

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

CITY OF RACINE

Requesting a Declaratory Ruling Pursuant to Wis. Stat. § 111.70(4)(b)
Involving a Dispute Between the Petitioner and

RACINE POLICE ASSOCIATION, WISCONSIN PROFESSIONAL POLICE ASSOCIATION

Case ID: 53.0031

Case Type: DR_M

DECISION NO. 39446-B

Appearances:

Joel Aziere, Hunter Cone and Mark L. Olson, Attorneys, Buelow Vetter Buikema Olson & Vliet, 20855 Watertown Road, Suite 200, Waukesha, Wisconsin, appearing on behalf of the City of Racine.

Roger W. Palek, Attorney, Wisconsin Professional Police Association, 660 John Nolen Drive, Suite 300, Madison, Wisconsin, appearing on behalf of the Racine Police Association, Wisconsin Professional Police Association.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECLARATORY RULING

This litigation returns to the Wisconsin Employment Relations Commission following a remand from the Dane County Circuit Court (22CV1674) and the creation of an amended version of Wis. Stats. § 111.70(4)(mc) 6. The parties provided the Commission with written argument until April 2, 2025.

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 Racine, herein the City, is a municipal employer.

2. The Racine Police Association, Wisconsin Professional Police Association, herein the Association, is a labor organization that serves as the collective bargaining representative of certain public safety employees of the City.

3. A dispute continues to exist between the City and the Association as to whether the underlined portions of the following proposals are mandatory or prohibited subjects of bargaining:

1. Medical Coverage: Full-time employee shall be eligible for Employer health insurance following acceptance into the plan. In accordance with the first sentence of this paragraph, every member of the unit shall be provided during the life of this contract with medical and hospitalization insurance under the self-funded City of Racine Health Insurance Plan beginning with the first day of the month following employment.
2. The Employer shall define a notional health insurance premium.
3. Plan specification booklets of the health insurance program will be provided to all eligible employees upon request from the Human Resources Department; a Summary Plan Description will be on-line in the Human Resources Department page on CORI.
4. All employees who retired after January 1, 1996 shall be subject to placement within the insurance program established for active bargaining unit employees.
5. The Employer will continue to pay Medicare B and provide City health insurance and retirees will be required to enroll in Medicare B. Employees hired on, or after, 1/1/10 will not be eligible for Medicare B payments by the Employer. Employees hired on, or after, 1/1/10 will not be allowed to remain in the City of Racine's health insurance plan upon reaching the age of Medicare eligibility or federal retirement age, whichever occurs later.
6. Retired and Disabled Employees: All employees who retire on or after January 1, 2001 shall be subject to placement within the insurance program established for active bargaining unit employees.
7. Medical-Hospital Insurance for Retired Employees: The City shall pay the premiums on surgical, hospital and major medical insurance for any police officer who is forced to retire by virtue of duty incurred injury or disease and for any police officer who retires at age fifty -two (52) and effective January 1, 1999, age fifty (50) or over with twenty (20) years or more of continuous service immediately preceding retirement. In addition, in the event of duty incurred death, or death of the retiree, the City shall pay the premiums on surgical, hospital, and major medical insurance for the surviving spouse and dependent

family members of the deceased officer until such time as the surviving spouse remarries.

Medical-Hospital Insurance for Disabled Employees: Those police officers retiring because of disability and having (11) or more years of continuous service with the City immediately preceding such retirement shall have the privilege of continuing under the City's regular *medical hospital* insurance plan on condition, however, that they pay the full cost of such insurance coverage. The City shall pay the premiums on *surgical, hospital and major medical* insurance for the employee, spouse and/or dependent survivors of any employee who dies or becomes disabled by virtue of a non-duty related injury or disease, provided that the employee has at least fifteen (15) years of continuous service with the Department. This privilege shall terminate upon the remarriage of the spouse and/or upon the dependent survivors reaching the age of twenty-five (25) years.

