

HEAT AND FROST INSULATORS ALLIED
WORKERS LOCAL 7,
Union,

and

WESTERN WASHINGTON CHAPTER OF
THE WESTERN INSULATION
CONTRACTORS ASSOCIATION,
Employer

ARBITRATOR'S DECISION AND AWARD

FMCS Case 230511-06022
Contract Interpretation on Wages & Benefits

Arbitrator: Donna E Lurie

SENT ELECTRONICALLY TO THE PARTIES:

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INTRODUCTION

This matter came before Arbitrator Donna E. Lurie upon the filing of a contract interpretation grievance and a subsequent Demand for Arbitration by the Heat and Frost Insulators Allied Workers Local 7 (hereafter "Local 7 or Union") regarding payment of wages and benefits to Firestop employees in a manner that differed from Local 7's Table A allocations of wages and benefits (Joint Exhibit 2). The employers of Local 7 Firestop employees are contractors and most of them are represented by the Western Washington Chapter of the Western Insulation Contractors Association (hereafter "WICA"). This arbitration is governed by the Collective Bargaining Agreement ("CBA" or "Contract") between the parties in effect from 2022-2026 (Joint Exhibit 1). In addition, the parties are governed by the Western States Insulators and Allied Workers' Pension Fund Agreement and Declaration of Trust that was established in 1959 and amended in 1992 and 1998 (Union Exhibits 9 and 10).

WICA raised a question of arbitrability as it relates to requiring the employers of Firestop employees to contribute to a defined benefit trust pension plan without a specific written obligation to do so. While WICA raised concerns regarding potential violations of ERISA, Counsel for the employers' association stated that their position focused on remedy and did not

inhibit the arbitrator and the parties from hearing the contract interpretation grievance and moving forward with the case (TR. 9).

An in-person evidentiary hearing was held in Tukwila, Washington on October 10, 2023. The parties arranged for a court reporter, and a transcript was sent to the arbitrator and each party representative. Local 7 and WICA were given a full opportunity to provide opening statements, introduce documents, examine and cross examine sworn witnesses, and make arguments in support of their positions. There were four Joint Exhibits. Local 7 submitted eleven exhibits, and WICA submitted eight separate exhibits (with Employer Exhibit 6 not admitted).

One witness testified on behalf of Local 7 – Todd Mitchell, Business Manager for Local 7. Three witnesses testified on behalf of WICA and the employers of Firestop employees – Ken Gritter, Ken Christopherson, and Robert Bergman. The parties requested the opportunity to submit post-hearing briefs. After receipt of post-hearing briefs on December 5, 2023, the hearing record was closed.

ISSUE STATEMENTS

The parties disagreed on specific wording for the two issues submitted to arbitration. After careful review of the party statements and evidence submitted, the arbitrator frames the issues as follows:

1. Did the signatory employers violate the Firestop Collective Bargaining Agreement when they refused to be bound by Union Table A and refused to have Firestop employees covered by the Insulators and Allied Workers Defined Benefit Pension Plan?
2. Did the signatory employers violate the Firestop Contract when they paid wages and benefits to apprentices that differed from the specified amounts listed in Union Table A?

FACTUAL BACKGROUND

The Heat and Frost Insulators Allied Workers Local 7 (hereafter “Local 7 or Union”) represents Firestop employees who work on fire containment in the construction industry in Washington State and Alaska (Tr. 27-28). The purpose of Firestop work is to contain a fire within a building and protect the ingress and egress of people during a fire event (Tr. 166-167). Firestop Containment Journeymen and Apprentices are engaged in the manufacture, fabrication, assembling, molding, handling, erection, spraying, poring, mixing, hanging, preparation, application, adjusting, alteration, repairing, dismantling, reconditioning, testing, and

maintenance of all firestopping materials (Joint Exhibit 1, p. 4). Approximately 30 journeymen and 12 apprentices are Firestop employees and are covered by the Firestop Collective Bargaining Agreement (hereafter “Contract or CBA”) (Joint Exhibit 1) (Tr. 240-241). The Firestop Contract is separate from the Collective Bargaining Agreement covering the larger group of Heat and Frost Insulators and Allied Workers (Employer Exhibit 1). Local 7 represents both employee groups and serves as the Union signatory on both Contracts (Joint Exhibit 1; Employer Exhibit 1). Local 7 is part of the Western Conference of the Heat and Frost Insulation Locals in the western United States (Tr. 238).

