BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

**WISCONSIN PROFESSIONAL POLICE ASSOCIATION/
LAW ENFORCEMENT EMPLOYEE RELATIONS DIVISION**

and

CITY OF RHINELANDER

Case 115
No. 65549
MA-13247

Appearances:

Attorney Gordon E. McQuillen, Director of Legal Services, Wisconsin Professional Police Association, 340 Coyier Lane, Madison Wisconsin 53713, on behalf of the Union.

Attorney Philip I. Parkinson, City Attorney, City of Rhinelander, 135 South Stevens Street, Rhinelander, Wisconsin 54501, on behalf of the City.

ARBITRATION AWARD

The Wisconsin Professional Police Association/Law Enforcement Employee Relations Division (herein the Union) represents two bargaining units of employees within the City of Rhinelander (herein the City), the Rhinelander Professional Police Association, Local #38 and Rhinelander City Employees Local #178. At the time of the events giving rise to the grievances herein, the City and the Union were parties to collective bargaining agreements covering both bargaining units for the period January 1, 2004 through December 31, 2005. Subsequent to the filing of the grievances, the contracts expired and at the time of this arbitration the parties were in negotiations over successor agreements. On January 30, 2006, the Union filed a request with the Wisconsin Employment Relations Commission (WERC) to initiate grievance arbitration concerning an allegation that the City had violated the collective bargaining agreements by unilaterally changing health insurance coverage for 2006. John R. Emery, a member of the WERC's staff, was appointed to arbitrate the dispute. A hearing was conducted on May 1, 2006, with the parties requesting an expedited award. The proceedings were not transcribed. The parties filed their briefs on May 22, 2006 whereupon record was closed.

ISSUES

The parties stipulated to a statement of the issues, as follows:

Did the City violate Article 15 of the contract with Local 38 and Article 11 of the contract with Local 178 when it entered into an insurance contract with Security Insurance for health insurance benefits for 2006 for Locals 38 and 178 and imposed the provisions of that insurance contract on the bargaining unit employees?

If so, what is the remedy?

PERTINENT CONTRACT LANGUAGE

ARTICLE 15 of the 2004-2005 Local 38 contract (excerpt)

In the event the hospital and surgical program, including major medical, cost increase exceeds 25% for the 2003 calendar year, the Insurance Committee shall meet and look for ways to modify the program to bring the increase down to or less than 25%. In the event the Insurance Committee is unable to agree on a method to reduce the premium to a 25% or less increase, the City of Rhinelander shall have the ability to unilaterally modify benefits, including deductibles and co-pays, in order to meet the 25% cap.

ARTICLE 11 of the 2004-2005 Local 178 contract (excerpt)

In the event the hospital and surgical program, including major medical, cost increase exceeds 25% for the 2004 calendar year, the Insurance Committee shall meet and look for ways to modify the program to bring the increase down to or less than 25%. In the event the Insurance Committee is unable to agree on a method to reduce the premium to a 25% or less increase, the City of Rhinelander shall have the ability to unilaterally modify benefits, including deductibles and co-pays, in order to meet the 25% cap.

OTHER RELEVANT LANGUAGE

MEMORANDUM OF AGREEMENT

It is hereby agreed by and between the City of Rhinelander and the Wisconsin Professional Police Association, LEER Division, on behalf of the Rhinelander City Employees Local 178 that the following agreements have been entered into between the City and the Association:

1. That the City and the Association have agreed to select changes made to the Health Plan, effective January 1, 2005, the Health Plan shall include a deductible for health care services of $1,000/single, $1,750/single plus one, and $2,500/family.

2. That the City agrees to establish a Health Reimbursement Arrangement Plan (HRA) on behalf of each employee covered by the City's Hospital and Surgical Insurance Plan.

3. That the City agrees to deposit into said HRA plan, effective January 1, 2005 and each month thereafter, $60.75 single, $103.92/single plus one, and $137.21/family.

4. That the funds deposited in the HRA shall be available for the employee and eligible members of the employee's family for reimbursement of authorized medical related expenses, as determined by IRS code.

5. That any fund balance in an employee's HRA shall be retained in the employee's HRA and roll over from year to year until either funds are exhausted; or the employee's employment with the City has terminated, in which case upon termination the employee shall have 30 days to transfer HRA funds into an account maintained by, or on behalf of, the former employee for medical reimbursement purposes as authorized by IRS code.