8. Retired and Disabled Employees: Employees retiring on January 1, 2006 through December 31, 2006 will be required to contribute 5% of the monthly premium for the coverage selected by the employee, to a maximum monthly amount of \$30 for single coverage and \$60 for family coverage. Any employee retiring on January 1, 2007, through December 31, 2009 will be required to contribute 5% of the monthly premium for coverage selected by the employee, to a maximum of monthly amount of \$40 for the single coverage and \$70 for family coverage. However, any employee retiring on or after 1/1/10 shall be required to pay the premium contribution for insurance in effect at the time of the employee's retirement.
9. Substitution of Insurance Coverage Provided by Other Employer: Any retired police officer covered under the provisions of Paragraph A or B of this section taking employment with any other employer providing *medical hospital* insurance coverage equivalent to the City's insurance plan shall be taken off the City's coverage while so employed, on condition, however, that such individual shall be immediately reinstated under the City's plan upon notice that his/her employment with such subsequent employer has been terminated.
10. Spouses and Dependent Survivors: Spouses and dependent survivors of employees not covered under the provisions of Section 3.a., above, may continue under the City's *medical and hospitalization* insurance program in accordance with the terms and conditions of that insurance plan provided that the spouse and/or dependent survivors pay the premium for said coverage. This privilege shall terminate upon the remarriage of the spouse and/or the dependent survivors reaching the age of twenty-five (25) years.

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11. Employees may establish a Flexible Spending Account with voluntary employee contributions to a maximum of \$2,550 per year and \$500 per year for dependent care.
12. The City and the Association agree to the creation of a Healthcare Reimbursement Account/WEBA with the details to be determined in a Memorandum of Agreement developed by the parties.

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

CONCLUSIONS OF LAW

1. The underlined and italicized portions of the proposals set forth above in the Findings of Fact are prohibited subjects of bargaining within the meaning of Wis. Stat. § 111.70(4)(mc) 6.
2. The underlined proposals set forth above in the Findings of Fact which are applicable to employees employed during and covered by the terms of a successor bargaining agreement between the City of Racine and the Racine Police Association, Wisconsin Professional Police Association, are mandatory subjects of bargaining within the meaning of Wis. Stat. § 111.70 (1)(a).
3. The underlined proposals set forth above in the Findings of Fact which are not applicable to employees employed during and covered by the terms of a successor bargaining agreement between the City of Racine and the Racine Police Association, Wisconsin Professional Police Association, are not mandatory subjects of bargaining within the meaning of Wis. Stat. § 111.70 (1)(a).

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

DECLARATORY RULING

1. The City of Racine is prohibited from bargaining with the Racine Police Association, Wisconsin Professional Police Association as to all of the disputed proposals referenced in Conclusion of Law 1.
2. The City of Racine is obligated to bargain with the Racine Police Association, Wisconsin Professional Police Association as to all of the disputed proposals referenced in Conclusion of Law 2.
3. The City of Racine has no obligation to bargain with the Racine Police Association, Wisconsin Professional Police Association as to all of the disputed proposals referenced in Conclusion of Law 3.

Issued at the City of Madison, Wisconsin, this 9th day of May, 2025.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

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

The Commission proceeds to determine the City's duty to bargain with the Association in the context of the newly created provisions of Wis. Stat. § 111.70(4)(mc) 6., which provide:

6. Except for whether or not to provide health care coverage and 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. For purposes of this subdivision, "design" does not include the decision as to who is covered by a health care coverage plan selected by the municipal employer.

Under this statutory language, it now seems clear that there is a duty to bargain over: (1) whether there will be health care coverage as a fringe benefit for current bargaining unit employees; (2) how much will current bargaining unit employees pay for any such coverage; and (3) whether any health care coverage plan will cover single employees and/or employees and their families. Therefore, the matters remaining in dispute between the parties focus primarily on whether the City must bargain with the Association over deferred compensation for current employees in the form of health care coverage and other health-related benefits to be received by the employees and/or their families if the employees retire or leave employment due to death or injury during the term of the agreement being bargained. While it appears the Association has conceded that it has no right to bargain for those former employees who have already retired, the Association has not amended some of the proposals to delete coverage of those former employees. Thus, from the Commission's perspective, there continues to be a need to address the former employee issue. The same is true as to certain language which remains in the Association's proposal even though the Association has conceded the language is prohibited by Wis. Stat. § 111.70(4)(mc) 6. because it specifies certain types of health care coverage.

