

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**LOCAL 1287 and Local 1287(CH)  
AFSCME, AFL-CIO**

and

**CITY OF WAUSAU**

Case 127  
No. 67534  
MA-13934

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**Appearances:**

**Mr. John Spiegelhoff**, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 1105 East 9<sup>th</sup> Street, Merrill, Wisconsin 54452, appearing on behalf of Locals 1287 and 1287(CH), AFSCME, AFL-CIO.

**Mr. Dean R. Dietrich**, Attorney at Law, Ruder Ware, L.L.S.C., 500 First Street, P.O. Box 8050, 54402-8050, appearing on behalf of the City of Wausau.

**ARBITRATION AWARD**

Locals 1287 and 1287(CH), AFSCME, AFL-CIO, hereinafter “Union,” and City of Wausau, hereinafter “City” or “Employer,” requested that the Wisconsin Employment Relations Commission provide a panel of WERC commissioners/staff arbitrators from which to select an arbitrator to hear and decide the instant dispute. From said list, the parties selected Coleen A. Burns as Arbitrator. The hearing was held on March 4, 2008 in Wausau, Wisconsin. The hearing was not transcribed. The parties submitted post-hearing briefs and reply briefs, the last of which was received on May 27, 2008; whereupon the record was closed. Based upon the evidence and arguments of the parties, the undersigned makes and issues the following Award.

**ISSUES**

The Union frames the issues as:

Did the City violate the collective bargaining agreement when, on January 1, 2008, it implemented an HRA for City employees encompassing both Local 1287 and Local 1287(CH)?

If so, what is the appropriate remedy?

The City frames the issues as follows:

Whether the City violated the Labor Agreement when it implemented a self-funded deductible in the City health care benefit plan?

If so, what is the appropriate remedy?

### **CONTRACT LANGUAGE**

#### **LOCAL 1287**

#### **ARTICLE 5 - MANAGEMENT RIGHTS**

The City possesses the sole right to operate City government and all management rights repose in it but such rights must be exercised consistently with the other provisions of this contract. These rights include but are not limited to the following:

- A. To direct all operations (sic) City government.
- B. To hire, promote, transfer, assign and retain employees in positions with the City;
- C. To suspend, demote, discharge and take other disciplinary action against employees for just cause;
- D. To relieve employees from their duties because of lack of work or other legitimate reasons;
- E. To maintain efficiency of City Government operation entrusted to it;
- F. To take whatever action is necessary to comply with State or Federal law;
- G. To introduce new or improved methods or facilities;
- H. To change existing methods or facilities;
- I. To contract out for goods or services. Whenever possible, the Employer shall provide the Union a reasonable opportunity to discuss contemplated subcontracting that would result in the layoff of bargaining unit personnel prior to a final decision being made on such subcontracting.

- J. To determine the methods, means and personnel by which such operations are to be conducted;
- K. To take whatever action is necessary to carry out the functions of the City in situations of emergency.

The Union and the employees agree that they will not attempt to abridge these management rights and the City agrees it will not use these management rights to interfere with rights established under this agreement or for the purpose of undermining the Union or discriminating against any of its members.

Any dispute with respect to the reasonableness of the application of said management rights with employees covered by this agreement (see Exhibit 'A' for a complete list of these employees) may be processed through the grievance and arbitration procedures contained herein, however, the pendency of any grievance or arbitration shall not interfere with the right of the City to continue to exercise these management rights.

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#### **ARTICLE 24 - INSURANCE**

A. Medical and Hospitalization Benefits: Effective July 1, 2006, the employee will contribute on a monthly basis, nine percent (9%) of the health insurance premium. The nine percent (9%) rate will be based on the family and single policies held by the majority of employees in the unit and it will apply to all employees who participate in a City health plan.

