

Dated this 13th day of May, 1997.

\_\_\_\_\_  
County Board Chair

\_\_\_\_\_  
Attest: County Clerk

Policy and Fiscal Note Attached:  Yes  No

Approved as to Form:

\_\_\_\_\_  
Corporation Counsel

\_\_\_\_\_  
Date

\_\_\_\_\_  
Finance Director

\_\_\_\_\_  
Date

Action Required: Majority Vote Two-thirds Vote Other \_\_\_\_\_

County Board Meeting Date: May 13, 1997

Policy amendment to be included in Chapter 18 of the Personnel Code:

Maintenance of Insurability. If an employee previously declined coverage under the health plan for himself/herself or any of his/her eligible dependents, the health plan permits an employee, a dependent spouse and any eligible dependent children to be enrolled for health benefits under the plan when the spouse's previous coverage ends due to:

1. the employee's spouse's coverage is terminated; (The employee must list a specific reason for termination of coverage).
2. the employee's spouse's coverage is substantially modified through a reduction in covered health benefits or an increase in deductibles, coinsurance and out-of-pocket maximums;

3. the employee's death;
4. divorce; or
5. the employee's spouse's employer terminated their current medical plan and the employee or his/her dependents do not remain eligible for benefits under any plan which may replace the other plan without interruption of coverage.

Employees may then elect coverage under the health plan provided they enroll within 31 days from the termination of the employee's spouse's plan. Employees must provide proof that loss of coverage under his/her spouse's plan has occurred due to one of the reasons listed above before coverage under the health plan will be effective. Coverage under the health plan will be effective on the day coverage under the employee's spouse's plan terminates.

If the employee applies more than 31 days after the date of termination of coverage under the employee's spouse's plan, the employee's application will be medically underwritten.

If an employee becomes eligible for coverage under the health plan through this maintenance of insurability provision, credit is given under the pre-existing condition limitation from the date he/she was eligible for benefits under the county's health plan.

However, benefits under the health plan will be subject to all the same provisions that would have applied had the employee been enrolled under the health plan on the date he/she was first eligible for coverage.

A "Policy and Fiscal Note" was attached to the resolution.

The Board considered this resolution at that meeting. The discussion which occurred concerning same was contentious and volatile. The Board ultimately decided to refer the resolution back to the Personnel Committee. The minutes of that meeting provide in pertinent part:

Resolution No. 17-05/97, 1997 compensation adjustments for certain non-represented employees, was moved for adoption on motion by Supervisor Kret, seconded by Supervisor Mikrut. An amendment to the policy regarding maintenance of insurability, was offered by Supervisor Kret, seconded by Supervisor Lothian. A motion by Supervisor Lohrmann, seconded by Supervisor

Tilton, to table the resolution was withdrawn. Supervisor Lohrmann moved, seconded by Supervisor Tilton, to lay the resolution over until the next County Board meeting and to hold discussion in closed session. Supervisor Lohrmann's amendment was not acted on at this time because Supervisor Kret's previous amendment was still on the floor. The amendment to the maintenance of insurability was adopted by voice vote. Supervisor Lohrmann restated her amendment. On motion by Supervisor Lohrmann, seconded by Supervisor Tilton, their motion to lay over and hold a closed session was withdrawn. A motion by Supervisor Lohrmann, seconded by Supervisor Norem, to postpone for three months was defeated by voice vote. On motion by Supervisor Tilton, seconded by Supervisor Grant, the resolution was referred back to the Personnel Committee. A friendly amendment was offered by Supervisor Lohrmann and accepted by Supervisor Tilton, to recommend that issues will be discussed in closed session prior to another resolution coming on the County Board floor so the Board fully understands the issues and is able to vote intelligently on the resolution. Resolution No. 17-05/97, as amended, was referred back to committee.

28. On May 21, 1997, the Chairman of the Personnel Committee, Don Kret, sent the following letter to all County Board members:

Dear Fellow Board Members:

It is both the duty and the intent of the Personnel Committee to carry out the policies and wishes of the County Board. In order to intelligently and effectively carry out these duties it is both appropriate and necessary that we are aware of the desires and concerns of all Board members.

Therefore, on behalf of the Personnel Committee, I urge all Board members to either attend the May 27th Personnel Committee meeting or submit to the Committee by that date your ideas concerning an economic package for both the represented and nonrepresented County employees. Failure to do so may result in an embarrassing situation which would not be in the best interests of the Board and thereby a disservice to the citizens we represent. Please follow through.