As to the issue of deferred compensation, the Commission has long held that proposals specifying that current bargaining employees who retire during the term of the current contract¹ are eligible to receive deferred compensation in various forms after they retire are mandatory subject of bargaining primarily related to wages. *See City of Milwaukee*, Dec. No. 19091 (WERC, 10/81); *Green County*, Dec. No. 21144 (WERC, 11/83). Here, some of the disputed proposals provide such deferred compensation in the form of insurance benefits to employees and their families. It is the City's view that Wis. Stat. § 111.70(4)(mc) 6. (both in its original and current language) prohibits bargaining over deferred compensation in the form of health insurance benefits. In this regard, the City argues the use of the word "employee" in the statutory language demonstrates a legislative intent to not only exclude insurance bargaining for former employees

¹ Retirements that occur after a contract expires but before a successor agreement is created (i.e. during a contract hiatus) are also deferred compensation mandatory subjects of bargaining because the Employer is obligated to maintain mandatory subjects of bargaining for those employed during the hiatus.

but also bargaining over health insurance benefits current employees might seek to receive after they retire or leave employment due to death or injury. The Commission does not find that argument persuasive. So long as the deferred compensation proposal does not exceed the parameters of the three health insurance topics that the City concedes can be bargained as benefits current employees will receive during the term of the agreement (and any contract hiatus), the use of the word “employee” does not signify an end to deferred compensation for current employees. Rather it is no more than a word needed to signify that bargaining is limited to the health insurance benefits current Association represented employees can seek—both while employed and after retirement.²

The Commission turns to consideration of the specific proposals that remain in dispute.

1. Medical Coverage: Full-time employee shall be eligible for Employer health insurance following acceptance into the plan. In accordance with the first sentence of this paragraph, every member of the unit shall be provided during the life of this contract with *medical and hospitalization* insurance under the *self-funded* City of Racine Health Insurance Plan beginning with the first day of the month following employment.

The Association correctly concedes that the italicized portions of the proposal are prohibited subjects of bargaining with the meaning of Wis. Stats. 111.70(4)(mc) 6 as they intrude into the design of any health insurance plan and how it may be funded.

2. The Employer shall define a notional health insurance premium.

Meaningful bargaining over the employee premium contribution can only occur if the Association knows what the City has established as the total premium. Therefore, the direct linkage of this proposal to bargaining over employee premium contribution makes it a mandatory subject of bargaining within the scope of Wis. Stat. § 111.70(4)(mc)6.

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²The legislative history cited by the City also is not persuasive. Act 34 contained the following language.

- (1) Legislative intent statement. The legislature intends that the treatment of s. 111.70 (4) (mc) 6. by this act is to clarify the intent of 2011 Wisconsin Acts 10 and 32 and that this act is to be considered a restatement of current law.

In the Commission’s view, “current law” has always allowed mandatory bargaining over deferred compensation in the form of health insurance. Rejection of the amendment cited by the City does not override the Commission’s view of the “Legislative intent statement”. To the extent that the City relies on the Commission’s decision in *City of Milwaukee*, Dec. No. 35042 (WERC, 6/14) and *City of Monona*, Dec. No. 36748 (WERC, 11/16) as statements that “current law” does not include deferred compensation insurance proposals covering current employees, the City reads those decisions too broadly. Deferred compensation was not at issue in those decisions.

3. Plan specification booklets of the health insurance program will be provided to all eligible employees upon request from the Human Resources Department; a Summary Plan Description will be on-line in the Human Resources Department page on CORI.

The Commission concludes that the proposal is a mandatory subject of bargaining. The language does not intrude into the City's discretion to determine what health insurance benefits to provide and has a linkage to employee conditions of employment by advising employees what benefits the City has chosen to offer

4. All employees who retired after January 1, 1996 shall be subject to placement within the insurance program established for active bargaining unit employees.