The Western Washington Chapter of the Western Insulation Contractors Association (hereafter “WICA”) is a multi-employer and regional trade association for mechanical insulation contractors (Tr. 235-236). WICA represents the contractors in collective bargaining with Local 7 (Tr. 245). All signatory contractors, regardless of their membership in WICA, are subject to the same obligations under the respective Insulation Contract and/or Firestop Contract (Tr. 247). Fewer contractors are covered by the Firestop Contract than the Insulation Contract (Tr. 245).

Local 7 and WICA have negotiated a Firestop Contract since 2008 (Tr. 28). Earlier versions of the Firestop Contracts covered employees represented by Local 7 and other trade unions (Plumbers and Pipefitters) (Tr. 28-29, 172) (Union Exhibits 1-4). WICA began negotiating Firestop Contracts solely with Local 7 in 2022. Todd Mitchell, Business Manager, represented Local 7 employees in contract negotiations in 2018 and in 2022 (Union Exhibit 4 and Joint Exhibit 1).

The parties to the Local 7-WICA Contracts are covered by the Insulators and Allied Workers Pension Fund (Joint Exhibit 1, p. 18). This Fund is financed through negotiated employer contributions (Union Exhibit 4, p.16). Parties have the option of negotiating a “defined contribution” plan for employee pensions (known as the Individual Account Plan or IAP) (Tr. 30). A defined contribution plan caps the annual employer contribution rate required through negotiations, and the plan provides retirement proceeds that reflect the value of the investments plus interest (Tr. 176-177). In addition, the parties have the option of negotiating a “defined benefit plan” (Tr. 176-177). A defined benefit plan requires negotiated annual employer contributions, and the plan provides a guaranteed benefit to retired employees that is based on an employee’s years of service (Employer Exhibit 1, pp. 17, 23-24).

Firestop employees and employers have historically participated in a defined contribution plan and Firestop Contracts contain specific language providing an Individual Account Plan (Union Exhibits 1-4; Tr. 30). The Firestop Contract does not contain specific language that provides for a defined benefit plan (Joint Exhibit 1). No allocations were agreed to and no employer contributions have been made to a defined benefit plan between 2010 and 2023 (Tr. 96-97). In contrast, the Insulator Contract has historically contained language that provides both a defined benefit plan AND a defined contribution account (Employer Exhibit 1, pp. 23-24).

WICA and the Western States Conference of Insulators and Allied Workers recommended model pension language developed by the Pension Trust's legal counsel (TR. 91-93; Joint Exhibit 1, pp. 17-18 and Employer Exhibit 1, pp. 22-23). During the negotiations for the 2018-2022 Firestop Contract, Local 7 proposed replacing the existing Firestop pension language with the same pension language that existed in the Insulator Contract, including the model language from the Pension Fund (Employer Exhibit 2; Tr. 177). Local 7 negotiators explained that they wanted to align their contract language with the Insulator Contract (Tr. 94). WICA negotiators rejected the Union's proposed language changes with a "hard no" (Tr. 178-180, 190, 109; (Employer Exhibit 2, p. 27). A summary of the tentative agreements reached for the 2018-2022 Firestop Contract shows that the parties eventually adopted the model language of the Pension Fund but left the issue of a Defined Benefit Plan as "open" (Employer Exhibit 3). The term "open" meant unresolved or "not agreed to" (Tr. 194). The Union did not communicate their assumption that adopting the model pension language would obligate WICA to join the defined benefit plan for Firestop employees (Tr. 188-189, 197). Local 7's negotiator testified that he understood the impediment to establishing a defined benefit plan was the issue of who would fund the cost (Tr. 41-42, 142-145). Local 7 assumed that Firestop employees could defer a portion of their yearly increase in wages and benefits to self-fund a defined benefit plan (Tr. 118-119). WICA's lead negotiator refuted the Union's testimony and recollection of bargaining discussions. WICA representatives testified that Local 7's negotiator was told in clear terms that Firestop contractors would not agree to add a defined benefit plan to the Firestop Contract ("no F'ing way" at Tr. 183-184). There were no further discussions between the parties on a defined benefit plan for the duration of the 2018-2022 Firestop Contract (Tr. 112).

