STATE OF WISCONSIN | CIRCUIT COURT BRANCH V | BROWN COUNTY

GREEN BAY PROFESSIONAL POLICE ASSOCIATION and RYAN MEADER;

Plaintiffs,

GREEN BAY PROFESSIONAL FIRE FIGHTERS ASSOCIATION, LOCAL 141, IAFF, ALF-CIO, and PROFESSIONAL FIRE FIGHTERS OF WISCONSIN, INC., and

BROWN COUNTY SHERIFF'S DEPARTMENT NON-SUPERVISORY LABOR ASSOCIATION,

Intervenor Plaintiffs,

CITY OF GREEN BAY, and BROWN COUNTY,

Defendants.

DECISION AND ORDER

Case No. 11-CV-2195

Before the Court are dueling summary judgment motions on declaratory judgment claims and counterclaims concerning the interpretation of Wisconsin Statutes section 111.70(4)(mc)6. Section 111.70(4)(mc)6 is a component of the Municipal Employment Relations Act ("MERA"), which, *inter alia*, sets forth the prohibited subjects of collective bargaining for municipal public safety employees. All parties agree that section 111.70(4)(mc)6 prohibits public safety employees from collectively bargaining over particular aspects of a municipality's decision concerning health care benefits; however, they request that the Court interpret the statute's scope.[1]

[1] Due to the Court's decision on the summary judgment motions, it will not address the City of Green Bay's request for partial summary judgment as the issues raised are now moot.

The Plaintiffs, Green Bay Professional Police Association and Ryan Meader, and the Intervenor Plaintiffs, Green Bay Professional Fire Fighters Association, Local 141, IAFF, ALF-CIO, Professional Firefighters of Wisconsin, Inc., and Brown County Sheriff's Department Non-Supervisory Labor Association (Plaintiffs and Intervenor Plaintiffs, collectively, the "Associations") assert that section 111.70(4)(mc)6 does not prohibit public safety employees from collectively bargaining "their proportionate cost of, and financial exposure to, the 'design and selection' choices made by a municipality."[2]

In opposition, the Defendants, City of Green Bay and Brown County (collectively, the "Municipalities"), argue that section 111.70(4)(mc)6 prohibits public safety employees from collective bargaining all aspects of health care coverage including costs to the employees. However, the municipality does concede that that municipal public safety employees can still bargain about the premium or premium equivalent. (Municipalities' Br. 3.) Thus, the Court will not address that issue and nothing in this decision should be considered relevant to that issue.

The Associations and the Municipalities both affirmatively assert that there are no factual disputes and that declaratory relief and summary judgment are appropriate in their respective favor. For the following reasons, the Associations' summary judgment motion will be **DENIED**, and the Municipalities' summary judgment motion will be **GRANTED**.

[2] In the Complaints in this action, the Associations utilize a much broader argument concerning the type of health care coverage decisions that could be unilaterally made by a municipality; however, the Associations brief limits their argument to the public safety employees' proportionate share of costs. Accordingly, the Court is satisfied that the Association is narrowing the issue. Therefore, to the extent that the City of Green Bay's original brief in support of summary judgment, filed December 9, 2011, is still pending, many of the arguments are no longer relevant. The Court is of the understanding that the subsequent motion for summary judgment reflects the Municipalities current stance on the case.

BACKGROUND

In 2011, the Wisconsin legislature drastically altered municipal employee collective bargaining. First, 2011 Wisconsin Act 10 stripped municipal employees, with the exception of those classified as public safety employees,[3] of almost all collective bargaining rights. Soon after, 2011 Wisconsin Act 32 was enacted into law, which included sections that changed public safety employees' collective bargaining rights. Although their rights were previously untouched in Act 10, Act 32 limited public safety employees' collective bargaining rights, including creating a prohibition on collective bargaining about the design and selection of health care coverage plans.