29. The Personnel Committee met again on May 27, 1997. One of the items which was discussed during the meeting was the 1997 economic package for the unrepresented employees. After discussing same, the Committee made some minor changes to Resolution No. 17-05/97 and decided to send it back to the County Board for action. The minutes of that meeting provide in pertinent part:

- B. Resolution #17-05/97 was referred back to the Personnel Committee by the County Board. Supervisor Lohrmann suggested that the committee consider a text amendment in the 6th paragraph to strike "is prepared to" and replace with "will." Supervisor Shepstone asked how the resolution applied to part-time employees. Motion by Lothian/Mikrut to forward resolution #17-05/97 to the County Board in June 1997, including the text amendment as suggested and with the text amendment to be included in the issue paper. Motion carried 7-0.

30. The Personnel Committee met again on June 5, 1997. One of the items which was discussed during the meeting was the 1997 economic package for unrepresented County employees. After discussing same, the Committee decided to send Resolution No. 17-05/97, as amended, back to the County Board for action. The minutes of that meeting provide in pertinent part:

- C. Resolution #17-05/97 (Non-represented employees compensation) -- Motion by Lothian/Mikrut to refer the resolution as amended back to the County Board. Motion by Robers and with no objection the June 1997 benefit payroll effective dates were changed to July 1997 and the July 1, 1997 date was changed to August 1, 1997. Vote on the original motion as amended carried 7-0. Following receipt and review of the Corporation Counsel's opinion, motion by Holden/Tilton to reconsider Resolution #17-05/97. Motion carried 7-0. Motion by Robers/Holden to further amend the resolution by excluding salaried management employees of Lakeland School from sub-paragraph 2, deleting "and salaried management staff at Lakeland School" from sub-paragraph 3, and deleting the second "be it further resolved" paragraph. Motion carried 7-0. Motion by Robers/Holden to recommend adoption of the resolution as further amended. Motion carried 7-0.

31. A County Board meeting was held June 17, 1997. One of the items on the agenda for that meeting was the following resolution:

RESOLUTION NO. 17-05/97

1997 COMPENSATION ADJUSTMENTS  
FOR CERTAIN NON-REPRESENTED EMPLOYEES

Moved by: Personnel Committee

WHEREAS, the Personnel Committee has completed a final review and evaluation of appropriate 1997 compensation adjustments for non-represented employees, and

WHEREAS, the Personnel Committee recommends that the revisions identified herein be adopted by the Walworth County Board.

NOW, THEREFORE, BE IT RESOLVED that the following compensation adjustments are approved:

1. Effective January 1, 1997, a general wage increase of 2.75% is approved for the following: management and administrative support pay plans (section 14.07 of the Personnel Code), Lakeland Farm regular-status employees, Clinical Director-Psychiatrist (Human Services) and the Medical Director (Lakeland Nursing Home);
2. Effective with the July ~~June~~ 1997 benefit payroll, all full-time non-represented employees (excluding elected officers and salaried management staff at Lakeland School) shall pay ten percent of the monthly health insurance premium for coverage in effect on and after August ~~July~~ 1, 1997;
3. Effective with the July ~~June~~ 1997 benefit payroll, the wage schedules for positions included under sub-paragraph 1 ~~and salaried management staff at Lakeland School~~ shall be increased by \$0.25 per hour;
4. Effective for coverage on and after January 1, 1998, elected officers with full-time health insurance benefits shall be required to pay the ten percent health premium copayment; and

BE IT FURTHER RESOLVED that the Personnel Code is amended to provide a "maintenance of insurability" provision, attached hereto and made a part hereof, which shall apply only to non-represented employees, and

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~~BE IT FURTHER RESOLVED that any other general wage increase for salaried non-represented employees of Lakeland School for the school year 1997-98 shall be subject to approval by separate resolution; and~~

BE IT FURTHER RESOLVED that the County Board supports the Personnel Committee's concern for continued equitable treatment of non-

represented employees and will ~~is prepared to~~ address any subsequent early adjustments which may be warranted after all labor contracts are settled, and

BE IT FURTHER RESOLVED that funds required to implement the above increases have been included in the 1997 budget.

Dated this 17th ~~13th~~ day of June ~~May~~, 1997.

