

IN THE MATTER OF THE ARBITRATION BETWEEN:

LAW ENFORCEMENT LABOR SERVICES,

and

BMS Case #s 14-PA-0978,  
14-PA-0989 and 14-PA-1054

RAMSEY COUNTY, MINNESOTA

DECISION AND AWARD

ARBITRATOR: Stephen A. Bard

DATE OF HEARING: Case Submitted on Stipulated Facts

DATE OF RECEIPT OF STIPULATION AND BRIEFS: October 31, 2014

DATE OF DECISION AND AWARD: November 18, 2014

GRIEVANTS: Ramsey County Deputies, Dispatchers and Dispatch Supervisors

APPEARANCES:

For the Employer:

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Labor Relations Manager  
Ramsey County Human Resources  
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For the Union:

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## INTRODUCTION

This matter came on for arbitration before Neutral Arbitrator Stephen A. Bard, on October 31, 2014. The case was submitted on a written Stipulation of Facts and Briefs from each party.

## ISSUES

1. Did Ramsey County violate its labor agreements with the bargaining groups participating in these grievances by unilaterally decreasing the County's contribution to the premium for family health insurance coverage for the members of those bargaining groups in 2014?
2. If so, what is the appropriate remedy?

## RELEVANT CONTRACT PROVISIONS

The following provisions of the Collective Bargaining Agreement are relevant to a decision of this case.

### 5. Employer Authority

...

5.2 Any terms and conditions of employment not specifically established or modified by this Agreement shall remain solely within the discretion of the employer to modify, establish or eliminate.

7.5 Arbitrator's Authority-The arbitrator shall have no right to amend, modify, nullify, ignore, add to, or subtract from the terms and conditions of this Agreement. The arbitrator shall consider and decide only the specific issue(s) submitted in writing by the Employer and the Union, and shall have no authority to make a decision on any other issue not so submitted.

18.1 Employee Insurance - The County will provide the following insurance contributions on the 1st of the month following thirty (30) days of employment to provisional, probationary and permanent employees who elect insurance coverage: (All contributions shown for medical and dental are monthly and based on full time employment.)

### Medical Insurance

2012 – Employees shall continue to pay \$31 for single coverage. For family coverage, employees shall continue to pay the same amount as in 2011.

2013 – Employees shall contribute \$40 for single coverage. For family coverage, the County shall

pay 80% of the premium increase from 2012 to 2013 and the employee shall pay 20% of the increase.

2014 – Employees shall contribute \$55 for single coverage. For family coverage, the County shall pay 75% of the premium increase from 2013 to 2014 and the employee shall pay 25% of the increase.

Changes will be effective on January 1 of each year.

#### Dental Insurance

2012 – Employees shall continue to pay the same amount for single or family coverage as in 2011.

2013 – The County and the employee will split the increase or decrease in premium for single and family coverage 50/50.

2014 - The County and the employee will split the increase or decrease in premium for single and family coverage 50/50.

Changes will be effective January 1 of each year.

Article 26 of the Deputy Sheriffs’ contract and Article 27 of the Dispatchers’ contract and Article 27 of the Emergency Communications Shift Supervisors’ contract all specify that:

“The parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make requests and proposals with respect to any subject or matter not removed by law from the area of collective bargaining, and that the complete understanding and agreements after the exercise of that right and opportunity are set forth in this agreement. Except as otherwise agreed to by the parties, the County and the Union, for the life of this Agreement, each voluntarily and unqualifiedly waives the right, and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter referred to or covered in this Agreement, or with respect to any subject or matter not specifically referred to or covered in this Agreement, even though such subject or matter may not have been within the knowledge or contemplation of either or both of the parties at the time that they negotiated or signed this Agreement.”

#### FINDINGS OF FACT

The Arbitrator adopts the facts as stipulated to by the parties and has attached that Stipulation as Exhibit A to this Decision and incorporates it by reference herein.