The pertinent part of Act 32, enacted as 111.70(4)(mc)6, modified MERA. Under MERA, there are three categories of collective bargaining for public safety employees: (1) mandatory subjects for which collective bargaining is required (primarily related to wages, hours and conditions); (2) permissive subjects for which collective bargaining is permitted but not required (primarily related to the management and direction of the municipality); and (3) prohibited subjects of bargaining for which collective bargaining is prohibited and would violate the law. Wis. Stat. § 111.70 (2011-12); City of Menasha v. Wisconsin Employment Relations Comm'n, 2011 WI App 108, ¶ 2, 335 Wis. 2d 250, 254-55, 802 N.W.2d 531, 533. This case centers on the language of a particular prohibited subject. The relevant part of Act 32 reads:

> (mc) *Prohibited subjects of bargaining; public safety employees.* The municipal employer is prohibited from bargaining collectively with a collective bargaining unit containing a public safety employee with respect to any of the following:
>
> ...

[3] All parties agree that the members of the Associations are public safety employees and that the City of Green Bay and Brown County are both municipal employers within the meaning of the statute.

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

§ 111.70(4)(mc)6.

The parties request a decision on whether section 111.70(4)(mc)6 prohibits bargaining over the employees' proportionate share of the cost of the municipalitys' design and selection choice.

SUMMARY JUDGMENT STANDARD

Summary judgment will be granted only "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Wis. Stat. § 802.08(2) (2011-12). When reflecting on summary judgment motions, courts consider evidentiary facts in the record true if they are not contested by other proof. L.L.N. v. Clauder, 209 Wis. 2d 674, 684, 563 N.W.2d 434, 439 (1997).

Essentially, summary judgment is only appropriate if evidentiary facts indicate that "the law resolving the issue is clear." Rady v. Lutz, 150 Wis. 2d 643, 647, 444 N.W.2d 58 (Ct. App. 1989). Any reasonable doubt whether a genuine issue of material fact exists shall be resolved in favor of the non-moving party, and the moving party has the burden of proving there is no issue of material fact and that they are entitled to judgment as a matter of law. Burdick Hunter of WI, Inc v. Hamilton, 101 Wis. 2d 460, 470, 304 N.W.2d 752, 752 (1981).

After reviewing the submissions of the parties, the Court is satisfied that this case is best resolved by summary judgment. Interpretation of a statute is a question of law. Town of Clearfield v. Cushman, 150 Wis. 2d 10, 19, 440 N.W.2d 777, 780 (1989). Accordingly, summary judgment is appropriate.

STATUTORY INTERPRETATION STANDARD

The goal of statutory interpretation is to give effect to the legislature's intent. State ex rel. Kalal v. Circuit Court for Dane County, 2004 WI 58, ¶ 43, 271 Wis. 2d 633, 663, 681 N.W.2d 110, 124. Interpretation begins with the language of the statute. Kalal, ¶ 45. If the language is plain, statutory interpretation also ends with the language of the statute. Id. Courts use a particular statutory interpretation methodology when looking at the language of a statute.

Generally, a word is given its common, ordinary, and accepted meaning. Id.; Wis. Stat. § 990.01(1) (2011-12). To help ascertain the common definition of a term, a dictionary definition is often helpful. See Milwaukee Journal Sentinel v. City of Milwaukee, 2012 WI 65, ¶¶ 28-29, 341 Wis. 2d 607, 619-20, 815 N.W.2d. 367, 375. If, however, the word or phrase is technical or specially-defined, then statutory interpretation requires that it is given its technical or special definitional meaning. Kalal, ¶ 45; § 990.01(1).

In addition to considering the meaning of each individual word, courts consider the statute as a whole to give reasonable effect to every word. Kalal, ¶ 46. "Statutory language is interpreted in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results." Id. Additionally, courts should favor an interpretation that fulfills the purpose of a statute over an interpretation that is incongruous with its objective. Hubbard v. Messer, 2003 WI 145, ¶ 9, 267 Wis. 2d 92, 112, 673 N.W.2d 676, 686. Courts can also consider the legislative intent from the history, scope, and purpose of the statute, as long as the court does not consult extrinsic sources. Id.; Kalal, ¶ 51. If this process reveals a plain meaning, then courts cannot disregard the clear words of the statute. Kalal, ¶ 46.