\_\_\_\_\_  
County Board Chair

\_\_\_\_\_  
Attest: County Clerk

Policy and Fiscal Note Attached: x Yes \_\_\_ No

Approved as to Form:

\_\_\_\_\_  
Corporation Counsel

\_\_\_\_\_  
Date

\_\_\_\_\_  
Finance Director

\_\_\_\_\_  
Date

Action Required: Majority Vote Two-thirds Vote Other \_\_\_\_\_

County Board Meeting Date: May 13, 1997 and June 17, 1997

Resolution @ by

This resolution was adopted,  
rejected, laid over.

Ayes      Noes

Date \_\_\_\_\_

The Board reconsidered this resolution at that meeting. Following discussion, a vote was taken. The resolution was adopted on a vote of 17 to 14. The minutes of that meeting provide in pertinent part:



Resolution No. 17-05/97, 1997 Compensation Adjustments for Certain Non-Represented Employees, that was referred back to committee at the previous board session, was moved for adoption on motion by Supervisor Kret, seconded by Supervisor Lothian. Supervisor Kret addressed the changes made by the Personnel Committee and Corporation Counsel. Discussion followed with concerns being expressed with regard to health insurance cost, and if other options were explored to lower health care cost. Roll call vote was requested. Supervisor S. Shepstone abstained from voting due to a conflict of interest. Total Vote: 31; Ayes: 17 - Arnold, Byrnes, Fischer, Holden, Kret, Logterman, Lothian, Mikrut, Pearce, Robers, Scharine, Smith, Tilton, Troemel, Van Dreser, Zeise, Morrison; Noes: 14 - Burton, Grant, Kelley, Kuhnke, Lohrmann, Muzatko, Norem, Palzkill, Parker, Price, Schaefer, R. Shepstone, Shroble, Wolf; Abstaining: 1 - S. Shepstone; Absent: 2 - Lightfield, Wenglowisky. The resolution was adopted.

32. On June 19, 1997, St. John issued the following memo implementing the resolution referenced in Finding of Fact 31:

TO: All Non-Represented Regular Employees -- Courthouse, Personnel, Lakeland Agriculture, Lakeland School, Planning-Zoning-Sanitation-Solid Waste, Sheriff's and Lakeland Nursing Home Departments

FROM: Janice St. John, Personnel Director

DATE: June 19, 1997

RE: **1997 WAGE AND BENEFIT CHANGES FOR NON-REPRESENTED EMPLOYEES**

The County Board has by resolution #17-05/97 approved the following changes in your wages and benefits for 1997:

1. Wages. Effective retroactive to 1/1/97 your pay rate schedule will be increased by 2.75%. This wage increase applies to all persons employed as of 6/17/97. Your pay check dated 7/3/97 will reflect the 1/1/97 rate and will include back-pay to 1/1/97.

Effective with your pay check dated 7/18/97 your pay rate schedule will be increased by an additional \$0.25 per hour.

2. Health Insurance. If you are full-time and have coverage under the County's group health plan as of 8/1/97, you will now be required to pay 10% of the monthly health insurance premium (\$57.20 for family coverage, or \$22.50 for single coverage). If you are part-time and have coverage under the County's health plan, you will continue to pay your pro-rata share of the monthly premiums (employee's share varies from 10% to 50%). Your monthly health insurance premium copayment will be deducted beginning on your 7/18/97 pay check.
3. Pre-tax Payment of Your Health Insurance Premium. The County's current S125 plan for non-represented employees allows you to elect to pay your health insurance premium pre-tax. The S125 option allows you to reduce your gross by the amount of the health insurance premium prior to calculating federal, state and social security taxes. If you choose the S125 option we still report the higher amount for Wisconsin Retirement purposes.

**If you are enrolled under the health plan, you are required to complete an S125 election form and return it to the Personnel Department by July 11, 1997.** Your election will apply for the remainder of 1997 and you may subsequently change your election during the regular annual enrollment in November-December 1997 for calendar year 1998. Please contact John Piotroski at 741-2591 if you have questions on the S125 option.

4. Other Group Health Coverage? It is expected that a few employees may consider dropping coverage under the County's group health plan because they have other group coverage available. The above pay adjustments for January and July 1997 continue to apply to you regardless of your decisions on health insurance coverage. If you decide to drop County coverage or reduce to single coverage, please contact Debbie Bluett at 741-2594 for more detailed benefit information. The County Board has amended the County's health insurance personnel policy to provide for "maintenance of insurability" when the persons dropped from County coverage have other group coverage and would want to re-enroll in the County plan at a later time. (See the policy amendment attached).
5. "Equity" Concerns by You. The Personnel Committee understands that the implementation of a health insurance premium copayment is not a popular decision, but is one that is supported by a majority of the County Board. Chairman Kret and the other members of the Personnel

Committee are committed to continuing to evaluate "equity" concerns you may have. They will be reviewing any written requests for review of current policies that you wish to submit during the next months. Specific issues which you would like reviewed should be sent to the Personnel Director and you will be advised of the agenda date when the issue will be reviewed.