## POSITION OF THE UNION

1. In 2012, the parties negotiated labor agreements for 2012-2014 that included language specifically governing the apportionment of an increase in the cost of family health insurance coverage: the contracts require that the County pay 75% of the increase from 2013 to 2104, and that the employees pay 25%. Prior to 2014, the premium rates had gone up for 17 consecutive years. There is no evidence that the parties foresaw, or had any reason to foresee, the 2014 decrease when they negotiated their 2012-2014 labor agreements. As a result, the labor agreements are silent regarding how such a decrease should be apportioned.
2. There was clearly no meeting of the minds on the matter at issue since the contract was silent on how an unexpected decrease in premiums would be shared by the parties
3. Gaps in a collective bargaining agreement are inevitable, and contract grievances about them frequently follow. An important role of an arbitrator is to serve as the parties' gap-filler. The gap-filling procedure most commonly used by arbitrators is the "bargaining model" standard, which is based on an estimation of what the parties would have intended had they foreseen and considered the situation.
4. Arbitrators often use past practice to infer the existence of a term not set forth in the written agreement, assuming there are no contractual barriers to such an analysis. Here, the record shows that in the past 20 years, the only time when County employees saw their health insurance premium rates go down was in 1996, when the rates decreased by 1.5%. Critically, that entire decrease was applied to lower the employees' contribution to the premiums, while the County's contributions remained the same. The Union acknowledges that this one data point from 18 years ago does not constitute an established past practice that should be given the same weight as a written contract

term. However, in determining the reasonable expectations of the parties, and what they would have agreed to had they negotiated over decreases in health insurance premiums, the County's handling of a decrease in premiums in the past is significant. This also highlights the fact that prior to 2014, there is no evidence that the County had ever unilaterally reduced its contribution to health insurance premiums.

5. The expectations of the parties, and what they would have negotiated had they foreseen a decrease in health insurance premiums, can be further determined from the labor agreements themselves, as well as from the course of dealing between the parties. It is important to note at the outset that insurance premiums are only a portion of the costs that employees incur under the County's health care plan; the plan also includes out-of-pocket expenses in the form of deductibles and co-pays, the cost of which falls entirely on the employees. The record shows that these out-of-pocket costs have always gone up: for example, since 2004, co-pays for office visits have gone up incrementally from \$0 for Benefit Level 1 and \$15 for Benefit Level 2 to \$20 and \$35, respectively (or even more for employees not participating in the Healthy Benefits program); the co-pay for emergency room visits has gone from \$55 to \$100; and the family out-of-pocket maximum (including the deductible) for both medical and prescription costs has doubled, from \$1,000 to \$2,000.

When the parties negotiated the health insurance language in the labor agreements, it is reasonable to assume that they were aware of those out-of-pocket expenses and factored them into their negotiations regarding the total package of wages and benefits. Moreover, the Union participates in a Labor Management Committee (LMC) that reviews health insurance proposals, including plan design changes and premium rates, and makes recommendations regarding those proposals to the

County Board of Commissioners. As described above, the plans recommended by the LMC, with Union participation, have consistently included increases in co-pays and deductibles. It is axiomatic that premiums and out-of-pocket expenses are a “trade-off” in the design of health insurance plans – higher co-pays and deductibles generally mean lower premiums, and vice versa. In this case, while the premium rates have also gone up, the rate of increase has been held in check to reflect the rising co-pay and deductible rates. The significance is that, while co-pays and deductibles are paid entirely by employees, the increases in premiums are incurred primarily by the County, as required under the labor agreements; in other words, for any health insurance plan under which the rate of increase in premiums is slowed by an increase in employees’ out-of-pocket expenses, the County benefits disproportionately. This is the course of dealing between the parties and the backdrop for this dispute.

6. The County’s unilateral action in apportioning the 2014 decrease in family health insurance premiums is inconsistent with this course of dealing. Having benefitted disproportionately from a slower increase in the premium rates resulting from increases in the employees’ co-pay and deductible costs, the County now claims the right to take the lion’s share of the unexpected decrease in the premium rate. Applying the “bargaining model” to fill the gap in the labor agreements, the Arbitrator should conclude that the Union never would have agreed to such a formulation.

