BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
BROWN COUNTY SHERIFF'S DEPARTMENT LABOR ASSOCIATION	
and	Case 384 No. 41715 MA-5438
BROWN COUNTY (SHERIFF'S DEPARTMENT)	

Appearances:
Mohr & Beinlich, S.C., Attorneys at Law, 415 South Washington Street, Mr. John C. Jacques, Assistant Corporation Counsel, P.O. Box 1600,

ARBITRATION AWARD

Brown County Sheriff's Department Labor Association, hereinafter referred to as the Association, and Brown County (Sheriff's Department), hereinafter referred to as the Employer or County, are parties to a collective bargaining agreement which provides for the final and binding arbitration of grievances. The Association, with the concurrence with the County, requested the Wisconsin Employment Relations Commission to appoint an Arbitrator to hear and decide the instant dispute. The Commission appointed Coleen A. Burns as Arbitrator. Hearing was held on May 3, 1989, in Green Bay, Wisconsin. The hearing was not transcribed and the record was closed upon receipt of post-hearing briefs on May 25, 1989.

ISSUE

The Association frames the issue as follows:

> Did Brown County's unilateral increase in the employes' share of the health insurance premium violate the collective bargaining rights of the employes? If so, what is the appropriate remedy?

The County frames the issue as follows:

> Did the Employer violate the collective bargaining agreement provisions set forth in Article 33 by continuing the same insurance coverages and continuing to pay the same percentage contribution towards the cost of health insurance premiums whose actuarily determined premiums increased as of January 1, 1989?

The Arbitrator frames the issue as follows:

> Did the County violate the collective bargaining agreement when it increased the payroll deduction for the employes' share of the health insurance premium, commencing December 15, 1988? If so, what is the appropriate remedy?

RELEVANT CONTRACT LANGUAGE

Article 2. RECOGNITION

> The County agrees to recognize the bargaining unit as the bargaining agent for the enforcement personnel of the Brown County Sheriff's Department in the matter of wages, hours of work, and working conditions, except insituations wherein this contract is in conflict with existing Wisconsin Statutes. In the case of conflict, the statute will apply.

. . .

Article 33. HEALTH INSURANCE

> The County agrees to provide health insurance for each employee as follows:
>
> 95% of the costs of said health insurance for those employees under the family plan, and 100% for those employees under the single plan. The County agrees to provide dental insurance for each employee as outlined above.

> Retired personnel are to remain in the plan, if they so desire, to age 65, provided they pay the entire costs of all premiums, except as may be otherwise specifically provided for in this Agreement.

Insurance options and costs per employee and Employer are increased to read:

	Employee	Employer
Family Health	8.46	160.80
Family Health and Family Dental	10.32	196.04
Family Health and Single Dental	8.46	180.00
Single Health and Single Dental	0	83.33
Single Health and Family Dental	1.86	99.37
Family HMP and Family Dental	35.03	196.04
Family HMP and Single Dental	33.17	180.00
Single HMP and Single Dental	9.30	83.33
Single HMP and Family Dental	11.16	99.37
Single HMP	9.30	64.13
Family HMP	33.17	160.80

. . .

BACKGROUND

The Association and the County are parties to a collective bargaining agreement which, by its terms, became effective January 1, 1987 and remained in full force and effect through December 31, 1988. The parties, however, mutually agreed to extend the terms of this collective bargaining agreement until the parties reached agreement on a successor agreement.

The parties opened negotiations on the successor agreement in late September or early October, 1988. On or about October 18, 1988, the County advised Association representative, that the insurance premiums for coverage during the 1989 calendar year would be as follows:

	County Share	Employee Share
BASIC/Single	$ 95.61	$0.00
/Family	231.88	12.20
GHP/Single	$ 95.61	29.49
/Family	231.88	90.33

Commencing with the December 15, 1988 paycheck, the County increased the deduction for the employe's share of health insurance in accordance with the rates set forth in the October, 1988 letter. The Association, claiming that the increase in the employe's health insurance deduction violated MERA, filed a complaint of prohibited practices with the WERC. Thereafter, the parties agreed to submit the instant dispute to grievance arbitration.

POSITIONS OF THE PARTIES

Association

Article 2 of the labor contract contains the following language:

> The County agrees to recognize the bargaining unit as the bargaining agent for the enforcement personnel of the Brown County Sheriff's Department in the matters of wages, hours of work, and working conditions, except in situations wherein this contract is in conflict with existing Wisconsin Statutes. In the case of conflict, the statute will apply.

