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December 20, 2007

By Facsimile {707-565-2624} and U.S. Mail

Sonoma County Board of Supervisors
c/o Steven Woodside, County Counsel
Sonoma County Administration Building
575 Administration Drive
Suite 116
Santa Rosa, CA 95403

RE: Sonoma County Association of Retired Employees

Dear Board of Supervisors:

I am sending this letter on behalf of the Sonoma County Association of Retired Employees ("SCARE") to notify you of Sonoma County retirees' unequivocal legal right to continued post-retirement health insurance coverage. Should Sonoma County ("the County") attempt to reduce or eliminate post-employment health coverage, SCARE and its members will challenge that action in court.

In summary, current retirees, as well as active employees, would be found by a court to have vested contractual and, therefore, constitutional rights to retiree medical benefits. As discussed further below, there are three sources of these vested contractual and constitutional rights: (1) the County's long-standing practice of promising and providing lifetime retiree health benefits, as evidenced by over forty years of Board of Supervisors Resolutions, testimony of former County Human Resources Managers, letters from the County, and the County's provision of retiree medical benefits; (2) Memoranda of Understanding ("MOU") between unions and the County guaranteeing lifetime benefits for retirees who were represented by those unions during the course of their County employment; and (3) the County's acknowledged long-standing "tie" arrangement that links the health insurance benefits of retired employees with those benefits of active Unrepresented Administrative Management ("SCAMC") employees. Like the retirees, those current County employees who have already worked for at least 10 years and those who have not, but eventually will do so, have vested rights as a matter of contract.

As I will explain below, our analysis in these regards is based on California court decisions which have held that government employees have contractual rights to retirement benefits and that the California Constitution prohibits modification of such contractual rights. The case law permits modifications in benefits only if any reductions are accompanied by

offsetting improvements.

As you know, the Board of Supervisors resolution proposed earlier this year introduces a reference to Government Code Section 31692, which you may believe gives to the County the right to revoke a resolution granting retiree benefits, so long as relatively minimal advance notice is given. As I will explain below, the insertion of a reference to Section 31692 into such a resolution would not give the County the ability to impair the rights of retirees and other current employees who already have vested rights to benefits pursuant to prior promises and practices. Because the retirees' vested contractual and constitutional rights go beyond the baseline provisions of Section 31692, a mere citation to that statute cannot extinguish well-established, constitutionally protected contract claims.

It is our understanding that several unions have pending disputes with the County related to post-retirement medical benefits, including over whether union retirees' benefits are tied to those of active members of the same bargaining unit or to those of active unrepresented employees. For the purposes of this letter, we do not need to address these issues. Instead, the purpose of this letter is to apprise the County that any attempt to eliminate or significantly reduce retiree medical benefits for any or all retirees will be met with legal action.

In this regard, it is our understanding that County personnel are currently proposing, at least for discussion purposes, several options that would provide lower benefits for retirees than for active employees to whose benefits the retirees' benefits have long been tied. Implementation of any such proposal will lead to litigation.

I. BACKGROUND

As discussed in greater detail below, the County has contributed to the cost of providing retiree health benefits for all retirees since at least 1964. BOS Resolution No. 9751-1, Jun. 22, 1964. Furthermore, the County has agreed to numerous MOUs that secure retiree health benefits for union members. In 1985, retiree representatives and the County agreed to a "tie" arrangement between retiree health benefits and benefits of current SCAMC employees, for at least some retirees. Pursuant to that agreement, affected retirees would pay the same premiums as current active SCAMC employees, and the County would provide the same benefits to the retirees as it provided to those active SCAMC employees. *See* Letter from Kenneth Couch, Employee Relations Manager, County to Bill Focha, President, Sonoma County Deputy Sheriff's Association at 2, 5, 6 (May 17, 2007) ("Couch letter"), attached hereto as Exhibit 1. Since then, this agreement has been followed by the County.

In 1990 and 1991, retiree health plan eligibility was changed, when the County implemented the "10/20 Rule," which applied to employees hired after January 1, 1990. As you know, that Rule requires retirees to have worked at least ten (10) years in order to be eligible for a county contribution to retirement health benefits and at least twenty (20) years in order to be eligible to receive that County contribution for a spouse or dependent.

II. CALIFORNIA CASE LAW STRONGLY FAVORS VESTING OF PUBLIC EMPLOYEE RETIREMENT BENEFITS; ATTEMPTS TO MODIFY SUCH VESTED RIGHTS HAVE BEEN HELD TO VIOLATE THE CALIFORNIA CONSTITUTION

Under the common law, a contract may be formed even in the absence of one fully integrated document. California courts have consistently found that public employees who render services based on the understanding that they will receive retirement benefits in the future have vested contractual rights to such benefits. "'California is firmly committed to the proposition that these rights are contractual; that they are 'vested' in the sense that the lawmakers' power to alter them after they have been earned is quite limited.'" *Cal. Ass'n of Prof'l Scientists v. Schwarzenegger*, 137 Cal. App. 4th 37, 383 (2006) (quoting *Lyon v. Flournoy*, 271 Cal. App. 2d 774, 779 (1969)). As explained below, any attempt to terminate such vested rights not only violates the contract, but also violates the California Constitution.

Numerous County documents that we have reviewed, many of which came from Public Records Act requests to the County by SCARE, prove the existence of one or more contracts to provide lifetime benefits for all retirees and for current employees. *See* Section III below.

The leading case addressing retirement benefit vesting is *Claypool v. Wilson*, 4 Cal. App. 4th 646 (1992). In that case, the court stated that "a pension right may not be destroyed, once vested, without impairing a contractual obligation of the employing public entity." 4 Cal. App. 4th at 611. *See also Wallace v. City of Fresno*, 42 Cal. 2d 180, 183 (1954) ("[Vested pension rights] cannot be constitutionally abolished by subsequent changes in the law.").

The contractual basis for the pension right is the exchange of an employee's services for the right offered by statute, ordinance, or MOU. *Claypool* at 662. *See also American Fed'n of Teachers v. Oakland Unified Sch.* Dist., 251 Cal. App. 2d 91, 97 (1967). Rules and regulations promulgated by a governing board are integral parts of a public employee's contract. *Goddard v. S. Bay Union High Sch. Dist.*, 79 Cal. App. 3d 98, 105-06 (1978).

In *Thorning v. Hollister School District*, 11 Cal. App. 4th 1598 (1992), the court found that retired board members had vested rights to health benefits provided by the school district and that suspension of the benefit payments gave rise to a claim for deprivation of constitutional rights. *Id.* at 1609-10. The policy at issue stated that the district would pay all premiums for current and retired board members. *Id.* at 1607. Two years later, the district inserted a discretionary clause, attempting to confer on itself discretion to eliminate such benefits (as the County may be intending here). *Id.* However, the court held that the new language could not be applied to those who already had vested rights. *Id.* at 1606.