Local 7 and WICA negotiated a successor Firestop Contract in March of 2022 (Joint Exhibit 1). No further changes were proposed for the pension language (Tr. 224). Following the ratification of the 2022-2026 Firestop Contract, Local 7 conducted a membership meeting to determine the allocation of wage and benefit dollar amounts for 2022 (Tr. 62-65). Article 12.1 of the Firestop

Contract provides the Union with the option of determining specific allocations of the negotiated base wage package for increases in Health & Welfare, Pension, Union dues, Occupational Health, HRA, Apprenticeship, or other applicable trust upon approval (Joint Exhibit 1, p. 9). These allocations require membership approval (Tr. 58). Level 2 members of Local 7 voted to allocate the full \$3.50 wage increase for 2022 to the base wage rate, and Level 3 members of Local 7 voted to allocate the \$3.50 wage increase for 2022 to the Individual Account Plan (Tr. 61; Joint Exhibit 1, p.7). The Union explained to the members that it would take two years of wage allocations to cover the cost of \$5.62 per hour to fund a defined benefit plan (Tr. 64). No notice was sent to WICA to inform them of the Union's funding approach (Tr. 116). WICA leaders testified that a brief discussion was held during a labor-management meeting in July of 2022 about pensions. Local 7's representative expressed an interest in having a defined benefit plan, but he acknowledged that the Firestop Contract required new contract language to authorize a defined benefit plan (Tr. 227, 232, 159).

Pursuant to the 2022-2026 Firestop Contract, the employees received a \$3.00 hourly increase for wages and benefits for 2023 (Joint Exhibit 1, p. 7). Local 7 members voted to allocate the full \$3.00 to a defined benefit plan and reallocate an additional \$2.62 in 2022 increases to cover the \$5.62 cost of a new plan (Tr. 65-66). Following the membership decisions, Local 7 prepared Union Table A that listed specific allocations for wages and benefits effective March 26, 2023 (Union Exhibit 7). WICA and the employer contractors challenged the Union's action as unilateral and unauthorized by the Contract. They refused to pay the wage and benefit allocations listed on Union Table A. Employer contractors expressed concern over withdrawal liability associated with any new defined benefit plan. WICA stated that it did not agree to exceed the annual wage increase package for apprentices. Employer contractors ended up implementing an alternative wage and benefit formula for 2023 (Joint Exhibit 3).

Local 7 filed a grievance alleging contract violations when employer contractors refused to follow Union Table A as issued by Local 7 (Joint Exhibit 2 and Union Exhibit 7). The parties were unable to resolve the grievance and moved the case to arbitration (Joint Exhibit 4).

APPLICABLE CONTRACT PROVISIONS

ARTICLE IX – WAGES

- 9.1 The Employer agrees to pay employees represented by this Agreement (at a minimum) based on the following rates: Table A

- 9.2 Dues checkoff is 3.75 % of the total package. The total package is outlined in the wage addendums to this Agreement showing allocation of wages and benefits [see Union Exhibits 5-8 and WICA Exhibits 5, 7, & 8]. The increase to the base wage is listed below.
\$3.50 First year: March 27, 2022 through March 25, 2023
\$3.00 Second year: March 26, 2023 through March 30, 2024 ...
- 9.3 Journeyman 1 shall be identified as an employee that either has been placed or has advanced through the program as a "Firestop/Containment Worker". Fringe benefits for Firestop 1 Apprentices to be reported to the Local 7 Health and Welfare Trust and Western States Pension.
- 9.4 Journeyman 2 shall be identified as an employee who is a recognized bargaining unit member of the Heat & Frost Insulators Master Agreement holding a journeyman card. All fringe benefits for this classification of worker will be remitted per the Master Agreement of the applicable Union in which membership is held...

