

In the Matter of the Arbitration

between)
)
International Association of Fire)
Fighters, Local 624)
("Union"))
-and-)
City of San Antonio, Texas)
 ("City"))

Contract interpretation
AAA Case No.: 01-14-0001-1563
Grievance No. FG14-001

Before: Maretta Comfort Toedt, Arbitrator, duly selected by the parties.

Appearances:

For the Union

Ricky J. Poole Attorney
Gerard Cortes Lieutenant, witness
Lupe Gonzalez Member Insurance Advocate, witness

For the City

Deborah Klein Assistant City Attorney
Charles Weir Assistant City Attorney
Jacqueline Shoh Outside Counsel
Patricia Atkins City of San Antonio Employee Benefits Administrator, witness
Erik Walsh Deputy City Manager, witness

AWARD

Summary

1. The City of San Antonio and the International Association of Fire Fighters (IAFF), Local 624, (the "Union") have a collective bargaining agreement (CBA) that encompasses a Master Contract Document (MCD) that contains the terms and conditions of the negotiated Employee Health Benefit Program.
2. On March 27, 2014,¹ the City sent a letter to certain employees requesting documentation to verify the eligibility of dependents listed on the employee's medical benefit plan. Christopher Steele, President of Local 624, filed a grievance on May 1, 2014 alleging various contractual violations.²

¹ Union Ex. 3, City Ex. 13 and 14

² Union Ex. 1, City Ex. 1

3. The City objects to the form of the grievance and contends that it did not violate the collective bargaining agreement or the Master Contract Document.
4. The City's objection to the form of the grievance is overruled. The Union itself is a proper grievant for this purpose. It would have been better had the grievance been styled with the Union as grievant, but having **Mr. Steele as the grievant** in his capacity as president of Local 624 substantially complies with any requirement of the CBA in this regard. In addition, I note that the Union is required to use a grievance form prepared by the City. Had the City wished to draft a grievance form that clearly distinguishes whether the grievance is filed on behalf of an individual or the Union, it could have done so.
5. The grievance is denied. The CBA implicitly but clearly gives the City the authority:
 - a. to verify dependent coverage for already covered dependents;
 - b. to terminate or discipline employees for failing to provide that information, subject to any applicable provisions of the CBA (e.g., Article 3, Section 1, Civil Service regulations); and
 - c. to terminate family medical benefits for firefighters who do not provide such verifications, subject to any applicable provisions of the CBA and/or MCD.

The hearing

6. I presided at a hearing in the above matter on June 4-5, 2015 at 111 Soledad Street, San Antonio, Texas.
7. The parties **stipulated that the issues** to be determined were:³
 - a. Whether the City has the right to verify dependent coverage for already covered dependents?
 - b. To the extent that the City has the ability to seek that information, whether the City has the ability to terminate or discipline employees for failing to provide that information?
 - c. Can the failure to provide the requested information result in termination of insurance coverage for the dependent of the employee?
8. The witnesses were sworn and sequestered during the hearing by agreement of the parties. Each party had full opportunity to make opening and closing statements, to examine and cross examine witnesses under oath, to offer exhibits, to raise objections on procedural rulings and otherwise to make known its positions and arguments on the issues involved in the grievance.

³ Vol. 1, Tr. p. 11-12

9. A court reporter was present and transcribed the proceedings; I received a copy of the transcript on July 1, 2015.
10. The parties agreed to submit post-hearing briefs, which I received on July 6, 2015.
11. Both parties stipulated that the grievance was properly before me for final and binding opinion and award.
12. The parties agreed that I would retain jurisdiction in the event there was a need for clarification or interpretation of the remedy.
13. In reaching the decision within, I carefully considered all arguments made and the entire record in the case.
14. This is a contract interpretation dispute; under the parties' stipulation above, the Union has the burden to establish by a preponderance of the evidence that a violation of the CBA occurred.
15. The weight of the evidence indicates as follows.

Factual Background

16. In 2010, the Fire Fighters had a "passive" enrollment during the open enrollment period (which generally occurred in the fall) for the City-provided health care plan.⁴ Passive enrollment meant that during the annual open enrollment period the Fire Fighter was not required to confirm or verify any dependent coverage for a dependent that had already been determined to be eligible for family medical benefits. If a Fire Fighter did nothing when he or she received the list of his/her covered dependents, then coverage would continue on those individuals. If a Fire Fighter had a change in family status (such as a divorce or a child aging out of the plan), the employee could indicate any changes and submit them to the Employee Benefits Office.
17. Active enrollment, which at that time applied to all City employees except for Fire Fighters represented by the Union, required the employee to verify or confirm during the open enrollment period that a dependent covered by the family medical plan, such as a spouse or child, remained a dependent.
18. In 2010, the City hired an outside consultant to audit the City's health care plan. The results of the audit indicated that documentation for dependent family members (e.g., birth certificates, marriage certificates) was missing from some of the employee's records.