The *Thorning* court used a two-pronged test to determine if benefits were a vested part of compensation, rather than merely gratuitous. Under that test, if the benefit is (1) a practice over a long period of time and (2) a significant inducement or incentive for employees, then the benefit is fundamental, and thus a "'maturing emolument for continued service.'" *Id.* at 1605-07 (quoting

Cal. League of City Employee Ass'ns v. Palos Verdes Library Dist., 87 Cal. App. 3d 135, 150 (1978)).

Similarly, government employees' vested rights to benefits (wage increases, vacations, and sabbaticals based on longevity) were upheld in *California League*, 87 Cal. App. 3d at 135. "'For the employee who has invested substantial time towards [a] . . . promised benefit[,] the withdrawal of it constitutes a denial of expected compensation.'" *Id.* at 138 (quoting the opinion of the trial court). Termination of expected benefits therefore "'penalizes the employee who has contributed continuous service in anticipation of receiving the promised consideration, and allows the . . . [employer] to reap the advantage of continued . . . service that it intended to induce, without ever fulfilling its declared and implicit obligation.'" *Id.* The court held that it would be "grossly unfair" for the governmental employer "to eliminate such benefits and reap the rewards of such long-time service without payment of an important element of compensation for such service." *Id.* at 140.

Moreover, as you should be aware, contractual rights created by an MOU are binding contractual rights. *See Sonoma County Organization of Public Employees v. County of Sonoma*, 23 Cal. 3d 296, 304 (1979) ("[T]he agreements between . . . [local entities and employees] are binding contracts.")

The United States Constitution prohibits a state from passing any law impairing the obligation of contracts. U.S. Const. Art. I § 10, cl. 1. The California Constitution has a parallel clause that guarantees a "law impairing the obligation of contracts may not be passed." Cal. Const. Art. 1, § 9. As a result, where employee or retiree rights to retiree health coverage are vested according to contract law, it is unconstitutional to modify those rights. *See Claypool; Wallace; County of Sonoma*, 23 Cal. 3d at 311 (1979) (overturning part of a statute that invalidated agreements granting cost-of-living wage increases to public employees because it violated both the California and federal Constitutions).

Here, the County has a long-standing policy of providing retiree health benefits, as evidenced by many documents, by the testimony of retirees, including former Human Resources and other management employees, by BOS resolutions, and by MOUs. The promises of such benefits obviously have been a significant inducement for continued service and, thus, retiree health benefits are "fundamental" and vested.[1]

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[1] The rights of employees with fewer than ten years of County employment are also protected. In *Claypool*, the court stated, "A public employee's pension constitutes an element of compensation, and a vested contractual right to pension benefits that *accrues upon acceptance of employment*." 4 Cal. App. 4th at 661 (quoting *Betts v. Bd. Of Admin.*, 21 Cal. 3d 859, 863-64 (1978)) (emphasis added). Thus, any employee of the County who has accepted employment and/or has continued employment based on the understanding that upon reaching ten years of service, he or she would earn the right to continued medical benefits upon future retirement. *See also Cal. League of City Employee Ass'ns v. Palos Verdes Library Dist.*, 87 Cal. App. 3d 135,

The evidence supporting these rights is discussed in Section III below. The extent of these rights is addressed in Section IV below.

III. THE EVIDENCE CLEARLY ESTABLISHES THE EXISTENCE OF ONE OR MORE BINDING CONTRACTS

A. Board of Supervisors Resolutions.

As you know, since at least 1964, the County has provided retiree health benefits for employees. *See* BOS Resolution No. 9751-1, Jun. 22, 1964. Since that time, numerous BOS resolutions have confirmed the right to such benefits. *See e.g.* BOS Resolution Nos. 10292-1 (1964), 11118-1 (1964), 15584 (1966), 93-1767 (1993), 01-1402 (2001), 05-0441 (2005), 05-1039 (2005); Ordinance Nos. 5055 (1997), and 5179 (1999). The County's policy of providing retiree medical benefits has been well known to its employees throughout the forty-year period. The County has performed on it promises by consistently paying such benefits, without eliminating them or reducing them to the detriment of retirees (absent agreement by the retirees and/or an offsetting improvement).

In addition to the general resolutions listed above, the County has included retiree health benefit information in Salary Resolutions specifically applicable to unrepresented employees, which function in a similar way to the MOUs for union employees.

B. Memoranda of Understanding.

In addition or in the alternative to the vested contractual rights to retiree health benefits that they acquired along with all other County employees, County retirees who were union members have rights vested specifically under MOUs operative at the times of their retirement. For example, for the years 2002-2008, the County's MOU with the Service Employees International Union provides for the right to retiree medical coverage upon attainment of the requisite ten years of service, and links the County's obligation to pay for that coverage to its obligation to current employees. 2002-2008 SEIU MOU at 43. Other currently operative MOUs that we have seen all contain the same language guaranteeing retiree health coverage so long as the 10/20 rule is met. As you know, MOUs are binding on the County.

C. Evidence Related to the "Tie".

In addition to the evidence establishing the County's promises to provide lifetime retiree health benefits and the uncontroverted fact that it has provided such benefits, there is a wealth of evidence detailing a 1985 "tie" arrangement which constitutes a binding contract with regard to the vested benefits of at least those retirees who had been unrepresented during their employment.

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139 (1978) (explaining that an employee begins earning pension rights from the day he starts employment).

Specifically, that arrangement tied the benefits of retirees to the benefits of current active SCAMC employees. The modification of retiree benefits effectuated by the "tie" arrangement did not alter the fact that retiree health benefits were vested and would continue to be vested. It simply modified the specific benefits that the County would provide affected retirees. The County unequivocally confirmed this policy in a recent letter responding to a grievance from Deputy Sheriffs. Couch Letter, Exh. 1 hereto, at 2, 5, 6. The Couch Letter stated: "[The County] has a well established practice of linking retiree health benefits to active unrepresented Administrative, Managerial, and Confidential employees and not to active employees in the retirees' former bargaining unit." Elsewhere in the letter, Mr. Couch described the policy in greater depth: "Since 1985, the County's retirees have paid the same premiums and have received the same benefit *as do active County Administrative Management employees*." *Id.* at 5 (emphasis in original).[2]

A letter dated January 31, 2001, from Maureen Latimer, then-President of SCARE, to Mike Chrystal, County administrator, also detailed the "tie":

> County retirees pay the same premium payment for health care coverage as do active County Administrative Management employees. This arrangement dates back to 1985 when retirees gave up no cost lifetime health benefits in return for a reduced premium payment for spouses and eligible dependents. At that time, the agreement was made between the County and its retirees that, in perpetuity, assured retirees that they were tied to Administrative Management employees for purposes of health care benefits, providing retirees with the same benefits under the County Health Plan and the same premium rates as Administrative Management employees.

Letter from Maureen Latimer, then-President, SCARE to Mike Chrystal, County Administrator (Jan. 31, 2001), attached hereto as Exhibit 2.