It should also be noted that the HealthPartners plan design is unchanged for 2014, meaning that employees are responsible for the same co-pays and deductibles under the plan as they were in 2013. As such, when the County unilaterally reduced its own contributions to family health insurance to reflect 75% of the decrease in 2014, this necessarily resulted in shifting a greater proportion of overall health care costs onto the employees. This is contrary to the general

framework of the labor agreements and the expectations of the parties, as described above, and not something the Union would have agreed to had the parties foreseen a decrease in health insurance premiums during contract negotiations.

7. The Arbitrator should also consider the discrepancies between the health insurance and dental insurance provisions in the labor agreements. Regarding dental insurance, the contracts require that for both 2013 and 2014, “[t]he County and the employee will split the increase or decrease in premium for single and family coverage 50/50.” The parties could have negotiated a similar formula to apply to health insurance premiums, but, significantly, did not – presumably because the possibility of a decrease in premiums was foreseeable for dental insurance but not for health insurance. This falls under the doctrine of *expressio unius est exclusio alterius* (“the expression of one thing is the exclusion of another”): the fact that the parties agreed on a rule for the apportionment of a decrease in dental insurance premiums implies that there was no such agreement with respect to a decrease in health insurance premiums.

8. The County argues that it may apportion the decrease in health insurance premiums as it sees fit under the employer rights provisions of the labor agreements, and/or under the reserved rights doctrine – that is, because the labor agreements are silent on the issue, and management retains all rights not limited by contract. This argument should be rejected, first of all, because it disregards the Arbitrator’s appropriate and widely accepted role as a gap-filler. Furthermore, because health insurance contributions are a mandatory subject of collective bargaining, the reserved rights doctrine does not permit the County to assert unilateral control over changes to those contributions, even in a situation that was not foreseen by the parties during contract negotiations.

9. Finally, the County questions the validity of these grievances because none of the other

bargaining groups affected by the decrease in family health insurance premiums, including one represented by Law Enforcement Labor Services, have filed grievances. There is no support in the law for this argument. Firstly, there is no evidence in the record to establish that any of the non-LELS bargaining groups were even aware of the County's apportionment of the decrease in health insurance premiums. Secondly, a bargaining group's decision on whether or not to file a grievance is based on a range of factors, including the bargaining history and the wage and benefit package specific to that group; the decision not to file a grievance cannot reasonably be seen as an acceptance of the employer's conduct or an acknowledgment that that conduct complies with the labor agreement. Further, even though all of the County's labor agreements contain the same provisions regarding health insurance, the fact that County employees belong to 23 separate bargaining groups demonstrates that these employees have a wide range of interests and wage and benefit considerations, all of which factor into each group's decision on whether to file a grievance.

#### POSITION OF THE EMPLOYER

The Employer's arguments in defense of its actions are summarized below.

1. The collective bargaining agreements do not require the Employer to contribute a specific dollar amount to the employees' health insurance premiums. The parties have negotiated agreements that are of three years duration. Each year of the agreements provides different contributions for single and family health insurance coverage. No specific dollar contribution (from the Employer) can be found in any of the agreements. Instead of a specific dollar contribution from the Employer, the negotiated agreements specify the employees' contribution for single coverage (to \$55.00 per month) and divide the cost of any increase in family coverage costs. The negotiated

agreements specify that the Employer will pay seventy-five percent of the increase to the family premium in 2014. The agreements are silent with respect to how any family health insurance premium decreases are handled.

If the parties intended that the Employer should contribute the same (or any) specific dollar amount for family coverage in 2014, they would have negotiated it. They did not. If the parties intended that there should be a specific division of family health insurance premium decreases, they would have negotiated it. They did not. The parties chose to leave the contracts silent with regard to the actual dollar amount expended by the Employer for family health insurance premiums. The parties also chose to leave the contract silent regarding the division of health insurance premium decreases.