Employees shall be responsible for a \$300.00 per person, \$600.00 per family medical deductible on all covered expenses. In addition, employees shall be responsible for 10% co-pay after deductible up to \$2,500.00. The maximum out of pocket medical expense will be \$550.00 per individual, \$1,100.00 per family, per insurance contract per year. The prescription coverage will include a three tier program with the co-pay levels at \$0 for tier 1/generics, \$20 tier 2/preferred brands and \$40 tier 3/non-preferred brands. The maximum out of pocket costs for formulary prescription drugs shall be \$300 per person, \$600 per family. The plan coverages shall be the same as the 2006 plan.

Probationary employees must indicate whether or not they desire to be covered by the City's medical and hospitalization insurance program within the first thirty (30) days of employment, with coverage to be effective upon the first of the month following the thirtieth (30<sup>th</sup>) day of employment. No employee shall make any claim against the City for additional compensation in lieu of or in

addition to the City's contribution because the employee does not qualify for the family plan. The City may change insurance carriers and/or self-fund its insurance program so long as benefits equal to those currently in effect are maintained.

If any changes in benefits are proposed by the third party administrator or carrier of the plan, these proposed changes shall be presented to the Union and shall not be implemented during the term of this Agreement unless agreed to by the Union and the City. Any changes in minimum coverage mandated by State or Federal law shall be implemented by the City as soon as possible. However, neither party waives its right to bargain the impact of such changes. Confidentiality of patient information will be maintained to the extent that it is presently protected under the current program.

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**Local 1287(CH)**

**ARTICLE 2 - MANAGEMENT RIGHTS**

The City possesses the sole right to operate the departments of the City and all management rights repose in it, but such rights must be exercised consistently with other provisions of this contract. These rights include but are not limited to the following:

- A. To direct all operations of the respective departments;
- B. To establish reasonable work rules;
- C. To hire, promote, transfer, assign and retain employees;
- D. To suspend, demote, discharge and take other disciplinary action against employees for just cause;
- E. To lay off employees from their duties because of lack of work or for other legitimate reasons;
- F. To maintain efficiency of department operations entrusted to it;
- G. To take whatever action is necessary to comply with State and Federal Law;

- H. To introduce new or improved methods or facilities;
- I. To manage and direct the working force, to make assignments of jobs, to determine the work to be performed by employees, and to determine the competence and qualifications of employees;
- J. To change existing methods or facilities;
- K. To determine the methods, means and personnel by which operations are to be conducted;
- L. To take whatever action is necessary to carry out the functions of the departments in situations of emergency.

Any dispute with respect to the reasonableness of the application of said management rights with employees covered by this Agreement may be processed through the grievance and arbitration procedure contained herein; however, the pendency of any grievance or arbitration shall not interfere with the right of the City to continue to exercise these management rights.

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#### **ARTICLE 18 – INSURANCE**

- A. Medical and Hospitalization Benefits: Effective December 31, 2006 employees shall contribute 9% of the monthly health insurance premium cost. The Employer shall pay the balance of the premiums. (Presently, all employees represented by 1287CH who participate in health insurance are enrolled in Security Health. The premium shall be that premium charged to the City by Security Health or a provider or company providing a similar benefit package. If for any reason, an employee chooses a different plan, the City's portion of the premium shall not exceed that amount paid for the plan for the majority of employees.)

Effective 1/1/07 employees shall annually pay the first three hundred dollars (\$300.00) of covered medical charges per individual, six hundred dollars (\$600.00) per family. In addition, employees shall annually pay ten percent (10%) co-pay after deductible of additional charges up to \$2500.00, with an annual five hundred fifty dollars (\$550.00) per individual maximum deductible and co-pay out-of-pocket payment and an annual one thousand one hundred dollars (\$1,100.00) per family

maximum deductible and co-pay-out-of-pocket payment. The plan coverages shall be the same as in the 2006 plan.

The prescription coverage will include a three tier program with the co-pay levels at \$0 for tier 1/generics, \$20 tier 2/preferred brands and \$40 tier 3/non-preferred brands. The maximum annual out of pocket costs for formulary prescription drugs shall be \$300 per person, \$600 per family.