In a recent letter to Ann Goodrich, current County Director of Human Resources, Richard Gearhart echoed Ms. Latimer's statements, reporting that when he was County Human Resources Director, he verbally communicated the "tie" policy on several occasions. Letter from Richard Gearhart, President, SCARE to Ann Goodrich, County Director of Human Resources, (Feb. 16, 2007), attached hereto as Exhibit 3.

While he was Human Resources Director, Ray Myers sent an e-mail to County administrators recounting the 1985 agreement. E-Mail from Ray Myers, Director of Human Resources, County, to Joanne Sidwell and Marcia Chadbourne, County Administrators (Mar. 8, 2004, 20:15 PST), attached hereto as Exhibit 4. In the e-mail, he described current retirees and employees as "vested under the retirement plan." Myers remembers a modification that accompanied the agreement -- employees and retirees would no longer pay premiums, but would be subject to co-payments and deductibles for the first time. *Id.* However, the retirees

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[2] In the same paragraph, Mr. Couch also cites the year of the agreement as 1989. This appears to be a typographical error.

"understood the value of a higher stop loss" and were "very supportive" of the agreement. *Id.*[3]

The negotiation of and agreement to the "tie arrangement" are significant in several ways. First, they make it clear that the County recognized that it had a pre-existing obligation to pay the full cost of retiree medical benefits; i.e., the County recognized that its obligation could only be modified by agreement with the retirees. Second, even if there had been no pre-existing binding contractual obligation, the tie arrangement would in and of itself give rise to such an obligation.

In short, there is overwhelming evidence of the "tie" agreement, which confirms or establishes a contractual right to benefits.

IV. RETIREES AND VESTED EMPLOYEES HAVE VESTED CONSTITUTIONAL AND CONTRACTUAL RIGHTS TO LIFETIME BENEFITS

A. The County's Long-Standing Practice of Promising and Providing Lifetime Medical Benefits Without Reference to Any Discretionary Clause Establishes that All County Retirees Have a Vested Right to Retirement Health Benefits.

As explained in Section II, above, California case law strongly establishes that retirement benefits are vested where, as here, there is evidence of an employer's long-standing practice of providing such benefits coupled with clear promises of lifetime benefits. As that is the situation here, all County retirees have a vested right to continuing health coverage. This coverage may not be terminated or significantly altered by the County.

B. Retired Union Members Who Retired at the Time an MOU was in Effect Have Vested Rights Under That Operative MOU.

As discussed above in Section III-B, those retirees who were union members may be entitled to specific benefits pursuant to the MOUs operative at the times of their retirement. In other words, former union employees also have vested rights to benefits under their respective MOUs that may augment their vested rights as employees arising under the County's general promises and practices. Thus, in some cases, these rights may be greater than the vested rights that otherwise would arise under the County's general practices or its specific practices with regard to SCAMC employees. As stated above, the purpose of this letter is not to address the question of whether any particular MOU or the MOUs in general link retiree benefits to those of active union members or not; rather, for present purposes, the significance of the MOUs is that they constitute another basis for the existence of vested rights.

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[3] This agreement is a good illustration of a situation that would probably pass the *Allen-Betts* test, discussed below, regarding the narrow category of allowable modifications to vested benefits. While retirees and future retirees were disadvantaged by the advent of co-payments and deductibles, there was a concomitant advantage to them in the elimination of premiums.

C. At the Least, the Contractual Right is the Right to Receive the Same Benefits as SCAMC Employees.

As discussed above (see Section III-B), the "tie" documents provide another basis, in addition to the County's general policies, practices, and specific salary resolutions, for the vested rights of retirees who were unrepresented while they were active employees, and for any union retirees whose MOUs might not fully establish vested rights.

D. Allowable Modifications of Benefits.

Under the *Claypool* line of cases, discussed above, the County may only modify retiree health benefits to a limited extent. In *California League,* the court described these limitations:

> [P]ension cases have adopted the principle that vested contractual rights may be modified in order to maintain the flexibility and integrity of the pension system. To be sustained as reasonable, such modifications must 'bear some material relation to the theory of a pension system and its successful operation, and *changes in a . . . plan which result in disadvantage must be accompanied by comparable new advantages.*'[4]

Cal. League, 87 Cal. App. 3d at 140 (quoting *Allen*, 45 Cal. 2d at 131) (emphasis added).

V. CALIFORNIA GOVERNMENT CODE SECTION 31692 DOES NOT ALTER THE RETIREES' VESTED RIGHTS TO HEALTH BENEFITS

As you know, "Attachment A" to the proposed Salary Resolution that was previously in front of the BOS reads: "The County provides contributions towards the payment of health care benefits for retirees from the general fund pursuant to the authority provided under California Government Code Section 31691 *et seq.* Nothing contained herein shall be construed to alter rights, responsibilities, or obligations of the County under the Government Code." County BOS Proposed Salary Res. 95-0926 §§ 15.4, 15.5 (April, 2007). This section of the Government Code is part of the County Employees Retirement Law of 1937 ("CERL").

California Government Code Section 31692 provides:

> The adoption of an ordinance or resolution pursuant to Section 31691 shall give no vested right to any member [of the retirement organization] or retired member, and the [BOS]. . . may amend or repeal the ordinance or resolution at any time except that as to any member who is retired at the time of such an amendment or repeal, the amendment or repeal shall not be operative until ninety (90) days after the

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[4] This formula is often referred to as the *"Allen-Betts* reasonableness test." *Valdes v. Cory*, 139 Cal. App. 3d 773, 784 (1983).

> board or governing body notifies the member in writing of the amendment or repeal. . . .

Cal. Gov. Code § 31692 (West 2007).

Regardless of whether past or future resolutions reference CERL, the long-standing practice of offering lifetime retiree health benefits, the obligations arising from MOUs, and the "tie" arrangement supercede any possible limitations in CERL.

No reported cases have interpreted this provision of CERL (Section 31692) so as to limit retirees' constitutional rights to vested benefits created by longstanding practices and promises of a government agency. It is axiomatic that a statute cannot supercede or take away a federal or state constitutional right. Consequently, any attempt by the County to modify vested benefit rights based on Section 31692 would be unconstitutional. *See also Sonoma County* (holding that an attempt to limit by statute compensation established by MOUs constituted an unconstitutional abridgement of contracts); *Thorning*, discussed above.

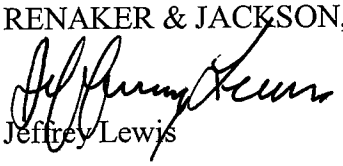
VI. CONCLUSION

Given the case law providing for the constitutionally protected vesting of contractual rights to retirement benefits and the facts here – the long history of providing benefits, the BOS resolutions, the MOUs, and the "tie" arrangement – the County may not terminate or modify retiree medical benefits for current retirees or for currently active employees. Furthermore, based on the same case law, the County may not lawfully reduce retiree medical benefits in comparison to those it provides to active SCAMC employees.

Please feel free to call me if you have any questions or would like to discuss this matter.

Sincerely,

LEWIS, FEINBERG, LEE,
RENAKER & JACKSON, P.C.

By 
Jeffrey Lewis

cc Richard Gearhart

bcc Vincent Harrington, Esq.
Nancy Watson, Esq.
Jonathan Siegel, Esq.

EXHIBIT 1

COUNTY of SONOMA
HUMAN RESOURCES DEPARTMENT
OPPORTUNITY ■ DIVERSITY ■ SERVICE

575 Administration Drive, Suite 116B
Santa Rosa, CA 95403
Telephone: 707-565-2331
Fax: 707-565-3770
Ann Goodrich, *HR Director*

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May 17, 2007

VIA FACSIMILE AND US MAIL

Bill Focha, President
Sonoma County Deputy Sheriffs' Association
P.O. Box 957
Windsor, CA 95492

Re: Sonoma County Deputy Sheriffs' Association and Deputy Sheriffs' Law Enforcement Management Grievance

Dear Mr. Focha:

This letter constitutes the County's Step III response to your grievance dated April 10, 2007 which you filed directly at Step III. The Grievance was filed directly with the County's Employee Relations Manager bypassing Steps I and II of the Grievance Procedure. Pursuant to the County's communications with you and DSA's Chief Negotiator John Noble, the due date for this response is Thursday, May 17.

In your letter, you indicate that you are filing the Grievance on behalf of both current members and former members of the Deputy Sheriffs Association (DSA) and the Deputy Sheriffs' Law Enforcement Management (DSLEM). You assert that the County's Board of Supervisors' Resolution No. 07-0269 violates Articles 18.16.b and c (Retiree Health Benefits) and Articles 35.1 (Full Understanding, Modification and Acknowledgment) and 35.4 (Written Modification Required) of the DSA Memorandum of Understanding (MOU). The grievance does not assert a violation of a specific article of the DSLEM MOU.[1]

The Grievance asserts that the Board of Supervisors' resolution, passed on April 10, 2007, "prospectively changed the medical insurance benefits of bargaining unit members who retire." The DSA asserts that this resolution violates the current County's contractual obligation, through the MOU, to provide "retiree medical benefits at the same level as *active employees/bargaining unit members*." (Emphasis added.) For the reasons detailed below, the grievance is denied and the County will not process this grievance under the Grievance Procedure of the DSA Memorandum of Understanding (MOU), or through the County Grievance Procedure as specified in the DSLEM MOU.

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[1] The relevant DSLEM MOU Articles are 5.21b. and c. (health care) and Article 32.4 (full understanding, modification and waiver). DSLEM is covered by the County Grievance Procedure established by the Board of Supervisors' Resolution 74211B on May 10, 1983, as it may be amended in the future.

The Grievance is denied because:

- Retirees do not have access to the grievance procedure under the MOU;
- DSA cannot bring a grievance on behalf of the retirees;
- The County has a well established practice of linking retiree health benefits to active unrepresented Administrative, Managerial and Confidential employees and not to active employees in the retirees' former bargaining unit; and
- The County is not obligated to negotiate with DSA over terms and conditions of employment for employees and retirees that DSA does not represent.

With respect to the DSLEM claim, the County Grievance Procedure specifically excludes from the definition of a grievance a "complaint, the resolution of which would require a change in or an amendment to law, ordinance, or the resolutions, rules or regulations of the Board." The DSA/DSLEM Grievance requests the Board's action of April 10, 2007 be rescinded, and therefore the Grievance is denied.

RELEVANT MOU PROVISIONS

The DSA Grievance alleges that the County's action violated the following DSA MOU articles:

18.16 Future Employee/Future Retiree Health Care

b. With respect to this retiree, he or she must have been employed with the County for a period of at least 10 years (consecutive or nonconsecutive) which may include employment with the County prior to July 1, 1990, and must have been a contributing member (or a contribution was made on the employee's behalf) of the County's Retirement System for the same length of time. Upon meeting these two conditions, the County shall contribute for the retiree only the same amount towards a health plan premium as it contributes to an active single employee in the same manner and on the same basis as is done at the time for other retirees who were hired or rehired before July 1, 1990. The retiree may enroll eligible dependents in the group health plan covering the retiree, but the retiree is responsible for the total dependent(s) premium(s).

c. When such an employee has been employed by the County for a period of at least 20 years (consecutive or nonconsecutive) which may include employment with the County prior to July 1, 1990, and has been a contributing member (or a contribution was made on the employee's

behalf) of the County's Retirement System for the same length of time the County shall also contribute for one dependent the same amount towards a health plan premium as it contributes to an active employee with one dependent and in the same manner and on the same basis as is done at the time for other retirees who were hired or rehired before July 1, 1990. The retiree with 20 or more years of County service may enroll eligible dependents in the group plan covering the retiree, but the retiree is responsible for the total premium cost of more than one dependent. In no event shall employees hired or rehired after July 1, 1990 be entitled to receive greater contributions from the County for a health plan upon retirement than the County pays for employees hired or rehired before July 1, 1990 upon their retirement.

Article 31 Grievance Procedure

31.2 Definitions

a. A grievance is a claim by an employee, a group of employees, or the Association on behalf of an employee(s), concerning the interpretation, application or an alleged violation of an expressed provision of this Memorandum. All other complaints are specifically excluded from this procedure including but not limited to, complaints which arise from the following: all disciplinary actions; all matters concerning employment examinations; all other matters subject to the jurisdiction of the Civil Service Commission; performance review appraisals or denial of a merit increase, except as provided in Article 7.19; provisions of the Fair Labor Standards Act; and any provision of this Memorandum specifically identified as not grievable.

b. Day shall mean regular County business days, Monday through Friday, 8 a.m. to 5 p.m.

c. A "grievant" shall mean an employee, a group of employees or the Association who in good faith has an actual grievance with County over a grievable matter as defined in31.2 above.

The Association may file a grievance without naming an individual employee in the grievance provided the grievance alleges a violation of a right or benefit granted the Association under Article 5 of this Memorandum.

Article 35 Full Understanding, Modification, and Acknowledgment

35.1 Full Understanding

This Memorandum of Understanding sets forth the full and entire understanding of the parties regarding the matters set forth herein. All other prior or existing understanding or agreements by the parties, whether formal or informal, regarding any such matters are hereby superseded or terminated in their entirety.

35.4 Written Modifications Required

No agreement, alteration, understanding, variation, waiver, or modification of any of the terms or provisions contained herein shall in any manner be binding upon the Association and the County, unless made and executed in writing by the parties, and if required, approved and implemented by the Board of Supervisors.

The DSLEM MOU's language on Retiree Health Care benefits mirrors the language found in DSA MOU Articles 18.16.b and c. The DSLEM MOU's grievance procedure, however, incorporates the County Grievance Procedure as the method by which DSLEM grievances are processed and resolved.