The foregoing language incorporates by reference all of the obligations of an employer and employe under Sec. 111.77, Wis. Stats. A perusal of Sec. 111.77, Wis. Stats., clearly shows that the County has an obligation to continue in effect those terms and conditions of the then existing labor contract. WERC case law clearly requires the continuation of the status quo during the hiatus of a contract. (Cites omitted) In addition, the case law clearly indicates that health care premiums are a mandatory subject of bargaining which the County may not unilaterally change during the course of negotiations. The parties have not reached an impasse in negotiations and continue to this day to bargain in good faith. Clearly, the County's actions are a violation of the existing case law as well as of its statutory obligation.

The Employer has also violated the specific terms of the labor agreement. The Employer's argument that it is obligated to pay only (95%) of the total premium and that the specific rates contained in the contract are irrelevant is

without merit. The Employer sustained a substantial increase in premium as of September 1, 1988 and, yet, did not alter the employes' contribution toward that premium. Obviously, the Employer by its own actions, has directly acknowledged that the rates as set forth in the labor agreement are the true status quo in this matter.

As remedy for the County's contract violation, the affected employes are entitled to be made whole. The County should be required to make all bargaining unit employes whole for any out-of-pocket losses occasioned by the County's change in insurance contribution from December 15, 1988 until a successor agreement is reached, or the parties reach impasse.

County

The plain language of Article 33 of the contract provides for payment of insurance costs in terms of percentages; specifically, 95% of the cost under the family basic plan and 100% under the single basic plan. Those percentages are reflected in the rate schedule set forth in the agreement. The rates also reflect that additional "HMP" costs are born entirely by the employe who desires the HMP benefit. The County has complied with the requirements of Article 33 by continuing to pay the equivalent of 95% of the family basic plan premium for employes enrolled in either family plan, and by continuing to pay the equivalent of 100% of the single basic plan premium for employes enrolled in either single plan.

The WERC has recognized that an employer has a duty to maintain the "dynamic status quo" during the period of a contract hiatus. (Cites omitted). The County has complied with this duty by maintaining the same level of health insurance benefits and by maintaining the same percentage contribution on the health insurance premiums. The Association, however, seeks to change the "dynamic status quo" on the percentage contributions by freezing the employes' share of the health insurance premium.

Illogically, the Association requests a freeze on the dollar amount of the employes' contributions, but would raise the dollar amount of the County's contribution. The Association cannot have it both ways as to its "dollar amount" argument. The past practice of the parties has been to continue the same percentage contribution when rates are increased. Such percentage

contributions have never been challenged until the instant grievance. The use of past practice by arbitrators to resolve contractual language issues is common.

The new insurance premium rates were actuarily determined to maintain the fiscal integrity of the self insurance fund in accordance with statutory directives. The cost of premiums are based upon prior insurance claims of employes. The County has no control over either the volume or cost of employe claims for medical expenses. There was no change in insurance coverage in 1989 and no change in the County's percentage contribution towards those coverages. The grievance should be denied.

DISCUSSION

In the present case, the parties have mutually agreed to continue the provisions of the labor contract until the parties reach an agreement on a successor contract. Since there is no "contract hiatus period," the parties' arguments concerning a municipal employer's duty to maintain the "status quo" during a "contract hiatus period" have no relevance to the instant dispute. 1/

The County maintains that it has continued the existing level of insurance benefits. The Association has not argued otherwise. The sole issue to be determined herein is whether the County violated the provisions of the collective bargaining agreement when it increased the payroll deduction for the employe's share of the health insurance premium, commencing with the December 15, 1988 paycheck.

The language of Article 33, Health Insurance, requires the County to provide health insurance for each employe and to pay "95% of the cost of said health insurance for those employes under the family plan, and 100% for those employes under the single plan." At all times material hereto, the County has offered two health insurance plans, i.e., a basic plan and a more expensive HMP plan. Inasmuch as this language of Article 33 does not distinguish between the two plans, it would appear that the County is required to pay 95% of the cost of either family health insurance plan and 100% of the cost of either single health insurance plan. Such an interpretation, however, must be rejected on the basis that it is inconsistent with the parties' implementation of the language of Article 33.