Pretax insurance premiums: Effective 1/1/99 all deductions from employees' pay for health and dental insurance (1/1/00) premiums will be taken on a pretax basis.

Probationary employees must indicate whether or not they desire to be covered by the City's medical and hospitalization insurance program within the first thirty (30) days of employment, with coverage to be effective upon the first of the month following the thirty-first (31<sup>st</sup>) day of employment. No employee shall make any claim against the City for additional compensation in lieu of or in addition to the City's contribution because the employee does not qualify for the family plan. The City may change insurance carriers and/or self-fund its insurance program so long as benefits equal to those currently in effect are maintained.

If any changes in benefits are proposed by the third party administrator or carrier of the plan, these proposed changes shall be presented to the Union and shall not be implemented during the term of this Agreement unless agreed to by the Union and the City. Any changes in minimum coverage mandated by State or Federal law shall be implemented by the City as soon as possible. However, neither party waives its right to bargain the impact of such changes. Confidentiality of patient information will be maintained to the extent that it is presently protected under the current program.

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### **BACKGROUND**

On or about October 27, 2008, City Human Resources Specialist Ila Koss issued the following memorandum to union president's Al Lippert, Joe Blair and Dave Jordan:

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The City of Wausau has entered into an agreement with Security Health and Employee Benefit Corporation (EBC) to purchase a high deductible Health Reimbursement Account with a \$1500 cap.

The plan will allow the City to self-fund the difference in claim expenses between the current employee medical deductible of \$300 and the HRA cap of \$1,500. The employee will not be responsible for the 10% co-insurance (of the next \$2,500) until after the \$1,500 HRA cap has been met.

Adding the HRA to partner with the City Group Health plan does not change the benefit level currently offered to our employees, nor will it change Security's pool of providers. The HRA plan will, however reduce the amount of increase the monthly health premiums would have experienced in 2008 from 13.6% to 10%.

In addition to the 3.6% savings in premium dollars, many employees will save the expense of the 10% co-insurance (\$250) because this expense does not kick in until after the HRA high deductible has been met.

The following information shows:

1. Current premium and employee costs.
2. Premium and employee costs for 2008 without the HRA.
3. Premium and employee costs for 2008 with the HRA.

1. Current (2007)

	Single \$437.23	Family \$1,346.65
9% employee Share:	\$39.35 monthly	\$121.20 monthly
Annual Medical Ded:	\$300	\$600
Annual Co-Ins:	<u>\$250</u>	<u>\$500</u>
Total Annual Employee Cost	\$1,029.40	\$2,554.40

2. 2008 Premium Information without HRA

	Single \$499.39	Family \$1,538.11
9% employee Share:	\$44.95 monthly	\$138.43 monthly
Annual Medical Ded:	\$300	\$600
Annual Co-Ins:	<u>\$250</u>	<u>\$500</u>
Total Annual Employee Cost	\$1,089.40	\$2,761.16

3. 2008 Premium Information with HRA

	Single \$479.13	Family \$1,475.71
9% employee Share:	\$43.12 monthly	\$132.81 monthly
Annual Medical Ded:	<u>\$300</u>	<u>\$600</u>
	\$817.44*	\$2,193.72*
Annual Co-Ins:*	<u>\$250</u>	<u>\$500</u>
Total Annual Employee Cost	\$1,067.44	\$2,693.72

- **The \$250/\$500 co-insurance does not become an expense until after the full \$1500 HRA deductible has been paid out in claims as compared to the current \$300/\$600 medical deductible.**

We will be holding meetings for employee information, questions and answers regarding the HRA which will become effective January 1, 2008 as follows:

Monday November 5, 2007	10:00 AM	City Council Chambers
	12:30 PM	WATS Garage
Tuesday November 6, 2007	7:00 AM	Public Works Garage
	1:30 PM	City Council Chambers
Wednesday November 7, 2007	10:00 AM	Police/Fire Community Room
	3:00 PM	Police/Fire Community Room

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On or about October 29, 2007, Koss issued the following memorandum to all City employees:

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RE: 2008 Health Insurance

Because the City was facing a 13.6% increase in monthly health insurance premiums for 2008, the City of Wausau has entered into an agreement with



Security Health and Employee Benefit Corporation to purchase a high deductible Health Reimbursement Account with a \$1500 cap.