This proposal creates a City obligation both as to employees who retire during the term of the contract the City and the Association will bargain and to those who retired under previous contracts. Consistent with the decision on the United States Supreme Court in *Pittsburg Plate Glass*, 404 U.S. 157 (1971), the Commission has long held that municipal employers have no duty to bargain over insurance benefits for employees who have already retired because those individuals are no longer bargaining unit employees. *See City of Milwaukee*, Dec. No. 19091 (WERC, 10/81); *Green County*, Dec. No. 21144 (WERC, 11/83). In those same pre-Sec. 111.70(4)(mc) 6. decisions, the Commission concluded that proposals providing insurance benefits for bargaining unit employees who retire during the term of a contract are mandatory subjects of bargaining as deferred wage compensation for their current employment.

Thus, the Commission concludes that the City continues to have no duty to bargain over the issue of insurance benefits available to those employees who retired under prior collective bargaining agreements. As to employees who may retire under the terms of the current agreement, the Commission concludes this proposal is a mandatory subject of bargaining primarily related to wages in the form of deferred compensation

5. The Employer will continue to pay Medicare B and provide City health insurance and retirees will be required to enroll in Medicare B. Employees hired on, or after, 1/1/10 will not be eligible for Medicare B payments by the Employer. Employees hired on, or after, 1/1/10 will not be allowed to remain in the City of Racine's health insurance plan upon reaching the age of Medicare eligibility or federal retirement age, whichever occurs later.

This contract proposal has several components. As to retirees hired prior to 1/1/2007, the City is obligated to provide City health insurance and pay Medicare B premiums. For retirees hired on or after 1/1/2007, they are entitled to continue to receive City health insurance at a specified premium level until the later of "Medicare eligibility or federal retirement age." To the extent this proposal addresses employees who retired during prior collective bargaining agreements, the Commission concludes it is not a mandatory subject of bargaining under long standing labor law precedent discussed earlier herein. To the extent the proposal covers current employees who may

retire during the term of the current collective bargaining agreement, the Commission concludes this proposal is a mandatory subject of bargaining primarily related to wages in the form of deferred compensation. Medicare B is not a “health care coverage plan” provided by the City and thus falls outside the scope of Wis. Stat. § 111.70(4)(mc) 6. The City argument to the contrary incorrectly assumes that Wis. Stat. § 111.70(4)(mc) 6., defines the only matters that can be bargained as opposed to establishing an exclusion from all the wage, hour and condition of employment matters that continue to be mandatory subjects of bargaining for public safety employee unions.

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6. Retired and Disabled Employees: All employees who retire on or after January 1, 2001 shall be subject to placement within the insurance program established for active bargaining unit employees.

Consistent with the analysis provided as to other proposals, to the extent this proposal addresses individuals who retired under prior collective bargaining agreements, it is not a mandatory subject of bargaining. To the extent the proposal covers current employees who may retire during the term of the current collective bargaining agreement, the Commission concludes this proposal is a mandatory subject of bargaining primarily related to wages in the form of deferred compensation.

7. Medical-Hospital Insurance for Retired Employees: The City shall pay the premiums on *surgical, hospital and major medical* insurance for any police officer who is forced to retire by virtue of duty incurred injury or disease and for any police officer who retires at age fifty -two (52) and effective January 1, 1999, age fifty (50) or over with twenty (20) years or more of continuous service immediately preceding retirement. In addition, in the event of duty incurred death, or death of the retiree, the City shall pay the premiums on *surgical, hospital, and major medical* insurance for the surviving spouse and dependent family members of the deceased officer until such time as the surviving spouse remarries.

*Medical-Hospital Insurance for Disabled Employees: Those police officers retiring because of disability and having (11) or more years of continuous service with the City immediately preceding such retirement shall have the privilege of continuing under the City’s regular *medical hospital* insurance plan on condition, however, that they pay the full cost of such insurance coverage. The City shall pay the premiums on *surgical, hospital and major medical* insurance for the employee, spouse and/or dependent survivors of any employee who dies or becomes disabled by virtue of a non-duty related injury or disease, provided that the employee has at least fifteen (15) years of continuous service with the Department. This privilege shall terminate upon the remarriage of the spouse and/or upon the dependent survivors reaching the age of twenty-five (25) years.*

As the Association likely concedes, the specification of “surgical, hospital, and major medical insurance” in these proposals is a prohibited subject of bargaining because it dictates the “design” of the insurance plan. The Commission concludes the proposal is otherwise a mandatory subject of bargaining primarily related to wages in the form of deferred compensation to the extent it obligates the City to make premium payments and provide health insurance coverage. To the extent the proposal covers employees who retired during the terms of prior collective bargaining agreement, the City has no duty to bargain under the long-standing labor relations precedent discussed earlier herein.