⁴ Vol. 1, Tr. p. 58-59, 72-73, 105-106

19. Although the record before me does not reflect what correspondence was sent to employees in 2010, on October 10, 2010, the Union obtained a temporary injunction that ordered the City to cease and desist from conducting the health care audit for dependent coverage and to cease and desist from terminating any dependent coverage based upon the Fire Fighter's failure to provide the information required under the audit.⁵
20. On February 25, 2011 the parties entered into an Agreed Permanent Injunction to permanently enjoin the City from conducting the audit with regard only to those employees who are currently employed as Fire Fighters and to permanently enjoin the City from terminating any health care coverage for dependents of active Fire Fighters based on the Fire Fighters' failure to comply with the audit.⁶ The court stated that nothing in the Agreed Permanent Injunction would limit the City's ability to ascertain eligibility under circumstances to be discussed later in this award.
21. Later in 2012,⁷ in order to confirm or verify that dependents covered under the family medical plan remained eligible dependents, the City sent post cards to employees advising them that they must actively enroll during the open enrollment period from October 15 to November 14, 2012.⁸
22. In August 2012, the Union, through its president, Christopher Steele, protested the issuance of the post cards and the City's requirement that Fire Fighters actively enroll during the open enrollment period.⁹
23. The Union filed suit in district court alleging that the City unilaterally changed the terms of the parties' CBA regarding health-care benefits, claiming that the City's unilateral actions violated the City's duty to engage in good-faith collective bargaining. The City denied the Union's allegations and moved to abate the proceedings on the grounds that the Union's claim was subject to arbitration under the CBA and that the Union had failed to exhaust its administrative remedies under the CBA. The trial court denied the City's motion to abate.
24. On October 2, 2013, the Fourth Court of Appeals found that:¹⁰

⁵ Union Ex. 8

⁶ Union Ex. 10

⁷ The dates on this exhibit are difficult to read but it appears that the post card may have been sent on or before the fall 2012 open enrollment period. The post card also appears to indicate that the documentation is needed for the 2013 plan year.

⁸ City Ex. 5

⁹ City Ex. 8 and 9

¹⁰ *City of San Antonio v. Intl. Ass'n. of Fire Fighters, Local 624*, 2013 Tex.App. LEXIS 12277 (Tex.App.-San Antonio 2013, no pet.)

- a. The City's interlocutory appeal was the proper proceeding because the Union's claim was subject to the Federal Arbitration Act (FAA);
 - b. The Union's complaint involved the interpretation or application of the CBA and thus was within the scope of the CBA's arbitration agreement; and
 - c. The trial court's denial of the City's motion to abate was reversed and the underlying lawsuit was abated until the exhaustion of remedies provided for in the CBA was completed to finality.
25. On March 27, 2014, the City sent a letter to Fire Fighter Gerard Cortes requesting a birth certificate for Anthony Cortes, the son of Mr. Cortes.¹¹
26. On May 1, 2014, the Union filed the grievance at issue here.¹² The grievance alleged that the City violated Article 1, Recognition; Article 3, Section 1.C, Management Rights; Article 9, Maintenance of Standards; Article 25, Health Care Benefits; Article 37, Declaration of the Full and Final Scope of Agreement; Master Contract Document, Chapter 1, General Plan Coverage to Eligible Participants; as well as provisions of the Texas Local Government Code, §§174.023 and 174.105.

The form of the grievance

27. The City argues that the form of the grievance does not comply with the terms of the CBA. Specifically, the City contends that the grievance violates Article 30, Section 4(A)(2)(d) and (e). (Reproduced in Appendix A) The City contends that the aggrieved employee did not sign the grievance as required by subdivision (d) and that the grievance does not specify what standard, privilege or working condition was violated as required by subdivision (e).
28. The Union responds that Christopher Steele filed and signed the grievance acting as local Union president and that the grievance is a Union grievance, not an individual grievance. The requested remedy specifies that relief is sought for all employees. Therefore, no individual employee signature is required.
29. Article 30, Section 4(A)(2) spells out the elements needed in order to file a grievance with the Union Grievance Committee and provides that the Union or any employee covered by the CBA may file a grievance. The grievance must include the employee's signature, but I interpret the

¹¹ Union Ex. 3, City Ex. 13 and 14 (Although the exhibit in the record is addressed to Gerard Cortes, the City evidently sent similar letters addressed to individual Fire Fighters requesting the submission of documentation in order to verify eligibility of particular dependents.)