ARTICLE XII – OPTION CLAUSE

- 12.1 At the option of the unions, any part of the negotiated base wage package may be used for increase in Health & Welfare, Pension, Union dues, Occupational Health, HRA, Apprenticeship, or other applicable trust upon approval.

ARTICLE XIV – JOINT TRADE BOARD

14.9(e) The arbitrator ... shall have the authority only to interpret and to apply the provisions of this Agreement and shall not have the authority to amend or modify the terms and conditions of this Agreement. The decision of the arbitrator shall be final and binding upon the parties to the dispute and to the Employers and the Union.

ARTICLE XVI – LOCAL 7 TRUST FUNDS

16.1 This Agreement requires the Employer to make contributions to certain employee benefit plans ("trust funds"). The formal names of the trust funds are as follows:

- a. Insulators & Allied Workers Pension Plan
- b. Insulators & Allied Workers Health Plan
- c. Northwest Insulation Workers' Welfare Trust
- d. Local 7 Apprentice Training Fund
- e. Vacation Savings/ Paid Time Off Account...

...Payments must be made on all compensable hours whether worked by Heat and Frost Insulators and Allied Workers hired by the Employers or Heat and Frost Insulators and Allied Workers working for persons to whom the Employer has contracted or subcontracted work.

... The Union and the Employer agree to be bound by all of the terms and conditions of the Trust Agreements creating the various funds and all lawful amendments thereto...

...Failure by an individual Employer to make the required payments shall be deemed a breach of this Collective Bargaining Agreement by the individual Employer...

16.5 Local 7 Pension Plan and Insulation & Allied Workers Health Plan

Employers shall pay to the Insulation & Allied Workers Pension Plan and Insulation and Allied Workers Health Plan the appropriate contributions per the Memorandum of Agreement on Pension and Health Funds made and entered into on the 21st day of April 1992...

16.6 The undersigned Employer accepts a true copy of Agreement and Declaration of Trust, dated November 20, 1959, which is made part thereof. It is understood and agreed that the Employer, by its signature to this Agreement, accepts the terms and provisions of the Agreement and Declaration of Trust, and shall be bound thereto and thereby upon acceptance of the Board of Trustees.

16.7-c That the Employer further ratifies... and consents to *all acts of said Trustees* ...

16.7 (d) That the Employer further ratifies, confirms, approves, and consents to all amendments of the said Trust Agreement that *may be made by written agreement* between the Trustees and the Western Conference of Heat and Frost Insulators & Allied Workers and the Western Insulation Contractors Association (WICA) regardless of whether the undersigned employer is a member of WICA...

WICA and the Western States Conference of Heat and Frost Insulators & Allied Workers have established a defined benefit pension plan, known as the Insulation & Allied Workers Pension Plan, and a defined contribution plan, known as the Insulation & Allied Workers Individual Account Plan, both funded by the Insulation & Allied Workers Pension Fund ...

Local 7 Individual Account Plan

Contributions to the Insulation & Allied Workers Individual Account Plan are made in accordance with the following classifications:

Class I:	Apprentices of 1 to 3 years
Class II:	Mechanics of 1 to 5 years
Class III:	Mechanics of 6 to 15 years
Class IV:	Mechanics of 16 to 19 years
Class V:	Mechanics of 20 or more years

The Employer shall pay to the Insulation & Allied Workers *Individual Account Plan* for each hour worked (including overtime) the following sums based on the employee's classification:

Class I:	Apprentice contribution rate of \$3.37
Class II:	Mechanic contribution rate of \$3.12
Class III:	Mechanic contribution rate of \$6.12
Class IV:	Mechanic contribution rate of \$3.12
Class V:	Mechanic contribution rate of \$3.12

...Contributions to the Individual Account Plan shall be increased in the following manner: The increase in benefits will be deducted from the total hourly compensation and shall not be considered maintenance of benefits. *The Employer shall pay such additional amounts per hour as may be determined by written agreement between WICA and the Conference. Any additional contribution shall be made by adjustment within the total hourly compensation under this Agreement...*

Local 7 General Provisions

Contributions to the Insulation & Allied Workers Pension Plan, the Insulation & Allied Workers Individual Account Plan and the Insulation & Allied Workers Health Plan shall be made in the manner and within the time limits specified by the respective Board of Trustees...

The Trust Agreement(s) for the Insulation & Allied Workers Pension Fund and the Insulation & Allied Workers Health Plan, as amended, are incorporated into and made a part of this Agreement...

This Collective Bargaining Agreement incorporates and makes part of this Agreement the following agreements between WICA and the Conference: The Memorandum of Agreement executed on April 21, 1992, effective January 1, 1992 through December 31, 1997, the Letter of Understanding clarifying the Memorandum of Agreement (April 21, 1992), the Agreement to extend the Memorandum (effective January 1, 1998 through December 31, 2000), the Second Agreement to extend the Memorandum and Agreement to Increase Contributions (January 1, 2001 through December 31, 2005), and from year to year thereafter until WICA or the Conference gives written notice of its intent to terminate or modify such Memorandum of Agreement.

(Joint Exhibit 1)

DISCUSSION

I. DID THE SIGNATORY EMPLOYERS VIOLATE THE FIRESTOP CONTRACT WHEN THEY REFUSED TO BE BOUND BY UNION TABLE A AND REFUSED TO HAVE FIRESTOP EMPLOYEES COVERED BY THE INSULATORS AND ALLIED WORKERS DEFINED BENEFIT PENSION PLAN?

The model language in Article 16.7 of the 2022-2026 Firestop Contract describes the framework created by WICA and the Union's Western States Conference to establish certain Trust funds:

"WICA and the Western States Conference of Heat and Frost Insulators & Allied Workers have established a defined benefit pension plan, known as the Insulation & Allied Workers Pension Plan, and a defined contribution plan, known as the Insulation & Allied Workers Individual Account Plan, both funded by the Insulation & Allied Workers Pension Fund ..." (Joint Exhibit 1, p. 18)

Local 7 argues that the model language describing the defined benefit plan in Article 16.7(d), the Trust document (Union Exhibit 10), and Article 12 gave the Union the authority to work with its members to self-fund a defined benefit pension plan. The reference to the broader Insulation and Allied Workers Pension Plan expanded pension options beyond the defined contribution plan previously administered by ATPA and established by the parties (Union Exhibit 9). The term "pension" extends to any available benefit under the Insulation and Allied Workers Pension Plan – "pension" includes the defined benefit plan as well as the defined contribution plan.

Local 7 maintains that Union members decide how to allocate the base wage package. No approval or discussion with the Employer is needed. If Union members decide to defer their wages or allocate all wages to certain benefits, Employers must honor those allocations and pay Firestop employees in compliance with Union Table A (Union Exhibit 7). The Union's right to allocate funds from the negotiated base wage package is undisputed (Tr. 58, 60-61, 213-214). Local 7 argues that the language in Article 12.1 is clear and unambiguous and should be enforced as written. "Pension" is listed as one of the options for allocation in Article 12.1 (Joint Exhibit 1, p.9). The Firestop Contract contains no language that restricts or prohibits the Union from deferring wage increases to self-fund a defined benefit pension plan.

Local 7 states that the 2022 and 2023 membership allocations did not result in a greater increase to the negotiated base wage package, and these allocations honored the Employers' refusal to fund the defined benefit pension plan out of "their own pocket" (Tr. 204). Local 7 requests that Union Table A be enforced and that Employer contractors be found in violation of the Firestop Contract for failing to honor Union Table A.

