

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

PORTAGE COUNTY

To Initiate Arbitration Between Said Petitioner and

**PORTAGE COUNTY HIGHWAY EMPLOYEES
LOCAL 311, AFSCME, AFL-CIO**

Case 148
No. 59064
INT/ARB-9059

Decision No. 30046

Appearances:

Ms. Therese Frieberg, Personnel Director, Portage County, County-City Building, 1516 Church Street, Stevens Point, Wisconsin 54481, appearing on behalf of Portage County.

Mr. Gerald Ugland, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, P.O. Box 44, Stevens Point, Wisconsin 54481, appearing on behalf of Portage County Highway Employees Local 311, AFSCME, AFL-CIO.

**FINDINGS OF FACT, CONCLUSION OF LAW AND
ORDER GRANTING MOTION TO DISMISS**

On July 17, 2000, Portage County filed a petition for interest arbitration pursuant to Sec. 111.70(4)(cm)6, Stats., regarding a health insurance dispute between the County and the Portage County Highway Employees Local 311, AFSCME, AFL-CIO.

On October 20, 2000, Local 311 filed a motion to dismiss the petition.

On October 31 and November 2, 2000, the County filed responses to the motion.

Neither party requested an evidentiary hearing. By letter dated December 4, 2000, the Commission advised the parties that unless advised otherwise by December 15, 2000, it would presume that the motion to dismiss should be decided based on the submissions of the parties received October 20, October 30 and November 2, 2000. Neither party responded to the December 4, 2000 letter.

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Having reviewed the record and being fully advised in the premises, the Commission makes and issues the following

FINDINGS OF FACT

1. Portage County, herein the County, is a municipal employer having its principal offices at 1462 Strongs Avenue, Stevens Point, Wisconsin 54481.
2. Portage County Highway Department Employees Local 311, AFSCME, AFL-CIO, herein Local 311, is a labor organization functioning as the collective bargaining representative of certain employees of the County Highway Department.
3. In September, 1999, the County and Local 311 agreed to the following Memorandum of Understanding:

MEMORANDUM OF UNDERSTANDING

Labor-Management Committee and Reopener

The following agreement has been reached between Portage County Highway Employees Local 311, AFSCME, AFL-CIO and Portage County.

Effective after the ratification of this 1999-01 Agreement by the County and Union, the County may create a labor-management committee to study the health benefit. The committee is expected to provide a written report containing its analysis and recommendation. The Union agrees to provide representatives to the committee.

After the committee's recommendations are received, the County may require the Labor Agreement be reopened on the issue of implementing insurance changes. Except as otherwise mutually agreed upon, the insurance changes, if any, are not to be effective before July 1, 2000. If the parties are unable to reach a mutual agreement on any insurance changes and impact thereof, the County may submit a petition for interest arbitration to the WERC. The arbitrator shall apply the stationary criteria in effect when the Labor Agreement is signed when rendering his/her arbitration decision.

4. Pursuant to the Memorandum of Understanding, a labor-management committee met on six occasions. No consensus was reached as to any changes in the current health insurance plan.

5. On June 13, 2000, the County sent the following memo to Local 311:

I am sending this correspondence to you directly as Mr. Ugland, your Staff Representative is on a leave of absence and Portage County has not been advised of any official alternate staff representative. First, I wish to outline the process that the parties (Portage County and the Represented Employees) have participated in with regard to discussing changes to the Health Plan benefit from July of 1999 through the present. Several initial informational meetings to outline the status of the health plan and proposed changes were held with both represented and non-represented employees. A more formal represented employee group met on six separate occasions through December of 1999. These meetings resulted in lots of information being shared by the County with the group but ultimately no consensus; other than to maintain the status quo, was reached. At the last meeting, I indicated that we would no longer be meeting due to lack of progress and lack of attendance from the represented group. Since that time Mr. Pankratz forwarded a letter in March outlining the position of the represented groups.

The Portage County Personnel Committee authorized a response to your most recent correspondence at their meeting on June 5, 2000. By way of this letter, I am outlining the proposal of Portage County for Health Plan provision for AFSCME Local 311 employees for the year 2001. By separate correspondence to each other bargaining unit, I will outline the specific proposal relative to that unit. The plan design that Portage County agrees to submit for proposals is attached and is the same for each group. As you will note it closely matches the plan design advocated by the represented employees and offered by Blue Cross Blue Shield and is within the parameters outlined in Mr. Pankratz March 27, 2000 letter. Please review the attached with the bargaining units and advise.