¹² Union Ex. 1; City Ex. 1

requirement for the employee's signature as applying to grievances where an employee, not the Union, is the grievant. As the grievance has been filed on behalf of the Union, the fact that the Union president and a Union representative signed the City's grievance form appears to comply with the requirements of Article 30.

30. As the CBA requires the Union to submit the grievance on a form provided by the City, the City, had it wished to do so, could have drafted a form that would have distinguished between a grievance filed by an individual grievant and one filed by the Union on behalf of all of its members.

31. The City also contends that the grievance is faulty because the Union **has not specifically identified what standard, privilege or working condition is alleged to have been violated as required by Article 30, Section 4(A)(2)(e).** The Union argues that the standard that the Union refers to is the City's practice of never having conducted audits of covered dependents in the past.¹³ The City responds that the fact that audits have not been conducted in the past is not a standard; the standard at issue is the provision of **free health care to eligible dependents.**

32. The maintenance of standards provision in the CBA is broadly written. While neither party has provided authority for the interpretation of a maintenance of standards clause, the clause itself provides its own interpretation. Maintenance of standards is defined in Article 9 as:

{A}ll standards, privileges and working conditions enjoyed by the City of San Antonio Fire Fighters at the effective date of this Agreement, which are not included in this Agreement, shall remain unchanged for the duration of this Agreement.

33. **"Freedom from audits"** does not fall within the parties' definition of a standard, privilege, or working condition. While the City may not have conducted audits for the purpose of verifying eligibility for dependent coverage in the past, this is not the same as a standard, privilege, or working condition. **I agree with the City on this point; the grievance does not properly identify a standard, privilege or working condition as contemplated under Article 9.**

¹³ In its grievance the Union specified that the "standard" that allegedly was unilaterally changed in violation of Article 9 was that "audits of covered dependents have never been conducted in the past, were specifically found to be outside the contract in 2010, were not negotiated in the last round of collective bargaining, have never formed the basis for disciplinary action, and have never formed the basis to terminate dependent coverage as a result of failure to provide documentary information." (Union Ex. 1)

The merits: Issue 1

Does the City have the right to verify coverage for already-covered dependents?

34. For the reasons discussed below, **the short answer to the stipulated issue is yes, the City does have the right to verify coverage for already-covered dependents.**

35. Article 25 of the CBA (reproduced in Appendix A) states in part, at sections 1 and 3, as follows (with emphasis added):

[§ 1-A] The City shall provide all active Fire Fighters **who are eligible** with family medical benefits The minimum benefits provided are those as stated in the Master Contract Document for the City of San Antonio ... which is attached and incorporated herein as Attachment II. Provisions and benefits specified in the Master Contract Document shall not be reduced during the life of this Agreement

[§ 3] Health care **benefits** for active Fire Fighters shall not be terminated, altered, modified, or reduced, during the term of the Agreement, except by amendments or successors to this Agreement.

36. The Master Contract Document states in part, at the page titled “Plan and Claims Administration,” as follows (with capitalization altered and emphasis added):

The Plan Administrator’s powers shall include, but shall not be limited to, the following:

- (a) To make and enforce **reasonable** rules and regulations **as the Plan Administrator deems necessary or proper** for the effective and efficient administration of the Plan Document;
- (b) **To interpret the contract** [*which I interpret to mean the Master Contract Document*], **including, but not limited to, all questions of coverage and eligibility. The Plan Administrator’s interpretations thereof in good faith shall be final and conclusive** on all persons claiming Benefits under the Plan Document, subject only to the Review and Appeal Process