However, if this process results in a statute that is "capable of being understood by reasonably well-informed persons in two or more senses," then it is ambiguous. Id., ¶ 47. Once a statute is ambiguous, courts look to extrinsic sources to ascertain legislative intent. Id., ¶ 48. Courts generally may not consider extrinsic sources absent ambiguity. Id., ¶ 51. However, sometimes legislative history is used to confirm a plain-meaning interpretation. Id.

ANALYSIS

Despite the parties' voluminous submissions on this matter, the Court's role is relatively simple: to interpret section 111.70(4)(mc)6.[4] Because statutory interpretation is the Court's only role, it cannot, and will not, wade into any public policy debate. To the extent that the parties suggest that the Court's decision will have negative results, it is a debate more appropriately taken up in the legislative forum.

Section 111.70(4)(mc)6 invokes both labor and insurance issues. Although it is ultimately a labor statute, a consideration of basic insurance principles is necessary for the Court to understand the parties' respective positions. Municipal employers will usually select either a fully funded health coverage plan or a self-funded health care coverage plan. For purposes of this decision, it is not imperative to go into detail considering the specifics of these options or other insurance models. Instead, it is only important to note that in a self-funded plan the employer assumes the employee's risk of health care costs that fall within plan coverage,

[4] The parties did submit several decisions on similar issues before other circuit courts, as well as one Wisconsin Employment Relations Commission decision. The Court notes that the cases have persuasive authority, but lack precedential value. Additionally, because there are multiple decisions which suggest opposite interpretations, they are not overly helpful to any party. Although courts will often give deference to WERC rulings, the Court notes that the decision provided to the Court was overturned by a circuit court.

whereas, in a fully funded plan, the employer purchases the coverage from a third party who then assumes the risk of the health care costs covered by the plan. (See Beaudry Aff., ¶¶ 16-17.)[5]

In both a self-funded or fully funded plan, the parties do not dispute that the plan design includes setting the deductible, coinsurance, copays, etc. Once these are set by the plan, they are costs the employee will incur to the extent that they are not paid by the plan. The Court must determine whether the legislature prohibited municipalities and public safety employees from bargaining over the proportionate share of the costs associated with the municipality's design and selection choice under section 111.70(4)(mc)6.

The Court will first conduct a plain meaning analysis of the statute. To simplify matters, the Court will address the statute in two parts: (1) "[t]he design and selection of health care coverage plans by the municipal employer for the public safety employees"; and (2) "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." After considering the plain meaning of the statute, the Court will then briefly address the relevant legislative history.

Plain Meaning

1. Design and Selection of the Plan

The first portion of section 111.70(4)(mc)6 provides that municipalities may not bargain collectively with public safety employees regarding "[t]he design and selection of health care coverage plans by the municipal employer for public safety employees." In order to determine the limitations set by this language, the Court must examine the meaning of "design" and "selection" and whether those terms encompass health care costs that employees might pay which are not covered by the plan itself. In so doing, the Court finds that the plain meaning of this portion of

[5] For helpful background information the Court considered both the affidavits and depositions of Rae Ann Beaudry and Robert D. Klausner. The Court is satisfied that both of these individuals are in a position to give pertinent information on the basics of insurance.

the statute does not prohibit bargaining over the public safety employees' proportionate share of health care costs not covered by the plan. These costs are incidental to plan selection, not part of the "design and selection" of the plan.

The proffered experts of both the Municipalities and the Associations agree that "design" in the context of a health care coverage plan means all of the components of coverage, including deductibles, co-payments, and the scope of services included in the plan. (Beaudry Aff., ¶ 11; Lacy Aff., Ex. 4 - Kluasner Depo., 32:16-21.) "Selection" is defined as "the act or process of selecting." Webster's Ninth New Collegiate Dictionary 1064 (Frederick C. Mish et al. eds., 1991). "Select" is defined as "to take by preference from a number or group : pick out : CHOOSE." Id. Based on these definitions, the "design and selection of health care coverage plans" means the choice of what components of coverage the plan will include. While the components of the coverage plan might ultimately dictate what costs will not be paid by the insurance company—and thus must be paid by either employee or employer—such extraneous costs are not themselves part of the design or selection of the plan.

