



OFFICE OF THE CLERK  
**WISCONSIN COURT OF APPEALS**

110 EAST MAIN STREET, SUITE 215  
P.O. BOX 1688  
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880  
TTY: (800) 947-3529  
Facsimile (608) 267-0640  
Web Site: [www.wicourts.gov](http://www.wicourts.gov)

**DISTRICT II**

March 4, 2015

To:

Hon. Patrick L. Willis  
Circuit Court Judge  
Manitowoc County Courthouse  
1010 S. 8th Street  
Manitowoc, WI 54220-5380

James L. Palmer  
Andrew D. Schauer  
Wisconsin Professional Police Assn.  
660 John Nolen Dr., Ste. 300  
Madison, WI 53713

Lynn Zigmunt  
Clerk of Circuit Court  
Manitowoc County Courthouse  
1010 S. 8th Street  
Manitowoc, WI 54220-5380

Steven J. Rollins  
Manitowoc County Corporation Counsel  
1010 S. 8th St.  
Manitowoc, WI 54220

You are hereby notified that the Court has entered the following opinion and order:

---

2013AP1

Manitowoc County Sheriff Department Employees v. Manitowoc  
County (L.C. # 2012CV222)

Before Brown, C.J., Neubauer, P.J., and Gundrum, J.

The Manitowoc County Sheriff Department Employees, a local collective bargaining unit affiliate of the Wisconsin Professional Police Association (the Association), appeals from an order determining that the contributions of the employer, Manitowoc County (the County), to its employees' health savings accounts is a prohibited subject of collective bargaining, and dismissing the Association's petition for a declaratory ruling to the contrary. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2013-14).<sup>1</sup> Pursuant to the decision in

---

<sup>1</sup> All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

*Wisconsin Prof'l Police Ass'n v. WERC*, 2013 WI App 145, 352 Wis. 2d 218, 841 N.W.2d 839, which was released after the briefing in this case, we conclude that the allocation between the County and its employees of payments into an employee's health savings account is not a part of the design and selection of a health care coverage plan and has no impact on such design and selection.<sup>2</sup> As such, it is not a prohibited subject of bargaining. We therefore reverse and remand.

In years past, the County and the Association were parties to a collective bargaining agreement (CBA) which provided that the County would fund an employee's health insurance plan deductible through an employer contribution to the employee's health savings account (HSA). The CBA was last effective in 2010, and in June 2011, while the parties were negotiating a successor agreement,<sup>3</sup> WIS. STAT. § 111.70(4)(mc)6. (2011-12), became effective, providing in pertinent part:

---

<sup>2</sup> We are aware that the governing statute, WIS. STAT. § 111.70(4)(mc)6., has now been to amended to provide that bargaining is prohibited with respect to the following:

6. Except for the employee premium contribution, all costs and payments associated with health care coverage plans and the design and selection of health care coverage plans by the municipal employer for public safety employees, and the impact of such costs and payments and the design and selection of the health care coverage plans on the wages, hours, and conditions of employment of the public safety employee.

See 2013 Wis. Act 20, §§ 1722p, 9329(1e). Regardless, and even if we believe that *Wisconsin Prof'l Police Ass'n v. WERC*, 2013 WI App 145, 352 Wis. 2d 218, 841 N.W.2d 839, was wrongly decided, this court is bound by and cannot overrule its own precedent. See *Cook v. Cook*, 208 Wis. 2d 166, 189-90, 560 N.W.2d 246 (1997).

<sup>3</sup> During the process of negotiating a successor CBA, the County is obligated to operate under the status quo of the prior agreement except that it may discontinue "terms which are prohibited subjects of bargaining."

(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:

...

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.

Pursuant to the new legislation, employees were notified that the County “will no longer make any deposit into your Health Savings Account.” In response to a grievance, the County took the position that “health savings account funding is part of health insurance plan design, and as such, is a prohibited subject of bargaining.” The Association petitioned the circuit court for a ruling declaring “that the HSA compensation provided for in the CBA is not a prohibited subject of bargaining” and ordering the County to continue making the HSA deposits. The circuit court determined that the HSA contributions were a prohibited subject of bargaining.