37. It is undisputed that the “Plan Administrator” of the MCD is the Employee Benefits Administrator of the City of San Antonio.¹⁴
38. I note that the audit that the consultant conducted determined that the City did not have the proper supporting documentation to verify eligibility and coverage for the dependents of all employees. One of the listed powers of the Plan Administrator is to appoint consultants as may be required to assist in administering the plan.¹⁵ The audit did not determine that there had been any change in family status, only that documentation to support eligibility for coverage was there or not there. It is the City’s subsequent request for documentation as a result of the audit with which the Union takes issue.
39. **Provision of benefits versus eligibility and coverage issues:** The Union argues that pursuant to Article 25, Section 3 of the CBA, **the City is expressly prohibited from terminating, altering, modifying or reducing health care coverage.** (Union brief at 2) The Union misstates the language of Article 25, Section 3. That section states that health care *benefits* cannot be terminated, altered, modified or reduced during the term of the Agreement.
40. There is a difference between health care benefits on the one hand, and coverage and eligibility issues on the other. The City is not eliminating benefits; it is verifying or confirming eligibility. The MCD specifically states that interpreting the contract as to *all questions of coverage and eligibility* is a power of the Plan Administrator, i.e., the City’s Employee Benefits Administrator.¹⁶ As long as the individual remains eligible, the benefits remain as provided by the plan.
41. The provision of family medical benefits for active Fire Fighters, as required by Article 25 of the CBA, is dependent upon eligibility. The latter, i.e., coverage and eligibility issues, are to be determined by the Plan Administrator. While Article 25, Section 3 provides that the City will not terminate, alter, modify or reduce health care *benefits* during the term of the Agreement, it does not prohibit the City from determining eligibility and terminating coverage¹⁷ for individuals if they no longer meet the eligibility criteria for receiving those benefits.
42. **Specific versus general language:** The Union argues that the specific language of the CBA and MCD trumps the general and broad authority of the Plan Administrator to determine questions

¹⁴ MCD, page titled “General Information”

¹⁵ MCD, page titled “Plan and Claims Administration”

¹⁶ MCD, page titled “Plan and Claims Administration”

¹⁷ Termination of coverage, as discussed later in this award, would be subject to any other applicable terms of the CBA, MCD, laws, or regulations.

of eligibility and coverage.¹⁸ The Union points to the following provisions as specific language that limits the authority of the Plan Administrator (Union brief, at p. 7):

- a. Article 25, Section 3 in the CBA (discussed above);
- b. The provision in the MCD regarding when a Plan Administrator is entitled to request legal documentation (only during a request for coverage or a change in family status *as initiated by the employee*);¹⁹ and
- c. The provision in the MCD providing the limited circumstances that allow for termination of dependent coverage upon termination of the employee or on the date dependents cease to be eligible as defined in the Plan.²⁰

43. In essence, the Union interprets language in the MCD as allegedly meaning that whether and how the City learns of a change in family status (and whether a dependent remains eligible for coverage) is totally and exclusively up to the active Fire Fighter. The Union's interpretation also assumes that once a dependent has been determined to be eligible for coverage of health care benefits, the eligibility determination is permanent, which is certainly not the case. Dependent children finish school and/or age out of the plan and divorces or deaths occur. According to the Union, the only way that the CBA/MCD allows the Plan Administrator to become aware of these changes in family status is if the Fire Fighter decides to report the change.
44. There are a number of generally accepted contract rules of interpretation, one of which, as the Union has noted, is that specific language usually controls general language. But, there are other rules of contract interpretation, one being that all parts of a contract should be construed together. If one interpretation of a contract would render another part to be ignored or regarded as superfluous, that interpretation may not be the correct or most desirable one, especially if there is another interpretation that would give meaning to all provisions of the contract. That is the case here.
45. I interpret this general language as allowing the Plan Administrator to make reasonable rules and regulations that assist in determining eligibility and coverage and, significantly, to interpret the contract regarding all questions of coverage and eligibility.²¹ If the Union's interpretation were to

¹⁸ MCD, page titled "Plan and Claims Administration"

¹⁹ MCD, p. 2, "Effective Date of Coverage"

²⁰ MCD, p. 2, "Termination of Coverage for Dependents"

²¹ MCD, page titled "Plan and Claims Administration"

be followed, then the language authorizing the Plan Administrator to make reasonable rules and regulations to assist in determining eligibility and coverage **would be superfluous**. A better reading of the contract language grants the Plan Administrator this authority.

