

BEFORE THE ARBITRATOR

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In the Matter of a Dispute Between

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS LOCAL 311

and

CITY OF MONONA

Case ID: 482.0002

Case Type: MA

AWARD NO. 7928

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**Appearances:**

Patrick Kilbane, for Local 311.

William S. Cole, for the City.

**ARBITRATION AWARD**

The parties advised the Wisconsin Employment Relations Commission that they had selected me to serve as the arbitrator of an insurance opt-out grievance. A hearing was held in Monona, Wisconsin, on March 29, 2016. The proceedings were not recorded. The parties thereafter filed written argument, the last of which was received on May 23, 2016.

**ISSUE**

The parties agreed to the following statement of the issue to be resolved by this Award:

Did the City violate Article 29 Maintenance of Standards when it unilaterally reduced the monetary payments made to employees who elect to opt out of the health insurance benefit described in Article 18 Health and Welfare?

**DISCUSSION**

**Relevant Facts and Contractual Provisions**

The parties' 2015 - 2016 contract contains an Article 29 Maintenance of Standards clause stating in pertinent part:

The Employer agrees that all conditions of employment relating to wages, hours of work and general working conditions shall be maintained at not less than the highest minimum standards in effect at the time of the signing of this Agreement, and such conditions of employment shall be changed only where specific provisions for improvement are made elsewhere in this Agreement.

When the 2015 - 2016 contract was signed on December 1, 2014, the International Association of Fire Fighters Local 311 represented employees were receiving a monthly payment if they opted out of receiving a contractual insurance benefit. Unrepresented City employees were receiving the exact same benefit. Effective January 1, 2016, the City reduced the size of the benefit to the same extent for both unrepresented City employees and Local 311 represented employees.

Article 29 has been part of the parties' contracts since at least the 2006 - 2007 agreement. Attached as the last page to that 2006 - 2007 contract was a signed Memorandum of Understanding (MOU), dated June 19, 2008, which described an insurance opt-out agreement between the parties. The MOU did not contain any language specifying a duration. The same MOU was attached to the 2008 and 2009 - 2011 contracts and again signed by the parties but was undated.

The parties' 2012 - 2014 contract was signed on March 5, 2012. The parties did not sign a "new" MOU and no MOU was attached to the contract. During bargaining, no proposals were made regarding the MOU's continuation or termination. During the term of that contract, the insurance opt-out benefit did not change.

The parties 2015 - 2016 contract was signed on December 1, 2014. The parties did not sign a "new" MOU and no MOU was attached to the contract. During bargaining, no proposals were made regarding the MOU's continuation or termination. As noted earlier, effective January 1, 2016, the insurance opt-out benefit was reduced.

It is the parties' practice for Local 311 to prepare a draft contract for the City to review.

### Analysis

But for the potential impact of the MOU history summarized above, it would be clear that the Article 29 Maintenance of Standards clause in the 2015 - 2016 agreement obligated the City to maintain the opt-out benefit. Article 29 requires maintenance of "conditions of employment relating to wages ... in effect at the time of the signing of this agreement." As aptly described in the statement of the issue placed before me by the parties, the opt-out benefit is a "monetary payment made to employees" and thus, contrary to the City's argument, easily falls within the plain meaning of the broadly worded phrase "conditions of employment

relating to wages” as used in Article 29.<sup>1</sup> This “condition of employment relating to wages” was being received by eligible employees on December 1, 2014 (the date the 2015 - 2016 agreement was signed) and thus meets the Article 29 requirement of being “in effect at the time of the signing of this Agreement.”

The City takes issue with the foregoing analysis because it believes the scope of Article 29 is limited to “conditions of employment relating to wages” that are established elsewhere in the 2015 - 2016 contract and then argues there is no contractual reference to the opt-out benefit. However, consistent with my experience that maintenance of standards clauses are typically designed to protect wages and benefits that may not be contractually identified, there is no such “contract-only” limitation expressed in Article 29. Thus, this City argument has been rejected. However, the City’s arguments regarding the MOU history are not so easily discarded.

As noted earlier, the evidence establishes that there was a history of signing and attaching an insurance opt-out benefit MOU to the parties’ contracts. That history ended with the 2012 - 2014 contract. No new MOU was signed and no MOU was attached. That “no MOU” pattern repeated itself with the 2015 - 2016 agreement. Given that history, it can well be argued that the contractual obligation<sup>2</sup> of the City to provide the benefit ended with the signing of the 2012 - 2014 contract – even in the face of Article 29. This is particularly true where, as here, it was Local 311 that prepared the initial draft of the 2012 - 2014 and 2015 - 2016 agreements and provided them to the City for review. However, because the evidence also establishes that there was never any discussion at the bargaining table over the end of this benefit, and it continued to be provided at the pre-2012 - 2014 level until January 1, 2016, I conclude that there was no mutual intent to exclude this benefit from the scope of Article 29.

Given the foregoing, the City did violate Article 29 when it reduced the opt-out benefit. To remedy that violation, the City shall restore the opt-out benefit to the pre-January 1, 2016 level and make the affected employees whole.

Dated at Madison, Wisconsin, this 24th day of June 2016.

## **WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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Peter G. Davis, Arbitrator

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<sup>1</sup> Because (as discussed elsewhere in this Award) Article 29 protects both contractually identified and extra-contractual “conditions of employment relating to wages,” the Article 31 definition of “wages” cited by the City does not limit the scope of the definition of “wages” in Article 29.

<sup>2</sup> The benefit level did not change until January 1, 2016, but the City argues it was maintained prior to that as a matter of City policy applicable to all City employees.