St. John also sent memos which were virtually identical to the above to the unrepresented employees in the Human Services and Highway Departments and to the Sheriff's Department (monthly).

33. The 1997 unrepresented employees' economic package (which included, as one of its components, a ten percent (10%) co-pay on the insurance premium) was well on its way to being finalized before the Union filed an election petition covering the unrepresented professional employees. The County Board's final approval of that package was unrelated to the organizational activities of any employees.

Based on the foregoing Findings of Fact, the Examiner makes the following

#### **CONCLUSIONS OF LAW**

1. The County's decision to adopt and implement the 1997 unrepresented employees' economic package (which included, as one of its components, a ten percent (10%) co-pay on the insurance premium) while an election petition was pending was a consequence of deliberations begun prior to the Union's organizing campaign for the unrepresented professional employees and was unrelated to it, and therefore did not violate Secs. 111.70(3)(a)1 or 3, Stats.

2. By its actions referenced in Conclusion of Law 1, the County did not violate Sec. 111.70(3)(a)2, Stats.

Based on the foregoing Findings of Fact and Conclusions of Law, the Examiner makes and issues the following

**ORDER**

The complaint of prohibited practices is dismissed.

Dated at Madison, Wisconsin, this 27th day of May, 1998.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Raleigh Jones /s/  
Raleigh Jones, Examiner

**WALWORTH COUNTY**

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER**

**BACKGROUND**

In its complaint, the Union noted that it has filed an election petition with the WERC seeking an election among the County's remaining unrepresented professional employees. The complaint alleged that after the election petition was filed, the County Board passed a resolution which required all unrepresented County employees to pay ten percent (10%) of their health insurance premium. The complaint alleged that the *status quo* at the time of the election petition was that the County paid 100% of the health insurance premium. The gist of the Union's complaint is that by taking this action after the election petition was filed, the County allegedly interfered with the unrepresented professional employees' concerted activity and discriminated against them. The Union contends the County committed prohibited practices in violation of Sections 111.70(3)(a)1, 2 and 3, Stats. The County denies it committed any prohibited practices by its conduct herein.

**POSITIONS OF THE PARTIES**

**Union**

The Union's position is that the County's actions herein constituted prohibited practices. For background purposes, the Union notes that on May 7, 1997, it filed an election petition seeking an election among the County's remaining unrepresented professional employees. The Union contends that when the County Board passed a resolution on June 17, 1997 which required the County's unrepresented employees to pay ten percent (10%) of their health insurance premium, it altered the existing insurance *status quo* which was that the County paid all of the health insurance premium. The Union contends this interfered with the unrepresented professional employees' concerted activity and discriminated against them. It makes the following arguments to support these contentions. First, the Union submits that the County's "long-standing past practice" was that it implemented wage and benefit changes for its unrepresented employees only after bargaining with AFSCME and the other unions were concluded. Thus, the Union notes that the County had historically waited to implement the unrepresented pay plan until after a settlement pattern with its unions had been established. The Union avers that here, though, the County disregarded this long-standing practice and implemented an unrepresented pay plan before any of the unions had settled with the County. In the Union's view, the County turned this "historic pattern on its head." Second, the Union asserts that the County Board was well aware that its decision to implement the unrepresented pay plan prior to the establishment of any settlement pattern was a breach of this historical pattern. In its view, the closeness of

