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October 11, 2002

OFFICIAL OPINION 2002-5

Mr. Charles Johnson, III, CPA
State Examiner
State Board of Accounts
302 West Washington Street
4th Floor, Room E418
Indianapolis, Indiana 46204-2765

RE: Payment by Public Employers of Group Health Insurance Premiums

Dear Mr. Johnson:

This letter responds to your request for an advisory letter on the following questions:

May a public employer pay the full amount of group health insurance premiums for its employees under IND. CODE § 5-10-8-2.6 and IND. CODE § 5-10-8-3.1?

What is the application of these statutes in situations where a collective bargaining agreement exists?

It is our opinion that public employers may not pay the full amount of group health insurance premiums for their employees. IND. CODE § 5-10-8-2.6(c) clearly states that employers may pay “a part” of the cost of group insurance and this language has been interpreted by past Attorneys General to exclude the possibility of allowing employers to pay the full amount. Because it is not permissible to bargain for a term that is contrary to statute or public policy, the existence of a collective bargaining agreement allowing full payment by employers would not alter this conclusion. See *Ahuja v. Lynco Ltd. Medical Research*, 675 N.E.2d 704 (Ind. Ct. App. 1997); *Gary Teachers Union, Local No. 4 v. School City of Gary*, 165 Ind. App. 314, 332 N.E.2d 256 (1975).

ANALYSIS

I. Public Employers May Not Pay the Full Amount of Their Employees' Group Health Insurance Premiums

IND. CODE § 5-10-8-2.6 states that public employers may provide programs of group insurance for their employees and retired employees. The statute provides in pertinent part: "A public employer may pay *a part* of the cost of group insurance . . ." IND. CODE § 5-10-8-2.6(c) (emphasis added).

In interpreting the meaning of a statute, the primary goal is to discern the legislative intent behind it. *Woods v. State*, 703 N.E.2d 1115, 1117 (Ind. Ct. App. 1998). To determine the legislature's intent, courts will look to the plain language of the statute. *N. Miami Educ. Ass'n v. N. Miami Cmty. Schools*, 746 N.E.2d 380, 381 (Ind. Ct. App. 2001). If a statute has not been previously construed, its interpretation is controlled by the express language of the statute and by application of the general rules of statutory construction. *Woods*, 703 N.E.2d at 1117. One of the fundamental rules of statutory construction is that we look to the plain language of the statute and attribute the common, ordinary meaning to terms found in everyday speech. *Id.*

IND. CODE § 5-10-8-2.6 has not been previously construed by a court; therefore, we must look to its plain language. The fact that the legislature has expressly stated that public employers may pay "a part" of the cost of group insurance is controlling here. It would in no way be possible to construe the word "part" to mean "whole." It is helpful here to bear in mind the Latin phrase "expressio unius est exclusio alterius" which represents a canon of construction holding that the enumeration of certain things in a statute necessarily implies the exclusion of all others. *T.W. Thom Const., Inc. v. City of Jeffersonville*, 721 N.E.2d 319, 325 (Ind. Ct. App. 1999). Therefore, because the statute specifically states that employers may pay only a part of the cost of group insurance, it excludes the possibility of allowing them to pay the full amount. Presumably, if the legislature had intended to permit employers to pay the full amount, the statute would not have included the words "a part." It may be reasonably inferred by the deliberate use of those words that the legislature did not intend for employers to pay the full amount.

However, there is no limitation in the statute upon the proportionate share which the employers may pay. Therefore, past Attorney General opinions have stated that the employer may pay any amount *less* than the total cost of the insurance. 1978 IND. OP. ATT'Y GEN. No. 20 (citing 1957 IND. OP. ATT'Y GEN. No. 21). The determination as to what share of the cost the employer will pay is left to the local unit. 1957 IND. OP. ATT'Y GEN. No. 21. Thus, a public employer "may participate financially to any degree it desires, short of full payment for the cost of the insurance plan selected, so long as the employer has sufficient funds available for the payment of wages and salaries from which it can appropriate the money for the payment." *Id.*

Additionally, IND. CODE § 5-10-8-3.1 provides that a public employer who contracts for group insurance "may withhold or cause to be withheld from participating employees' salaries or wages whatever part of the cost of the plan the employees are required to pay." If this option is

exercised, the employer withholds from the employee's wages that portion which the employee is required to pay. The employer must then contribute the additional funds necessary to comprise the entire cost of the premium. 1978 IND. OP. ATT'Y GEN. No. 20.

II. Collective Bargaining Agreements

"Collective bargaining" normally refers to the negotiation process between an employer and a properly accredited agent of its employees concerning the wages, hours and working conditions of those employees. *City of Michigan City v. Fraternal Order of Police*, 505 N.E.2d 159, 160 (Ind. Ct. App. 1987). A collective bargaining agreement is the contract¹ resulting from those negotiations. *Id.* While there is a strong presumption of the validity of contracts, courts have refused to enforce contracts that contravene a statute or are otherwise contrary to the declared public policy of the state. *Ahuja v. Lynco Ltd. Medical Research*, 675 N.E.2d 704, 708 (Ind. Ct. App. 1997).

In *Gary Teachers Union, Local No. 4 v. School City of Gary*, the Indiana Court of Appeals held that a provision in a collective bargaining agreement entered into between the teachers union and the school was void as contrary to law. 165 Ind. App. 314, 316, 332 N.E.2d 256, 258 (1975). The provision granted tenure to any teacher who had served under contract as a teacher in the School City of Gary for three (3) or more successive years and who at any time thereafter entered into a contract with the school for further service. *Id.* This conflicted with the Teacher Tenure Act passed by the General Assembly which provides that teachers who have served under contract as a teacher in a school city or school town corporation for five (5) or more successive years and then enter into a contract for further service with such corporation shall become "permanent" teachers with indefinite contracts to remain in force until the teacher reaches 66 years of age. *Id.* The court ruled that the Teacher Tenure Act controls and prohibits according tenure status to teachers before the statutory requirements are met. *Id.* at 320, 332 N.E.2d at 260.

The courts will not, therefore, uphold a term reached through collective bargaining that is contrary to statute or public policy. IND. CODE § 5-10-8-2.6(c) clearly states that public employers may only pay a part of the cost of group insurance; therefore, any term of a collective bargaining agreement providing for the payment of the entire cost by the employer would be void as contrary to statute.

CONCLUSION

The language of IND. CODE § 5-10-8-2.6 unambiguously states that public employers may pay *a part* of the cost of group health insurance premiums for their employees. Rules of statutory construction hold that an unambiguous statute must be held to mean what it plainly expresses. *N. Miami Educ. Ass'n*, 746 N.E.2d at 382. Therefore, because the statute provides that employers may only pay a part of the cost, this language cannot be expanded or construed to

¹ Although collective bargaining agreements are considered contracts relating to employment, "they do not necessarily create a 'contract of employment' within the strict meaning of the term." *Ritter v. Stanton*, 745 N.E.2d 828, 841 (Ind. Ct. App. 2001).

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allow employers to pay the full amount. The existence of a collective bargaining agreement allowing employers to pay the full amount would not alter this conclusion, as courts will not enforce contract terms that run contrary to statute or public policy. *Ahuja*, 675 N.E.2d at 707.

Sincerely,

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Deputy Attorney General

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