6. That the provisions of this agreement shall be effective through December 31, 2005.

BACKGROUND

For a variety of reasons, the City has experienced unusually high increases in health insurance costs in recent years. Combined with limited revenues and levy caps, this has created a problem for the City in managing its budgets and has led the City to seek changes in health insurance carriers and benefits in order to better control these costs. In the 2004-2005 contracts with the two locals, similar language was included to allow the City to act to control costs in the event of insurance premium increases in excess of 25%. The Local 38 contract allowed the City to unilaterally modify benefits if insurance cost increases for 2003 would exceed 25%. The Local 178 contract contained the same language, but applied to 2004. Neither contract made provision for how to deal with substantial increases in 2005.

In 2005, faced with another significant health insurance increase, the City and the Union negotiated identical Memoranda of Agreement between the City and the Locals to modify the health insurance plan. The memoranda provided for significant increases in deductibles, to be offset by contributions by the City into Health Reimbursement Accounts for the employees. The memoranda were signed August 15, 2005 and were expressly set to expire on December 31, 2005.

In November 2005 the City learned that it would experience another significant insurance increase in 2006. Thus, the City made a proposal to the Union in the context of negotiating the successor agreements to once again modify the insurance program to reduce costs. The parties could not agree to the requested changes and later in November the City informed the locals that it was unilaterally changing insurance plans effective January 1, 2006, which would effect increases in deductibles, co-pays and prescription drug coverage. The Union instructed its members to enroll in the new plan, but also filed grievances on November 30, 2005 challenging the City's prospective action. The changes went into effect in 2006 and the City has continued to make contributions into the HRA accounts to offset additional health costs to the employees.

POSITIONS OF THE PARTIES

The Union

The Union assets that the two expired contracts between the City and Locals 38 and 178 contained specific provision for health care coverage for the employees and the distribution of the cost of the same between the parties. In 2005, the parties negotiated a Memorandum of Agreement to address increasing insurance costs, which was specifically designed to expire on December 31, 2005, at which time the parties were to revert to the language of the contracts. The City had no legal or contractual right to do otherwise.

The City's principal arguments justifying its action are that 1) insurance costs were too great and something had to be done and 2) the additional costs to the employees were negligible. These may be legitimate arguments in bargaining, but do not support a unilateral modification of the contract.

The fact that the contracts permitted the City to make unilateral insurance changes in 2003 and 2004, respectively, does not authorize it to do so in 2006. Those provisions were specifically limited in time. The fact that the City negotiated the Memorandum in 2005 makes it clear that it knew it no longer had the freedom of unilateral action. City Attorney Parkinson acknowledged as much when he called Union Representative Ingram in response to Ingram's November 9, 2005 letter and told Ingram he knew the City had to negotiate any proposed insurance changes.

In sum, nothing the City has offered changes the fact that the contract and memorandum both had specific language limiting the City's power to unilaterally modify the health insurance plan. By its action, the City changed the status quo. In consequence, the status quo should be restored and the employees made whole for any losses caused by the change.

The City

The City asserts that its actions were within its rights under the language of the expired collective bargaining agreements and, therefore, were consistent with the dynamic status quo.

Courts and the WERC have recognized that changes can occur during a hiatus period if those changes would have been permitted during the contract term. *citations omitted* The contracts reveal that the parties had contemplated excessive insurance rate increases and had acted to empower the City to act, unilaterally if necessary, to limit them. The arbitrator should not ignore this clear language in the contracts, but should give it appropriate weight when considering the City's actions.

The City had previously bargained a provision allowing it to unilaterally modify the insurance plan when premium increases would exceed 25%. The City, faced with an untenable situation brought about by another dramatic insurance cost increase and a restrictive levy limit, acted in accordance with the contract language to reduce the insurance increase to as close to 25% as possible. Further, the City continued to contribute to the employees' HRAs past the expiration date of the Memoranda of Agreement in order to offset much if the additional costs to the employees. The arbitrator should, therefore, find that the City acted consistently with the dynamic status quo and dismiss the grievances.

DISCUSSION

The essence of the City's position in this matter is that its action was brought about by financial necessity. There is no question that the increased health insurance cost to the City in recent years have caused significant difficulties and that the projected increases for 2006 would have been difficult to absorb. For authority, the City relies on the language in the expired agreements permitting it to make unilateral plan changes to control costs and asserts that the doctrine of "dynamic status quo" permitted its action during the hiatus period.

