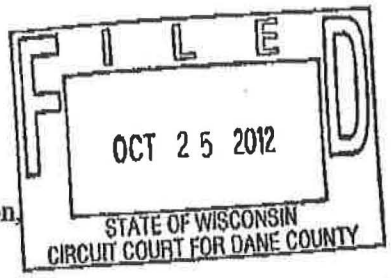
STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY
Branch 10

Wisconsin Professional Police Association,
Petitioner

vs.

Wisconsin Employment Relations Commission,

Respondent



Case No. 12CV1123
Decision No. 33662C1

DECISION AND ORDER

This is a review of a declaratory ruling by the Wisconsin Employment Relations Commission holding that the amount of the employee share of a health insurance coverage deductible is a prohibited subject of bargaining between the Wisconsin Professional Police Association and Eau Claire County under Wis. Stat. §111.70(4)(mc)6.[1] Because the plain meaning of the statute does not prohibit collective bargaining about the employee and employer share of deductibles, the court reverses the decision of the Commission.

The facts are undisputed. In bargaining the Association proposed the following language be added to the collective bargaining agreement's section 15.01A, that specified the employee/employer shares of health insurance premiums:

> The Association fully acknowledges the right of the Employer to choose the carrier and to establish the plan design. Should the Employer design or choose a plan design which includes a deductible, the employees shall be responsible for paying the first two hundred fifty ($250) / five hundred dollars ($500) of the deductible.

The County took the position that the proposed amendment was a prohibited subject of bargaining because §111.70(4)(mc)6 prohibits bargaining regarding "The 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." The Commission agreed with the County.

[1] Unless otherwise stated all references are to the 2009-10 Wisconsin Statutes, as amended through Act 286 as found on the Revisor of Statutes' web site.

STANDARD OF REVIEW

The parties disagree on the standard of review the court should apply to the Commission's decision. Petitioners argue that it should be *de novo* while the Commission and the County believe the decision should be given "great weight deference."

The commission has great experience and has been accorded great weight deference in determining whether particular issues were permissive, mandatory or prohibited subjects of bargaining under former §111.70(1)(a) and in particular in determining whether an issue was "primarily related" to "wages, hours and conditions of employment" under that section. *School District of Drummond v. Wisconsin Employment Relations Commission, 121 Wis. 2d 126, 13, 352 N.W.2d 662 (Wis.) (quoting West Bend Education Association v. Wisconsin Employment Relations Commission,* 121 Wis.2d 1, 5, 341 N.W.2d 417 (Wis.). This case does not present a question of the interpretation of §111.70(1)(a) or of the application of the "primarily related" test to "wages, hours and conditions of employment" as used in that section.

The issue in this case, as the court understands it and as the commission described it (Comm. Dec. p. 3) is the meaning of the phrase "design and selection of health coverage plans" in §111.70(4)(mc)6 and whether that phrase includes the allocation between the employer and employee of responsibility for paying deductibles. The decision interprets a new statute that uses terms not previously interpreted or applied by the Commission. The Commission did not discuss either the current or former §111.70(1)(a) or the "primarily related" test or rely upon them in its decision, nor did it make reference to any of its own prior decisions or to any court decisions in its analysis (other than a citation for the principles of statutory construction) or rely on its experience in interpreting the phrase "wages, hours and conditions of employment." The decision also does not meet the criterium that the interpretation in the decision be "long-standing." *Gilbert v. Labor & Indus. Review Comm'n,* 2008 WI App 173, ¶9, 315 Wis. 2d 726, 762 N.W.2d 671.

In short, this was an issue of true first impression for the Commission. When an issue is of true first impression for the Commission a court reviews the decision *de novo*. *Brown v. Labor & Indus. Review Comm'n,* 2003 WI 142, ¶14, 267 Wis. 2d 3, 671 N.W.2d 279. "When no deference is given to an administrative agency, a court engages in its own independent determination of the questions of law presented, benefiting from the analyses of the agency." *Id.*

DISCUSSION

"[T]he purpose of statutory interpretation is to determine what the statute means so that it may be given its full, proper, and intended effect." *State ex rel. Kalal v. Circuit Court for Dane County*, 2004 WI 58, ¶ 44, 271 Wis.2d 633, 681 N.W.2d 110. Statutory interpretation begins with the plain language of the statute. *Id.* ¶45. A statute is read in context and in relation to surrounding or closely-related statutes. *Id.*¶46. If the meaning is clear, the analysis ends there. *Id.* If the plain language does not yield a clear meaning then it is proper to consult sources extrinsic to the statute, such as legislative history. *Id.* ¶50-51.

