

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of

CITY OF MONONA

Requesting a Declaratory Ruling Pursuant to §§ 111.70(4)(b) and 227.41(2), Stats.,  
Involving a Dispute Between Said Petitioner and

FIRE FIGHTERS / EMT EMPLOYEES,  
INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS LOCAL 311

Case ID: 482.0004

Case Type: DR\_M

DECISION NO. 36748

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**Appearances:**

Thomas R. Crone, von Briesen & Roper, S.C., 10 East Doty Street, Suite 900, Madison, Wisconsin, appearing on behalf of the City of Monona.

Patrick Kilbane, Service Representative, IAFF Local 311, 28455 - 303rd Avenue, Holcombe, Wisconsin, appearing on behalf of the City and Fire Fighters/EMT Employees, International Association of Fire Fighters Local 311.

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECLARATORY RULING**

On September 16, 2016, the City of Monona filed a petition with the Wisconsin Employment Relations Commission, pursuant to §§ 111.70(4)(b) and 227.41(2), Stats., requesting a declaratory ruling as to whether a provision in an existing collective bargaining agreement between the City and Fire Fighters/EMT Employees, International Association of Fire Fighters Local 311, and a bargaining proposal from Local 311 are prohibited subjects of bargaining within the meaning of § 111.70(4)(mc)6, Stats.

The parties filed written argument and, on October 17, 2016, advised the Commission that the matter was ripe for action based on the pleadings and argument. On November 7, 2016, the Commission voted on the matters and concluded both matters are prohibited subjects of bargaining.

Having considered the matter and being fully advised in the premises, the Commission makes and issues the following

**FINDINGS OF FACT**

1. The City of Monona is a municipal employer.
2. Fire Fighters/EMT Employees, International Association of Fire Fighters, Local 311 is a labor organization that serves as the collective bargaining representative of certain public safety employees of the City.
3. The 2015-2016 collective bargaining agreement between the City and Local 311 contains the following provision:

Employees may elect to not receive group hospital, surgical and major medical insurance if he or she is eligible for such benefits elsewhere.

If an employee elects to not receive such benefits, he or she will receive a monthly contribution to a deferred compensation account established by the City in his or her name. Such contribution shall be a monthly payment equal to the employer's share of the single insurance premium which would otherwise be paid on behalf of the employee. Re-enrollment of employees or their dependents is subject to health insurance carrier or health administrator restrictions and regulations that may be in effect from time to time.

4. During collective bargaining with the City, Local 311 made the following proposal:

- A. Employees may elect to not receive group hospital, surgical and major medical insurance if he or she is eligible for such benefits elsewhere.

If an employee elects to not receive such benefits, he or she will receive a monthly contribution to a deferred compensation account established by the City in his or her name. Such contribution shall be a monthly payment equal to the employer's share of the single insurance premium which would otherwise be paid on behalf of the employee. Re-enrollment of employees or their dependents is subject to health insurance carrier or health administrator restrictions and regulations that may be in effect from time to time.

- B. Employee health insurance opt out be reduced from 90% of the single plan to \$250 per month.

Based on the above and foregoing Findings of Fact, the Commission makes and issues the following

**CONCLUSIONS OF LAW**

1. The contractual provision quoted in Finding of Fact 3 is a cost and payment associated with a health care coverage plan, impacts the design and selection of a health care coverage plan, and is an impact of such costs/payments and design/selection on wages.

2. The proposal quoted in Finding of Fact 4 is a cost and payment associated with a health coverage plan, impacts the design and selection of a health care coverage plan, and is an impact of such costs/payments and design/selection on wages.

Based on the above and forgoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following

**DECLARATORY RULING**

1. The contractual provision quoted in Finding of Fact 3 is a prohibited subject of bargaining within the meaning of § 111.70(4)(mc)6, Stats.

2. The proposal quoted in Finding of Fact 4 is a prohibited subject of bargaining within the meaning of § 111.70(4)(mc)6, Stats.

Signed at the City of Madison, Wisconsin, this 16th day of November 2016.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James R. Scott, Chairman

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Rodney G. Pasch, Commissioner

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James J. Daley, Commissioner

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND DECLARATORY RULING**

Pursuant to § 111.70(4)(b), Stats., we are obligated to resolve disputes over whether there is a duty to bargain a particular subject by way of declaratory ruling. Permissive subjects of bargaining are those which are “primarily related to management and direction of the governmental entity and over which the employer may but need not bargain” and prohibited subjects are “those that would violate the law.” *Dunn County v. WERC*, 2006 WI App. 120, ¶8, 293 Wis.2d 637, 718 N.W.2d 138.

Section 111.70(4)(mc), Stats., prohibits collective bargaining between the City and Local 311 over the following subject:

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.

The City asserts that a provision in an existing collective bargaining agreement and the Local 311 bargaining proposal are not “employee premium contribution[s]” but are “costs and payments associated with health care coverage plans.” The City further contends that the provision and proposal conflict with the City’s right to determine the design of a “health care coverage plan” because a plan selected might require that all employees participate to avoid adverse selection.

The Union counters that payments specified in the contractual provision and the bargaining proposal are “wages” and are not prohibited subjects of bargaining.

Some background is important to understanding the issue in this case. In the wake of Act 10, which effectively eliminated bargaining over health insurance issues for most public employees, the ability to bargain health insurance issues in public safety units was limited by 2011 Act 32. Act 32 provided that municipal employers were prohibited from bargaining:

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.

Following that legislative change, the labor organization in *WPPA v. WERC*, 2013 WI App. 145, 352 Wis.2d 218, 841 N.W.2d 839, proposed to the employer language that acknowledged the employer’s right to choose a carrier and a plan design but required that, if the plan

included a deductible, the employee payment would be capped at \$250/\$500. A majority of the Commission determined that the proposal was prohibited by the language quoted above. The Court of Appeals felt otherwise and reversed our decision. Pivotal to the Court of Appeals' decision was its view that "plan design" encompassed the decision to include a deductible in a plan but not the decision of who was going to pay the deductible. Following that decision, the Legislature adopted language which had the effect of "overruling" the Court of Appeals' decision in *WPPA, supra*.

Section 111.70(4)(mc)6, Stats., now prohibits public safety employee bargaining over the following three subjects/categories:

1. All costs and payments associated with health care coverage plans.
2. The design and selection of health care coverage plans.
3. The impact of costs/payments and design/selection on wages ... .

Incentive payments to bargaining unit members who choose not to be covered by a health insurance plan operated by their employer are clearly prohibited subjects of bargaining under the statutory provision referenced above. As a practical matter, such payment would be barred under all three of the subcategories. First, such payments are literally "payments associated with health care coverage plans ...." Second, such payments infringe on the design and selection of health care coverage plans because they presume the existence of a plan and that any such plan allows non-selection opt out by employees. Third, such payments clearly impact on wages. Therefore, while Local 311 is correct that opt out payments were once mandatory subjects of bargaining, the Legislature has decided that bargaining is now prohibited due to the payments' relationship to health care coverage plans.

Signed at the City of Madison, Wisconsin, this 16th day of November 2016.

## **WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James R. Scott, Chairman

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Rodney G. Pasch, Commissioner

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James J. Daley, Commissioner