In WASHBURN PUBLIC SCHOOLS, DEC. NO. 28941-B (WERC, 6/98), the Commission stated as follows:

> It is well settled that during a contract hiatus, absent a valid defense, a municipal employer violates Sec. 111.70(3)(a)4, Stats., if it takes unilateral action as to mandatory subjects of bargaining in a manner inconsistent with its rights under the dynamic status quo. ST. CROIX FALLS SCHOOL DIST. V. WERC, 186 WIS. 2D 671 (1994) AFFIRMING DEC. NO. 27215-D (WERC, 7/93); RACINE EDUCATION ASSOCIATION V. WERC, 214 WIS. 2D 352 (1997); VILLAGE OF SAUKVILLE, DEC. NO. 28032-B (WERC, 3/96); MAYVILLE SCHOOL DISTRICT, DEC. NO. 25144-D (WERC, 5/92) AFFIRMED MAYVILLE SCHOOL DISTRICT V. WERC, 192 WIS. 2D 379 (1995); JEFFERSON COUNTY V. WERC, 187 WIS. 2D 647 (1994) AFFIRMING DEC. NO. 26845-B (WERC, 7/94); CITY OF BROOKFIELD, DEC. No. 19822-C (WERC, 11/84). The dynamic status quo is defined by relevant language from the expired contract as historically applied or as clarified by bargaining history, if any. CITY OF BROOKFIELD, *supra*.; SCHOOL DISTRICT OF WISCONSIN RAPIDS, DEC. NO. 19084-C (WERC, 3/85); VILLAGE OF SAUKVILLE, *supra*. (At pp. 5-6).

In its decision, the Commission went on to note that:

> [A] status quo analysis is different than a grievance arbitration analysis. The language of the expired agreement, any practice, and any bargaining history are all to be considered when determining the parties' rights under the status quo. SAINT CROIX FALLS SCHOOL DISTRICT, DEC. NO. 27215-D, *supra*.; CITY OF BROOKFIELD, *supra*.; SCHOOL DISTRICT OF WISCONSIN RAPIDS, *supra*.; VILLAGE OF SAUKVILLE, *supra*. (At p. 8)

Here, the language of the contracts gave the City the authority to modify the health insurance plan design if cost increases exceeded a certain level, but restricted that authority to a defined period in each contract, 2003 as to Local 38 and 2004 as to Local 178. The City argues that this language should be read to permit the City to act likewise during the hiatus under the "dynamic status quo" concept. I disagree.

In 2005, when the City was faced with significant cost increases, it did not attempt to rely on the contract language, but negotiated a Memorandum of Agreement with the Union to make cost saving plan changes. This indicates that the parties did not see the contract language as permitting unilateral action by the City beyond the specified time period. Any plan changes deemed necessary by the City beyond that point would have to be negotiated, as was done in 2005. Initially, the City also acknowledged its obligation to bargain changes for 2006, but abandoned that position when negotiations stalled and it felt constrained to act with or without Union cooperation due to the impending 2006 increases.

While a perceived financial crisis, whether real or imagined, may explain such precipitous action, it cannot justify it or the concept of mandatory subjects of bargaining, as defined by statute and legal precedent, has no force. At the expiration of the Memoranda of Agreement on December 31, 2005, the City was required to return to the status quo as set forth in the language of the respective collective bargaining agreements or negotiate some other result. Because the City's unilateral action was not permissible during the hiatus under the dynamic status quo, therefore, its action was a violation of the contracts.

For the foregoing reasons, and based upon the record as a whole, I hereby enter the following

AWARD

The City violated Article 15 of the contract with Local 38 and Article 11 of the contract with Local 178 when it entered into an insurance contract with Security Insurance for health insurance benefits for 2006 for Locals 38 and 178 and imposed the provisions of that insurance contract on the bargaining unit employees.

As and for a remedy, the status quo with respect to health insurance in the parties' ongoing negotiations is the language contained in the expired contracts. Further, until such time as the parties ratify successor contracts for Locals 38 and 178, or interest arbitration awards are issued regarding them, the City is required to make whole any bargaining unit employees negatively affected by the 2006 insurance plan changes by reimbursing them for any additional health care costs beyond that which they would have incurred had the City not made the 2006 insurance plan changes.

The Arbitrator will retain jurisdiction for a period of 60 days after issuance of the award to resolve any issues arising in its implementation.

Dated at Fond du Lac, Wisconsin this 8th day of June, 2006.

John R. Emery /s/
John R. Emery, Arbitrator

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