the County Board's vote on June 17, 1997 (i.e. 17-14) shows this and underscores the controversial nature of the Personnel Committee's recommended pay plan. Third, the Union argues that because of this historic pattern of implementing the unrepresented pay plan after the establishment of a settlement pattern, the unrepresented employees had an expectation that the pattern would continue in 1997. The Union asserts that this expectation "was smashed by the County Board's action." Fourth, the Union submits that once it filed its election petition, the County was legally obligated to not change any conditions which would interfere with the employees' free choice in the election. The Union argues that the County's decision to make the unrepresented employees pay ten percent (10%) of their insurance premium was such a unilateral change so it constituted unlawful interference. According to the Union, that change was designed, in part, to undermine the legitimacy of the Union in the eyes of the voters. The Union avers that a voter could conclude from the facts (i.e. the Union files an election petition and the County responds by implementing a benefit cut) that the Union cost them the ten percent (10%) co-pay by filing the election petition. The Union contends it can be inferred from the record that the County knew its actions interfered with the free choice of the voters. The Union asks rhetorically "what good is a Union if, after petitioning for an election, it can't stop the County from implementing a major benefit cut?" The Union distinguishes the Examiner's GREENFIELD 1/ decision from this case on the facts. According to the Union, the facts here are sufficiently different so as to warrant a contrary result. Additionally, the Union asserts that the "course of action" referenced in that decision must be routine and inevitable. In the Union's view, the County Board's action on May 13, 1997 ended one "course of action" and the June, 1997 vote was a second "course of action". Next, the Union argues that the County's actions constitute unlawful discrimination. Finally, the Union argues that an employer should be prohibited from substantially altering the *status quo* after an election petition is filed. According to the Union, the *status quo* was violated here because the insurance *status quo* at the time of the election petition was 100% employer paid and it is now just 90% employer paid. In the Union's opinion, the County has gained an unfair advantage for subsequent negotiations by its actions herein. As a remedy for these alleged prohibited practices, the Union seeks to have the County return the unrepresented professional employees to the *status quo* which existed prior to the County Board resolution which required them to contribute ten percent (10%) of their health insurance premium.

### County

The County's position is that its actions herein did not constitute prohibited practices. In its view, the County's implementation of the 1997 compensation package was totally appropriate under the circumstances because it was completely separate and distinct from any organizational activities on the part of any employees. The County avers that under Commission case law (particularly GREENFIELD 2/, GREEN COUNTY, 3/ and JEFFERSON COUNTY 4/), an employer that has set the course and announced its intent to act or refrain from acting in a certain fashion must then stay the course and not deviate from the announced action. It further

avers that if an employer does deviate from its announced action upon learning of an election petition, then it is highly likely that the employer will be found to have interfered with, restrained or coerced its employes with regard to their rights to organize. The County contends that what it did here (i.e. implement the 1997 compensation package for unrepresented employes after the union filed its election petition) was nothing more than follow through on a matter that had been reviewed in-depth for many months, and had been announced before the Union filed their election petition. To support this premise, it calls attention to St. John's testimony about the lengthy decision-making process which the County used to decide the 1997 economic package for unrepresented employes. It notes this lengthy decision-making process resulted in her announcement on April 21, 1997 (via a memo) that the Personnel Committee had voted to make certain recommendations to the full County Board with regard to the 1997 compensation adjustments for the non-represented employes (namely that those employes get a general wage increase of 2.75% retroactive to January 1, 1997, an additional 25 cents per hour wage increase effective June, 1997, and also have to pay ten percent (10%) of their health insurance premium effective July, 1997). According to the County, the terms and conditions referenced in St. John's April, 1997 memo are substantially identical to the terms which were later adopted by the County Board in June, 1997. The County submits it is critical to its defense that the following be recognized about the foregoing: 1) St. John's memo of April 21, 1997 predates the Union's election petition which was filed May 7, 1997; and 2) the ten percent (10%) health insurance co-pay was only a portion of the Personnel Committee's recommendation. The County asserts that the weakness of the Union's position is shown in that the Union only attacks that portion of 1997 compensation package which it finds objectionable, namely the ten percent (10%) insurance co-pay. It notes in this regard that the Union's complaint seeks only to prevent the County from implementing the ten percent (10%) insurance co-pay and seeks no relief or makes no allegations of improper conduct on the part of the County in implementing the two wage increases. It asserts that what the Union is doing is simply segregating the negative portion of the 1997 economic package (namely the insurance co-pay) from the positive portion of that package (namely the wage increases). The County contends that the Union should not be allowed to "have its cake and eat it too" because the 1997 economic package was just that (a "package deal"), and was not separable into different items subject to approval on an individual basis. In the County's view, the two pay increases which were part of the economic package were meant to "soften the blow of the ten percent (10%) co-pay." Finally, the County argues that the Union failed to meet its burden of proof in proving a violation of Sections 111.70(3)(a)1, 2 or 3 of MERA. It therefore requests that the complaint be dismissed.

