

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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COMMUNICATION WORKERS OF AMERICA, LOCAL 4671, Complainant,

and

CITY OF REEDSBURG, Respondent.

Case 8  
No. 71368  
MP-4702

DECISION NO. 34190-B

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**Appearances:**

Mr. Matthew R. Harris, Staff Attorney, Communications Workers of America District 4, 20525 Center Ridge Road, Suite 700, Rocky River, Ohio 44116, appearing on behalf of the Complainant.

Mr. Steven C. Zach, Boardman & Clark LLP, 1 S. Pinckney Street, Suite 410, P.O. Box 927, Madison, Wisconsin 53701-0927, appearing on behalf of the Respondent.

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

On January 11, 2012, Communications Workers of America, Local 4671, filed a complaint with the Wisconsin Employment Relations Commission asserting that the City of Reedsburg had committed a prohibited practice within the meaning of § 111.70(3)(a) 5, Stats., by violating a collective bargaining agreement in effect on January 1, 2012. The City contends that no agreement was in effect after December 31, 2011.

The parties stipulated to the facts to be considered and filed written argument with Commission Examiner Danielle Carne by October 9, 2012. Examiner Carne had not issued a decision before she left the Commission's employ on June 7, 2013. To minimize further delay, the Commission concluded that it would issue the decision in this matter. We did so on July 11, 2013, when we concluded that we lacked jurisdiction to decide the matter.

On July 23, 2013, Local 4671 filed a petition for rehearing, and on August 13, 2013, we granted the petition for the purpose of determining whether we erred in our July 11, 2013 decision.

Based on the record evidence and arguments of the parties, the Commission makes and files the following

### **FINDINGS OF FACT**

1. The City of Reedsburg (herein the “City”) is a municipal employer.
2. Communication Workers of America, Local 4671 (herein the “Union”), is a labor organization that at all times material herein served as the collective bargaining representative of certain employees of the City. The employees so represented were “general municipal employees” within the meaning of § 111.70(1)(fm), Stats.
3. The City and the Union were parties to a collective bargaining agreement with a term beginning January 1, 2011 that, among other matters, contained provisions as to health insurance and retirement benefits. The agreement also contained the following provision:

Section 17.01 Period Covered – This Agreement shall be effective as of 1 January 2011 and shall remain in effect to and including 31 December 2011 and shall continue in effect thereafter until terminated by written notice given by either party expressly stating its intention to terminate this Agreement, in which case it shall terminate sixty (60) days following receipt of such notice. Within thirty (30) days of receipt of such notice to terminate this Agreement, the Union and the City shall commence collective bargaining with respect to a new Agreement.

4. On June 29, 2011, 2011 Wisconsin Act 10 took effect and specified at Section 9332(1) thereof that the provisions of Act 10 first applied to employees covered by a collective bargaining agreement that contained provisions inconsistent with the terms of Act 10 “... on the day on which the agreement expires or is terminated, extended, modified, or renewed, whichever occurs first.” Act 10 made health insurance and retirement issues prohibited subjects of bargaining for “general municipal employees.”

5. In early January 2012, the City took action to increase employee health insurance and retirement contributions beyond those contained in the agreement referenced in Finding of Fact 3. On January 11, 2012, the Union filed the instant complaint alleging that those changes violated the continued existence of the contract referenced in Finding of Fact 3 because notice to terminate had not been given pursuant to Section 17.01.

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

**CONCLUSIONS OF LAW**

1. The collective bargaining agreement referenced in Finding of Fact 3 contained health insurance and retirement contribution provisions inconsistent with the terms of Act 10.

2. The meaning of the Section 17.01 contractual term “continue” falls within the scope of the meaning of the Act 10 term “extended.”

3. As of January 1, 2012, the Commission only has authority under § 111.70(3)(a)5, Stats., to determine whether the City of Reedsburg violated a collective bargaining agreement with Communication Workers of America, Local 4671 as to “wages” as defined in § 111.70(4)(mb) 1, Stats.

4. The health insurance and retirement contribution provisions that the complaint alleges were violated by the City of Reedsburg are not wages as defined in § 111.70(4)(mb)1, Stats. Therefore, the complaint does not state a claim for relief which the Commission has authority to grant.

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

**ORDER**

The complaint is dismissed.

Dated at Madison, Wisconsin, this 27th day of February 2014.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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James R. Scott, Chairman



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Rodney G. Pasch, Commissioner

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

We granted the petition for rehearing so that we could re-evaluate the analysis in our July 11, 2013 decision. Having done so, we conclude that our authority to review the merits of the retirement / insurance contribution dispute depends on whether the contractual term “continue” found in Section 17.01 of the 2011 agreement falls within or outside the meaning of the Act 10 term “extended.” If “continue” is the functional equivalent of “extended,” then Act 10 applies and we only have authority under § 111.70(3)(a)5, Stats., as amended by Act 10, to resolve contractual “wage” disputes as that term is defined in § 111.70(4)(mb)1, Stats. “Wages” as defined in § 111.70(4)(mb)1, Stats., does not include retirement and insurance contributions.

We are satisfied that by use of the phrase “expires or is terminated, extended, modified, or renewed,” the Legislature intended that immediately upon the formally stated expiration date of a pre-Act 10 collective bargaining agreement, Act 10 became applicable if (as is true for the retirement / insurance provisions at issue here) the pre-Act 10 agreement contained terms that were inconsistent with Act 10. Further, when giving the word “extended” its “common and approved usage” as required by § 990.01, Stats, it is apparent that its meaning encompasses the common understanding of the word “continue.” Given the foregoing, we find no persuasive basis for a conclusion that the Legislature intended that a “continued” pre-Act 10 agreement postponed the applicability of Act 10 but an “extended” pre-Act 10 agreement did not. Therefore, because the applicability of Act 10 limits the scope of § 111.70(3)(a)5, Stats., to resolution of “wage” disputes and the instant complaint does not raise a “wage” dispute, the complaint does not state a claim for relief which the Commission has authority to grant.

Therefore, we have dismissed the complaint.

Dated at Madison, Wisconsin, this 27th day of February 2014.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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James R. Scott, Chairman



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Rodney G. Pasch, Commissioner