

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Stipulation of

THE CITY OF MARINETTE

and

THE WISCONSIN PROFESSIONAL POLICE ASSOCIATION

Requesting a Declaratory Ruling Pursuant to Section 111.70(4)(b), Wis. Stats.

Case 110
No. 71741
DR(M)-726

Decision No. 34096

Appearances:

John Haase and **Ann Eiden**, Godfrey & Kahn, S.C. 200 South Washington Street, Suite 100, Green Bay, Wisconsin, appearing on behalf of the City of Marinette.

Roger W. Palek, Staff Attorney, 660 John Nolen Drive, Suite 300, Madison, Wisconsin 53713 and **Lucy T. Brown**, Attorney at Law, 210 DuRose Terrace, Madison, Wisconsin, 53705, appearing on behalf of the Wisconsin Professional Police Association.

**FINDINGS OF FACT, CONCLUSION OF LAW
AND DECLARATORY RULING**

On September 4, 2012, the City of Marinette and the Wisconsin Professional Police Association filed a joint petition with the Wisconsin Employment Relations Commission requesting a declaratory ruling pursuant to Sec. 111.70(4)(b), Stats. as to whether the health reimbursement account (HRA) contained in a 2011-2012 collective bargaining agreement is a prohibited subject of bargaining within the meaning of Sec. 111.70(4)(mc)6, Stats. The parties subsequently stipulated to a factual record and filed written argument. The record was closed on February 18, 2013.

Having reviewed the record and being fully advised in the premises, the Commission makes and issues the following

No. 34096

FINDINGS OF FACT

1. The City of Marinette, herein the City, is a municipal employer.
2. The Wisconsin Professional Police Association, herein WPPA, is a labor organization that serves as the collective bargaining representative of certain public safety employees of the City.
3. On or about August 25, 2011, the City and WPPA entered into a 2011-2012 collective bargaining agreement which provided in pertinent part as follows:

Health Reimbursement Account ('HRA'). The City will fund a Health Reimbursement Account for each full-time employee enrolled in the City's health insurance plan, in the following amounts: \$500 for each single health insurance participant and \$1,250 for each family plan participant.

4. Effective January 1, 2012, the City made the following changes as to the administration of the HRA:

- *Beginning 01/01/2012 the City will provide a maximum HRA reimbursement of \$500 Single Plan, or \$1,000 Family Plan. Employees must be enrolled in the City's Health Insurance Plan to be eligible for HRA Funds.*
- *Beginning 01/01/2012 rollover of non-used HRA funds will not be allowed.*
- *For current Retirees, or upon retirement, Accumulated HRA Rollover Funds must be utilized within 2 years or they will be forfeited.*
- *Priority of funding for claims after 01/01/2012 will be as follows:*
 1. *HRA,*
 2. *FSA,*
 3. *Past HRA Rollover Funds**Employees can request alternative priority by contacting Superior State.*
- *A Single Employee must meet a minimum of \$500 towards their Insurance Deductible or, \$1000 must be met collectively as a Family, before HRA Funds can be utilized.*
- *All Insurance Dr. Office Co-pays can not be funded by any HRA Funds.*
- *Up to ½ of HRA (\$250 Single/\$500 Family) can be used for Rx Co-pays prior to meeting the \$500 Single & \$1000 Family minimums. \$500 Single and \$1000 Family maximums still apply.*

- *Beginning 01/01/2012 HRA Funds can only be used for Deductibles, Coinsurance and Rx Co-pays (50% maximum of HRA Funds can be used for Rx prior to \$500 Single/\$1000 Family Minimums). Dental and Vision etc. can not be funded by new HRA Funds.*
- *Prior Accumulated Rollover HRA Funds, can be utilized for Dental, Vision and Rx, Coinsurance & Gym membership reimbursements.*

Based on the above and foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSION OF LAW

The HRA referenced in Findings of Fact 3 and 4 is a prohibited subject of bargaining within the meaning of Sec. 111.70(4)(mc) 6, Stats.

Based upon the above and foregoing Findings of Fact and Conclusion of Law, the Commission makes and issues the following

DECLARATORY RULING

The City of Marinette and the WPPA are prohibited from bargaining over the HRA referenced in Findings of Fact 3 and 4.

Given under our hands and seal at the City of Madison, Wisconsin, this 11th day of April, 2013.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott /s/

James R. Scott, Chairman

Rodney G. Pasch /s/

Rodney G. Pasch, Commissioner

CITY OF MARINETTE

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSION OF LAW AND DECLARATORY RULING

Section 111.70(4)(cm) 6, Stats. provides:

(mc) *Prohibited subjects of bargaining; public safety employees.*

. . .

6. 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 health coverage plans on the wages, hours and conditions of employment of public safety employee.

As the parties have correctly argued, for the HRA to fall outside the statutory prohibition, it cannot fall within scope of either “the design and selection of health care coverage plans” or “the impact of the design and selection of health care coverage plans on wages, hours and conditions of employment.” We conclude that an HRA falls within the scope of both statutory alternative definitions and thus is a prohibited subject of bargaining.

We begin our analysis with the issue of whether an HRA is a “health care coverage plan” within the meaning of Sec. 111.70(4)(cm) 6, Stats.¹ As is evidenced by Finding of Fact 4, an HRA specifies the type and amount of health care costs that are covered by HRA funds. In this regard, the design of the HRA is functionally no different than the design of a health insurance policy—a matter which all parties agree falls within the scope of the statutory prohibition. Thus, we think it clear that an HRA falls within the statutory definition of the “design” of a “health care coverage plan” and thus is a prohibited subject of bargaining.

Findings of Fact 3 and 4 above also establish the inseparable relationship between the HRA and the design of the health insurance plan the City can unilaterally establish under Sec. 111.70(4)(mc) 6, Stats. HRA eligibility is limited to those who are enrolled in the City’s health insurance plan. How HRA funds can be used is largely regulated by the scope of the benefits provided by the City health insurance plan. Finding of Fact 3 establishes the wage impact of the HRA by virtue of the employer’s obligation to make the specified contributions as part of an employee’s compensation. Therefore, we conclude that the HRA also falls

¹ It is important to note that the Legislature did not use the phrase “health insurance plan” but rather chose the broader more generic term “health care coverage plan” to describe the scope of the prohibition.

squarely with the confines of “the impact of the design and selection of health coverage plans on wages, hours and conditions of employment.” Thus, on this additional basis, the HRA is a prohibited subject of bargaining within the meaning of Sec. 111.70(4)(mc) 6, Stats.

Dated at Madison, Wisconsin, this 11th day of April, 2013.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott /s/

James R. Scott, Chairman

Rodney G. Pasch /s/

Rodney G. Pasch, Commissioner