County Grievance Procedure Section 1:

Specifically excluded from the definition of grievance and from the grievance procedure are: (1) complaints, the resolution of which would require a change in or an amendment to law, ordinance, or the resolutions, rules or regulations of this Board [of Supervisors].

BRIEF FACTUAL BACKGROUND

Countywide Liability for Retiree Medical Benefits

Accounting rules recently issued by the Government Accounting Standards Board (GASB) require public agencies to account for their unfunded liability for Other Post Employment Benefits (OPEBs) such as health care. As required under the GASB rules, the County undertook an actuarial study to determine the total amount of its unfunded liability. The report estimated the County's liability for medical benefits at $381 million. Over the last six years, the County's annual "pay as you go" cost for retiree medical has increased from $6.7 million (2.85% of payroll) per year to over $20 million (or 7.6% of payroll) per year. This is a nearly 300% increase.

Historic Tie Between Retiree Medical Benefits and Unrepresented Managers

The DSA is the exclusive representative for the classifications of Sheriffs Sergeant, Deputy Sheriff Trainee, Deputy Sheriff I and Deputy Sheriff II. Employees in the DSA bargaining unit are not impacted by the Resolution. The current MOU between the County and the DSA is effective until August 14, 2007. In the current MOU Article 18.16.b and c, the County provides health care for retirees. It states in relevant part:

> 18.16.b Upon meeting theses two conditions, the County shall contribute for the retiree only the same amount towards a health plan premium as it contributes to an active single employee in the same manner and on the same basis as is done at the time for other retirees who were hired or rehired before July 1, 1990.
>
> 18.16.c The County shall also contribute for one dependent the same amount towards a health plan premium as it contributes to an active employee with one dependent and in the same manner and on the same basis as is done at the time for other retirees who were hired or rehired before July 1, 1990.

The parties are currently negotiating over a successor agreement. The DSLEM is the exclusive representative of Sheriffs Lieutenant, Sheriffs Captain and Assistant Sheriff. The current MOU between the County and the DSLEM is effective until August 14, 2007. The parties are also negotiating over a successor agreement.

Since 1985, the County's retirees have paid the same premiums and have received the same benefit *as do active County Administrative Management employees*. In and around 1989, "an arrangement was made between the County and its retirees that, essentially, assured retirees that they were tied to Administrative Management employees for purposes of health care benefits. . . ." *See* Letter from Maureen Latimer, President of the Sonoma County Association of Retired Employees (SCARE) to Mike Chrystal, Sonoma County Administrator dated January 31, 2001 attached as Attachment 1. *See also* Letter from Maureen Latimer, President of SCARE to Tim Smith, Sonoma County Board of Supervisors dated December 5, 2001 attached as Attachment 2.

Action Grieved

On April 10, 2007, the County's Board of Supervisors passed a resolution that begins to address the County's unfunded liability for medical insurance for retirees and unrepresented employees. Resolution No. 07-0269 amends the current Salary Resolution to modify the medical plan design and County contributions towards the premium of all County health plans for Unrepresented Administrative Management Employees, Retirees and other unrepresented groups in the County, including the Board of Supervisors and Department Heads. This Resolution is effective July 1, 2007 for retirees and July 11, 2007 for current unrepresented Administrative Management employees.

RESPONSE TO THE GRIEVANCE

The DSA Cannot Bring a Grievance on Behalf of Retirees Because Retirees Do Not Have Standing to Grieve Alleged Violations of the MOU

It is a well established principle of labor law that retirees do not have collective bargaining rights. Retirees, because they are no longer "employees," are not subject to the protection of Meyers-Milias-Brown Act (MMBA). *County of San Joaquin* (2003) PERB Decision No. 1570-M) *citing Allied Chemical and Alkali Workers v. Pittsburgh Plate Glass Co.* (1971) 404 U.S. 157.[2] The protections afforded to an employee under the various federal and state labor laws terminate upon the employee's separation from employment. Under the DSA MOU, a retiree is not an employee. An employee is defined as any person legally employed by the County and a member of the bargaining unit represented by the Association. *See* Article 3.2. A grievant is defined as "an employee, a group of employees or the Association." *See* Article 31.2. As a retiree is no longer employed by the County, a retiree does not have standing to grieve an alleged violation of the MOU. Moreover, a grievance is defined as:

> A grievance is a claim made by an employee or a group of employees, or the Association on *behalf of an employee(s)* concerning the interpretation, application or an alleged violation of an expressed provision of this Memorandum.

(Emphasis added.) A grievance can only be claimed by an employee or claimed on behalf of an employee. The Association is precluded from brining a grievance on the behalf of retirees.

The Grievance Fails to Allege a Violation of the MOU

County's Action Did Not Violate Article 18.16

The Grievance alleges that the Board's Resolution violates MOU Articles 18.16.b and c because the County is obligated to contribute the same amount towards a health plan premium as it contributes to active employees *in the same bargaining unit*. The DSA's reading of the County's MOU ignores 1) the County's well-established practice of the last 22 years of linking retirees with unrepresented employees and 2) other provisions of the MOU.

The contract says the County shall contribute for the retiree only the same amount towards a health plan premium as it contributes to an active employee. The term "active employee" is only used in the Retiree Health Care Articles of the MOU and is not used in any other place in the MOU. The term is ambiguous and it is therefore appropriate to

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[2] Case law interpreting the National Labor Relations Act is persuasive in interpreting the MMBA. *Fire Fighters Union v. City of Vallejo* 12 Cal.3d 608 (1974). Similarly, the Public Employment Relations Board will look to its interpretation of similar language in other collective bargaining statutes it administers when making its determinations.

look to the other parts of the MOU and practice to help resolve the ambiguity. Here, the MOU only states "active employee" but not specify that the active employee must be one in the retiree's former bargaining unit. In fact, the parties' longstanding history is that the "active employee" is not. As noted above, retiree medical benefits within the County are not tied to the active employees of the bargaining unit from which he or she retires. Since 1985 the County has tied the health benefits of retirees to the County's Administrative Management employees. The linkage of retirees to Administrative, Management and Confidential, or unrepresented employees, was requested by SCARE and resulted in an agreement between SCARE and the County. This linkage was understood by the County and SCARE and memorialized beginning with the 1990 round of bargaining and MOUs. *See* Letter from Richard Gearhart, Director of Employee and Labor Relations to Jan Thom, President of SCARE dated October 6, 1989 attached as Attachment 3. *See also* Memorandum from Richard Gearhart, Director of Employee and Labor Relations to the Sonoma County Board of Supervisors dated October 4, 1989 attached as Attachment 4. The documents cited here and above support the County's position that retiree health benefits are not tied to the benefits of active employees in the retiree's former bargaining unit. Rather, it is the County's long-standing, stated, and well-established practice to link retiree health care benefits and obligations with those received by active unrepresented Administrative, Management and Confidential employees.

It is a well-established tenant of contract law that provisions of the MOU cannot be read in isolation, but must be read in conjunction with all other relevant portions so as to not render any part extraneous. *National City Police Officers Association v. City of National City* (2001) 87 Cal.App.4th 1274. Here the contract defines "employee" in Article 3.2 to mean an employee in the bargaining unit. However, Article 3.2 must be read in conjunction with Article 3.1. Article 3.1 specifically states that none of definitions in Article 3.2 (where employee is defined) "are intended to apply in the administration of the County Employees' Retirement Law of 1937. . . ." The County's health care benefits are provided under the authority found in the County Employees' Retirement Law of 1937. Therefore, "employee" as defined in Article 3.2 is not the same definition of "employee" in Articles 18.16.b and c because these benefits are provided through the County Employees' Retirement Law of 1937.

DSA's interpretation of MOU Articles 18.16.b and c – that the County is obligated to provide retirees "medical benefits at the *same level as active employees/bargaining unit members*" is too narrow because it renders the express provision of Article 3.1 superfluous. (Emphasis added.) However, reading the provisions together supports the County's position that retiree health care benefits are linked to active employees, but not linked specifically to active employees in the retirees' former bargaining unit. The County's action did not violate any provision of the MOU based on the County's well-established practice of linking retiree health care benefits to active unrepresented Administrative, Managerial and Confidential employees and the County's reading of the whole MOU.

The County Did not Violate Articles 35.1 and 35.4 of the MOU

The Grievance alleges the County violated Articles 35.1 and 35.4 of the DSA MOU when it passed a Resolution changing health care benefits for retirees and unrepresented employees. As demonstrated above, the Board's Resolution does not modify or terminate any provision of the DSA MOU. The Resolution simply modifies health plan designs and premium payments which the County may lawfully do for its unrepresented employees and retirees. The County's actions are in line with its twenty year long agreement with SCARE to treat retirees in the same manner as active, unrepresented Administrative, Managerial and Confidential employees are treated for health care. While the grievance cites to an alleged violation of Articles 35.1 and 35.4, it does not appear that that the County has violated this provision. Instead, the County's actions to modify retiree health care benefits are consistent with the language of the contract and the well-established practice of the County.

The County is Not Obligated to Meet and Confer with DSA over the Health Care Benefits Currently Received by Retirees

Additionally, both retirees and unrepresented employees are outside of the DSA's bargaining unit and as such the County is not obligated to meet and confer with DSA over any changes to their benefits. The County is not required to meet and confer with DSA over matters that concern employees not represented by DSA.

Unrepresented employees are exactly that – not represented by any recognized employee organization. The bargaining obligation of public agencies as set forth in the MMBA applies only to "employee organizations," defined as "any organization which includes employees of a public agency and which has as one of its primary purposes representing those employees in their relations with that public entity." Cal. Gov. Code §§ 3501, 3505. While DSA is undoubtedly a recognized employee organization, it is not the organization that represents unrepresented employees. Unrepresented, Administrative, Managerial and Confidential employees are employed with the County either by individual employment contracts or by some other mechanism and the employment relationship is governed by Salary Resolution. Any provision of the Salary Resolution may be superseded in whole or in part by resolution adopted by the Board of Supervisor. *See* Section I of the Salary Resolution; *see also DiGiancinto v. Ameriko-Omserv. Corp.* (1997) 59 Cal.App.4th 629 (an at-will employee who continues to work after notice of modifications of terms of employment has accepted those modifications).

Lastly, the County does not have any conceivable bargaining obligation to retirees. Retirees and their organizations are not entitled to collective bargaining rights under the MMBA, and lack any standing to file unfair practice charges with the Public Employment Relations Board, and as demonstrated above, grievances with the County. *San Leandro Unified School District* (1984) 9 PERC ¶ 16017. Moreover, the County is also not required to meet and confer with DSA over matters that fall outside the mandatory scope of bargaining and health care benefits for its retired members is outside

the scope. *El Centro Elementary School District* (2006) PERB Decision No. 1863 (stating health care benefits for retirees are a permissive subject of bargaining); *Allied Chemical, supra*, 404 U.S. at 157.

The DSLEM's Complaint is Excluded from the Grievance Procedure

In addition to all of the above, Appendix B, Departmental Grievance Procedures, of the DSLEM MOU excludes from the grievance procedure "complaints, the resolution of which would require a change in or an amendment to law, ordinance, or the *resolutions*, rules or regulations of the Board of Supervisors." *See* Section 1 of the Departmental Grievance Procedure. Here, DSLEM's complaint alleges that the County's Board of Supervisor's Resolution No 07-0269 violates the MOU. In the complaint, DSA "demands that the resolution passed by the County Board of Supervisors . . . be rescinded. . . ." Because the Grievance specifically complains of an act of the Board of Supervisors and the resolution of this complaint requires that the Board rescind the Resolution or amend the Resolution in a way satisfactory to DSA, this Grievance is excluded from the definition of grievance and from the grievance procedure.

CONCLUSION

The County remains interested in continuing discussions with the DSA over health care issues for current bargaining unit members, as well as continuing negotiations over a successor agreement. It is our goal to continue this collaborative process and to continue to discuss these issues with *you*. However, based on the all of the above, the grievance is denied. If you disagree with this resolution, the matter may be appealed within fifteen (15) County business days of receipt of this response. Under section 6(f) of the DSLEM's Grievance Process, the DSLEM has five (5) business days to appeal to the Grievance Appeals Committee.

Sincerely,

Kenneth R. Couch
Employee Relations Manager

Attachments

cc: Charles Sakai
Genevieve Ng
Ann Goodrich

EXHIBIT 2

SCARE

SONOMA COUNTY ASSOCIATION OF RETIRED EMPLOYEES

P.O. Box 6298 • 613 Fourth No. 206 Santa Rosa, CA 95406 • (707) 545-7349

cc;
Johnnie Sidwell
Ray Myers
BV Dels
We will need to seek County Council input re the 1985 agreement - assuming there was one!
Mike Chrystal

January 31, 2001

Mike Chrystal
Sonoma County Administrator
575 Administrative Drive, Room 104 A
Santa Rosa, CA 95403

RE: Health Plan Premiums for Survivors of Retirees

Dear Mike:

The Sonoma County Association of Retired Employees (SCARE) requests that Sonoma County provide to all retirees and current survivors of retirees the same survivor health insurance premium benefit as the County provides now for survivors of retirees who retired after July 1, 1999.

As you know, County retirees pay the same premium payment for health care coverage as do active County Administrative Management employees. This arrangement dates back to 1985 when retirees gave up no cost lifetime health benefits in return for a reduced premium payment for spouses and eligible dependents. At that time, the agreement was made between the County and its retirees that, in perpetuity, assured retirees that they were tied to Administrative Management employees for purposes of health care benefits, providing retirees with the same benefits under the County Health Plan and the same premium rates as Administrative Management employees. From the time of this 1985 agreement, retirees have received the same benefits under the County Health Plan and paid the same health care premium rates as Administrative Management employees.