This case is governed by *Wisconsin Prof'l Police Ass'n*, holding that though a County is free to unilaterally design and select a health care plan “that includes no deductibles or deductibles of any amount[,]” the allocation of responsibility between the employer and employee for the payment of that plan’s deductible is not a prohibited bargaining subject. *Wisconsin Prof'l Police Ass'n*, 352 Wis. 2d 218, ¶¶15, 24-26, 29. In so holding, the court observed that “[b]y its terms, the phrase ‘health care coverage plans’ is limited to the elements contained in such plans.” *Id.*, ¶26. Noting that WIS. STAT. § 111.70(4)(mc)6. (2011-12), is silent on the constituent elements of a plan, the court determined that the phrase “health care coverage plan” was only reasonably understood as a plan addressing “the rights and obligations that flow between the insurer and insured.” *Wisconsin Prof'l Police Ass'n*, 352 Wis. 2d 218, ¶26.

Though a deductible concerns these rights and obligations, a deductible payment allocation between an employer and employee does not, and is “a subject extrinsic to the rights and obligations of an insurer and insured.” *Id.*

We conclude that the allocation between the County and its employees of payments made into an employee’s HSA is not an element of the “health care coverage plan” designed and selected by the County and is therefore not a prohibited subject of bargaining. The funding mechanism for an employee HSA which is used to pay the employee’s health care deductibles does not concern “the rights and obligations that flow between the insurer and insured.” *Id.* The HSA payment allocation is irrelevant to the insurer and is extrinsic to the design and selection of the County’s health care plan. Because the HSA funding allocation is not part of the County’s health care coverage plan, it is necessarily not an impact of that plan’s design and selection. *See id.*, ¶¶22, 45 (the “impact” prong of WIS. STAT. § 111.70(4)(mc)6., does not provide an independent basis for determining that a subject extrinsic to the design and selection of a health care plan is a prohibited subject of bargaining).

Given the analysis and holding in *Wisconsin Prof’l Police Ass’n*, we need not further address the parties’ arguments.<sup>4</sup> Because we hold that the allocation of payments into an

---

<sup>4</sup> We are also aware of the decision in *Milwaukee Police Ass’n, Local 21 v. City of Milwaukee*, 2013 WI App 70, 348 Wis. 2d 168, 833 N.W.2d 179, released during the pendency of this appeal, which reversed the circuit court’s broad decision enjoining the City from modifying any terms of a labor agreement concerning health-care-coverage costs, and directed the City not to modify the agreement’s “specific deductibles, co-pays, prescription costs.” *Id.*, ¶1. Like the court in *Wisconsin Prof’l Police Ass’n v. WERC*, 2013 WI App 145, 352 Wis. 2d 218, 841 N.W.2d 839, we determine that the peculiar holding, facts, and arguments in *Milwaukee Police Ass’n, Local 21*, are inapplicable to and provide no guidance in the instant case. *See Wisconsin Prof’l Police Ass’n*, 352 Wis. 2d 218, ¶¶37-40. Further, neither party to this appeal relies on *Milwaukee Police Ass’n, Local 21*.

employee's health savings account is not a prohibited subject of collective bargaining, we reverse and remand for further proceedings consistent with our decision.<sup>5</sup>

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily reversed and the cause is remanded pursuant to WIS. STAT. RULE 809.21.

---

*Diane M. Fremgen*  
*Clerk of Court of Appeals.*

---

<sup>5</sup> We recognize that given the amendment of WIS. STAT. § 111.70(4)(mc)6., aspects of the appellant's claim may be moot. We leave this for the parties to argue and the circuit court to decide on remand, along with the unresolved issue of whether the County committed a prohibited practice, and the proper remedy, if any.