Section 111.70 does not define the phrase "design and selection of health coverage plans" or any of its component terms, e.g. "health coverage plans." Undefined terms are given their "common, ordinary and accepted meaning" unless they are a term of art with a specialized or technical meaning. *Kalal* 271 Wis.2d 633 at ¶45. The common meaning of "health coverage plan," which the parties implicitly accept, is an insurance policy that, subject to its terms, provides payment for the medical or health care-related expenses of the persons it covers.

"Design" is also not defined in §111.70. It is used in the context of health insurance in Wis. Stat. § 149.14(4), where it refers to the "benefit levels, deductibles, copayment and coinsurance requirements, exclusions, and limitations" of the health insurance risk-sharing plan created under Ch. 149. It is also used in §635.02(1m) which defines "Benefit design characteristics" as "covered services, cost sharing, utilization management, managed care networks and other features that differentiate plan or coverage designs" in the context of group health insurance plans for small businesses. These are consistent with the common usage of "design" that can be gleaned from general dictionaries to mean the arrangement of elements or components in a product or the underlying scheme that governs its functioning or operation.[2] Thus, the design of a health coverage plan refers to the benefit levels, deductibles, copayments, coinsurance, exclusions, limitations, covered services and other features, elements or components of a health insurance policy.

The policy in this case is summarized in Exhibit D of the Commission's record, the "WCA Group Health Trust Eau Claire County Medical Benefit Plan (EPO)." Page 1-3 specifies the

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[2] *See Webster's Third New International Dictionary of the English Language Unabridged* (1986) (noun, def. 5 & 6), *Merriam-Webster's Collegiate® Dictionary, Eleventh Edition* (online version at www.m-w.com) (noun def. 5 & 6) (both Merriam-Webster, Springfield, MA) *The American Heritage Dictionary of the English Language, Fifth Edition* (online version at www.ahdictionary.com) (noun, def. 2) (Houghton-Mifflin-Harcourt, Boston MA).

amounts of the deductibles for the individual and family plans. It describes the deductible as "The amount [the covered employee]must pay each year before the plan will begin paying any benefits." The policy does not include any language about the division of responsibility between the employee and employer for that share. The reference to the employee "must pay" might be read as precluding the employer from paying a share of the deductible. However, that language was in effect when the previous collective bargaining agreement specifically provided for employer reimbursement of part of the employee share and so does not support such a reading.

It is logical that the plan does not address employee and employer responsibilities for payment of the deductible, because that does not concern the rights and obligations that flow between the insurer and the insured. Put another way, the sharing of costs between employee and employer is extrinsic to the plan; as long as the deductible is paid it makes no difference in the plan (or to the insurer) who has paid it. The court's conclusion is that the plain meaning of "the design" of the plan in the statute does not include matters that are outside of the plan, such as the sharing between employer and employee of the costs of deductibles or premiums.

The parties all discuss the legislative history of §111.70(4)(mc)6. A resort to legislative history is unnecessary and improper when the language of the statute is plain. *Kalal* 271 Wis.2d 633, ¶50-51. Even if it were proper, the legislative history does not alter the court's conclusion.

The provision was added during the Joint Finance Committee's consideration of 2011 Assembly Bill 40, which became 2011 Wisconsin Act 32. The subsection was adopted by Motion 472, which was accompanied by a note explaining, in relevant part, that despite the "design and selection" language "The employee contribution requirements for any offered coverage for represented law enforcement and fire personal would still be collectively bargained."[3]

The Commission reads "employee contribution requirements for any offered coverage" in the note to refer only to what an employee pays toward the premiums of the plan. That is a reasonable reading, since premium payments are made "for", that is "to obtain," the "offered coverage." But the note is only reassurance that the statutory language was not intended to prohibit bargaining about the amount that employees contribute to premiums. It does not follow that the legislature therefore

[3] The Commission record does not include a copy of the motion and note or a citation to it, though both parties refer to it in their submissions to the Commission. The Commission's brief before this court has attached to it a copy of the motion and note, unauthenticated, not marked as an exhibit or as an appendix and with no citation to its source. The court will nonetheless consider the motion and note because all parties discuss them in their briefs and do not dispute its language or context.

intended to prohibit bargaining about sharing deductible costs.

Because the court finds that the allocation of deductible costs between employer and employee is not part of the design of the insurance plan it need not reach the question of "the impact of the design of the plan on wages, hours or other condition of employment."

ORDER

For the reasons stated above, the ruling of the Commission is reversed. This is a final order as defined in Wis. Stat. §808.03(1) for purposes of appeal.

Dated: October 25, 2012

BY THE COURT:

Juan B. Colás
Circuit Court Judge

Copy: Counsel BY FAX ONLY