The Municipalities assert that this portion of the statute prohibits bargaining about the proportionate share of the costs because it would prevent the employer from being able to select a plan. Specifically, the Municipalities argue that an interpretation that allowed bargaining over costs would stymie their ability to pick either a self-funded plan or a fully funded plan and would force the employers to become co-insurers. The Court is not persuaded. The Municipalities are able to choose a self-funded or fully funded plan. Such selection is not denied by subsequent bargaining over costs; the selection and design of a coverage plan still remains in the hands of the employer and cannot, itself, be bargained over.

2. Impact of the Design and Selection

The Court must consider whether the prohibition on bargaining over "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" bars bargaining with regard to employees proportionate share of health care costs. § 111.70(4)(mc)6. The parties disagree concerning the legislative intent behind this portion of the statute. However, the Court notes that the parties spent significantly less time addressing this issue. Particularly, the parties failed to provide context concerning the interplay between health care coverage and collective bargaining prior to the enactment of section 111.70(4)(mc)6.

The Associations argue that the legislative intent of the second portion of the statute is to prohibit public safety employees from demanding a wage increase, a concession of hours, or concession of a condition of employment based on a municipality's plan selection and design. The Associations provide no relevant case law citations to support this argument; instead, they focus on a plain meaning analysis of the word "impact." In contrast, the Municipalities take a broader view and assert that the second part of the statute prohibits bargaining over the proportionate share of health care costs not covered by the plan, because the employees cannot "bargain for additional benefits in the form of employer payment for health care services not covered by their plan." To determine the legislative intent, the Court must first consider the plain meaning of the statute, which requires that the Court define "impact" and then "wages, hours, and conditions of employment" before determining how these concepts fit together.

a. "Impact"

Because neither party suggests that "impact" is a technical or a specially defined word, the Court will apply its plain meaning. "Impact" has several definitions, including "to have

direct effect or impact on" and "the force of impression of one thing on another."[6] Webster's Ninth New Collegiate Dictionary 602-03 (Frederick C. Mish et al. eds., 1991).

Within the context of the statute, the Court is convinced that "impact" applies broadly, meaning more than just a *direct* effect. The Court reaches this conclusion based on the inclusion of the word "hours" within the statute. The Court cannot think of any scenario in which the design and selection of a health care coverage plan would directly impact "hours." Instead, "hours" might only be *indirectly* impacted by plan selection, such as in a situation where employees try to get better hours as a specific trade-off for the municipality designing a health care plan with a high deductible. Further, the Court notes that there is no word limiting "impact" in the statute. Accordingly, the best definition, in context, for "impact" is "the force of impression of one thing on another."

b. Wages, Hours, and Conditions of Employment

Within the context of the statute, "impact" (of the design and selection of health care coverage plan) modifies "wages, hours, and conditions of employment." The latter terms are more difficult to define because, although they have ordinary meanings, the terms have also garnered specialized meanings within the collective bargaining context.

First, the Court notes that the Wisconsin Employment Relations Commission ("WERC") has consistently held that "[e]mployee health insurance benefits primarily relate to wages, hours, and conditions of employment, and thus, are mandatory subjects of bargaining." Highway

[6] Webster's Dictionary also defines the term as "impinging or striking," "forceful contact," and "press together." However, these definitions are not applicable in the context of the statute. Additionally, there are slightly varying definitions based on whether the word is used as a noun or a verb.

Employees, Local 2740, AFSCME, AFL-CIO v. Monroe County, Dec. No. 30636-A (WERC, 1/04).[7]

The Court is not bound by the WERC's interpretation; however, in certain circumstances, courts should defer to an administrative agency's interpretation of a statute. Dodgeland Educ. Ass'n v. Wisconsin Employment Relations Comm'n, 2002 WI 22, ¶ 22, 250 Wis. 2d 357, 376-77, 639 N.W.2d 733, 743. The Court believes that this is one of those circumstances, because the agency has vast experience and technical knowledge of these terms as they are used in the collective bargaining context, and thus, it is deserving of "great deference," even though the interpretation of the term does not arise out of a WERC decision the Court is reviewing nor is it analyzing the exact same statute.[8]