Prior to the December 15, 1988 change, an employe who elected to enroll in the family basic plan received the same dollar amount premium contribution from the County as an employe who elected to enroll in the family HMP plan, i.e., $160.80/month. The $160.80 was equivalent to 95% of the monthly premium of the family basic plan, but was slightly less than 83% of the monthly premium of the family HMP plan. Similarly, an employe who elected to enroll in the single basic plan received the same dollar amount premium contribution from the County as the employe who elected to enroll in the single HMP plan, i.e., $64.13/month. The $64.13 was equivalent to 100% of the monthly single basic plan premium and was slightly more than 87% of the monthly single HMP premium. Since the Association has not contested either the $160.80/month premium contribution or the $64.13/month premium contribution, the Arbitrator is persuaded that the parties are in agreement that the County's health insurance premium contributions are indexed off of the basic plan. That is, this language of Article 33 is satisfied when the County pays 95% of the family basic plan premium toward either family plan and 100% of the single basic plan premium toward either single plan. As the County argues, the effect of this language is to require the employe who selects the HMP option to pay more towards the health insurance benefit than employes who select the basic plan option.

The record demonstrates that Employers Health Insurance Company 2/ actuarily determined, on the basis of prior experience, that there was a need to increase the monthly premiums for coverage provided in the 1989 calendar year. 3/ The rates recommended by Employer's Health Insurance Company were implemented, effective with the January, 1989 premium. 4/

1/ In reaching this conclusion, the Arbitrator does not decide whether the Association is correct when it argues that the provisions of Article 2 provide a grievance arbitrator with jurisdiction to determine alleged violations of MERA.

2/ While the record is not entirely clear, it appears that Employers's Health Insurance Company is the third party administrator of the County's self-funded insurance plan.

3/ While the Association argues that the premiums increased as of September 1, 1988, this argument is not supported by the record evidence. See Joint Exhibit #3.

4/ Consistent with most insurance plans, the premium for January, 1989 was paid in December. Thus, the increased premium affected the December 15, 1988 paycheck.

The Association does not argue and the record does not establish that the actuarily determined premiums are erroneous, or that the rate increases are not needed to maintain the existing level of benefits. Rather, the Association argues that the employe was not obligated to assume any of the health insurance premium increases. In making this argument, the Association relies upon the chart in Article 33 which specifies a dollar amount to be paid by the County and a dollar amount to be paid by the employe for each type and combination of insurance.

As the County argues, the dollar amounts specified as the County's contribution are entitled to be given the same force and effect as the dollar amounts specified as the employe's contribution. Thus, for example, if the employe is not obligated to pay more than $33.17 on the monthly family HMP premium, then the County is not obligated to pay more than $160.80 on the monthly family HMP premium. Given the uncontroverted evidence that the self-insurance fund requires a monthly family HMP premium of $322.21, acceptance of the Association's argument would have the likely effect of depriving employes of the health insurance benefit because there would be insufficient monies to pay the employe's claims.

The undersigned is persuaded that the more reasonable interpretation of Article 33 is the one advanced by the County. That is, the controlling language is the first sentence of Article 33, which, as discussed supra, requires the County to pay "95% of the costs" of the family basic plan on either family health insurance plan, and "100 of the costs" of the single basic plan on either single plan. All other "costs" of the health insurance plans are the obligation of the employes.

The Association does not argue and the record does not demonstrate that the 1989 "costs" of the employes' health insurance benefits are other than the premiums recommended by the Employers Health Insurance Company. As the "costs" of these premiums increased, the provisions of Article 33 required the County and the employe to each increase their health insurance contributions. Specifically, effective with the January, 1989 premium, the County was required to pay 95% of the 1989 premium for the family basic plan, i.e., $231.88/month, on either family insurance plan. The County was also required to pay 100% of the 1989 premium for the single basic plan, i.e. $95.61/month, on either of the single plans. All other "costs" of the 1989 health insurance premiums are the obligation of the employes. 5/ Contrary to the argument of the Association, the County did not violate the provisions of the parties' collective bargaining agreement when the County increased the payroll deduction for the employe's share of the health insurance premiums, commencing December 15, 1988.

5/ An employe on the single HMP plan is obligated to pay $29.49/month. An employe on the family basic plan is obligated to pay $12.20/month. An employe on the family HMP plan is obligated to pay $90.33/month.

Based upon the above and foregoing and the record as a whole, the undersigned issues the following

AWARD

The grievance is denied and dismissed.

Dated at Madison, Wisconsin this 24th day of August, 1989.

By _____
Coleen A. Burns, Arbitrator