For all employees who are covered by a \$300/\$600 medical deductible the plan will allow the City to self-fund the difference in claim expenses between the current employee medical deductible of \$300 and the \$1500 HRA cap. In addition, the employee will not be responsible for the 10% co-insurance payments until **after** the \$1500 HRA cap has been met.

Adding the HRA to partner with the City Group Health plan will not change current benefit levels or the Security's pool of providers. However, the HRA plan will mean that the premium increase in 2008 for employees covered by the \$300/\$600 medical deductible will be reduced to 10%.

To help you better understand the HRA concept and to answer questions you may have about the plan, we will be holding meetings for employee information, questions and answers as follows:

Monday November 5, 2007	10:00 AM	City Council Chambers
	12:30 PM	WATS Garage
Tuesday November 6, 2007	7:00 AM	Public Works Garage
	1:30 PM	City Council Chambers
Wednesday November 7, 2007	10:00 AM	Police/Fire Community Room
	3:00 PM	Police/Fire Community Room

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On or about November 7, 2007, Koss issued the following memorandum to all City employees:

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The City of Wausau has received rate increases for the Security Health Plan premium rates to be effective January 1, 2008. The new rates reflect a 9.6% increase.

The monthly premium rates for the HMO coverage effective January 1, 2008, and the employees share will be:

Family - \$1,475.71 monthly with an employee rate (9%) of \$132.81  
Single - \$ 479.13 monthly with an employee rate (9%) of \$43.12

The monthly premium rates for the Indemnity coverage effective January 1, 2008, and the employees share will be:

Family - \$1,634.76 monthly with an employee rate of \$291.86  
Single - \$ 530.76 monthly with an employee rate of \$94.75

If you are currently covered by the Security HMO and wish to change to the Security Indemnity plan effective 1-1-08, please contact me.

If you are currently covered by the Security Indemnity plan and wish to change to the Security HMO effective 1-1-08, please contact me.

If you have any questions, please call me.

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The City's insurance consultant prepared the following document for distribution to the City's employees:

**City of Wausau HRA Plan  
Effective 1/1/2008  
How This Plan Works  
The Path To Payment**

1. A city health plan participant seeks medical care.
2. Medical Provider sends a claim to Security Health Plan.
3. Security Health Plan processes the claim.
4. Security Health Plan sends an Explanation of Benefits to you. A copy of the EOB is automatically sent to EBC, the HRA administrator. You do not need to submit any paperwork to EBC.
5. Thursday of every week, EBC notifies the City of the amount of reimbursements ready to be sent to the participants.
6. The following Tuesday funds are transferred from the City to EBC.

7. EBC transfers funds electronically to participants' accounts that same day.
8. Participant uses transferred funds to pay medical provider.

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Grievances were filed on behalf of Local 1287 and 1287(CH) alleging, *inter alia*, that the City had violated the collective bargaining by unilaterally implementing a change in health insurance benefits on January 1, 2008. The grievances were consolidated and, thereafter, submitted to grievance arbitration.

### POSITIONS OF THE PARTIES

#### Union

The undisputed testimony of Koss and former Local 1287 President Craig Gardner establishes that, for a period of time beginning in the 1980's and ending in the early 1990's, the City had a fully self-funded health insurance plan which had a third party administrator and a stop loss policy. By this conduct, the parties have demonstrated that a self-funded plan means a fully self-funded plan.

Gardiner testified that prior to the move from private insurance to fully self-funded insurance, the employees had paid a portion of the premium; but did not do so after the move. Koss, contrary to Gardiner, recalled that, under the fully self funded plan, employees had deductibles; but that co-insurance was first bargained into the contract approximately five years ago.