8. Retired and Disabled Employees: Employees retiring on January 1, 2006 through December 31, 2006 will be required to contribute 5% of the monthly premium for the coverage selected by the employee, to a maximum monthly amount of \$30 for single coverage and \$60 for family coverage. Any employee retiring on January 1, 2007, through December 31, 2009 will be required to contribute 5% of the monthly premium for coverage selected by the employee, to a maximum of monthly amount of \$40 for the single coverage and \$70 for family coverage. However, any employee retiring on or after 1/1/10 shall be required to pay the premium contribution for insurance in effect at the time of the employee's retirement.

To the extent this proposal addresses employees who retired under prior agreements, the Commission concludes it is not a mandatory subject of bargaining under long-standing labor law precedent discussed earlier herein. To the extent the proposal covers current employees who may retire during the term of the next bargained contract, the Commission finds it is a mandatory subject of bargaining providing deferred compensation.

9. Substitution of Insurance Coverage Provided by Other Employer: Any retired police officer covered under the provisions of Paragraph A or B of this section taking employment with any other employer providing *medical hospital* insurance coverage equivalent to the City's insurance plan shall be taken off the City's coverage while so employed, on condition, however, that such individual shall be immediately reinstated under the City's plan upon notice that his/her employment with such subsequent employer has been terminated.

To the extent this proposal addresses employees who retired under prior agreements, the Commission concludes it is not a mandatory subject of bargaining under long standing labor law precedent discussed earlier herein. To the extent the proposal covers current employees who may retire during the term of the next bargained contract, the Commission finds it is a mandatory subject of bargaining providing deferred compensation. However, the specific reference to “medical hospital insurance” is a prohibited subject of bargaining as it relates to the “design” of an insurance plan.

10. Spouses and Dependent Survivors: Spouses and dependent survivors of employees not covered under the provisions of Section 3.a., above, may continue under the City's *medical and hospitalization* insurance program in

accordance with the terms and conditions of that insurance plan provided that the spouse and/or dependent survivors pay the premium for said coverage. This privilege shall terminate upon the remarriage of the spouse and/or the dependent survivors reaching the age of twenty-five (25) years.

The Commission concludes that the proposal is deferred compensation for employees who retire during the term of the next collective bargaining agreement and thus is a mandatory subject of bargaining. However, the specific reference to “medical hospital insurance” are prohibited subjects of bargaining as they relate to the “design” of an insurance plan.

11. Employees may establish a Flexible Spending Account with voluntary employee contributions to a maximum of \$2,550 per year and \$500 per year for dependent care.

The purpose of this Flexible Spending Account (FSA) is limited to expenses for dependent care. Thus, it has no relationship to reimbursement for health care expenses and the Commission need not and does not make any analysis of a proposal that would have such a relationship. This FSA dependent care proposal is a mandatory subject of bargaining primarily related to wages.

12. The City and the Association agree to the creation of a Healthcare Reimbursement Account/VEBA with the details to be determined in a Memorandum of Agreement developed by the parties.

The Association’s argument as to this proposal makes assertions as to the VEBA it contends has been created by the parties pursuant to the proposal before the Commission. The City makes no comment on that assertion one way or the other. It is apparent that the content of the VEBA Memorandum might well have a significant impact on whether it is a mandatory or prohibited subject of bargaining. Because any VEBA created by the parties is not part of the record, the Commission makes no ruling. However, the Commission notes that if the content to the VEBA Agreement is as the Association asserts it to be, there would seem to be no impact on or relationship to health care plan design,

Issued at the City of Madison, Wisconsin, this 9th day of May 2025.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman