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-A PECB
vs.	
CITY OF DAYTON,	
Respondent.	DECISION OF COMMISSION

Hafer, Price, Rinehart & Schwerin, by Pamela G. Bradburn, Attorney at Law, appeared on behalf of the complainant.

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

WSCCCE Local 1191-CD, AFSCME, AFL-CIO (the union) filed a complaint on January 9, 1984 charging unfair labor practices against the city of Dayton. The union alleged 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 May 9, 1984, before Examiner Katrina I. Boedecker. The examiner issued a decision on July 20, 1984 dismissing the complaint. The complainant filed a petition for review.

POSITIONS OF THE PARTIES ON REVIEW

The complainant's petition for review is based largely on the proposition that the City of Dayton did not comply with laws relating to the duty to bargain before switching to a different medical plan carrier. In addition, the union complains that the city did not bargain over the savings associated with the change. Finally, the union contends that the city made an offer in bargaining that incorporated the medical plan changes, and then withdrew the offer in contravention of good faith bargaining. The complainant asks for a finding of an unfair labor practice, reversing the examiner's decision.

The respondent supports the decision of the examiner based on the fact that the complainant itself originally suggested the change during bargaining and on the wording in the labor agreement that speaks only to the city's obligation to pay for medical coverage.

DISCUSSION

The facts are as set forth in the examiner's decision and are adopted by reference.

Collective bargaining is defined by RCW 41.56.030(4):

> "Collective bargaining" means the performance of the mutual obligations of the public employer and the exclusive bargaining representative to meet at reasonable times, to confer and negotiate in good faith, and to execute a written agreement with respect to grievance procedures and collective negotiations on personnel matters, including wages, hours and working conditions, which may be peculiar to an appropriate bargaining unit of such public employer, except that by such obligation neither party shall be compelled to agree to a proposal or be required to make a concession unless otherwise provided in this chapter.

Article XVI-Health and Welfare in the labor agreement provides, in its entirety:

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

The union proposed a less expensive, but equivalent, medical plan along with a wage increase and other contract improvements. The net cost of the proposal exceeded the savings from switching. The city then proposed to go to the new medical plan and further proposed that the anticipated savings would go to the employees as a wage increase. When the city council refused to approve the use of savings for a wage increase, that part of the proposal was withdrawn. The city then announced on December 12, 1983, that the city would change to the new medical plan effective February 1, 1984, and allow the other plan coverage to expire a week later. Plan changes were made in February, as the old plan came up for annual renewal during that month.

The central question is whether the city fulfilled its duty to bargain by introducing its concern for health care costs early in bargaining, announcing in bargaining that it intended to switch carriers, and by switching to a medical plan that had been proposed by the union. An additional consideration is whether the city was obligated to pass the savings from switching on to the bargaining unit employees, especially after advancing such a proposal in bargaining.

The Commission is persuaded that the city did meet its duty to bargain. There exists an obligation to bargain matters affecting benefits in any way, and we find the employer fulfilled its obligation. The Commission notes that the plans are almost identical, thereby removing objections based on any substantial change or loss of benefits. Also, the change has not cost any

employee any money. The contract language does not speak to a particular plan or premium rate. These considerations are still secondary to the obligation to "meet ... confer and negotiate". We find particularly significant that the union both proposed the new carrier and announced its good experience with the plan. As to the savings from the plan, the union acknowledges that the proposal to pass on savings from the change was dependent on city council approval (TR 75-76). There is no additional obligation by the city to pass on the savings or buy additional benefits given the absence of a premium rate in the labor agreement. Further, the union continued to have the opportunity to negotiate the use of the savings before and after the plan change was made.

The Commission does not find the legal citations by the union in this case determinative, as none are quite on point. In City of Seattle, Decision 651 (PECB, 1979), the city committed an unfair labor practice by paying the increased premium for two months and then stopping. The decision states that a refusal to pay additional premiums would not have been an unfair labor practice, but paying and then stopping payment did constitute a violation. The Nestle Company, 238 NLRB 92 (1978), is off point because it involved the refusal to turn over data on insurance costs, a situation that does not apply here.

The complainant relies heavily on Clear Pine Mouldings, 283 NLRB 69 (1978), for the proposition that a change of insurance carriers is a mandatory subject of bargaining. The NLRB affirmed its Administrative Law Judge in so holding in the factual context of that case. We do not find it controlling here. In Clear Pine Mouldings, the employer was withdrawing from an industry health and welfare trust because the contributions, in its judgment, had increased excessively. It tried to continue the old coverage at the old rates, but the trustees would not accept the contributions. The employer then purchased coverage from a carrier of its own selection, without any discussion whatever with the union. The employer was unsure as to whether or not the new coverage was identical to the old, and there were numerous other issues in the case. In addition to the unfair labor practice finding stemming from the unilateral change of insurance carriers, the employer was found guilty of interference, restraint and coercion and of dilatory bargaining. The employer defended on the ground that it made the change after an impasse has been reached in bargaining; the NLRB, however, held than no impasse had been reached.

The union contends on review that the employer engaged in bad faith bargaining by submitting and withdrawing proposals. This issue is raised for the first time on appeal. It was not mentioned in the union's unfair labor practice complaint, its prehearing brief, nor was it argued at hearing. Therefore, we decline to consider this issue.

ORDER

1. The Findings of Fact are amended by striking the last sentence of paragraph 6 and substituting for it: "The insurance benefits under the Washington Physicians plan are substantially the same those under the Blue Cross plan."

2. The Findings of Fact, Conclusions of Law and Order of the examiner, as amended herein, are affirmed.

ISSUED at Olympia, Washington, this 10th day of December, 1984.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Jane R. Wilkinson

JANE R. WILKINSON, Chairman

Mark C. Endresen

MARK C. ENDRESEN, Commissioner

Mary Ellen Krug

MARY ELLEN KRUG, Commissioner