City witness insurance consultant William Abell testified that the HRA in dispute is a "partially self-funded plan." As such, there is not a third party administrator, nor a stop loss insurance carrier.

Articles 18 and 24 must be considered within the context/history of when each came into being. Health Reimbursement Arrangements/Accounts were not in existence at the time that this language was negotiated and, thus, the negotiators who crafted this language knew only of fully self funded plans. Given this context, it is impossible for the City to advance the argument that an HRA is permitted under this language.

There was no intent to allow the City to implement an HRA or partially self-fund. The fact that an HRA is not specifically excluded in the contract does not grant the City *carte blanche* to unilaterally determine the content of health insurance plans.

The contract language permits the City to switch to a fully self-funded insurance plan. The contract language does not permit the City to switch to a partially self-funded plan or HRA.

The plan design/coverage amounts have changed over the years. There is, however, a long-standing, mutually understood, and consistently applied practice of bargaining such changes. Implied in the City's management rights is a duty to bargain in good faith and to not use its rights to undermine the Union.

The initial paragraph of the health insurance language identifies the amounts of the employee paid deductible, co-pay, maximum out of pocket medical expenses and prescription drug co-pays. The contract then states that the plan coverage "shall be the same as" the 2006 plan. Applying the maxim, *Noscitur a sociis*, there can be no plausible explanation other than the parties intended to have the same type of coverage; deductible, co-pay and maximum out-of-pocket expenses.

The City purchased a high end deductible of \$1500 for a single plan and \$3000 for a family plan. The employees would continue to pay their deductible of \$300/600 but after the employees met this deductible, the City would self fund an additional deductible. Additionally, another company, Employee Benefit Corporation (EBC), is now involved in the health plan as the company who reimburses employees for medical expenses over the \$300/600 employee deductible and up to the cap of the employer funded high end deductible. After the high end deductible is met, the employee then pays the 10% co-insurance up to \$2500 of covered medical expenses.

The Local 1287 contracts clearly delineate the order in which user penalties occur. Employees pay their deductible and then their insurance co-pay. With the advent of the unilaterally implemented HRA, the City has effectively changed the order of the plan design. The employee co-pay now is not applied until after the employer funded deductible cap has been met.

The true HRA deductible is actually \$1200 single and \$2400 family. Neither the contract language, nor the long-standing history/practice permits the City to "partially self-fund" the difference between the deductibles of employees and the high end deductible plan the City obtained.

During the 2007-08 contract negotiations, the City negotiator indicated that wages would be less if the Union did not address the rising costs of health insurance during the bargain. As Koss testified at hearing, the HRA option could have been brought to the bargaining table. The parties negotiated other health insurance changes during the 2007-08 contract negotiations.

The City stood to realize significant savings through the advent of the HRA. The unilateral implementation of the HRA precludes potential proportionate sharing of these savings. The Union's position does not lead to harsh, absurd or nonsensical results, but rather, returns the parties to the *status quo ante* and allows the parties to collectively bargain the terms and conditions related to insurance; consistent with original intent and historical practice.

The City has undermined the Union in its unilateral implementation of the HRA. Arbitrators, in similar cases, have rejected claims that management rights give an employer the right to unilaterally implement on the basis of "no harm no foul." An Award in favor of the City will prejudice the Union in that the HRA will become the *status quo* and the Union will have had no meaningful input into the HRA and its terms and conditions.

The City has unilaterally implemented the HRA in violation of the collective bargaining agreements. The grievance should be sustained and the health insurance plan design/coverage should be restored to the *status quo ante*.

### City

The language of the health insurance provisions does not qualify the term "self-fund". The parties' contract language allows the City to partially self-fund health insurance programs so long as equal benefits are maintained.

The ability of the City to partially self-fund the health insurance program is not specifically limited by contract and is consistent with the management rights expressed in the contract. Under a well-established arbitral principle, management retains all rights not expressly prohibited or limited by contract.

