STATE OF CONNECTICUT
LABOR DEPARTMENT

CONNECTICUT STATE BOARD OF LABOR RELATIONS

IN THE MATTER OF
CITY OF BRIDGEPORT

DECISION NO. 5231

-and-

MAY 12, 2022

NATIONAL ASSOCIATION OF GOVERNMENT
EMPLOYEES, LOCAL R1-200

Case No. MPP-34,465

A P P E A R A N C E S:

Attorney Christopher M. Hodgson
for the City

Attorney Richard M. Solazzo
for the Union

DECISION AND ORDER

On August 9, 2021, the National Association of Government Employees, Local R1-200 (the Union) filed a complaint with the Connecticut State Board of Labor Relations (the Labor Board), alleging that the City of Bridgeport (the City) violated the Municipal Employee Relations Act (MERA or the Act) by unilaterally changing an established practice of compensating employees for waiving certain City-provided health insurance benefits.

After the requisite preliminary steps had been taken, the matter came before the Labor Board for a formal hearing on January 26, 2022. The parties appeared, were represented by counsel and were given full opportunity to present evidence, examine, and cross-examine witnesses, and make argument. Both parties submitted post-hearing briefs on March 10, 2022. Based on the entire record before us, we make the following findings of fact and conclusions of law and we issue the following order.

FINDINGS OF FACT

1. The City is a municipal employer within the meaning of the Act.

2. The Union is an employee organization within the meaning of the Act and at all relevant times has been the exclusive bargaining agent for a bargaining unit (R1-200) of approximately 137 City employees.

3. At all relevant times since at least 1989, the City and the Union have been parties to a series of collective bargaining agreements, which provided bargaining unit members with health insurance coverage, including coverage for vision and dental care, and which contained provisions allowing for bargaining unit members to receive compensation in lieu of coverage.

4. The parties' collective bargaining agreement, dated July 1, 2018 through June 30, 2022, states, in relevant part:

ARTICLE 31 – INSURANCE

> **31.1** The City shall provide and pay for the Health Benefits for all employees and their enrolled eligible dependents as follows:
>
> A) "Medical Benefits" in accordance with the City of Bridgeport/Bridgeport Board of Education Medical Plan …
>
> B) Drug Prescription plan …
>
> C) The … CIGNA Dental Plan, or its equivalent ...
>
> D) The VSP Vision Plan, or its equivalent …
>
> ***
>
> **31.9** The City shall provide a payment of lieu [sic] of health benefits, for employees that waive such coverage [the Waiver Payment] …This payment will be in two (2) equal installments. [1]
>
> **31.10** The parties shall continue to work through the Labor Management Cooperative Committee [LMCC] on health care, which may modify but not substantially change the health benefits as provided herein.
>
> ***

(Ex. 3) (Footnote added).

[1] Substantially similar language has appeared in every collective bargaining agreement between the City and the Union since 1998. (Exs. 3, 7, 8, 9, 10, 11).

5. Since at least 1998, bargaining unit members were permitted to receive the Waiver Payment without opting out of dental or vision coverage. At all relevant times, the City utilized forms for electing the Waiver Payment which gave employees the option to check-off whether or not they wished to waive vision and/or dental coverage in addition to other coverage. (Exs. 12,13).

6. In 2019, Eric Amado became the City's director of labor relations/personnel. Sometime in the spring of 2021, Amado reviewed the collective bargaining agreement and concluded that the City had been misapplying Article 31.9 by allowing employees to receive the Waiver payment without opting-out of vision and dental coverage.

7. In a letter to Union president James Meszoros dated June 28, 2021, Amado stated, in relevant part:

> It has come to my attention that the City has erred in its administration of the health benefits buyout portion (Article 31.9) of the NAGE collective bargaining agreement. When an employee elects to accept the City's buyout option and waives health benefits coverage, they waive all health benefits listed in Article 31.1. We now realize that the City failed to discontinue the dental and vision portions of coverage for employees who elected this option. Now that we are aware of this error, it must be corrected. Soon we will be sending letters to each affected employee to notify them of the error, and any next steps that need to be taken.
>
> ***

(Ex. 14).

