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Practice Area: Compensation and Benefits/ERISA & Labor and Employment & School Law & County and Municipal Governance

On April 16, 2013, the District I Court of Appeals for the State of Wisconsin issued its much-anticipated decision in *Milwaukee Police Association vs. City of Milwaukee* related to the definition of "health insurance plan design" in Act 10. The Court of Appeals firmly and unequivocally concluded that employers of public safety employees may unilaterally determine health insurance plan design, to include deductibles, co-pays and maximum-out-of-pocket costs, as well as the funding mechanisms associated with the plan design (such as a high-deductible HSA, HRA, Flexible Savings Account, etc.).

After the passage of Act 10, the Milwaukee Police Association and the City of Milwaukee were uncertain about how to negotiate a new 2010-2012 Collective Bargaining Agreement. Act 10 prohibited bargaining over "health insurance plan design," but people disagreed over the definition of that term. The parties entered into a Collective Bargaining Agreement that included a lengthy Article defining various aspects of the health insurance plan, including deductibles, co-pays and other out-of-pocket costs associated with health insurance plan design selection by the City. However, they also included language which specifically provided that if the courts later determined the provisions of that Article were deemed to be a prohibited subject of bargaining, the remaining portions of the 2010-2012 Collective Bargaining Agreement would remain intact.

The Union then sought a declaratory ruling concerning the provisions of the disputed Article. The Circuit Court initially decided in favor of the Union, issuing an injunction preventing the City of Milwaukee from modifying the terms of the 2010-2012 Labor Agreement in connection with health care coverage costs, and also issuing a *writ of mandamus* directing the City to comply with the terms of the Labor Agreement, preventing the City from modifying the Agreement's "specific deductibles, co-pays, prescription costs."

The Court of Appeals, Judges Fine, Kessler and Brennan, unanimously agreed the Circuit Court was wrong. The Court of Appeals carefully analyzed the language of Act 10, ultimately concluding:

> It would make no sense for the legislature to have granted to the City and other municipal employers the unilateral right to design and select health-care-coverage plans irrespective of the "impact" the "design and selection" has "on the wages, hours, and conditions of employment of the public safety employee," but require bargaining on what the Association calls the "direct result" on the public safety employee's finances.

It is notable that the Court of Appeals, in a footnote, indicated the interpretation of "health insurance plan design" should be done consistent with other provisions of the statute which define those terms, such as Section 149.14(4) which defines health insurance plan design to include "benefit levels, deductibles, co-payment and co-insurance requirements, exclusions, and limitations under the plan."

This decision addresses several issues pending in other jurisdictions. For example, in one pending case from Manitowoc County, the Union tried to distinguish HRA/HSA contributions by the Employer from deductibles and co-pays, arguing HRA/HSA contributions are not part of "plan design" and therefore are negotiable. This case suggests that argument will fail. In another pending case involving Eau Claire County, the ubiquitous Judge Colas concluded that because "plan design" doesn't include deductibles (clearly wrong under this new decision), he didn't need to reach the legal issue of "impact" bargaining (also clearly wrong under this decision).

This case is significant for a number of reasons. It is the first of many pending cases which are anticipated to be reviewed by the Courts of Appeals involving this same subject matter. Second, there was no dissent in this case; all three judges on the panel agreed with it. Finally, the panel recommended publication of this decision in the official reports, which generally allows attorneys in other cases to cite to it with authority.

Certainly, the status of other pending cases on this same issue need to be watched carefully. However, this decision represents the first clear direction from a Court of Appeals. Parties can now begin to rely upon this decision with greater certainty for the future.

If you have any questions about this case, please contact any member of the Labor and Employment Team at von Briesen & Roper, s.c.