2. While the contracts are silent with respect to health insurance premium decreases, they are not silent with respect to dental premium decreases. For 2013 and 2014, the parties agreed that they would "...split the increase or decrease in premium for single and family 50/50." Clearly, the parties recognized that insurance premiums could rise or fall; they bargained specific terms to address how these changes would be handled. The agreements do not specify how health insurance premium decreases are divided. If the contracts required the Employer to pay additional wages to employees when health insurance premiums decrease, the contracts would say so. They do not. The negotiated agreements leave the Employer free to determine how family health insurance premium decreases are split, if they are split at all.

3. Because the contracts are silent, the Employer is free to determine the split of any health insurance premium decrease; it did not violate the contracts. The instant grievances ignore the clear language of the agreements: unlike dental insurance premiums, the Employer was left free to

determine how health insurance premium decreases would be divided, if at all.

4. The instant grievances do not seek to remedy a contract violation; they seek to change the provisions of the insurance articles. The grievances are asking the Arbitrator to add to the contracts and impose upon the Employer specific dollar expenditures for health insurance premiums. No such obligation exists in the collective bargaining agreements. The grievances seek two outcomes that are not supported by the terms of the negotiated agreements: to strip the Employer of its right to determine how health insurance premium decreases are divided and to create an additional wage obligation. Such changes to wages and insurance contributions should be negotiated, not imposed through arbitration.

5. The compensation provisions in the collective bargaining agreements are clear and unambiguous. There is nothing in any provision of the agreements that requires the employer to increase wages by any specific amount, in response to a decrease in health insurance premium costs. The Employer's contribution to health insurance premium increases is a negotiated term and condition of employment, similar to the Employer's contribution to the clothing allowance. There are provisions in the LELS contracts that are unique and some require the Employer to contribute specific dollar amounts for various benefits. Consider for example, the various LELS clothing allowances. The negotiated Employer contribution to the clothing allowance for Deputy Sheriffs is eight hundred dollars (\$800) for 2014. That contribution does not change with the cost of uniforms. If the cost of uniforms rises or falls, the Employer contribution remains the same, because that is the parties' agreement. This is not the case with family insurance premiums. There is no specified amount the Employer is required to contribute for family health insurance premiums. Unlike the clothing allowance, the parties have not agreed to a specific contribution amount. The Union's

assertion, that any decrease in family health insurance premiums must be paid to employees as wages, has no basis in the language of the contracts.

6. The cost of family health insurance premiums is not a negotiated term and condition of employment. The Employer purchases employee insurance coverage from Health Partners. Through the collective bargaining process, the Employer has agreed to offer insurance coverage to qualified employees and their dependents. If employees choose to have insurance coverage, the Employer has agreed to pay a portion of the cost of that coverage. For single employees, the Employer has agreed to pay the entire cost of the 2014 premium, minus the \$55.00 per month employee contribution. For family coverage, the Employer has agreed to pay seventy-five percent of the increase to family premiums in 2014. That is the clear and unambiguous agreement. When contract language is clear and unambiguous, arbitrators will apply its plain meaning and will not look outside the four corners of the document to ascertain the intentions of the parties.

The employees have suffered no loss as a result of the Employer's actions; thus, there is nothing to remedy. Employees covered by the LELS contracts received the same family health insurance benefits in 2014, the only change was a decline in Employer and employee premium costs. The percentage of family premium costs paid by the Employer is identical in 2013 and 2014. In 2013, the Employer paid 74.6% of the family premium cost and employees paid 25.4%. In 2014, the total premium for family coverage is \$1750.82; the Employer paid 74.6% of the family premium (\$1305.58) and employees paid \$445.24 which is 25.4% of the family premium costs. Surely, these reductions in premium costs cannot be seen as a loss that must be remedied with additional wage increases. Employees paid the same percentage of the premium and had lower premium costs.

There was not a reduction in any employee benefits.

7. The management rights provisions of the contracts allow the Employer to determine how insurance premium decreases are divided. These provisions specify that "Any terms and conditions of employment not specifically established or modified by this Agreement shall remain solely within the discretion of the Employer to modify, establish or eliminate." Clearly, the parties have agreed: the Employer retained its right to act, except as specifically limited by the contracts. The parties did not negotiate any limitations or obligations regarding the Employer's ability to divide the savings from health insurance premium decreases. That is left solely to the Employer's discretion.

