

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

**AFSCME LOCAL 1366D, CITY OF RIPON POLICE UNION and
AFSCME LOCAL 1366I, CITY OF RIPON DPW UNION, Complainants,**

vs.

CITY OF RIPON, Respondent.

Case 34
No. 60941
MP-3799

Decision No. 30353-A

Appearances:

Mr. Lee Gierke, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, P.O. Box 2236, Fond du Lac, Wisconsin, 54936-2236, appearing for the Complainant.

Davis & Kuelthau, S.C., by **Mr. William G. Bracken**, Employment Relations Services Coordinator, 219 Washington Avenue, P.O. Box 1278, Oshkosh, Wisconsin 54903-1278, appearing for the Respondent.

**ORDER DENYING MOTION TO DEFER COMPLAINT
TO GRIEVANCE ARBITRATION**

On February 27, 2002, the Complainants, AFSCME LOCAL 1366D, City of Ripon Police Union and AFSCME LOCAL 1366I, City of Ripon DPW Union, filed a complaint with the Wisconsin Employment Relations Commission, alleging that the City had committed prohibited practices under Sec. 111.70(3)(a)4 and 1, Wis. Stats., by unilaterally making changes to the employees' health insurance benefits subsequent to expiration of the parties' collective bargaining agreement, thereby failing to maintain the *status quo* as to health insurance benefits during the hiatus. On May 20, 2002, the City filed an Answer and Motion to Defer Complaint to Grievance Arbitration wherein it denied the substantive allegations of the complaint and affirmatively stated that the subject of the complaint was more appropriately addressed in grievance arbitration. On May 24, 2002, the Commission appointed John R. Emery, a member of the Commission's staff, as Hearing Examiner to make and issue Findings

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of Fact, Conclusions of Law and Order. Subsequently, the parties submitted written argument and supporting documentation and the City further averred that it was prepared to waive any and all procedural objections to arbitration.

Having considered the Respondent's Motion to Defer Complaint to Grievance Arbitration and the parties arguments thereon

NOW, THEREFORE, it is

ORDERED

That the Respondent's Motion to Defer Complaint to Grievance Arbitration is denied and that the complaint proceed to hearing.

Dated at Fond du Lac, Wisconsin, this 26th day of July, 2002.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

John R. Emery /s/

John R. Emery, Examiner

CITY OF RIPON

**MEMORANDUM ACCOMPANYING ORDER DENYING MOTION
TO DEFER COMPLAINT TO GRIEVANCE ARBITRATION**

In CITY OF GREENFIELD, DEC. NO. 14026-B (WERC, 11/77), the Commission held that grievance arbitration is not one of the *status quo* conditions which must be maintained during a contract hiatus. Therefore, upon expiration of the collective bargaining agreement, neither party can be compelled to submit to grievance arbitration over matters that arise during the hiatus. Conversely, in RACINE UNIFIED SCHOOL DISTRICT, DEC. NO. 29203-B (WERC 10/98), the Commission ruled that a contractual grievance procedure is part of the *status quo* and, therefore, following the contractual grievance process is a precondition to pursuing a prohibited practice complaint regarding an alleged violation of the *status quo* subsequent to expiration of the agreement.

In this case, Officer Mark Preissner, a member of Complainant, Local 1366D, filed a grievance on January 4, 2002, subsequent to expiration of the collective bargaining agreement, alleging that the City had changed the health benefits provided to employees, with the result that he was required to pay an increased portion of the cost of prescription medication. As relief, Preissner sought reimbursement for prescription costs in excess of \$5.00 for himself and all other similarly situated employees until ratification of a new contract. This grievance was processed through all the steps of the grievance procedure provided in the expired collective bargaining agreement, up to arbitration, which was not unavailable due to expiration of the agreement and the City's unwillingness, at the time, to consent to arbitration. With arbitration not an option, the Complainants filed the instant prohibited practice complaint on February 27, 2002. Inasmuch as the Complainants did, therefore, comply with the grievance procedure, I find they are entitled to pursue their complaint under the rule enunciated in RACINE UNIFIED SCHOOL DISTRICT, SUPRA. I note that the City has withdrawn its objections to arbitration, but this does no more than make the vehicle of arbitration available, should the Union choose to utilize it. Under CITY OF GREENFIELD, the Union cannot be compelled to arbitrate the issue, the City's waiver of objections notwithstanding, therefore the Motion to Defer is denied.

Dated at Fond du Lac, Wisconsin, this 26th day of July, 2002.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

John R. Emery /s/

John R. Emery, Examiner

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