

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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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

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS,  
LOCAL 321, AFL-CIO

Case ID: 53.0030  
Case Type: DR\_M

DECISION NO. 39447-B

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**Appearances:**

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

Christopher McGillis, Attorney, MacGillis Wiemer, LLC, 11040 W. Bluemound Road, Suite 100, Wauwatosa, Wisconsin, appearing on behalf of the International Association of Firefighters, Local 321, AFL-CIO.

**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. International Association of Firefighters, Local 321, AFL-CIO, herein the Union, 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 Union as to whether the underlined portions of the following insurance-related proposals are mandatory or prohibited subjects of bargaining:

#### ARTICLE XIV-INSURANCE AND PEER FITNESS TRAINER PROGRAM

1. Medical Coverage: Full-time employees shall be eligible for City paid health insurance following acceptance into the plan by the carrier. The Employer shall define a notional health insurance premium. Employees shall be required to contribute 10% of the monthly notional premium as a premium share for Plan 06A or 5% of the monthly notional premium share for Plan 07A, as approved by the Racine Common Council. All employees who retired after January 1, 1996 shall be subject to placement within the insurance program established for active bargaining unit employees.

2. The Employer will continue to pay Medicare B and provide City health insurance and retiree will be required to enroll in Medicare B. Employees hired on, or after, 1/1/07 will not be eligible for Medicare B payments by the Employer. Employees hired on, or after, 1/1/07 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.

However, any employee retiring on or after 1/1/07 shall be required to pay the premium contribution for insurance in effect at the time of the employee's retirement.

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3. Continued Insurance: The City shall pay the premiums on surgical, hospital, and major medical insurance for any Firefighter who is forced to retire by virtue of duty incurred injury or disease, and for any Firefighter who retires at age fifty-two (52) or over with twenty (20) years or more of continuous service immediately preceding retirement. In the event that a Retired Firefighter who is entitled to insurance benefits under the provision of this Section 3 dies leaving dependent survivors, those survivors shall be entitled to health insurance under the provisions of this Section 3 until such time as single dependents exceed the age for dependent coverage under the terms of the City's health insurance policy or until the widow/widower of the deceased Firefighter shall remarry, obtain other health insurance coverage, or be covered under Medicare or Medicaid health insurance, whichever event first occurs.

4. The City shall pay the premiums on *surgical, hospital and major medical insurance* of the employee, widow/widower and/or dependent survivors of any Firefighter who dies or become disabled by virtue of a non-duty related injury or illness provided that the Firefighter has at least fifteen (15) years of continuous service with the Department. This privilege shall terminate upon the remarriage of the widow/widower and/or upon the dependent survivors reaching the age of twenty-five (25) years.

5. Widows and Dependents: Widows and dependent survivors of employees not covered under Section 3, above, may continue under the City's *medical and hospitalization* plan in accordance with the terms and conditions of that insurance plan provided that the widow and/or dependent survivors pay the premium for said coverage. This privilege shall terminate upon the remarriage of the widow and/or upon the dependent survivors reaching the age of twenty-five (25) years.

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

### **CONCLUSION OF LAW**

1. The italicized and underlined 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 proposals set forth above in the Findings of Fact which are underlined but not italicized and are applicable to employees employed during and covered by the terms of a successor bargaining agreement between the City of Racine and the International Association of Firefighters, Local 321, AFL-CIO, are mandatory subjects of bargaining within the meaning of Wis. Stat. § 111.70 (1)(a).

3. The proposals set forth above in the Findings of Fact which are underlined but not italicized and are not applicable to employees employed during and covered by the terms of a successor bargaining agreement between the City of Racine and the International Association of Firefighters, Local 321, AFL-CIO, 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 International Association of Firefighters, Local 321, AFL-CIO as to all of the disputed proposals referenced in Conclusion of Law 1.

2. The City of Racine is obligated to bargain with the International Association of Firefighters, Local 321, AFL-CIO 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 International Association of Firefighters, Local 321, AFL-CIO as to all of the disputed proposals referenced in Conclusion of Law 3.

Issued at the City of Madison, Wisconsin, this 25<sup>th</sup> day of April, 2025.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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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 Union 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 Union 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 Union has conceded that it has no right to bargain for those former employees who have already retired, the Union 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 Union's proposal even though the Union 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 contract<sup>1</sup> 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

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<sup>1</sup> 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 union represented employees can seek—both while employed and after retirement.<sup>2</sup>

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

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

Meaningful bargaining over the employee premium contribution can only occur if the Union 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.

All employees who retired after January 1, 1996, shall be subject to placemen [sic] 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 Union 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

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<sup>2</sup>The 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.

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.

2. The Employer will continue to pay Medicare B and provide City health insurance and retiree will be required to enroll in Medicare B. Employees hired on, or after, 1/1/07 will not be eligible for Medicare B payments by the Employer. Employees hired on, or after, 1/1/07 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. However, any employee retiring on or after 1/1/07 shall be required to pay the premium contribution for insurance in effect at the time of the employee's retirement.

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.

3. Continued Insurance: The City shall pay the premiums on surgical, hospital, and major medical insurance for any Firefighter who is forced to retire by virtue of duty incurred injury or disease, and for any Firefighter who retires at age fifty-two (52) or over with twenty (20) years or more of continuous service immediately preceding retirement. In the event that a retired Firefighter who is entitled to insurance benefits under the provision of this Section 3 dies leaving dependent survivors, those survivors shall be entitled to health insurance under the provisions of this Section 3 until such time as single dependents exceed the age for dependent coverage under the terms of the City's health insurance policy or until the widow/widower of the deceased Firefighter shall remarry, obtain other health

insurance coverage, or be covered under Medicare or Medicaid health insurance, whichever event first occurs.

4. The City shall pay the premiums on surgical, hospital and major medical insurance of the employee, widow/widower and/or dependent survivors of any Firefighter who dies or become disabled by virtue of a non-duty related injury or illness provided that the Firefighter has at least fifteen (15) years of continuous service with the Department. This privilege shall terminate upon the remarriage of the widow/widower and/or upon the dependent survivors reaching the age of twenty-five (25) years.

As the Union 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.

5. Widows and dependent survivors of employees not covered under Section 3, 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 widow and/or dependent survivors pay the premium for said coverage. This privilege shall terminate upon the remarriage of the widow and/or upon the dependent survivors reaching the age of twenty-five (25) years.

The Commission concludes the proposal’s coverage for “widows and dependent survivors” is a mandatory subject of bargaining primarily related to wages in the form of deferred compensation for employees who retire during the term of the current contract. To the extent the proposal covers employees who retired during the terms of prior collective bargaining agreements, the City has no duty to bargain under the long-standing labor relations precedent discussed earlier herein.

The proposal is a prohibited subject of bargaining to the extent it references “medical and hospitalization” coverage-matters that fall within the scope of “plan design.”

Issued at the City of Madison, Wisconsin, this 25<sup>th</sup> day of April, 2025.

## **WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman