



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

DISTRICT III

July 31, 2015

To:

Hon. Marc A. Hammer
Circuit Court Judge
Brown County Courthouse
P.O. Box 23600
Green Bay, WI 54305-3600

John VanderLeest
Clerk of Circuit Court
Brown County Courthouse
P.O. Box 23600
Green Bay, WI 54305-3600

Jonathan Cermele
Cermele & Associates, S.C.
6310 W. Bluemound Rd., #200
Milwaukee, WI 53213

Timothy E. Hawks
B. Michele Sumara
Hawks Quindel, S.C.
P.O. Box 442
Milwaukee, WI 53201-0442

Geoffrey A. Lacy
Strang, Patteson, Renning, Lewis & Lacy
205 Doty St., Suite 201
Green Bay, WI 54301

Juliana Mary A. Ruenzel
Brown County Corporation Counsel
305 E. Walnut Street
Green Bay, WI 54301

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

2013AP270

Green Bay Professional Police Association, et. al v. City of Green Bay (L. C. No. 2011CV2195)

Before Hoover, P.J., Stark and Hruz, JJ.

The plaintiffs in this declaratory judgment action (the Associations) appeal an order denying their motion for summary judgment and granting summary judgment to the City of Green Bay and Brown County. We affirm the part of the order denying the Associations' motions, but reverse the part of the order granting the City's and County's motions.

This action required the court to construe WIS. STAT. § 111.70(4)(mc)6.,¹ which prohibits collective bargaining by public safety employees regarding the “design and selection of health care coverage plans” and “the impact of the design and selection of the health care coverage plans on the wages, hours, and conditions of employment for the public safety employee.” The circuit court concluded collective bargaining was not prohibited by the “design and selection” clause, but was prohibited by the “impact” clause. The circuit court rejected the Associations’ claims that the statute allows collective bargaining regarding the employees’ financial exposure to the design and selection of the municipalities’ health care coverage decisions, or that the statute is ambiguous. Rather, the court concluded the statute prohibits public safety employees from collectively bargaining all aspects of health care coverage including the costs to the employees, except for the municipalities’ concessions that the employees can still bargain “about the premium or premium equivalent.” The circuit court concluded the statute prohibits bargaining over the employees’ proportionate share of the cost of the municipalities’ design and selection choice.

¹ The circuit court was asked to construe the statute as it was enacted pursuant to 2011 Wisconsin Act 32. The statute was again amended by 2013 Wisconsin Act 20. The municipalities contend the 2013 modification merely clarified the meaning of WIS. STAT. § 111.70(4)(mc)6., showing legislative intent to disallow collective bargaining on the issues the Associations present here. However, § 9329(1)(e) of Act 20 contains an effective date, applying the “clarifying language” to collective bargaining agreements “on the day on which the collective bargaining agreement expires or is terminated, extended, modified, or renewed.” Applying the modified language to the version of the statute created in Act 32 is inconsistent with the “first applied” language. Because this declaratory judgment action and appeal were filed before 2013 Wis. Act 20 was passed, we decide this case based on the version of § 111.70(4)(mc)6. as it existed pursuant to 2011 Wis. Act 32.

After the circuit court entered its decision in this case, this court published two opinions² construing WIS. STAT. § 111.70(4)(mc)6. In *Milwaukee Police Association, Local 21 v. City of Milwaukee*, 2013 WI App 70, 348 Wis. 2d 168, 833 N.W.2d 179, this court reversed the circuit court's broad decision enjoining the City from modifying the terms of a labor agreement concerning health care coverage costs and directing the City to modify the agreement's specific deductibles, co-pays, and prescription costs. This court rejected the Milwaukee Police Association's attempts to distinguish the direct effects from the indirect effects of the design and selection choices on the employees' finances, and rejected the Milwaukee Police Association's argument that the statute was ambiguous. To the extent the Associations' arguments in the present appeal mirror those arguments, the circuit court properly rejected them. Therefore, we summarily affirm the part of the circuit court's order denying the Associations' motion for summary judgment.

However, in *Wisconsin Professional Police Association v. WERC*, 2013 WI App 145, 352 Wis. 2d 218, 841 N.W.2d 839, this court concluded WIS. STAT. § 111.70(4)(mc)6. did not prohibit collective bargaining regarding the allocation of responsibility between employees and employers to pay deductibles required under a health care coverage plan. We are bound by that precedent. See *Cook v. Cook*, 208 Wis. 2d 166, 189-90, 560 N.W.2d 246 (1997). Therefore, we summarily reverse the circuit court's order granting summary judgment to the City and County because the "impact" clause does not prohibit bargaining over the allocation of responsibility for

² This court also delayed submission of this appeal pending a petition for review of this court's unpublished summary order in *Manitowoc County Sheriff Department Employees v. Manitowoc County*, case No. 2013AP1 (WI App Mar. 4, 2015), in which we concluded we were bound by the precedent created in *Wisconsin Professional Police Association v. WERC*, 2013 WI App 145, 352 (continued)

payment of deductibles, co-pays and/or payments to an employee's health savings account.
Therefore,

IT IS ORDERED that the order is summarily affirmed in part, reversed in part and the cause is remanded for proceedings consistent with *Milwaukee Police Association v. City of Milwaukee* and *Wisconsin Professional Police Association v. WERC*. No costs on appeal.

Diane M. Fremgen
Clerk of Court of Appeals

Wis. 2d 218, 841 N.W.2d 839. This appeal was taken under submission after the Wisconsin Supreme Court denied the petition for review.