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## Alert

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### Prescription Co-Payments under the State Health Benefits Plan: A Winnable Fight?

By: Donald B. Ross, Jr., Esq.  
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Anyone monitoring the current environment surrounding contract negotiations knows that almost every employer is raising the issue of employee contributions to the cost of health benefits. Public employers statewide are seeking contributions from unions to the cost of health benefits in any variety of forms, ranging from increased prescriptions co-payments to premium contributions. For those unions that participate in the State Health Benefits Program ("SHBP"), the danger of facing increased health care costs can come from two sources: the employer and the SBHP itself. In addition to changes in health benefits demanded by employers, the level of benefits provided by the SHBP can change based on unilateral changes in the plan. Such changes have occurred twice in recent years, with the most recent change including increases in prescription co-payments.

Our office was recently successful in prosecuting a grievance involving the level of prescription co-payments provided to one of our unions that participated in the SHBP. In the matter of *Hudson County and P.B.A. Local 109*, P.E.R.C. Docket No. AR-2007-673, P.B.A. Local 109, the collective bargaining unit for the Hudson County Corrections Officers, was seeking reimbursement for increased prescription co-payments implemented by the SHBP. Local 109's contract with the County contained language that specifically set prescription co-payments at \$1.00 for generic drugs and \$5.00 for non-generic drugs. On January 1, 2007, the SHBP implemented a prescription co-payment change that increased the generic co-payment from \$1.00 to \$3.00 and the non-generic co-payment from \$5.00 to \$10.00. As the new co-payments deviated from the express terms of Local 109's contract, a grievance was filed when members of Local 109 were charged the higher prescription co-payments.

After an arbitrator was appointed, a hearing was scheduled and the parties presented their respective cases. The County did not challenge that the increased prescription co-payments deviated from the terms of the contract. Instead, the County argued that as it participated in the SBHP, it was obligated to follow the changes in the co-payments that were mandated by the SHBP itself. Since these changes were mandated by the SHBP, the County asserted that the changes were driven by operation of law and provided a defense to the grievance.

On behalf of Local 109, we argued that the County was obligated to follow the contract language, which was clear and unambiguous. We also argued that participation in the SHBP's prescription coverage (*cont'd* ➔)

component was voluntary and optional or supplemental coverage. Consequently, we asserted that the SHBP's unilateral changes in prescription co-payments were not mandated by law since the County was free to opt out of the SHBP's prescription coverage and contract with another insurance provider at the levels under the contract.

In ruling in favor of Local 109, the arbitrator explained that the contract language could not have been clearer, and the parties had negotiated terms that absolutely intended to provide coverage with specific prescription co-payments designated. The implementation of the higher co-payments was found to be in direct violation of the contract language. The arbitrator dismissed the County's argument that law mandated the changes and emphasized that prescription coverage was a supplemental benefit, which was freely negotiable and was not subject to preemption by any statute.

Consequently, the arbitrator held that the County violated the terms of the contract and ordered it to reimburse any employees who were forced to pay the higher co-payments. The arbitrator further ordered that, if necessary, the County will have the burden of having its insurance carrier provide an accounting that will determine the exact amount of reimbursement to the members of Local 109. If the County wanted to avoid the process of reimbursing each officer, then the County has to obtain prescription coverage from another source that would comply with the contract language.

What this ruling illustrates is the importance of understanding the nature of benefits provided under the SHBP, those that are supplemental benefits and are negotiable, and those that are basic benefits, which are mandated by law. The ruling also illustrates the importance of negotiating specific contract language as opposed to merely identifying a health plan or insurance carrier and incorporating a plan by reference. If Local 109's contract had contained language simply stating that the County shall provide SBHP prescription coverage rather than stating the exact co-payment amounts, the outcome would have been different.

For those unions that participate in the SHBP and who are entering into negotiations, it is important to review the health benefits language

under the contract to gain an understanding of what benefits you currently have. To the extent possible, lock in the current level of all supplement benefits such as prescription co-payments by listing the exact co-payments for all types of prescriptions (generic, non-generic/brand name, and experimental). Doing so will protect you from unilateral changes in the SHBP, which are likely to occur in the future. Then if any change in these benefits occurs, contact legal counsel and immediately file a grievance. With such significant benefits under attack, it is important to be well educated and ready to move quickly to protect what benefits you have.

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*The information provided here is necessarily general and is not intended as legal advice or a substitute for legal advice. If you have any questions regarding this Alert, please contact D.B. Ross, Jr. (dross@lindabury.com) or Eric B. Levine (elevine@lindabury.com) of the Public Safety Law Group.*

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With more than 33 years in the practice of law **D.B. Ross, Jr.** has a national reputation as a labor relations expert and is a respected negotiator. He has developed a concentration in the critical areas of police labor relations and has negotiated hundreds of labor contracts. He can be contacted at [dross@lindabury.com](mailto:dross@lindabury.com)



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