There is no single definition of "conditions of employment," as the phrase has been given different meanings in different contexts. However, in 2009, the Court of Appeals looked at the instances when the term was used within Chapter 111. Wisconsin Dept. of Employment Relations v. Wisconsin State Bldg. Trades Negotiating Comm., 2003 WI App 178, ¶ 27, 266 Wis. 2d 512, 529-30, 669 N.W.2d 499, 508. The court found that the term was linked to such

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[7] The Court uses this case only to demonstrate that health insurance benefits fall within the definition of "wages, hours, and conditions of employment." To the extent that the case held that health benefits are mandatory subject of bargaining, the current case presents a different ultimate issue because of Act 32's "prohibited" language.

[8] If the agency's "experience technical competence, and specialized knowledge aid the agency in its interpretation and application of the statute, the agency's conclusions are entitled to great difference by the court." Id. (citation omitted).

An agency's interpretation of a statute is entitled to due weight deference when "the agency has some experience in the area, but has not developed the expertise which necessarily places it in a better position to make judgments regarding the interpretation of the statute than a court." Id., ¶ 17. Under due weight deference, courts uphold the agency's reasonable interpretation of a statute as long as another interpretation is not more reasonable. Id. Finally, the court will give no deference to an agency's interpretation of a statute when "the issue before the agency is clearly one of first impression... or when an agency's position on the issues has been so inconsistent as to provide no real guidance." Id., ¶ 18; see also Dodgeland, ¶ 22.

Due to its longstanding interpretation of collective bargaining issues, the Court gives the WERC's interpretation great deference, or at the very least due deference.

terms as "wages," "rates of pay," "hours," "fringe benefits," hiring," "promotion," "compensation," and "tenure." Id. The court, thus, ultimately concluded that "'conditions of employment' generally connotes pay, benefits and other matters which directly affect the interests of employees." Id. The Court further notes that the Associations fail to assert that health benefits do not fall with fall within the umbrella of "wages, hours, and conditions of employment." The Court is satisfied that health benefits do fall within the definition of "wages, hours, and conditions of employment." Further, an employee's proportionate share of those costs would also fall within the definition to the extent that they would constitute a benefit.

c. "Impact" on "Wages, Hours, and Conditions of Employment"

After considering the meaning of the terms within the statute, the Court concludes that there is only one reasonable interpretation. Section 111.70(4)(mc)6 is, thus, unambiguous. Based on the plain language of the second portion of the statute, collective bargaining about the proportionate share of health care costs is prohibited, because a municipality's selection and design of a health care coverage plan would impact these costs.

The design and selection of a health care plan will by its very nature leave employees open to a certain level of financial risk (as long as the plan has some employee required costs). For example, if the design of a plan set a deductible at $500, the employees would assume the risk up to that deductible level. The public safety employees are not allowed to bargain concerning the setting of the $ 500 level.

If the employees were then permitted to bargain about their proportionate share of the $ 500, this would potentially create an additional benefit. A benefit that would only exist because of the plan's force of impression. Benefits, as a condition of employment, are a prohibited subject of bargaining if they are impacted by the design and selection of a health care plan.

There is no way to get around that the design and selection of a plan would impact a discussion of who would pay the $500. The selected plan completely frames the discussion of the $500. Without the plan setting a $500 deductible, there would not even be anything to bargain about. The plan, thus, would have the "force of impression" on these costs.

The Associations request that the Court resort to legislative history to give section 111.70(4)(mc)6 its true meaning, but the Court will not resort to extrinsic evidence when the statute is clear on its face. It is the enacted law, not the unenacted intent that is binding on the public." Kalal, ¶ 44. The Court stops at the plain language of the statute if it is clear. The Court finds that the plain language of the statute is clear and necessitates a broad meaning of "impact."

The Associations also argue that the Court must construe Act 32 in light of Act 10 and limit the harsh effect of defining section 111.70(4)(mc)6 broadly. The Court is willing to undertake such an inquiry, but it does not reach the same result as the Associations. Act 32 was passed after Act 10 and put further limitations on collective bargaining. The fact that public safety employees were exempt from changes in Act 10 does not mean the legislature could not choose to limit theit rights in Act 32. In fact, the purpose of Act 32, in part, was to limit the scope of collective bargaining for public safety employees. Despite some new limitations, public safety employees still enjoy many more collective bargaining rights than are available to general municipal employees.