### **DISCUSSION**

Prior to June, 1997, the County paid 100 percent (100%) of the health insurance premium for the County's unrepresented employes. This changed in June, 1997, when the County Board decided that henceforth all unrepresented employes would pay ten percent (10%) of their health insurance premium. Given the foregoing, there is no question that the County made a unilateral change. In the context of this case, the question is whether this change, which

was made shortly after the Union filed an election petition covering the County's unrepresented professional employees, was unlawful under MERA.

Unilateral changes in wages, hours or working conditions may, depending on the facts, violate either Sections 111.70(3)(a)1, 3 or 4 of MERA. Section 111.70(3)(a)4, however, can be violated only where a labor organization is already the exclusive representative of the employees affected. That is not the case here, so that section of the statute is not applicable. The other two sections are applicable though, and will be reviewed below.

### **Alleged Violation of Sec. 111.70(3)(a)1**

Section 111.70(3)(a)1, Stats., provides that it is a prohibited practice for a municipal employer "to interfere with, restrain, or coerce municipal employees in the exercise of their rights guaranteed in sub.(2)."

In order for a complainant to prevail on its complaint of interference with employee rights it must demonstrate, by a clear and satisfactory preponderance of the evidence, that respondent's complained of conduct contained either some threat of reprisal or promise of benefit which would tend to interfere with its employees in the exercise of their rights guaranteed by Sec. 111.70(2) of MERA. 5/ It is not necessary to show that the respondent intended its conduct to have the effect of interfering with those rights. 6/

In TOWN OF MERCER, 7/ it was held that under Sec. 111.70(3)(a)1,

a municipal employer may not make any unilateral changes in the wages, hours, and conditions of employment during the pendency of an election that would be likely to interfere with the employees' free choice in that election. It is not necessary to find that the employer acted out of hostility to the Union to establish such a violation; however, a change during the pendency of an election is not a per se violation and no violation is established if the employer can prove a legitimate business reason for the change or a course of action that pre-dates the Union's organizational campaign.

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1/ *CITY OF GREENFIELD, DEC. NO. 25900-A (Jones, 9/89), AFF'D BY OPERATION OF LAW, DEC. NO. 25900-B (WERC, 10/89).*

2/ *GREENFIELD, supra.*

3/ *GREEN COUNTY, DEC. NO. 26798-B (WERC, 1992).*



*4/ JEFFERSON COUNTY, DEC. NO. 26845-A (Mawhinney, 12/91), AFF'D AND MODIFIED, DEC. NO. 26845-B (WERC, 7/92).*

*5/ WESTERN WISCONSIN V.T.A.E. DISTRICT DEC. NO. 17714-B, (Pieroni, 6/81), AFF'D BY OPERATION OF LAW, DEC. NO. 17714-C, (WERC, 7/81), DRUMMOND JT. SCHOOL DISTRICT NO. 1, DEC. NO. 15909-A (Davis, 3/78), AFF'D BY OPERATION OF LAW, DEC. NO. 15909-B, (WERC, 4/78).*

*6/ CITY OF EVANSVILLE, DEC. NO. 9440-C (WERC, 3/71).*

*7/ DECISION NO. 23136-C, at page 6 (Buffett, 5/86), adopted by Commission, DEC. NO. 23136-D (WERC, 7/86).*

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In deciding whether the County's actions in this matter constitute unlawful interference, the discussion will be divided along the following three lines: 1) the County Board's decision to have the unrepresented employees pay ten percent (10%) of their health insurance premium during the pendency of a representation question; 2) whether the County's implementation of that (insurance) change contained a threat of reprisal or promise of benefits and; 3) the timing of the County's implementation decision. These points will be addressed below in the order just listed.

The record evidence establishes that the 1997 economic package for the unrepresented employees was considered by the County's Ways and Means Committee and later its Personnel Committee for months before the Union filed its election petition in May, 1997. In fact, by April 17, 1997, that decision-making process had progressed to the point that the Personnel Committee publicly voted on a specific package. Then, on April 21, 1997, the County's Personnel Director advised all unrepresented employees in writing what the Personnel Committee's recommendations were. At that point, all that remained for the unrepresented employees' 1997 economic package to be finalized was for the County Board to approve it. That took two Board meetings to happen. The first time it came up for a vote (at the May 13, 1997 Board meeting), it was referred back to the Personnel Committee following a contentious and volatile debate. The Personnel Committee then made some minor changes to the resolution's wording and resubmitted it to the County Board. The second time it came up for a vote (at the June 17, 1997 Board meeting) it passed on a vote of 17-14. The package that the County Board formally adopted on June 17, 1997 is virtually identical in form and substance to what was included in St. John's memo of April 21, 1997. In the Examiner's opinion, the foregoing facts establish that when the County Board decided at its June 17, 1997 meeting to adopt the Personnel Committee's recommended 1997 economic package for the unrepresented employees (which included, as one of its terms, an insurance change which required employees to henceforth pay ten percent [10%] of their health insurance premium) it was following through on a matter