8. Amado did not meet with the LMCC before issuing his June 28, 2021 letter.

9. The total number of bargaining unit members who lost vision and dental coverage as a result of the June 28, 2021 change is unclear. However, approximately 7-8 bargaining unit members elected to continue that coverage under the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985.[2]

CONCLUSIONS OF LAW

1. A unilateral change in a condition of employment involving a mandatory subject of bargaining constitutes a refusal to bargain unless the employer proves an adequate defense.

[2] COBRA affords individuals the right in certain circumstances to continue group insurance plan participation upon payment of the applicable premium.

2. Compensation for waiving employer-issued health insurance coverage is a mandatory subject of collective bargaining.

3. A controlling provision in a collective bargaining agreement is an adequate defense to a claim of unlawful unilateral change provided it is a clear and unmistakable waiver of the statutory right to bargain.

4. The City violated the Act when it unilaterally required bargaining unit members to waive dental and vision coverage, in addition to other City-provided healthcare benefits, to receive the Waiver Payment.

DISCUSSION

The Union contends that the City violated Section 7-470(a)(4)[3] of the Act by eliminating an established practice of permitting bargaining unit members to elect the Waiver Payment without being required to opt out of City-provided dental and vision coverage and by not submitting the proposed change to the LMCC.

The City contends that any such practice resulted from a misapplication of Section 31.9 of the collective bargaining agreement. Specifically, the City argues that Section 31.9 requires bargaining unit members to waive all four of "the Health Benefits" in Section 31.1 and that those sections permitted the City to make the alleged change. Based on the entire record before us, we are not persuaded by the City's contract defense and find that the City violated the Act.

> An employer violates the Act when, absent a defense, it unilaterally changes an existing condition of employment that is a mandatory subject of bargaining. ***Shepaug Valley Regional School District***, … [Decision No. 4765 (2014)]; ***State of Connecticut, Judicial Branch***, Decision No. 4532 (2011); ***Norwalk Third Taxing District***, Decision No. 3695 (1999); ***Bloomfield Board of Education***, Decision No. 3150 (1993); ***City of Stamford***, Decision No. 2680 (1988). A condition of employment may be established by past practice where the complainant shows that the employment practice was "clearly enunciated and consistent, [that it] endured[d] over a reasonable length of time, and [that it was] an accepted practice by both parties." ([Emphasis and] internal quotation marks omitted). ***Board of Education of Region 16 v. State Board of Labor Relations***, 299 Conn. 63, 73 (quoting ***Honulik v. Greenwich***, 293 Conn. 698, 719 n. 33 (2009)). A prima facie

[3] Conn. Gen. Stat. § 7-470 states, in relevant part:

> (a) Municipal employers or their representatives or agents are prohibited from: … (4) refusing to bargain collectively in good faith with an employee organization which has been designated … as the exclusive representative of employees in an appropriate unit…
> …

> case of unlawful unilateral change requires proof that an employer unilaterally changed a past practice involving a mandatory subject. ***Shepaug Valley Regional School District***, supra. A defense sufficient to rebut such a case includes a showing that an employer's actions were de minimus or that the parties' collective bargaining agreement affords express or implied consent to the unilateral action at issue. ***Region 16 Board of Education v. State Board of Labor Relations***, supra, 299 Conn. at 74; ***City of New Haven***, Decision No. 4735 (2014).

Town of Ridgefield, Decision No. 5163 pp. 5-6 (2021) and cases cited therein.

The Union has established that on or about June 28, 2021, the City unilaterally changed a decades-long practice of paying employees a specified sum of money for waiving medical insurance coverage, without also having to waive vision and dental coverage.[4] Insurance provisions allowing employees to elect payment in lieu of health insurance coverage under the employer's plan is a mandatory subject of collective bargaining. ***City of New London***, Decision No. 4187 (2006).

Once the union has made out its prima facie case, the burden shifts to the employer to establish an adequate defense and we recognize a controlling provision of a collective bargaining agreement as one such defense. ***Town of Ridgefield***, Decision No. 5163 (2021). "In analyzing a contract defense we exercise our limited jurisdiction to interpret a contract where the employer's conduct constitutes a prima facie violation of the Act and the employer seeks to justify its conduct on the grounds that the contract permits the change." ***State of Connecticut, Department of Correction***, Decision No. 4589 p. 7 (2012) (Internal quotation marks and citations omitted), appeal dismissed, Superior Court, judicial district of New Britain, Docket No. CV-12-6015310-S (July 16, 2013); ***Town of Ridgefield***, supra; ***State of Connecticut***, Decision No. 4573 (2012); ***Woodbridge Board of Education***, Decision No. 4565 (2011); ***New Haven Parking Authority***, Decision No. 3523 (1997).