Legislative History

Section 111.70(4)(mc)6 is unambiguous. However, the Court will consider extrinsic evidence to confirm the plain meaning interpretation. The parties present two pieces of legislative history to aid in finding the legislative intent: 1) a Joint Finance Committee Report; and 2) a veto message from Governor Walker.

1. Joint Finance Committee

The parties both present the analysis of a report of Motion 472 before the Joint Finance Committee, which addressed the relevant issue. The relevant portion states:

> This motion would provide that the design and choice of health insurance coverage plans to be offered by the employers under MERA to represented law enforcement and fire personnel would be a prohibited subject of bargaining. The employee contributions for any offered coverage for represented law enforcement and fire personnel would still be collectively bargained.

Butula Aff. Ex. 7, p. 4.

The Associations argue that the use of the term "contributions," encompasses costs that an employee pays towards health care. The Associations proffered expert, a labor attorney, argues that contribution refers to the concept of "cost sharing." (Klausner Aff. ¶ 12.B.) Further, the Associations point out that the legislature could have easily added specific words if it meant to restrict bargaining over these costs.

In response, the Municipalities cite to a proffered expert of the insurance industry for the proposition that "contribution," only means premiums or premium equivalents. (Beaudry Aff. ¶ 8.)[9] The Municipalities also point out that payment of a deductible (or similar costs) are not part of the offered coverage, but are payments to the provider of health services.

The Court does not find it significant that the word contribution is used. Just because Motion 472 included the word contribution, when it could have used the word premium, does not, by itself, indicate that the legislature intended to allow collective bargaining for the employees' proportionate share of health care. Further, "contribution," used as a broader term, as the Associations suggest, does not fit within the general insurance model. A person does not contribute to a deductible, coinsurance, copays, etc.; he or she pays the cost. Contribution is

[9] Although the experts disagree, it is not material, as the Court decided the issue based on a plain meaning analysis.

better understood as relating to premiums. Therefore, the legislative history does not change the Court's decision as it only affects collective bargaining over premiums and premium equivalents, which is not at issue in this case.

The Court is unsure as to why the Municipalities conceded that municipal public safety employees could collectively bargain premiums; however, the Municipalities' arguments concerning the analysis with Motion 472 would be consistent with this position. To the extent that the legislative history is inconsistent with the Court's ruling, it is immaterial, as the parties have already reconciled that the employees can collectively bargain concerning premiums. Further, the parties do not explain why this particular piece of legislative history carries significant weight. The Court will not, itself, put stock in the legislative history, because the language of the statute is plain.

2. Governor Walker's Veto

The Associations also present the text of a veto message for a section within Act. 32. On June 26, 2011, Governor Walker issued his Budget Veto Message explaining his reasons for vetoing certain provisions of Act 32. One of the vetoed provisions, section 2406d, which pertained to whether EMTs in two counties should be considered public safety employees, contained the following veto message:

> Under Act 10, current public safety employees retain the ability to bargain for wages, hours and conditions of employment, including the ability to bargain for employer payment of employee-required retirement and health insurance contributions.

Matthews Aff. Ex. 24.

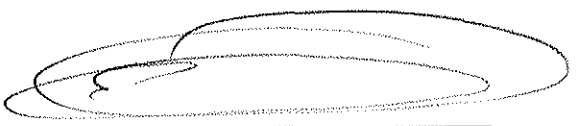
The Court finds that the only statement he is making concerns Act 10. Although this is a veto of a portion of Act 32, it is not actually referencing Act 32. Therefore, the Court is not swayed, and it has no bearing on the Court's decision.

CONCLUSION & ORDER

For the foregoing reasons, it is hereby **ORDERED** the Associations' summary judgment motion will be **DENIED**, and the Municipalities' summary judgment motion will be **GRANTED**.

Dated at Green Bay, Wisconsin, this 10 day of December, 2012.

BY THE COURT:



Honorable Marc A. Hammer
Circuit Court Judge, Branch V