46. The Union contends that the City's position would lead to absurd results; for example, the City supposedly could conduct yearly audits and require tax returns, real estate records, birth certificates, marriage licenses, and so on. (Union brief at p. 5) I disagree.
47. First, some of the documentation cited by the Union is documentation that the Fire Fighter is already providing in the event of the birth of a child, marriage, divorce, or death of a spouse. (The document requested in this particular grievance was the birth certificate of Gerard Cortes's son.)
48. Second, if the City requests documentation to verify eligibility and coverage that the Union believes is intrusive and/or burdensome, then a remedy is available: The Union may file a grievance alleging that the City has violated the CBA/MCD in that the City's request was not reasonable. The contract language requires the City's rules and regulations to be reasonable and to be necessary or proper for the effective administration of the plan.²² **The Union is not without a remedy here.**
49. The Union argues that there is no provision allowing the City to conduct an audit to determine if there has been a change of family status.²³ The City's authority to audit its plan falls under the general power in the MCD to effectively and efficiently administer the plan. As discussed earlier, the contract language giving the Plan Administrator the power and authority to interpret all questions of coverage and eligibility implies that the authority to request verification is allowed. All of this is pursuant to a standard of reasonableness.
50. **The MCD, which is incorporated into the CBA, implicitly but clearly entitles the City to conduct reasonable inquiries from time to time to confirm eligibility and to determine coverage.**
51. Finally, as discussed above, requesting documentation in order to verify eligibility and coverage for health-care benefits is not a termination, alteration, modification or reduction of health-care benefits.
52. **The temporary (10/19/10) and permanent (2/25/11) injunctions:** The Union also argues that the temporary and permanent injunctions prohibit the City from requesting this information,

²² MCD, page titled "Plan and Claims Administration"

²³ As noted earlier in this award, the Plan Administrator has the power to "appoint such agents, counsel, accountants, consultants and actuaries as may be required to assist in administering the Plan Document." MCD, page titled "Plan and Claims Administration"

seemingly indicating that the injunctions resolved the dispute between the parties. If that were so, this matter would not be in arbitration. **The intent of a temporary injunction is only to pre-serve the status quo pending trial or other adjudication or resolution.**

53. As I read the language in the permanent injunction, the court noted that the City had the authority to ascertain eligibility (a) during open enrollment, (b) within 31 days of a qualifying event, or (c) “through any other process hereinafter established by the City of San Antonio, as now or hereafter provided by the Collective Bargaining Agreement between the City and the International Association of Fire Fighters, Local 624, and all attachments thereto, including but not limited to the Master Contract Document.”²⁴
54. Under the terms of the CBA/MCD, the Plan Administrator has been given that authority. This authority is not unfettered or unlimited but instead is subject to a standard of reasonableness and for the effective and efficient administration of the Plan Document.²⁵
55. **Bargaining between the parties:** The Union contends that the City violated Article 1, Recognition, and Chapter 174, Tex. Loc. Gov’t. Code, by failing to recognize and bargain with the Union.
56. To the extent that the City is required to bargain with the Union regarding this issue, upon which I make no determination, the record reflects that the parties have met and/or communicated on several occasions in an attempt to agree on the wording of communications to employees;²⁶ and to discuss the City’s request for verifying documentation,²⁷ and in so doing the parties have in fact bargained.²⁸
57. For example, in a letter dated September 6, 2012 from Chief HR Officer Joe Angelo to the Union, the City suggested, among other things,²⁹ reviewing available dental and vision provider records,

²⁴ Union Ex. 10

²⁵ MCD, page titled “Plan and Claims Administration”

²⁶ City Ex. 6 and 10

²⁷ Vol. 2, Tr. p. 49-50

²⁸ The parties’ actions appear to have fulfilled the obligations listed in Tex. Loc. Gov’t. Code, §174.105

²⁹ The letter referenced a September 5 meeting with the Union and that the City agreed to “coordinate all written communication with you before implementation.” City Ex. 10

with the Union's support, in order to find missing data for 1,086 fire fighters.³⁰ The letter stated that the missing data was primarily birth certificates and marriage certificates.³¹

58. The City offered to obtain the documents, assist the employee in obtaining the documents, paying the cost of copying the documents, etc.³² The Union indicated that the member insurance advocate for the San Antonio Fire Fighters Union, Lupe Gonzalez, may in fact have some of this documentation.³³ Ms. Gonzalez testified that she had participated in meetings between the City and the Union (possibly 3-4) regarding ways to resolve the dispute and/or handle the City's request, but it appears that no agreement was ever reached.³⁴
59. Between the City's willingness to make this process as painless as possible for the Fire Fighters and the existence of some of this documentation already in the Union's possession, verifying eligibility for those individuals for whom documentation is lacking should not be a burdensome matter.

The merits: Issue 2

To the extent that the City has the ability to seek documentation, does the City have the ability to terminate or discipline employees for failing to provide that information?