WICA points out that the Individual Account Plan (defined contribution) is specifically described and authorized in the Firestop Contract (Joint Exhibit 1, pp. 18-19), but a defined benefit plan is not specifically described or authorized by the signatory parties. Local 7 is attempting to add language and a new benefit that was emphatically rejected by Employer contractors in contract negotiations. Specific defined benefit language does not exist in the 2022-2026 Firestop Contract. Local 7 had made several proposals to establish a defined benefit plan for Firestop employees and the Employer rejected those proposals (Employer Exhibits 2, 3 and 4). "A party may not be permitted to secure in arbitration that which it could not secure at the bargaining table" [Arbitrator Hockenberry in *Columbia Hospital for Women*, 113 LA 980 (1999)]. Secondly, the omission of specific language authorizing a defined benefit plan and the existence of vague references to a benefit should be interpreted against the Union since the usual inference of an omission is that clear intent to reject prevails over a vague intent to include. See *Progress-Bulletin Publishing Company*, 47 LA 1075 (Jones, 1966). WICA urges the arbitrator to focus on the explicit intent that was communicated by the parties to each other during contract negotiations, rather than any hidden or undisclosed intent or understandings (see *Kahn's & Company*, 83 LA 1225 (Murphy, 1984)).

For comparison purposes, the Insulators Contract specifically describes and authorizes a Defined Benefit Plan AND an Individual Account Plan (defined contribution) (See pp. 23-24 in

Employer Exhibit 1). WICA argues that Employer contractors never agreed to redefine the term “pension” from the way in which this term has been defined for Firestop employees since 2010 (i.e., individual account plan – defined contribution). Employer Exhibit 7 shows that the parties did not establish a defined benefit plan, since the space for “pension” is intentionally left blank.

WICA argues that Local 7’s demand to have payments made to a defined benefit plan in the absence of a specific written agreement with the Employer would violate federal law (ERISA and the Labor Management Relations Act). WICA maintains that the Union’s requested remedy would violate 29 U.S.C. §186-c-5-B. The Ninth Circuit Court of Appeals held that any payment made by an employer to trustees administering a pension fund were forbidden unless the employer and the union had a written agreement that specified the basis upon which the payments were to be made. See *Thurber v. Western Conference of Teamsters Pension Plan*, 542 F. 2d 1106 (9th Cir. 1976). WICA argues that the absence of a written agreement for specific contributions from the employer for a defined benefit plan should result in dismissal of the grievance.

The Arbitrator recognizes that it is a central principle in grievance arbitration that the Union bears the burden of persuasion as the moving party in a contract interpretation case. The Union asks the Arbitrator to assign a new meaning to the term “pension” and expand the term to include a new defined benefit plan where none existed before. When the meaning of a term is in dispute, arbitrators have determined that the parties intended for the term to have the same meaning as was given during negotiations leading up to the Contract. Elkouri and Elkouri, How Arbitration Works 9-26 (8th Ed. 2016), citing *Schnucks Markets*, 107 LA 739 (Cipolla, 1996). WICA and Local 7 have historically defined the term “pension” as referring to the Individual Account Plan since 2010. Local 7’s negotiator testified that the Union assigned a different meaning to the term “pension” in 2022, but he did not offer any supporting documentation (bargaining notes, Contract proposals, correspondence) to verify an agreement by both parties to expand pension plan offerings for Firestop employees. No written agreement between WICA and the Western Conference on expanded benefits was provided, nor was there any evidence of a new pension requirement issued by the Board of Trustees. In contrast, WICA provided bargaining records (proposals, TA list, Employer responses) to support the testimony of WICA representatives that Employer contractors rejected the addition of a defined benefit plan and refused to expand the definition of what constituted a “pension” in the Firestop Contract.