Assuming *arguendo*, that the contract language were to be found to be ambiguous, arbitral precedent states that the contract language should be interpreted to avoid harsh, absurd or nonsensical results. The City's interpretation is the only interpretation that avoids a harsh, absurd or nonsensical result. Not only is it consistent with the health insurance language, but also, it recognizes the City's retained management rights and avoids the circumstance of bargaining with the Union over every management decision or benefit that is not specifically granted to the City under the contract.

One of the obvious purposes behind the health insurance language is to give the City the ability to make adjustments to the health insurance to cut costs as long as the same level of benefits is maintained. The language in dispute grants the City latitude to implement the health insurance program in a variety of ways to lower costs.

The City was facing a 13.6% increase in monthly health insurance premiums for 2008. Under the new partially self-funded health insurance plan, Union employees and the City each received a 4% reduction in premium costs.

Under the previous plan, the \$250/500 co-insurance became an expense after the \$300/600 deductible was met. Under the partially self-funded plan, the 10% co-insurance does not become an expense until after the \$1,500 HRA cap is met; saving employees additional money depending on the amount of health claims submitted.

No evidence was submitted that members of the Union have suffered a loss. The evidence shows that Union members have benefited from lower health insurance premiums and the 10% co-insurance payable by the employee occurring after a higher amount of insurance claims are incurred.

The City has responsibly sought ways to contain health insurance costs without lowering employee's level of benefits. In addition to paying no additional money toward deductibles, Union members also save on co-insurance and premium costs.

In the 1980's the City self-funded its entire health insurance program and then elected to return to a fully insured program. One instance of complete self-funding does not establish a binding past practice. Moreover, under the contract language, self-funding and partial self-funding are not mutually exclusive. The fact that the City previously exercised its contractual right to fully self-fund does not preclude the City from exercising its contractual right to partially self-fund.

The City has properly exercised its management rights. The parties negotiated language permitting the City to implement the HRA. There has been no unlawful unilateral implementation; nor has the City undermined the Union. The Union has the right to address this issue in future negotiations.

The language of the health insurance provisions is clear on its face and provides the City with the right to implement the partial self-funding of payments under the HRA. The City has fully complied with the health insurance language. There is no change in the plan design as identified in existing contract language. Nor has there been any change in the level of benefits. The grievance should be dismissed in its entirety.

### **DISCUSSION**

The Union's statement of the issues most closely approximates the issues raised in the grievance as filed and processed through the grievance arbitration procedure. Accordingly, the undersigned has adopted the Union's statement of the issues, to wit:

Did the City violate the collective bargaining agreement when, on January 1, 2008, it implemented an HRA for City employees encompassing both Local 1287 and Local 1287(CH)?

If so, what is the appropriate remedy?

This grievance involves two different bargaining units. While these two units do not have identical contract language, the difference in contract language is not material to the resolution of this dispute.

Article 2 of the Local 1287(CH) contract and Article 5 of the Local 1287 contract are “Management Rights” clauses. Each of these clauses recognizes that the City’s management rights must be exercised consistently with the other provisions of the contract.

Article 18 of the Local 1287(CH) contract and Article 24 of the Local 1287 contract are “Insurance” clauses. Of particular relevance to this dispute is language contained in the second paragraph of each of these health insurance clauses.

The most reasonable construction of the plain language of the second paragraphs of each contract is that employees are required to pay, as a deductible, the first \$300 (individual)/\$600 (family) of covered medical costs. Although the amount of deductible has changed, this construction is consistent with the past application of the deductible language.

The language of the Local 1287(CH) contract then states: “In addition, employees shall annually pay ten percent (10%) co-pay after deductible of additional charges up to \$2500.00, with an annual five hundred fifty dollars (\$550.00) per individual maximum deductible and co-pay out-of-pocket payment and an annual one thousand one hundred dollars (\$1,100.00) per family maximum deductible and co-pay-out-of-pocket payment.” The language of the Local 1287 contract then states: “In addition, employees shall be responsible for 10% co-pay after deductible up to \$2,500.00. The maximum out of pocket medical expense will be \$550.00 per individual, \$1,100.00 per family, per insurance contract per year.”