Effective July 1, 1999, the County provided a significant health care premium benefit to Administrative Management employees upon their retirement which allowed that on the death of the retiree, the surviving spouse would be allowed to continue paying the same monthly health care premium as the retiree had paid. This benefit constitutes a major change in health care premium costs for survivors of Administrative Management retirees. It is my understanding that this benefit has now been extended to all employee organizations and covers all retirees that retire from the County after July 1, 1999. SCARE was not notified at the time the benefit was given to Administrative Management employees--an apparent oversight on the part of the County.

Currently, the survivors of retirees who retired prior to July 1, 1999, pay the entire monthly health care premium--a major financial burden for them. We now see a "two tiered" retiree health care premium system that was not part of the 1985 agreement with the County. Our membership is

pressing us to resolve this matter. SCARE requests that the County include all retirees and current survivors in its survivor benefit that became effective July 1, 1999.

While SCARE does not intend at any time to make this request to the County Retirement Board, we do request that Sonoma County provide this benefit. The County provides health care benefits for its retirees, pays the County's share of those benefits and is a party to the 1985 agreement to tie County retirees in with current Administrative Management employees for the purpose of health care benefits.

At your convenience, SCARE representatives would be happy to meet with you to discuss this request or answer questions you may have.

Sincerely,

Maureen Latimer, President
Sonoma County Association of Retired Employees

c. Tim Smith, Mike Cale, Mike Kerns, Paul Kelley, Mike Reilly, Bob Nissen

scare/mike.let

EXHIBIT 3

February 16, 2007
508 Buena Vista Dr
Santa Rosa, CA 95404

Ann Goodrich
Director of Human Resources
Human Resources Dept.
Administration Drive
Santa Rosa, CA. 95403

Dear Ms. Goodrich:

I am writing to expand on a couple of points I made during our discussion of Wednesday, February 7, 2007, regarding Retiree Health.

While we appreciate you and your staff taking the time to explain the proposed County Health Plan changes to us, we are very concerned that Sect.15.4, Medical Insurance Eligibility and Contributions for Retirees, Subsection (d) is incorrect and contravenes a long established County policy of more than twenty (20) years. Likewise, Sect. 15.5 (e) contains the same erroneous change in long standing County policy when it says that retiree medical insurance may be discontinued or modified solely at the County's discretion. These changes erroneously assert that the County may require retirees to pay more for their medical insurance than active management employees do.

As the Director of Human Resources/Personnel for 14 years, I verbally communicated on several occasions the County's policy of tying Retiree Health Insurance subsidy and health benefits to County Middle Management. That policy was also communicated to SCARE for their information on several occasions. Under CAO Tom Schopflin and the Board of Supervisors, we agreed to the tie so there would be a clear and consistent policy for treating retiree health. The intent was to have consistency and certainty and not have to revisit the issue periodically. The intent was also to have an automatic approach that suited the County and Retirees and did not create concern and consternation among retirees. In particular, the County sought a tie as previously retirees received the subsidy and benefits of their former bargaining unit. That system caused problems for administration of benefits for Risk Management.

It is my understanding that my successor, Ray Myers, continued to communicate that same policy with the approval of the County Administrator to bargaining units, SCAMC and SCARE. As the attached letter from former Personnel Director Bill Hart indicates, the tie with middle management goes back many years.

Carl Jackson, formerly Deputy General Manager of the County Water Agency, was the President of the Retired Employees, (SCARE), during several of the later years of my tenure as HR Director. We had several conversations in our official roles on the issue of the Retirees tie to County Middle Management (SCAMC) for health insurance benefits and County subsidy. As noted earlier, such a tie served the needs of the County and of Retirees. While both Mr. Jackson and I believe there were written communications

confirming this tie, we have not been able to find a copy of such a document. SCARE files are very limited, and we do not have access to the County files. Nonetheless, it is the position of SCARE, Mr. Jackson and me that such a formal policy tying County Retirees' (retiring both before and after 1990) health benefits and County subsidy to Middle Management/SCAMC, since at least the 1980's. Further, it was well known and communicated to both retirees and management employees and bargaining units on many occasions and was relied upon by both retirees and employees. Such a policy was not placed in MOU's on the advice of Counsel, as the MOU's do not cover retired employees.

Gail Braun, former Risk Manager, confirms the above understandings. Additionally, she believes that the tie of Retiree and Middle Management health insurance may have also been included in some open enrollment documents sent to retirees.

As we also noted, the retiree health coverage and tie to management was also used to respond to requests from SEIU, SCAMC and Retirees when the issue of adding an automatic cost of living escalator to our 1937 Act Retirement System was raised. The answer that I routinely gave was that our Retiree Health Insurance tied to Management was in effect in lieu of the automatic COLA that almost all other County retirement systems, both 1937 Act and PERS, enjoy. This quid pro quo was recognized by employee organizations and retirees, and their request for automatic COLA was regularly dropped.

Under the circumstances, SCARE hereby requests that Sects. 15.4 (d) and 15.5 (e) be dropped from the Proposed Salary Resolution language as it violates long standing County policy and oral agreements between the County and various employee groups and retirees. We also request that these Salary Resolution changes be held for 90 days to allow us to fully explore options. That would still allow the Board to take action 30 days before July 1, 2007.

We appreciate your recent offer to have a dialog on developing options for possible ways to reduce the significant unfunded liability for retiree health that the County faces. Public statements by Board of Supervisor members and the CAO strongly suggested a dialog would occur. We stand ready to actively participate in the generation and analysis of possible options to reduce current and future retiree health costs. We wonder if your studies have taken into consideration the fact that retirees over age 65 on Medicare cost the County much less than regular employee health insurance?

Please let me know if you have questions or wish to discuss these issues further.

Richard Gearhart,
President, SCARE

cc SCARE Board
County Administrator
County Counsel
SCAMC

EXHIBIT 4

County file

Ray Myers - Fwd: health plan

From: Ray Myers or Kay Ashbrook <myersbrook@yahoo.com>
To: Joanne Sidwell <jsidwell@sonoma-county.org>, Marcia Chadbourne <mchadbou@sonoma-county.org>
Date: 3/8/2004 8:15 PM
Subject: Fwd: health plan

Hi Joanne and Marcia:
This is Ray Myers writing from home tonight. I'm not sure why, but the retirees group are researching their linkage to the Management Group. See Maureen's email below.

I don't have any records that I copied or kept from when the retirees were linked to the mgt group, but it was in the 1985 era. Would you two look over your files and see if you can find a reference document. I know the MOU negotiations files for that time had all kinds of relevent records, memoranda, bargaining notes and consultant reports. I think this is going to get important. I know the retirees are concerned about how we'll react to the new federal prescription under Medicare, especially whether or not the County will try and drop drug coverage to Medicare eligible retirees under the CHP and any other purchased plans. For reasons stated way below, I don't think we can legally do that to the current group of retirees and employees vested under the retirement plan.

