STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, COUNCIL #2, LOCAL 1191-CD,	CASE NO. 5041-U-84-875
Complainant,	DECISION NO. 1990 - PECB
vs.	
CITY OF DAYTON,	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
Respondent.	

Keith Yates, Attorney at Law, City Attorney for City of Dayton, appeared for employer-respondent.

Randy Withrow, Staff Representative, Washington State Council of County and City Employees, AFL-CIO, appeared for union-complainant, Local 1191-CD.

On January 9, 1984, Local 1191-CD (WSCCCE/AFSCME/AFL-CIO), the union, filed a complaint charging unfair labor practices against the City of Dayton alleging that the city violated RCW 41.56.140(1) and (4) by implementing a unilateral change of the medical insurance carrier covering the city's employees.

A hearing was held on this matter May 9, 1984, before Examiner Katrina I. Boedecker. The parties filed post-hearing briefs.

BACKGROUND

The union has represented the employees of the City of Dayton for ten years. The parties had a collective bargaining agreement covering the period January 1, 1983, through December 31, 1983.[1/] It contains provisions for wages, grievances, holiday pay, vacations, and medical benefits. Article XVI of the contract provides succinctly:

> The city agrees to pay once each month the full amount of the employee's medical coverage.

A Public Employment Relations Commission (PERC) mediator was requested in October, 1983, to aid the parties in reaching an agreement.

1/ That mediation case remains pending on the agency docket. The successor contract has not been signed for 1984.

During 1983, a city council subcommittee was formed to examine the entire subject of medical coverage for city employees. This committee concluded that a change in medical carriers was required, because Blue Cross was intending to increase its rates more than 32% for 1984. No union member or representative served on this ad hoc committee, but information on its findings was supplied to the union's representatives.

In the Summer of 1983, the parties began to negotiate a successor contract for 1984. Opening proposals were exchanged on August 10, 1983. The union was cognizant of increases in premiums of the major medical carrier, Blue Cross of Washington/Alaska, and proposed the less expensive Washington Physicians Service medical plan which another one of its locals was using in the City of Walla Walla. The city's initial position was that any increase resulting from changes in medical carriers would be paid by the employees, not the city. The union wanted any savings generated by changing to Washington Physicians Service to be paid to the employees in the way of other benefits.

A second meeting was held September 8, 1983. The city was apparently convinced that the Washington Physicians Service plan would cost $4.65 less per employee per month, and proposed a changeover to that particular plan, starting February 1, 1984. The city offered to pay the $4.65 savings to the employees.

It is the union's contention that on September 28th the city withdrew its proposal of September 8th with respect to the medical carrier change, because at that time the city changed the wage portion of its "package offer". The city negotiator, Yates, contends that the union was fully aware that he still had to seek approval of the $4.65 increase offer made to the union. When Yates presented the idea to the city council, the council refused to offer the $4.65. The union indicated that the major issue before the mediator was:

> First Issue - Major Medical - City wants to change major medical. Union's position. It's a negotiable item. (sic)

Vacations, cost-of-living increases, sick leave and clothing allowances were other items of concern.

Mayor Rowe announced to the PERC mediator on December 12, 1983, that the city council would implement the Washington Physicians Service medical plan on February 1, 1984, and allow the Blue Cross coverage to expire a week later. The union, feeling that its proposal was not responded to in its entirety, announced its opposition to the new plan on December 13, 1983. The city and the union continued to exchange telephone calls late into December. The city council officially changed insurance carriers by resolution of December 27, 1983.

New enrollment cards were filled out by the employees and regular coverage under Washington Physicians Service began February 1, 1984. The Blue Cross plan apparently expired February 7, 1984, as indicated by the city.

POSITIONS OF THE PARTIES

The union contends that the employer has engaged in bad faith bargaining in violation of RCW 41.56.140(1), by its unilateral implementation of a new medical insurance carrier. Implicit in the complaint is the contention that the employer failed to negotiate the expenditure of any savings of funds resulting from less expensive medical coverage.

The employer contends that no benefit levels of the employees were altered, and that the negotiation of medical insurance carriers is not a mandatory subject for bargaining under RCW 41.56 et seq. Since the contract did not specify the choice of any particular carrier, the matter was subject to management discretion. No conditions of employment were changed; the city had met and conferred with the union about this item and had accepted the union's research and recommendation as to the newly selected carrier. But the city contends it was not obligated to reach written agreement as to who the new carrier would be.

DISCUSSION

The parties agreed in the 1983 contract that the city would provide medical coverage for all unit employees, but did not list a specific carrier. Tt is uncontroverted that the city solicited Washington Physicians Service as its insurance carrier after February 1, 1984, and then cancelled Blue Cross on or about February 8, 1984. The question is whether the city lacked good faith by unilaterally adopting a new medical insurance carrier.

Washington law is clear that unions and employers, without exception, must meet, confer and negotiate in good faith, with respect to wages, hours and working conditions. Neither party, however, is compelled "to agree to a proposal or be required to make a concession unless otherwise provided in this chapter." RCW 41.56.030(4). (emphasis added) There is no doubt that the two parties met, conferred and negotiated on this matter. John Cole, staff representative for the union, testified that the union proposed a change of medical carriers from Blue Cross to Washington Physicians; it is clear that the city, through its negotiator Yates and Mayor Carl Rowe, responded to this bargaining proposal. The city counter-proposed a wage increase and a change of medical insurance carrier to the Washington Physicians Service. Even if the city withdrew its wage increase proposal, it continued to offer the change of medical carrier.