As an alternative to this process, the committee also offered the option of participation in the State Health Plan Program. I am enclosing some informational materials regarding this option.

An additional outstanding issue with the Highway unit is the fact that effective July 1, 2000 Portage County, at it's option may submit this issue for interest arbitration if not resolved by July 1, 2000.

Thank you for your attention to these issues.

6. Through the June 13, 2000 memo set forth in Finding of Fact 5, the County exercised its right under the Memorandum of Understanding to reopen the existing 1999-2001 contract "on the issue of implementing insurance changes."

7. Prior to the filing of the July 17, 2000 petition for interest arbitration, the County and Local 311 did not meet for the purpose of attempting “to reach a mutual agreement on any insurance changes and impact thereof”

Based on the above and foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSION OF LAW

All Memorandum of Understanding prerequisites to the filing of an interest arbitration petition have not been met.

Based on the above and foregoing Findings of Fact and Conclusion of Law, the Commission makes and issues the following

ORDER

The petition for interest arbitration is dismissed.

Given under our hands and seal at the City of Madison, Wisconsin this 5th day of February, 2001.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

Portage County

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER GRANTING MOTION TO DISMISS**

The written argument filed by the parties is limited to the following which we quote in its entirety due to its brevity:

Local 311

The Union hereby raises objection to the Employer's filing for interest arbitration. The Employer did not notify the Union of its intent to open negotiations, did not file a Notice of Commencement of Contract negotiations, did not meet the criteria of the current contract for commencement of contract negotiations on the insurance issue that could be opened, namely receiving a recommendation from a joint committee and then "reopening on the issue of implementing insurance changes."

The County

This letter is in response to your request for a written response to AFSCME Local 311's letter dated October 17, 2000. Portage County filed a notice to reopen the labor agreement and continued negotiations on health insurance from the first bargaining session with AFSCME Local 311 in 1998 for the successor agreement through June of 2000.

Portage County did notify AFSCME Local 311 of its intent to file the petition. This notice dated June 13, 2000 is enclosed. Portage County met with representatives from each of the labor units in its workforce as part of a joint committee. Please see attached. AFSCME Local 311 was part of the committee. The conclusion of the represented employees on the committee was that they were unable/unwilling to recommend anything other than status quo with regard to the health plan benefit provided to employees. This conclusion was communicated to the Personnel Committee. All prerequisites for submission, at the option of the County, of the health plan change issue to interest arbitration have been met.

Portage County has a right to separately arbitrate the impasse arising out of the reopener clause issue on health insurance. The County does not object to an investigation conducted by the WERC to determine if an impasse exists but does not believe this to be required. Portage County does not believe it appropriate to schedule a hearing regarding the union's motion to dismiss. The motion must be denied.

Having reviewed and considered the parties' Memorandum of Understanding, we are satisfied that there are three contractual prerequisites which must be met before the County can file for interest arbitration.

First, the labor-management committee must meet to study the health insurance issue. We conclude that prerequisite has been met. The parties met on six occasions. Although the Memorandum indicates that the "committee is expected to provide a written report containing its analysis and recommendation.", it is apparent that no written report was produced because no consensus was reached as to a recommendation. Under these circumstances, the absence of a report does not provide a persuasive basis for concluding that the County failed to meet the first prerequisite.

Second, the County must decide to reopen the contract on the issue of implementing insurance changes. The County did so through its June 13, 2000 memo to Local 311.

Third, the Memorandum states that "If the parties are unable to reach a mutual agreement on any insurance changes and the impact thereof, the County may submit a petition for interest arbitration to the WERC." We are satisfied that this portion of the Memorandum requires that the parties meet in an attempt to reach a voluntary agreement on insurance issues. No meeting was held between the June 13, 2000 reopening of the contract and the July 17, 2000 filing of the petition. Therefore, the third contractual prerequisite has not been met and we have granted the Local 311 motion to dismiss.

Dated at Madison, Wisconsin this 5th day of February, 2001.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

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