8. The Employer has behaved reasonably and responsibly; it exercised its retained discretion fairly and consistently and treated all bargaining units equally. There is no language in any of the contracts to differentiate these three LELS units from the others and there is no reason to grant these units special compensation. There is no contract violation and there should be no remedy.

9. The Unions have waived their ability to seek additional wages or other compensation, for the duration of the contracts. The collective bargaining agreements do not contain any provisions that permit or require reopening of negotiations over insurance benefits or wages. Rather, each contract contains a "zipper clause" stating explicitly that the contracts are complete and total agreements. Article 26 of the Deputy Sheriffs' contract and Article 27 of the Dispatchers' contract and Article 27 of the Emergency Communications Shift Supervisors' contract all specify that the parties:

"...for the life of this Agreement, each voluntarily and unqualifiedly waives the right, and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter referred to or covered in this Agreement, or with respect to any subject or matter not specifically referred to or covered in this Agreement, even though such subject or matter may not have been within the knowledge or contemplation of either or both of the parties at the time that they negotiated or signed this Agreement."

These complete agreement and waiver provisions could not be more clear or explicit. The parties voluntarily waived the right to any additional negotiations over the wage and insurance provisions of the agreements. The parties negotiated freely and in good faith and their voluntary agreements only specify how dental insurance premium decreases would be split. Because the parties did not negotiate any method for splitting the health insurance premium decrease, the Employer retained the right to determine how it is divided, if at all. The parties explicitly waived the right to revisit this issue during the term of the contracts.

10. The Arbitrator is constrained by the clear language of Article 7 of the agreements from adding to the terms and conditions of this Agreement. Despite this clear language, the Unions are asking the Arbitrator to add contract provisions and mandate a specific division of the health insurance premium decrease. This remedy is outside the Arbitrator's authority. If the Unions desire a contract provision that mandates a specific split of health insurance premium decreases, they should obtain it at the negotiating table, not through arbitration. The Employer's actions were reasonable.

11. The contract did not require the Employer to split savings from the health insurance premium decrease at all. Unlike dental insurance costs, the Employer could have retained all of the savings. It did not. Ramsey County exercised its retained discretion, and was more generous than the contracts required: it applied the same formula to a premium decrease that the parties agreed to use for premium increases. This is a fair and reasonable response to an unforeseen event; it is certainly not a contract violation.

12. All other unions that represent Ramsey County employees have demonstrated that they agree: Ramsey County acted reasonably and within its retained discretion to divide the insurance

premium cost decreases. The insurance provisions at issue are identical in all twenty-three of the voluntary collective bargaining agreements that cover Ramsey County employees. No other unions grieved this event. Contracts that are negotiated with the same employer and contain identical provisions must be interpreted consistently. The Employer has done so in the instant cases; all employees in all bargaining units were treated the same. There is no evidence that these three LELS contracts can or should be interpreted differently from the other twenty collective bargaining agreements. There is no basis for the remedy sought by the Unions. The Unions' requested remedy would create chaos where the parties have clearly sought uniformity.

Granting the requested remedy will be harmful. If the requested remedy is granted, the members of the three affected bargaining units will be treated more favorably than any other County employees, despite the fact that they voluntarily negotiated the same contract language. There is no justification for such a result. Clearly, the parties have sought and achieved consistent treatment for all employees with respect to insurance benefits. That is why all Ramsey County contracts contain identical provisions. If the Unions prevail in their claims, the clarity and consistency of the contracts will be seriously undermined. Equality among employees will be destroyed. The Unions' requested remedy would be terribly disruptive; it would also be terribly unjust.