But first, to help you find any documents from 1985 changes Maureen is looking for, here are my recollections. Prior to 1985, the County health plan (CHP) and our purchased plans, then including Kaiser and HPR, were all uniform with regards to benefits for employees. The CHP then, as well as the purchased plans, made no distinction among groups of employees like they do now. That all started in the 1985 era at the instigation of the County. We wanted to reduce the upward cost of the CHP premiums, which were largely paid for by the County. In 1981, the County paid 100% of the premiums, but we only had the CHP. In the summer of 1981, we were "mandated" under the old HMO guidelines by Kaiser and HPR. I forget how much each employee paid for premiums, but it wasn't much and I think the CHP was treated differently than the purchased plans. Not sure. Anyway, I do know that in 1985 we proposed to all unions improvements in the CHP (increased benefits and added very modest preventative services) in return for which we wanted the unions to agree to co pays and deductibles and to pay more of the share for their premiums. Kaiser also was changing it's plan to require higher co pays. I think HPR was doing the same.

And the retirees receiving medical insurance were treated the same as active employees with regard to benefits and premium contributions. That had been the long standing guarantee: you retire from the County on any basis except for deferred retirement and you can continue to participate in the same health plans as the active employees and on the same cost basis as active employees. The former guarantee meant retirees could participate in open enrollments and add and remove dependents. The latter meant the retiree enrollee would pay the same premium contribution for the particular plan selected by him as an active employee would pay for the same plan. Because there was no distinction between health plans among the employee groups, the retirees were never considered to be enrolled in a particular plan under the MOU they retired from.

Then, as a result of our negotiations in 1985, we ended up getting all but SEIU to move to co pays and deductibles. The improvements (preventive care) was given to them; Risk Mgt said they didn't want to have two versions of CHP, but they could live with two versions of employee deductibles and co pays. So we ended up with all unions but SEIU having $100/$200 deductibles and some amount of co pays (I forget) and a lower stop loss amount. In return, we lowered the employee's share of the premium costs to zero the first year, and it rose in succeeding year or years of those multi year MOUs. SEIU had higher stop loss figures (single/two party/family; I forget now what the amounts were for each category). And their premium contributions did not drop.

At the conclusion of those negotiations, in 1985, I remember your predecessor, Marcia, realizing the impact of this on administration of the CHP regarding retirees. She didn't want to have to keep track of which version the retirees went into when retired. And would a retiree have the ability to move during open enrollment to a less costly version. Looking back on it now I'm not sure why we were so concerned with retiree choices, but we were. We also could tell that probably 90% of the retirees were from SEIU job classes, so they were not going to get a premium reduction.

Again, I can't clearly remember why we were concerned about that, except to say during those early 1980's, the retirees had more of a political impact on the Board than retirees do today. Back then, retirees who had been burned with high inflation were mobing the Board each year to demand a COLA. And each year the Board gave them an ad hoc (meaning it was paid for directly by the General Fund, not retirement earnings, excess or not) COLA of from 2% to 5%. I recall the CAO did a report on this in the later 1980s and it was striking: the Board gave retirement COLAs from the general fund to retirees in every year except one for over a 12 year period. This finally ended when legislation was passed and our Board adopted it to allow the Retirement Board to use excess earnings and other measures to provide catchup COLAs to older retirees to bring them to 75% of the purchasing power they had when first retired. But I digress.....

So most retirees would be in the SEIU version of the CHP unless we did something. We decided to say that all retirees and future retirees would be placed in the mgt benefit package henceforth with the changes enacted in 1985. That immediately cut the retirees premiums to zero, which they loved. They had to for the first time pay co pays and deductibles, but they understood the value of a higher stop loss for major medical cause they used the CHP more than active employees. The retirees were very supportive of the grouping in with mgt group for benefit identification. We also probably put the retirees in the mgt group cause I bet we were struggling to get SEIU to agree to a new MOU and we had to make a decision on the retirees before the union got around to agreeing. In 1981 we had a 30 day strike with SEIU. In 1983, we had a one or two week strike, largely at Community Hospital. In 1985 we had rolling strikes around the County. So getting SEIU to agree before July was never a possibility.

Later, the County made one more major change in our system of employee-retiree health care entitlement. In the bargaining around 1988 and 1989, we moved to limit access to retiree health coverage to only employees hired after 1990 who worked continuously with the County for 10 years and then went out on a normal or disability retirement. The same employee could cover a spouse and dependents if the employee worked a another 10 consecutive years at the County and retired.

So, back to the retirees' fears about how the County will react to the new prescription drug benefit under Medicare. I believe that the County has consistantly adhered to the guarantee to its

employees and retirees that I and others began articulating in 1981: you take a normal or disability retirement from the County and be enrolled in health insurance, you will get to continue to participate in the same array of health insurances available to active employees and on the same cost sharing basis as active employees do for so long as you maintain continuous premium payments. Miss a payment and you're dropped from coverage with no ability to get back in. The only distiction we have between employees and retirees is the change implemented in 1990 adn 1991: requiring 10 years work at the County before you can participate in health insurance upon retirement and 20 total years work at the County before your dependents can participate with the employee. For employees hired before 1990 and 1991, depending on bargaining units, those 10 year and 20 year requirements were not applicable.

The key for me in analyzing the prescription drug benefit coming under Medicare is the commitment the County made to retirees to participate in the same health plans, and on the same basis, as active employees. I believe it would violate that commitment, that guarantee, if we provided one health plan with prescription drugs for retirees eligible for Medicare and another for retirees not yet eligible for Medicare. Same for active employees under 65 and over 65 who may be working for us. If we want to take advantage dropping the prescription drug benefit for those employees/retirees eligible for Medicare, I believe we would have to negotiate that change and implement it for future employees or retirees after a certain date.

Sorry for the lengthy memory dump. I just wanted to finally get that down in writing to you two and also ask for your help to find critical documents from those early years when we made some major changes in our health benefit coverage and eligiblity criteria.

Richard Latimer <rmlatimer@juno.com> wrote:

> To: myersbrook@yahoo.com
> Date: Mon, 8 Mar 2004 15:42:44 -0800
> Subject: health plan
> From: Richard Latimer
>
> Hi Ray: Lanie from the Board of Supervisors office called me and told me
> that she checked the September 1984 Salary Ordinance that covered health
> benefits and did not find any reference to retirees being grouped with
> administrative management folks. Carl Jackson said that Bill Hart came
> in 1985 to the Administrative Management Council and talked about
> grouping retirees with them. As his letter states, Bill Hart also said
> it was done in 1985. Do you think that you might have some record of the
> 1985 transaction? Lanie seems to have ruled out the year being 1984.
> Thanks for any help your department can give us on this issue. Maureen
> Maureen Latimer
> RMLatimer@Juno.com
>
> ---
> The best thing to hit the Internet in years - Juno SpeedBand!
> Surf the Web up to FIVE TIMES FASTER!
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