STATE OF WISCONSIN   CIRCUIT COURT   ST. CROIX COUNTY

WISCONSIN PROFESSIONAL
POLICE ASSOCIATION,

                    Plaintiff,

          vs.   **DECISION AND ORDER**

CITY OF HUDSON,   Case No. 12 CV 371

                    Defendant.

INTRODUCTION

The Wisconsin Professional Police Association (Union) represents the City of Hudson's

(City) police officers. The City and the Union were party to a collective bargaining agreement

(CBA) that set forth the terms and conditions of the patrol officers' employment. The CBA

required the City to make contributions to officers' health reimbursement accounts (HRAs), in

addition to paying 92% of the premium of the group insurance plan for officers electing coverage

under the plan. The CBA expired on December 31, 2011.

On January 1, 2012, the City ceased making contributions to the officers' HRAs. The

parties were unable to agree on a new CBA and began interest arbitration. The City advised that

if the Union's final offer included a requirement that the City make HRA contributions, the City

would challenge the legality of the offer.

The City believed the inclusion of such a requirement would violate Wis. Stat. §

111.70(4)(mc)6. The statute provides:

> "The municipal employer is prohibited from bargaining collectively with a collective
> bargaining unit containing a public safety employee with respect to...(t)he design and
> selection of health care coverage plans by the municipal employer for public safety
> employees, and the impact of the design and selection of the health care coverage plans
> on the wages, hours, and conditions of employment of the public safety employee."

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The Union's final offer included a provision requiring the City to make contributions to the HRAs. The Union filed an action for declaratory judgment and now asks the court to interpret Wis. Stat. § 111.70(4)(mc)6 as not prohibiting bargain on whether (and in what amount) the City will make HRA contributions. The City opposes the Union's interpretation.

ANALYSIS

Motions for summary judgment are governed by the standards set out in Wis. Stat. § 802.08(2). *Grams v. Boss*, 97 Wis.2d 332, 338-39, 294 N.W.2d 473 (1980). Summary judgment is appropriate when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Id.* If the moving party has made a prima facie case, the court examines the affidavits and other proof of the opposing party to determine if there exist disputed material facts or facts, although undisputed, from which reasonable opposing inferences may be drawn, sufficient to entitle the opposing party to a trial. The party moving for summary judgment has the burden to establish the absence of a factual dispute.

Summary judgment should not be granted if reasonable, but differing, inferences could be drawn from undisputed facts. *Delmore v. American Family Mut. Ins. Co.*, 118 Wis.2d 510, 516, 348 N.W.2d 151, 154 (1984). Any reasonable doubt as to the existence of an issue must be resolved against the moving party. *Kraemer Bros., Inc. v. United States Fire Ins. Co.*, 89 Wis.2d 555, 278 N.W.2d 857 (1979).

In this case, there is no factual dispute, the parties agreed to a Joint Stipulation of Facts, and ask the Court only for an interpretation of Wis. Stat. § 111.70(4)(mc)6. Summary judgment is, therefore, appropriate in this matter.

This case is similar to a recent Court of Appeals decision and this Court will follow the Appellate Court's line of reasoning. In *Milwaukee Police Association, Local 21, IUPA, AFL-C10*

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and Michael V. Crivello v. City of Milwaukee, Appeal No. 2012AP1928, April 16, 2013 (recommended for publication), the Court ruled regarding a dispute between the City of Milwaukee and the Milwaukee Police Association regarding the interpretation of Wis. Stat. § 111.70(4)(mc)6.

In *Milwaukee*, the City of Milwaukee sought to alter its 2010-2012 labor agreement between it and the Milwaukee Police Association in connection with health-care-coverage costs. *Id.* at ¶ 1. The City did not want to comply with the terms of the labor agreement following the effectiveness of Wis. Stat. § 111.70(4)(mc)6, and wanted to modify deductibles, co-pays and prescription costs. *Id.* The circuit court held that the statute did not affect the City's obligation to bargain in connection with the coverage, but the appellate court reversed. *Id.*

In *Milwaukee*, the Association conceded that the City may design and select the health-care-coverage plans and the specific funding mechanism associated with the plan (which included an HRA). *Id.* at ¶ 8. The Association argued that it was free to bargain how the components affected its members' finances, even though the statute forbids bargaining over the impact of the coverage on the "wages, hours, and conditions of employment" of the employees. *Id.* The court found this directly ignored the clear language of the statute. *Id.* at ¶ 9.

It is clear, based on the court's interpretation in *Milwaukee,* that an HRA falls under the governance of Wis. Stat. § 111.70(4)(mc)6. The court did not take issue with the fact that the Association in *Milwaukee* included the funding mechanism as part of the health-care-coverage plan, and in fact, chose to specifically quote the Association's brief on that point. Though the Union in this case argues in its Supplementary brief that the Court of Appeal's decision in *Milwaukee* was based on a jumbled record, a confusing judgment by the circuit court judge and a new argument presented by the Association at the appellate level, the Court does not find these
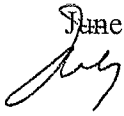
arguments convincing. The Court agrees with the City's interpretation of the case, as is demonstrated by the above discussion.

As such, in the case at hand, this Court must determine that an HRA is part of health-care-coverage for the purposes of Wis. Stat. § 111.70(4)(mc)6.
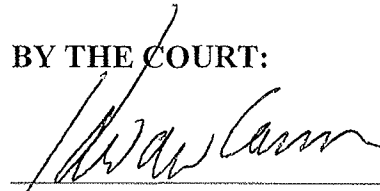
DECISION

For the reasons set forth herein, **IT IS HEREBY ORDERED** that Defendants' Motion for Summary Judgment is **GRANTED**. This judgment is final for purposes of appeal.

BY THE COURT:

Dated this 1 day of
June 2013.

Hon. Howard W. Cameron
St. Croix County Circuit Court Judge
Branch IV