## DISCUSSION

### Filling the Gap

As noted above, the Union has argued that where a contract is silent on a matter which was clearly overlooked during bargaining, an Arbitrator can and should "fill the gap" using the "bargaining model" standard which is based on an estimation of what the parties would have

intended had they foreseen and considered the situation. Deferring for a moment a consideration of whether or not “gap filling” by the Arbitrator is appropriate or permitted in the instant case, it is instructive to consider what criteria the Arbitrator could use in attempting to determine what the parties intended or would have agreed to had they considered the subject of a premium decrease.

There is little or no evidence to aid the Arbitrator in this task. The sole time in the last 20 years when there was a premium decrease (1.5%) was in 1996 when the entire decrease was passed on to the employees. The Union concedes that this single 18 year old event is insufficient to constitute a binding past practice but nevertheless considers it to be “significant” in determining the intent of the parties. The Arbitrator does not agree. There is no evidence in the record concerning bargaining history in 1996 or what other economic factors prevailed then that entered into the Employer’s unilateral decision at that time to take the action it did. It would be a stretch to assume that the County intended to set any kind of precedent should the same situation arise in the future.

On the same point of how to determine the expectation of the parties, the Union correctly point out that there is a very real effect on premium levels by the provisions regarding co-pays and deductibles. This argument states that in 2014 the employees continued to carry 100% of co-pays and deductibles that did not decrease from 2013. Accordingly, by taking for itself 75% of the premium decrease, the County upset this bargained for balance and changed the overall burden of health care costs in its favor.

There appears to be economic truth in this argument. The problem is that agreeing with the Union’s premise does not assist the Arbitrator in determining how the parties might have agreed to solve the problem had they foreseen it and bargained about it. Nor does the fact that they explicitly

agreed on the same split of premium decreases from 2013 levels for dental insurance compel the conclusion that they would have bargained to the same result for a decrease in premiums for family health insurance. Many other factors and differences between the two types of insurance could account for or influence different outcomes on this issue.

Since the “bargaining model” standard cannot be applied since the Arbitrator has no good way of determining what the parties would have agreed to had they foreseen the issue, the application of a different standard must be considered. The following passage is instructive.

“ Under the *Restatement (Second) of Contracts* standard, when the parties ‘have not agreed with respect to a term which is essential to a determination of their rights and duties, a term which is reasonable in the circumstances is supplied by the courts’ that is, ‘a term which comports with community standards of fairness and policy....’ Most often, the standard will be ‘good faith’ or ‘reasonableness under the circumstances.’ ”

*Elkouri and Elkouri, How Arbitration Works (6<sup>th</sup> Edition) p. 442.*

For reasons stated below, the Arbitrator will not “fill the gap” by adding a contract provision compelling a 75%-25% split of family health insurance premium decreases. However, the Arbitrator does find that the Employer’s action was reasonable under the circumstances.

#### Arbitrator’s Authority

Putting aside the difficulties of “filling the gap” in this case, the issue arises as to whether or not engaging in such an exercise is appropriate or permitted and, if not, did the Employer violate the Contract by its unilateral decision on apportioning the premium decrease between itself and these Unions. Article 7.5 unambiguously prohibits an Arbitrator from, *inter alia*, adding a provision to this contract. The Arbitrator cannot ignore this clear limitation on his authority under the “filling the gap” doctrine or any other theory of contract interpretation.

## Management Rights

The Arbitrator agrees with the Employer's arguments that the "Employer Authority" provisions of the contracts permit the Employer to determine how insurance premium decreases are divided. These provisions specify, "Any terms and conditions of employment not specifically established or modified by this Agreement shall remain solely within the discretion of the Employer to modify, establish or eliminate." The parties did not negotiate any limitations or obligations regarding the Employer's ability to divide the savings from health insurance premium decreases. The Employer has behaved reasonably and responsibly; it exercised its retained discretion fairly and consistently and treated all bargaining units equally. There is no language in any of the contracts to differentiate these three LELS units from the others and there is no reason to grant these units special compensation. There is no contract violation and there should be no remedy.

In light of the Arbitrator's reasoning as stated above, there is no reason to discuss the parties other arguments.

### DECISION AND AWARD

For the above stated reasons the grievance is denied.

Respectfully Submitted

Stephen A. Bard, Arbitrator