60. In Article 3, Management Rights, the City has the right to "suspend or discharge employees for just cause, subject to Civil Service regulations and/or the terms of this Agreement."³⁵
61. The record reflects that the City did not discipline or discharge any employee as a result of the employee's refusal to provide documentation to verify dependent coverage. In fact, Deputy City Manager Walsh testified that the intent of the process was "not to create a disciplinary problem on the back end. The intent was to get everybody focused on submitting documents."³⁶

³⁰ The City submitted a list of non-validated dependents that had been updated as of June 2, 2015 (City Ex. 16), reflecting a total of 407 employees for whom documentation is missing. The total number of missing documents is 658. Vol. 1, Tr. p. 116-117

³¹ City Ex. 10

³² City Ex. 12; Vol. 1, Tr. p. 113-114

³³ Vol. 2, Tr. p. 40-42

³⁴ Vol. 2, Tr. p. 49-50

³⁵ CBA, Article 3, Section 1(C)

³⁶ Vol. 2, Tr. p. 26-27

62. While the parties have stipulated this as an issue, I would note that there is no live case before me. Each case of discipline or discharge must be decided on its own merits, based on the facts and circumstances presented. No such facts or circumstances were presented here.
63. The most that I can say is that any case in which an employee is disciplined or discharged for failing to provide such information must be decided on a case-by-case basis by the arbitrator to whom it is presented. The City must prove the facts underlying the discipline. That arbitrator must determine whether the discipline or discharge was for just cause, which may include, among other considerations, whether notice was provided, progressive discipline, the appropriateness of the discipline, and possibly other due process issues. I can say no more than that I have interpreted the language of the CBA/MCD to mean that the City can request such information without violating either the CBA or the MCD.

The merits: Issue 3

Does failure to provide documentation result in termination of insurance coverage for dependents?

64. Similar to the above issue, the record here reflects that **no insurance coverage was terminated** for any dependent for whom documentation was not provided. Again, there is no live case before me.
65. The Union acknowledged in its brief (at p. 7) that should the City obtain documentation that informs it that a dependent is no longer eligible for coverage, the Plan Administrator has the authority to act. Likewise, if the City has the authority under the CBA/MCD to request verifying documentation, termination of coverage would be possible, as long as any other applicable requirements were met.
66. The parties have not shown that the Plan Administrator is barred from terminating coverage, however, each case must be decided on its own merits and should be subject to any legal requirements, the CBA, and MCD. I take notice that termination of family medical benefits could be an extremely significant event for a Fire Fighter and his or her family. The City should not make the decision to terminate benefits lightly.
67. **The necessity for dependent verification:** The Union contends that the City produced no evidence that it lost a single health care dollar as a result of ineligible dependents. It is difficult for the City to produce evidence of this sort given that they have not been able to collect the docu-

ments that would verify continued dependent coverage. What the City did produce were several divorce decrees,³⁷ one of them being that of the named grievant, Christopher Steele.³⁸ According to the divorce decree, Mr. Steele was divorced from his wife in September 2012 yet Mr. Steele never changed his family status for the purposes of dependent coverage.³⁹

68. Deputy City Director Walsh observed that whether or not the City is covering eligible dependents involves the use of public money.⁴⁰ As the City noted in its brief, “the language of the MCD gives the City, by and through the Plan Administrator, the power to assure that monies being spent by the City in providing dependent health care coverage is spent only on those who are eligible to receive such coverage.” (City brief at p. 7) There is a fiduciary duty here to ensure the proper expenditure of public monies.
69. The mere fact that a no-longer-eligible person remained nominally covered by the City’s health-benefits plan could put taxpayer money at risk. As a hypothetical example: Suppose that a Fire Fighter’s ex-wife were to be injured in an automobile accident and presented her City health-benefits credentials. Suppose also that various health-care providers (hospital, physician, etc.) all invoiced the City for the ex-spouse’s care, and that the City paid their invoices. At a minimum, it would be time-consuming for the City to recover the money from the health-care providers — and that assumes that the City discovered the problem at all. It might be equally likely that the City would never discover the problem, and as a result, thousands of dollars of taxpayer money could be improperly spent.

Award

The grievance is denied.

- a. The grievance complies with the requirement of Article 30, Section 4(A)(2)(d) to provide an employee signature.

³⁷ Divorce decrees were also submitted for Zachary and Jacqueline Wenzell (4/13/11) (City Ex. 19); Alfredo and Laura Duque (8/8/11) (City Ex. 21); James and Christina Cameron (3/27/12) (City Ex. 20); Rosalinda and Ramon Puente (8/14/12) (City Ex. 17); and Lauren and Caleb Macias (9/21/13) (City Ex. 18). Evidently, notification of withdrawal of a spouse was provided by Puente, Wenzell and Cameron but I note that such notification was provided from 4 months to 2 years after the divorce. The spouses of Steele, Macias, and Duque are still enrolled. Even assuming no claims were filed for these former spouses, there may have been premiums paid by the City on their behalf.