The gist of the union's complaint is that the city implemented the new medical carrier without formally agreeing to a successor labor contract and without applying the monetary savings to other employee benefits. Even if one assumes for the purposes of argument that the employer unilaterally changed medical carriers, the union has failed to show that the city did so in violation of RCW 41.56.140(4) and (1). Generally, it has been held that insurance benefits are treated like "wages" under the National Labor Relations Act; they are a mandatory subject for bargaining. Allied Chemical and Alkali Workers, Local 1 v. Pittsburgh Plate Glass Co., 404 U.S. 157, 159 (1971); Keystone Consolidated Industries v. NLRB, 606 F.2d 171, (7th Cir. 1979). The National Labor Relations Board (NLRB) concluded "that the term 'wages' ... must be construed to include emoluments of value, like pension and insurance benefits, which may accrue to employees out of their employment relationship." Inland Steel Co. v. NLRB, 170 F.2d 247, 251 (7th Cir. 1948) cert. den. on this issue 336 U.S. 960 (1949).

An employer was found to have violated RCW 41.56.140(4) and (1) by unilaterally reducing health insurance premium payments without fulfilling its duty to bargain, in City of Seattle, Decision 651 (PECB, 1979). As in the instant case, the City of Seattle was obligated by contract to pay 100% of an employee's monthly medical premium. However, that contract specified a dollar limit of $67.00/mo for those employees electing Group Health Cooperative coverage. For two months, the city paid an additional $6.00 towards the employee premium with no change of insurance coverage to employees. Then it abruptly stopped paying the extra money. The unilateral change was found to have unlawfully caused a reduction in the benefits of the employees. But here, the City of Dayton has not refused to pay 100% of the medical premiums. A comprehensive medical plan continued to be provided for the employees, and the union was able to demonstrate only de minimis differences between the Blue Cross and Washington Physicians Service plans. Although it was inferred that the Washington Physicians Service plan had a lower limit on lifetime coverage, the union offered no proof to indicate that lower benefits were inevitable. This is not a case where a change in medical carriers omits one or more significant insurance benefits and thereby causes an adverse impact upon the employees' previously negotiated benefits, as in Bastian Blessing v. NLRB, 474 F.2d 49, (6th Cir. 1973). This case is similar to Connecticut Light and Power Co. v. NLRB, 476 F.2d 1079 (2d Cir. 1973) where it was held that:

> The selection of an insurance carrier under the circumstances presented here is not a mandatory subject for bargaining within Section 8(d) of the Act....Here, there have been no specific allegations of any changes in coverage, levels or administration of the plan. All the union has alleged is general "dissatifaction" with Aetna. Equally important, the company has responded to specific complaint, with good faith negotiation; and as the board has found, the company has been able to obtain modifications from Aetna.

The union can hardly claim dissatisfaction with the new carrier since it recommended this carrier in August, 1983, based on its positive experience with the plan in the City of Walla Walla.

The union here has only shown that it is dissatisfied with what the city is doing with the $8.00 to $20.00 per employee per month monetary savings that the city received by changing carriers. It is not necessary to decide whether the city committed an unfair labor practice by refusing to exchange a savings on the new medical carrier for additional money allocated to employee uniforms or other benefits. It is clear that an employer need not bargain over the use of unanticipated funds. Federal Way School District, Decision No. 232-A (EDUC, 1977).

FINDINGS OF FACT

1. The City of Dayton is a municipal corporation and political subdivision of the State of Washington and is a public employer within the meaning of RCW 41.56.030(1).

2. Washington State Council of County and City Employees, Local 1191-CD, a "bargaining representative" within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of certain employees of the City of Dayton.

3. The City of Dayton and WSCCCE Local 1191-CD had a collective bargaining agreement for 1983, which provided for a medical plan for unit employees, paid for 100% by the city.

4. In August, 1983, the parties began negotiating a successor contract and initially expressed mutual dissatisfaction with the present medical carrier, Blue Cross. The union suggested a change to Washington Physicians Service.

5. On December 12, 1983, the city announced its intention to change medical carriers to Washington Physicians Service, effective February 1, 1984. The city council approved the changeover on December 27, 1983.

6. The employer met, conferred and negotiated in good faith with the union regarding the level of insurance medical benefits. The change of insurance carrier implemented in February, 1984, has not been shown to have had any material effect on the level of insurance benefits received by employees.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56. RCW.

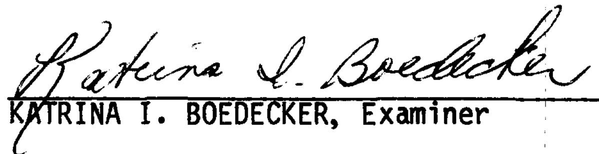
2. By changing its medical insurance carrier the City of Dayton did not unilaterally adopt changes in benefits or fail to negotiate a mandatory subject for bargaining, and thus did not violate RCW 41.56.140(4) or (1).

ORDER

The complaint in the above entitled matter is DISMISSED.

DATED at Olympia, Washington, this 20th day of July, 1984.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



KATRINA I. BOEDECKER, Examiner

This Order may be appealed by filing a petiton for review with the Commission pursuant to WAC 391-45-350.