Established principles of contract law govern interpretation of collective bargaining agreements. ***Honulik v. Town of Greenwich***, supra, 293 Conn. at 710; ***Poole v. Waterbury***, 266 Conn. 68, 87-88 (2003). One such principle is that "a contract is to be given effect according to its terms where the language is clear and unambiguous..." ***Honulik v. Town of Greenwich***, supra. If the language is ambiguous,[5] however, "past practice of the parties is the most widely used standard to interpret ambiguous and unclear contract language." ***Town of Fairfield***, Decision No. 5129 p. 8 (2020) (quoting Elkouri & Elkouri, ***How Arbitration Works***, supra). The City contends that the term "the Health Benefits" in Section 31.1 unambiguously means the collective package of medical, prescription, dental, and vision plans listed therein. Therefore, the City argues, "payment in lieu of health benefits" in Section 31.9 can only be logically interpreted

[4] Amado testified that the practice existed for "a decade, at least, if not more" and benefits manager Monquencelo Miles testified that he was unaware of any time prior to June 28, 2021 that employees were required to opt out of dental and vision coverage to receive the Waiver Payment. Miles has been employed in City benefits administration positions since 1990.

[5] "If the language of the contract is susceptible to more than one reasonable interpretation, the contract is ambiguous." ***Cruz v. Visual Perceptions LLC***, 311 Conn. 93, 103 (2014).

as requiring bargaining unit members to opt out of all four plans to receive the Waiver Payment.[6] We disagree.

"In construing contracts we avoid reading individual provisions in isolation and assume every word the parties used is intended to have meaning." ***City of New Haven***, Decision No. 4893 p. 4 (2016); see also ***Shepaug Valley Regional School District***, supra (Footnotes and citations omitted). In Section 31.1, the word "the" before the term "Health Benefits" is a definite article functioning as an adjective. It is used before "nouns and noun phrases that denote particular specific persons or things." ***Webster's II New College Dictionary*** (1995). In our view, use of the definite article signals the parties' intent that the City provide medical, prescription, dental, and vision to all bargaining unit members and their enrolled dependents. (Ex. 3). However, Section 31.9 governs eligibility for the Waiver Payment and in that section the parties excluded the definite article from the phrase "*payment in lieu of health benefits*". We believe that the lack of the definite article in Section 31.9 supports the Union's construction that "health benefits" is in that instance merely common parlance for the individual plans rather than the collective package of benefits defined in Section 31.1. Lastly, in other sections of Article 31, the parties alternately use the phrase "*all* Health Benefits" to refer to the collective benefit package in Section 31.1.[7] That the parties chose not to do so in Section 31.9 further signals their intent that opting out of insurance benefits in exchange for the Waiver Payment is not an all or nothing proposition.

We believe that Article 31.9 is at best ambiguous with regard to the scope of the required waiver. "Absent clear conflict between the practice and the contract, ambiguities in the contract would be resolved so as to maintain consistency with the practice." ***State of Connecticut***, supra (rejecting contract defense where language is consistent with historical practice). As such, we resolve the ambiguities in Section 31.9 by interpreting its terms consistently with the parties' longstanding practice prior to Amado's June 28, 2021 letter to Meszoros. ***Local 884, AFSCME (Moore and Antinozzi)***, supra; ***State of Connecticut***, supra. Since the Union's construction is consistent with longstanding past practice, we disagree with the City's interpretation that an employee must opt out of all four healthcare benefits listed in Article 31.1 to receive the Waiver Payment.

The City compares this case with ***City of Hartford***, Decision No. 3792 (2000), in which we found that the employer had the right to unilaterally eliminate a practice of allowing sanitation workers to leave work early upon completion of their assigned route and revert to the work schedule embodied in the collective bargaining agreement. Id; see also ***Norwalk Third Taxing District***, supra (employer could discontinue practice of allowing personal use of district vehicle where contract reserved right to approve or disapprove such use); ***City of Danbury***, Decision No. 4000 (2004) (contract permitted city to add civil service commission as a step in job reclassification approval process). We think such reliance is misplaced since those cases turned on a finding that the relevant contract language permitted the change. As discussed above, that is not the case here. Cf. ***City of Norwich***, Decision No. 1239 (1974) (unilateral withdrawal of benefit not required by contract may constitute a violation where it is embedded in a

[6] City's brief, p. 13.