³⁸ City Ex. 15

³⁹ Vol. 1, Tr. p. 124

⁴⁰ Vol. 2, Tr. p. 16-17, 19

- b. The grievance does not comply with the Article 30, Section 4(A)(2)(e) requirement that a standard be identified as the City's practice of not conducting audits is not a standard as interpreted by the language of that clause.
- c. In all other respects, the grievance complies with Article 30, Section 4(A) and is arbitrable.
- d. Based on the language of the CBA and MCD, the City has the right to verify dependent coverage for already covered dependents. To the extent that the City has the ability to seek such information, the City has the ability to terminate or discipline employees for failing to provide the information, subject to the provisions of the CBA (e.g., Article 3, Section 1, Civil Service regulations).
- e. In a proper case, failure to provide the requested information could result in termination of insurance coverage for the dependent of the employee, subject to any applicable law or regulation and applicable provisions of the CBA and/or MCD.

Pursuant to the parties' agreement, I have retained jurisdiction in the event there is a need for clarification or interpretation of the remedy.

Signed July 31, 2015 in
Houston, Texas



Maretta Comfort Toedt
Arbitrator

Appendix A

Relevant provisions from the Collective Bargaining Agreement Between The City of San Antonio and Local 624 International Association of Fire Fighters

ARTICLE I

RECOGNITION

The City recognizes the union as the exclusive bargaining agent for all permanent paid employees of the City of San Antonio Fire Department, with the sole exception of the Chief of the Department. It is understood that this bargaining unit does not include civilian personnel, including Fire Fighter Trainees enrolled in the initial Fire Academy.

ARTICLE 9

MAINTENANCE OF STANDARDS

All standards, privileges and working conditions enjoyed by the City of San Antonio Fire Fighters at the effective date of this Agreement, which are not included in this Agreement, shall remain unchanged for the duration of this Agreement.

ARTICLE 25

HEALTH BENEFITS

Section 1. Active Fire Fighters Health Benefits.

- A. The City shall provide all active Fire Fighters who are eligible with family medical benefits and shall pay the full cost of said benefits as agreed upon herein. The minimum benefits provided are those as stated in the Master Contract Document for the City of San Antonio, Professional Fire Fighters Association and San Antonio Police Officer's Association Bargaining Unit (hereinafter referred to as "Master Contract Document"), which is attached and incorporated herein as Attachment II. Provisions and benefits specified in the Master Contract Document shall not be reduced during the life of this Agreement; however, the City reserves the right to change carriers or plan administrators at any time at its discretion. While the City is prohibited from reducing the provisions and benefits specified in the Master Contract Document during the life of this Agreement, a determination of what medical service is medically necessary for a particular patient, or any reduction in the usual and customary charge for that medical service, will not be construed as a reduction in the benefits; provided that the determination is made in accordance with the procedure and criteria described in the Master Contract Document.
- B. Not reproduced here

Section 2.

This Agreement, and the Master Contract Document for health benefits adopted herein, shall control the available health benefits during the term of this agreement, for active Fire Fighters.

Section 3.

Health care benefits for active Fire Fighters shall not be terminated, altered, modified or reduced, during the term of this Agreement, except by amendments or successors to this Agreement.

ARTICLE 30

GRIEVANCE PROCEDURE

Section 4. Steps of Grievance Procedure

A. Initial Filing and Grievance Committee Review

1. Not reproduced here
2. The Union or any employee covered by this Agreement having a matter which is felt to be a grievance shall submit the grievance in writing to the Union Grievance Committee. The grievance shall be submitted on a form to be provided by the City and must include (a) a brief statement of the grievance and the facts on which it is based; (b) the section of the Collective Bargaining Agreement which has been violated; (c) the remedy or adjustment, if any, sought; (d) the employee's signature; and (e) where "maintenance of standards" is a basis for the grievance, the specific standard(s) alluded to must be identified. As used herein, "maintenance of standards" includes all statutory or other non-contract provisions incorporated herein through the Maintenance of Standards Clause found at Article 9.
3. Not reproduced here
4. Not reproduced here
5. Not reproduced here

ARTICLE 37

DECLARATION OF THE FULL AND FINAL SCOPE OF AGREEMENT

Section 1.