It would be illogical to construe “deductible” as a reference to anything other than the deductible established in the preceding sentence. Thus, the above referenced language is most reasonably interpreted to require the employee’s 10% co-pay to be applied as soon as the employee has satisfied the \$300/600 deductible. Such an interpretation is consistent with the evidence of the parties’ prior practices.

The HRA implemented by the City on January 1, 2008 delays the employee 10% co-pay until after the City has self-funded the difference between the employee’s \$300/600 deductible and the HRA cap. Thus, the HRA implemented by the City on January 1, 2008 is

not consistent with the language contained in the second paragraphs of the “Insurance” clauses of each labor contract.

As the City argues, each of the “Insurance” clauses provides the City with the right to change insurance carriers and/or self-fund “so long as benefits equal to those currently in effect are maintained.” “Equal” means “the same.”

The term “benefits” is not defined in the collective bargaining agreement. It is evident that, in the past, changes in co-pays have been negotiated by the parties.

Assuming *arguendo*, that the employee co-pay is a “benefit” within the meaning of this contract provision, the HRA plan implemented by the City would not maintain a benefit that is “equal to” that which was in effect prior to the implementation. This is so because the HRA delays the application of the 10% co-pay until after the City has self-funded the difference between the employee deductible and the HRA cap. If, for the sake of argument, the City has the right to self-fund an HRA, it does not have the right to self-fund the HRA in dispute.

In summary, the language of the “Health Insurance” clauses requires that the 10% co-pay be applied as soon as the employee has met the \$300/600 deductible. The “Health Insurance” clause does not provide the City with a right to alter this application of the 10% co-pay without bargaining such change with the Union. In implementing the HRA on January 1, 2008, the City exercised its management rights in a manner that is inconsistent with the requirements of the contractual “Health Insurance” clauses. In implementing the HRA on January 1, 2008, the City has violated the collective bargaining agreements of Local 1287 and Local 1287(CH).

The City’s argument that the implementation of the HRA improves the welfare of employees by reducing premium costs and, depending on submitted health insurance claims, providing additional cost savings to employees, may be reasonable. It does not, however, provide the Arbitrator with authority to ignore contractual requirements.

Employees have been harmed in that they have not been provided with the health insurance mandated by their labor contract. To give effect to contractual requirements does not lead to harsh, absurd or nonsensical results.

It is not evident that the City’s decision to implement the HRA was motivated by any factor other than a desire to produce health insurance savings in a manner consistent with the City’s view of its contractual obligations. The record provides no reasonable basis to conclude that the City willfully chose to disregard the collective bargaining agreement or otherwise sought to undermine the Union.



The Union has requested, as a remedy, that the health insurance be returned to the *status quo* required by the parties' collective bargaining agreements and that affected employees be made whole. Unless the parties agree otherwise, this is an appropriate remedy. The Arbitrator will retain jurisdiction for at least sixty (60) days from the date of this Award to address any issues over remedy that the parties are unable to resolve.

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

**AWARD**

1. The City violated the collective bargaining agreement when, on January 1, 2008, it implemented an HRA for City employees encompassing both Local 1287 and Local 1287(CH).
2. In remedy of the City's violation of the collective bargaining agreement and unless the parties agree otherwise, the City shall, as soon as practicable:
  - a) return to the *status quo* in which the employee 10% co-pay is applied as soon as the employee has met the \$300/600 deductible
  - b) make employees represented by Local 1287 and Local 1287(CH) whole for any losses suffered as a result of the unilateral implementation of the HRA on January 1, 2008.
3. The undersigned shall retain jurisdiction as discussed above.

Dated at Madison, Wisconsin, this 16th day of September, 2008.

Coleen A. Burns /s/

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Coleen A. Burns, Arbitrator

CAB/gjc  
7340

