

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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**MANITOWOC COUNTY HIGHWAY DEPARTMENT EMPLOYEES, LOCAL 986,  
MANITOWOC COUNTY SUPPORTIVE SERVICES EMPLOYEES, LOCAL 986-A,  
MANITOWOC COUNTY HUMAN SERVICE DEPARTMENT PROFESSIONAL  
EMPLOYEES. LOCAL 986-A, AND MANITOWOC COUNTY SHERIFF DEPARTMENT  
EMPLOYEES, AFSCME, AFL-CIO, Complainants,**

v.

**MANITOWOC COUNTY, Respondent**

Case 441  
No. 70852  
MP-4678

**Decision No. 34189**

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**Appearances:**

**Mark DeLorme**, Staff Representative, 701 North 8<sup>th</sup> Street, Manitowoc, Wisconsin 54220, and **Aaron N. Halstead**, Hawks Quindel, S.C. 222 West Washington Avenue, Suite 450, Madison, Wisconsin, 53701, appearing on behalf of Complainants.

**Steven J. Rollins**, Corporation Counsel, 1010 South Eighth Street, Manitowoc, Wisconsin 54220, appearing on behalf of Manitowoc County.

**ORDER DISMISSING COMPLAINT**

On July 18, 2011, the above-captioned labor organizations, herein AFSCME, filed a complaint with the Wisconsin Employment Relations Commission alleging that Manitowoc County, herein the County, had committed prohibited practices within the meaning of Secs. 111.70(3)(a) 4, 5 and derivatively 1, Stats. by “reneging on its agreement to fund the employee Health Savings Account deductible.” After extended discussions with Commission Examiner Danielle Carne over how best to proceed, the County responded to the complaint by filing a petition for declaratory ruling with the Commission on January 20, 2012 seeking among other matters dismissal of the complaint.

No. 34189

On June 26, 2012, following receipt of argument, the Commission dismissed the petition for declaratory ruling and referred the matter back to Examiner Carne for a ruling on what the Commission viewed as a County motion to dismiss the complaint. The parties subsequently filed written argument by January 14, 2013.

Examiner Carne did not issue a decision on the motion to dismiss prior to her departure from the Commission's employ on June 7, 2013. To minimize further delay, the Commission concluded that it would issue a decision on the motion.

Having considered the matter and being fully advised in the premises, the Commission makes and issues the following

**ORDER**

The complaint is dismissed.

Given under our hands and seal at the City of Madison, Wisconsin, this 10<sup>th</sup> day of July, 2013.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott /s/

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James R. Scott, Chairman

Rodney G. Pasch /s/

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Rodney G. Pasch, Commissioner

MANITOWOC COUNTY

MEMORANDUM ACCOMPANYING ORDER DISMISSING COMPLAINT

The County has moved to dismiss the complaint. ERC 12.04(2)(f) states:

(f) *To dismiss.* A motion to dismiss shall state the basis for the requested dismissal. A motion to dismiss shall not be granted before an evidentiary hearing has been conducted except where the pleadings, viewed in the light most favorable to the complainant, permit no interpretation of the facts alleged that would make dismissal inappropriate.

When reviewed in a manner consistent with ERC 12.04(2)(f), the complaint asserts the County violated AFSCME/County collective bargaining agreements and its duty to bargain with AFSCME. Consistent with ERC 12.04(2)(f), when ruling on the motion we assume the facts alleged in the complaint to be true and also consider supplemental evidence submitted by the parties.

The relevant facts can be summarized as follows:

1. 2006-2010 collective bargaining agreements between AFSCME and the County expired December 31, 2010. Those agreements required the County to make contributions to employee health saving accounts each January and April.
2. Prior to and following the expiration of the 2006-2010 contracts, the parties attempted to reach agreement on new contracts. As part of that effort, a Commission mediator assisted the parties.
3. In January, 2011, the County made the contributions to the health savings accounts referenced in the expired 2006-2010 agreements.
4. Following the introduction and passage of what came to be 2011 Wisconsin Act 10, the parties continued their efforts to reach agreements on new contracts before Act 10 became effective. The County sought health insurance cost savings in lieu of scheduled layoffs and the parties discussed whether the scheduled April contribution to health savings accounts should be made. No agreements were reached and the County made the April contributions.
5. In April 2011, the County discussed how it might proceed once Act 10 became effective. In May, 2011, the County Board passed the following resolution:

NOW, THEREFORE, BE IT RESOLVED that once enabling legislation is enacted and published, one-half of the health savings account contributions provided in 2011 to employees covered under an AFSCME agreement will be recovered through health insurance premium contributions.

6. Act 10 became effective June 29, 2011. Consistent with its May 2011 resolution, in July 2011 the County began to make deductions from the paychecks of AFSCME represented employees.

As to the alleged violation of collective bargaining agreements, we dismiss that complaint allegation because no agreements were in effect at the time of the allegedly improper County action.<sup>1</sup>

As to the alleged refusal to bargain, we dismiss that complaint allegation because: (1) the County met its pre-Act 10 duty to bargain status quo obligations by making the January and April 2011 payments; (2) the County engaged in good faith bargaining prior to the effective date of Act 10 generally as to new collective bargaining agreements and specifically as to continued health savings account payments and alternatives to such payments; (3) the duty to bargain as it existed prior to Act 10 did not prohibit planning by an employer as to how it would proceed if Act 10 became law; (4) on and after the June 29, 2011 effective date of Act 10 an employer did not have any duty to bargain obligation to maintain the pre-Act 10 status quo except as to base wage rates; and (5) post-Act 10 deductions from employee paychecks for health insurance premiums (under Act 10 a prohibited subject of bargaining) did not alter employee base wage rates.

Given the foregoing, we have granted the County motion to dismiss the AFSCME complaint.

Dated at Madison, Wisconsin, this 10<sup>th</sup> day of July, 2013.

#### WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott /s/

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James R. Scott, Chairman

Rodney G. Pasch /s/

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Rodney G. Pasch, Commissioner

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<sup>1</sup> The County also correctly notes that effective June 29, 2011, the Commission's jurisdiction over alleged violations of collective bargaining agreements covering the "General municipal" employees in question was limited to alleged base wage rate violations.