The parties agree that each has had full and unrestricted right and opportunity to make, advance, and discuss all matters properly within the province of collective bargaining. This Agreement constitutes the full and complete Agreement of the parties and there are no others, oral or written, except as specified in this Agreement. Each party for the term of this Agreement specifically waives the right to demand changes herein, whether or not the subjects were known to the parties at the time of execution hereof as proper subjects for collective bargaining; however, it is understood and agreed that the contract may be amended by mutual consent of the parties to this Agreement.

Appendix B

Relevant provisions of the Master Contract Document –

ATTACHMENT II MASTER CONTRACT DOCUMENT

San Antonio Professional Fire Fighters Association Bargaining Unit
Health Benefit Program

San Antonio, Texas
June 1, 2009

GENERAL INFORMATION

PLAN ADMINISTRATOR: Employee Benefits Administrator
City of San Antonio

Human Resources Department
P.O. Box 839966
San Antonio, Texas 78283
(210) 207-8705

PLAN AND CLAIMS ADMINISTRATION

Administration and payment of claims under the PLAN DOCUMENTS shall be carried out by the CLAIMS ADMINISTRATOR, under the supervision of the PLAN ADMINISTRATOR. **It shall be a principal duty of the PLAN ADMINISTRATOR to see that the PLAN DOCUMENT is carried out as written. The PLAN ADMINISTRATOR shall have full power to administer the Plan and all of their details, and to make all final determinations about coverage on behalf of the City of San Antonio.** (emphasis mine – MCT)

The PLAN ADMINISTRATOR will make available for examination, to each COVERED PERSON, his heirs and/or assigns, records that pertain to the COVERED PERSON at a reasonable time during normal business hours as established by the PLAN ADMINISTRATOR.

The PLAN ADMINISTRATOR'S powers shall include, but shall not be limited to, the following:

- (a) To make and enforce reasonable rules and regulations as the PLAN ADMINISTRATOR deems necessary or proper for the effective and efficient administration of the PLAN DOCUMENT;**
- (b) To interpret the contract, including, but not limited to, all questions of coverage and eligibility. The PLAN ADMINISTRATOR'S interpretations thereof in good faith shall be final and conclusive on all persons claiming Benefits under the PLAN DOCUMENT, subject only to the Review and Appeal Process; and**
- (c) To coordinate with and supervise the CLAIMS ADMINISTRATOR, prepare and handle budgetary and contractual relationships involving the plan, distribute information to COVERED PERSONS under the plan, appoint such agents, counsel, accountants,**

consultants and actuaries as may be required to assist in administering the PLAN DOCUMENT. (emphasis mine – MCT)

CHAPTER 1

GENERAL PLAN COVERAGE FOR ELIGIBLE PARTICIPANTS

ELIGIBILITY REQUIREMENTS

Effective Date of Coverage

Coverage does not become effective until the Eligible EMPLOYEE completes the CITY'S health benefit enrollment process.

Newborn infants will be covered from the date of birth as long as the EMPLOYEE is covered under this plan and coverage for the newborn child is requested within 31 days of the child's date of birth. If coverage of a newborn is not requested within 31 days of the child's date of birth, then coverage cannot become effective until the next January 1 of the year following the next open enrollment period.

Eligible Dependents who are enrolled after the EFFECTIVE DATE of this Plan will become covered on the date such dependent is acquired, provided that the covered EMPLOYEE enrolls such dependent within 31 days of the date the dependent is acquired. If coverage of a dependent is not requested within 31 days of the date the dependent was acquired, the coverage cannot become effective until the next January 1 of the year following the next open enrollment period.

Change of Family Status

If there is a legal change in family status, the EMPLOYEE has thirty-one (31) calendar days to notify the EMPLOYEE Benefits Office in writing or by personally appearing in the Benefits Office and completing a change of dependent coverage form.

If there is no change in family status or if notice is not given for additional coverage within thirty-one (31) days after the legal change in status, no change can become effective until the next January 1 of the year following the next enrollment period.

A legal change in family status includes: divorce; marriage; birth or adoption of a child, including a child living with the adopting parents during the period of adoption; change in employment status for the EMPLOYEE'S spouse; or ineligibility of a child due to age, or change in student status.

Termination of Coverage for Dependents

Coverage with respect to the COVERED PERSON'S dependents shall terminate under the PLAN at the earliest time specified below:

- (1) Upon termination of employment for the covered EMPLOYEE;
- (2) On the date dependents cease to be eligible as defined in the PLAN.

Documentation

The PLAN ADMINISTRATOR is entitled to require relevant legal documentation to be furnished with any request for coverage or change in status.

[remaining sections have not been reproduced.]