The Arbitrator acknowledges the desire of Firestop employees to obtain a defined benefit plan and the Union's creativity in attempting to self-fund this plan. The Arbitrator interprets Article 12.1 as providing Union members with the ability to allocate wage increases to benefit plans or "applicable trusts" that are specifically covered and authorized in the local Contract. The model pension language established a general framework. Signatory parties still have to agree on the basis and funding for a benefit to be added to the Contract. A benefit plan must be authorized through negotiations in order to be funded with Union member allocations. Given the evidence that a defined benefit plan was categorically rejected at the bargaining table, the Arbitrator cannot support the unilateral expansion of the term "pension" and cannot add a new pension plan to the 2022-2026 Firestop Contract. Local 7 has not satisfied its burden of proof in demonstrating that Employer contractors violated the Firestop Contract when they rejected Union Table A and refused to submit contributions for an unauthorized defined benefit plan.

II. DID THE SIGNATORY EMPLOYERS VIOLATE THE FIRESTOP CONTRACT WHEN THEY PAID WAGES AND BENEFITS TO APPRENTICES THAT DIFFERED FROM THE SPECIFIED AMOUNTS LISTED IN UNION TABLE A?

Local 7 argues that the Firestop Contract is silent on the issue of how wage and benefit allocations are applied to Firestop apprentices. The Union maintains that the parties have adopted a practice of paying apprentices a percentage of the journeyman base wage rate and 100 percent of the fringe benefits provided in the Firestop Contract (Tr. 71-72). Business Manager Mitchell gave several examples of apprentices receiving 100 percent of the Union members' benefit allocations (Tr. 76-83; Union Exhibits 5-7). The Union insists that apprentices receive the full \$5.62 hourly allocation to a defined benefit plan.

WICA representatives pointed out that the parties negotiated a total package increase of \$3.00 per hour for March 26, 2023 to March 30, 2024. WICA argues that Union Table A (Union Exhibit 7) would result in Apprentices receiving increases ranging from \$3.34 per hour for a 90 percent apprentice to \$4.02 per hour for a 65 percent apprentice for 2023-2024 (WICA post-hearing brief). The accuracy of these calculations were not challenged by Local 7. An allocation ranging from \$3.34 to \$4.02 per hour exceeds the total wage and benefit package amount that was negotiated and agreed to by WICA and Local 7 (Joint Exhibit 1, p. 7).

The Arbitrator notes that the 2022-2026 Firestop Contract contains language that limits the amount of wages and benefits that can be allocated by Union members. Article 9.2 refers to the

\$3.00 per hour “total package” for wages and benefits to be paid from March 26, 2023 through March 30, 2024 (Joint Exhibit 1, p. 7). Article 16.7(d) states that “any additional contribution [to the Individual Account Plan] shall be made by adjustment within the total hourly compensation under this agreement” (Joint Exhibit 1, p. 19). The Arbitrator interprets this language as restricting the parties to a total wage and benefit package for all Firestop employees to \$3.50 per hour for March 27, 2022 through March 25, 2023 and \$3.00 per hour for March 26, 2023 through March 30, 2024, unless the parties negotiate specific exceptions (e.g., Article 16.8(a) on Apprenticeship Training in Joint Exhibit 1). Local 7 has not satisfied its burden of proof in demonstrating that Employer contractors violated the Firestop Contract when they paid wages and benefits to apprentices that reflected the total agreed-upon wage and benefit package.

AWARD

Based on a careful review of the evidence and arguments presented by the parties, the Arbitrator finds that WICA did not violate the Firestop Contract when signatory employers refused to be bound by Union Table A and cover Firestop employees with a new defined benefit pension plan.

Based on a careful review of the evidence and arguments presented by the parties, the Arbitrator finds that WICA did not violate the Firestop Contract when signatory employers refused to pay the \$5.62 hourly benefit amount listed for apprentices in Union Table A.

The grievance is dismissed.

In accordance with 14.9 (f) of the Firestop Contract, compensation and expenses of the arbitrator shall be paid by Local 7; however, each party shall bear the expenses in respect to its own witnesses and counsel.

Respectfully submitted on January 2, 2024.

Arbitrator Donna E. Lurie /s/

Donna E. Lurie, Arbitrator
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