[7] In Section 31.6, for example, the parties explicitly stated that "*all* Health Benefits under Section 31.1" shall be provided to employees during a period of disciplinary suspension. (Ex. 3) (Emphasis added).

longstanding practice), reversed on other grounds, ***Norwich v. Norwich Firefighters***, 173 Conn. 210 (1977).

In its complaint, the Union also alleges that the City "failed to comply with its contractual obligation to 'work through the [LMCC].'" (Ex. 1). Although the Union argues that the City's conduct constituted a separate illegal refusal to bargain, we find that it rests on nothing more than a claim of simple breach of contract. As such, it falls outside of our "limited jurisdiction to interpret a contract…"[8] and we dismiss this claim. ***State of Connecticut Department of Correction***, supra; see also ***Hartford Board of Education***, Decision No. 1877 (1980).

Based on the entire record before us, we find that the Union has established a prima facie case of unilateral change in violation of the Act, and since the City has not rebutted the Union's case, we turn to the issue of remedy. We find that the traditional restoration of the *status quo ante* would best effectuate the policies of the Act and that the City should reimburse all affected bargaining unit members for out of pocket vision and dental care expenses, including the cost of continuing coverage under COBRA. Accordingly, we issue the following order.

ORDER

By virtue of and pursuant to the power vested in the Connecticut State Board of Labor Relations by the Municipal Employee Relations Act, it is hereby

ORDERED that the City of Bridgeport shall:

I. Cease and desist from refusing to bargain collectively with the Union over changes to the practice of permitting bargaining unit members to receive waiver compensation without being required to waive vision and/or dental coverage.

II. Take the following affirmative steps which the Board finds will effectuate the purposes of the Act:

A. Reinstate dental and/or vision coverage(s) to all affected bargaining unit members.

B. Reimburse those bargaining unit members who lost insurance coverage(s) for all out-of-pocket dental and/or vision care expenses that otherwise would have been covered under their former plan(s), retroactive to June 28, 2021. Such expenses

[8] In 1980, then chairman Fleming James, Jr. summarized the Labor Board's authority to interpret contracts as follows: "(1) where conduct constitutes a repudiation of the contract; (2) where conduct is motivated by a purpose forbidden by the act; [and] (3) where conduct constitutes a prima facie breach of statute apart from breach of contract and where the actor seeks unsuccessfully to justify the conduct as permitted by the contract." ***Hartford Board of Education***, Decision No. 1877 p. 3 (1980) (Emphasis omitted). In 2011, the Connecticut Supreme Court acknowledged that "the board of labor relations may … exercise jurisdiction over a breach of contract claim when it is interdependent with a claim over which the board of labor relations does have jurisdiction". ***Piteau v. Hartford Board of Educ***., 300 Conn. 667, 689 (2011).

shall include, but are not limited to, the cost of continuing such plan(s) under COBRA.

C. Post and leave posted for a period of sixty (60) consecutive days from the date of such posting, in a conspicuous place where the employees customarily assemble, a copy of this Decision and Order in its entirety; and

D. Notify the Connecticut State Board of Labor Relations at its office in the Labor Department, 38 Wolcott Hill Road, Wethersfield, Connecticut, within thirty (30) days of the receipt of this Decision and Order of the steps taken by the City of Bridgeport to comply therewith.

CONNECTICUT STATE BOARD OF LABOR RELATIONS

Barbara J. Collins
Barbara J. Collins
Board Member

Ellen Carter
Ellen Carter
Alternate Board Member

_____[9]
Scott R. Chadwick
Alternate Board Member

[9] Scott R. Chadwick did not participate in the deliberation of this case and resigned from the Labor Board before this decision issued.

CERTIFICATION

I hereby certify that a copy of the foregoing was mailed, postage prepaid, this 12th day of May, 2022 to the following:

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CONNECTICUT STATE BOARD OF LABOR RELATIONS