

MEMORANDUM OF LAW

DATE: April 8, 1988

TO: D. Cruz Gonzalez, Risk Management Director
via Jack McGrory, Deputy City Manager

FROM: City Attorney

SUBJECT: Participation in Union Health Insurance

You have asked this office if it is permissible for a recognized employee organization to require employees in its appropriate representation unit to be members of the employee organization in order to participate in the employee organization's health plan. You indicated that this matter was brought to your attention when an employee requested to change his or her health plan during the plan year because the employee no longer desired to be a member of the employee organization sponsoring the plan. The provisions of the employee organization health plan make membership in the employee organization a prerequisite to obtaining benefits under the plan.

We believe that an employee organization has the right to require membership in the organization as a condition of participation in its health plan for the following reasons.

Either upon entering employment with The City of San Diego or during the annual open enrollment period for all City employees, City employees have the option of picking health insurance from one of the following health care providers: (1) City Med, (2) Kaiser, (3) Greater San Diego, and (4) PruCare. Employees who are members of the appropriate units represented by the San Diego Police Officers' Association or Local 145 of the International Association of Firefighters have the additional option of selecting a group health plan offered by their respective recognized employee organization. Both the POA plan and the Local 145 plan require that all participants in the plan be members of the employee organization. If an employee does not desire to be a member of the applicable organization, he or she may elect coverage from one of the other four plans. No one is coerced into joining the organization in order to receive health plan benefits. Once the employee makes an election, they cannot change coverage during the plan year under any of the plans.

Public employee organizations are under no obligation to provide health care benefits for either members of the organization or employees in the appropriate representation units. They are, however, free to offer benefits to members or

to employees in the appropriate representation units. This, of course, is a matter solely within the discretion of the recognized employee organization.

You also expressed concern over the effect the Consolidated Ombudsman Budget Reconciliation Act of 1986, Public Law 99-272, 100 Stats. 313 (COBRA) has on this membership requirement. COBRA requires that employer provided group health care benefits continued to be made available to employees and their dependents after termination of employment under certain conditions. We are informed that both employee organization health plans described above offer the continuation of benefit coverage required by the Act. The only requirement for continued benefit coverage under these plans is that the former employee must continue to pay both dues and the insurance premium in accordance with the plan requirements. This is a permissible procedure under COBRA. If at any time in the future either recognized employee organization health plan fails to provide the required continuation of benefits, the employee who is aggrieved by such failure may seek a remedy through the enforcement provisions of section 2207 of COBRA which has been codified at 42 U.S.C. . 300bb-7. If, in fact, that situation ever occurs, we are available to assist you in the resolution of that dispute.

JOHN W. WITT, City Attorney

By

John M. Kaheny

Deputy City Attorney

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