that had been set in motion long before the Union filed its election petition. It follows from this finding that the County Board's decision on June 17, 1997 to adopt the Personnel Committee's recommended 1997 unrepresented employes' economic package was the culmination of a "course of action" like that contemplated in the TOWN OF MERCER decision. The phrase "course of action" can apply to a broad range of topics. It can, for example, apply to something that is uncontroversial, routine and inevitable. Conversely, it can also apply to something that is controversial and whose ultimate outcome is unknown. In this case, the economic package which the County Board considered on May 13, 1997 and adopted on June 17, 1997 is much closer to the latter category than the former. Be that as it may, the economic package which was ultimately adopted can be characterized as a "course of action" like that contemplated in MERCER. The fact that it took two Board meetings to get the votes necessary to pass the package is of no legal consequence. It is therefore held that since the County Board's adoption of the 1997 unrepresented employes' economic package was the result of a course of action that began before the County was notified by the Union of its organizing activity, the County's action in adopting that package was not unlawful interference. 8/

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***8/ Having so found, it is unnecessary to determine if the County proved a "legitimate business reason" for the unilateral change involved herein. This is because it was held in TOWN OF MERCER that "no violation is established if the Employer can prove a legitimate business reason for the change or a course of action that predates the Union's organizational campaign. (Emphasis added). Here, the latter has been found to exist.***

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The case law in the area of implementation of prior announced changes is quite clear. Once an employer has announced its intent to act or refrain from acting in a certain fashion, it has to stay the course and not deviate from its announced action. Application of this principle here means that once the County announced in April, 1997 what the terms of the proposed 1997 unrepresented employes' economic package were (i.e. two wage increases and a ten percent [10%] co-pay on insurance), that package had to remain intact despite the fact that an election petition was subsequently filed. The following shows why. Had the County acted to reverse direction and withdrawn the entire 1997 economic package for unrepresented employes upon learning of the election petition, it would likely have been found to have committed unlawful interference with the free choice of employes with regard to union representation. This is because a pre-election denial of a previously announced wage increase interferes with the employes' choice as to whether the union should be their bargaining representative and is viewed as retaliation for the union and employes filing an election petition. 9/

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***9/ GREEN COUNTY, supra.***

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Similarly, if the County had withdrawn just the ten percent (10%) co-pay insurance provision and kept the wage increase portions of the 1997 package, the Union would clearly be justified in claiming that the County's action was intended to diffuse the Union effort and in effect take away a motive for the Union organizational drive. Finally, had the County differentiated between employees who were subject to the election petition and those who were not (for example, implementing the 1997 economic package for just the unrepresented non-professional employees), the Union would again clearly be justified in claiming that the action was taken to diffuse the Union organizing effort and take away a motive for the Union organizational drive.

Attention is now turned to the question of whether the County's implementation of Resolution 17-05/97 interfered with employee rights. The record indicates that on June 19, 1997, the County's Personnel Director notified all unrepresented employees of the County Board's adoption of Resolution 17-05/97 and how it would affect their wages and benefits for 1997. A review of this memo reveals that it does not contain any statements connecting the 1997 unrepresented employees' economic package with the Union's pending organizing efforts. Specifically, the memo does not contain a promise of benefits if the Union were defeated in the election nor threats of reprisals if the Union should prevail. That being so, the memo is devoid of any threats or promises related to union activities. Accordingly, it is concluded that the County's memo implementing the 1997 economic package for the unrepresented employees was not coercive and therefore did not interfere, restrain or coerce those employees in the exercise of their protected rights.

Finally, attention is turned to the timing of the County's implementation decision. The record indicates that when the County implemented the 1997 unrepresented employees' economic package in June, 1997, it had not settled any of its contracts with its unions. However, in past years, the County had implemented the wage and benefit changes for its unrepresented employees after bargaining with AFSCME and the other unions were concluded and a settlement pattern had emerged. The Union characterizes what happened previously as a "past practice" which the County was obligated to continue. The Examiner disagrees. Just because the County had chosen in the past to implement wage and benefit changes for its unrepresented employees after bargaining was finished with its unions does not mean that the County was obligated to continue doing it that way. Certainly it could choose, as it did here, to do just the opposite. There is nothing in Section 111.70(3)(a)1 which mandates that municipal employers have to settle with their unions before they can unilaterally impose wages and working conditions on their unrepresented employees. That being so, the County's decision to impose the 1997 unrepresented employees' economic package on those employees before the County settled with any of its unions was not unlawful interference. Accordingly, no violation of Sec. 111.70(3)(a)1, Stats. has been found.

**Alleged Violation of Sec. 111.70(3)(a)3**

The Union also contends that the County's actions herein violated Sec. 111.70(3)(a)3, Stats. That section makes it a prohibited practice for a municipal employer "to encourage or discourage a membership in any labor organization by discrimination in regard to hiring, tenure, or other terms or conditions of employment. . ." This subsection prohibits employment practices that are in part motivated by hostility toward a union or protected activity. In order to prevail on a (3)(a)3 claim, the complainant must establish (1) that the employe or union engaged in protected, concerted activity; (2) that the employer had knowledge of such activity; (3) that the employer was hostile to the union activity; and (4) that the employer's action was based, at least in part, on its hostility to the union activity. 10/ It is the employer's motives in making labor relations decisions that are subject to scrutiny under this provision.

In this case, the unrepresented professional employes were engaged in protected, concerted activity (i.e. attempting to organize) when the County adopted the 1997 unrepresented employes' economic package, and the County was aware of that protected activity at the time it adopted same. That being so, points one and two above have been met. Points three and four above require that the Union prove the County was motivated by hostility towards the employes' organizational activity when it adopted the unrepresented employes' economic package on June 17, 1997.

The timing of the County's adoption of that package (i.e. six weeks after the Union filed its election petition) is probative, but not determinative, as to hostility towards the employes' protected activity. Here, the record establishes that the County's 1997 economic package for unrepresented employes was well on its way to being finalized before the Union filed its election petition on May 7, 1997. The following shows this. By the time the Union filed its election petition, the Personnel Committee had already publicly voted on a 1997 economic package for the unrepresented employes and the specifics of the package had been disseminated to all the unrepresented employes. All that remained to be done at that point was for the County Board to vote on the Personnel Committee's recommended package.

Other than the County's timing in adopting the 1997 unrepresented employes' economic package after the Union filed its election petition, there is no evidence of any hostility toward the organizing campaign on the part of the County nor any basis in the record for inferring same. That being so, the timing of this action is not sufficient, in the Examiner's opinion, to sustain the Union's burden to prove by a clear and satisfactory preponderance of the evidence that the County was motivated by hostility towards the unrepresented professional employes' organizational activity when it adopted the 1997 unrepresented employes' economic package on June 17, 1997. Accordingly, no violation of Sec. 111.70(3)(a)3, Stats., has been found.

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***10/ The "in-part" test was applied by the Wisconsin Supreme Court to MERA cases in MUSKEGO-NORWAY C.S.J.S.D. No. 9 v. WERB, 35 Wis.2D 540 (1967) and is discussed at length in EMPLOYMENT RELATIONS DEPT. v. WERC, 122 Wis.2D 132 (1985).***

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**Alleged Violation of Sec. 111.70(3)(a)2**

Finally, the Union contends that the Employer's actions herein violated Sec. 111.70(3)(a)2, Stats. That section makes it a prohibited practice for a municipal employer to "initiate, create, dominate or interfere with the formation or administration of any labor or employee organization. . ." Domination requires the actual subjugation of the labor organization to the employer's will. To establish a violation of this section, a complainant must demonstrate that a respondent's conduct threatened the independence of the union as an entity devoted to the employees' interests as opposed to the employer's interest. In this case, there is no evidence whatsoever that the County's actions impaired the Union's independence as an entity devoted to the employees' interests. As a result, there is no basis in the record for concluding that the County violated this section by its conduct herein. Accordingly, no violation of Sec. 111.70(3)(a)2, Stats., has been found.

In summary then, it is concluded that the County's actions were not unlawful and did not violate Secs. 111.70(3)(a)1, 2 or 3, Stats. The complaint has therefore been dismissed.

Dated at Madison, Wisconsin, this 27th day of May, 1998.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Raleigh Jones /s/ \_\_\_\_\_  
Raleigh Jones, Examiner

REJ/gjc  
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