

MEMORANDUM OF LAW

DATE: February 21, 1992

TO: Larry B. Grissom, Retirement Administrator

FROM: City Attorney

SUBJECT: The Availability of Post Retirement Health Care Insurance
(San Diego Municipal Code Section 24.0907.2) for Unified
Port District Members of City Employees' Retirement System

You have asked whether Unified Port District ("UPD") members of the City Employees' Retirement System ("CERS") should be participating in the post retirement health care program set forth in San Diego Municipal Code ("SDMC") section 24.0907.2. You have also asked whether the UPD should have been participating in this benefit as the result of a lawsuit brought against the City and the Retirement Board by retired City employees in *Andrews v. City of San Diego, et al.*, Superior Court Case No. 515699, filed on February 21, 1984 ("Andrews lawsuit"). Finally, you have asked whether there is a basis upon which the UPD members of CERS could participate in this program on a prospective basis.

Briefly, the City-sponsored group health insurance for eligible retirees set forth in SDMC section 24.0907.2 is not available to UPD retirees. The plain meaning of SDMC section 24.0907.2 and the legislative intent behind this section evidence this conclusion. In addition, the UPD should not be participating in this benefit as the result of the Andrews lawsuit. The UPD members of CERS were not parties to this lawsuit. Finally, absent a change in the SDMC and an agreement between the City of San Diego ("City") and UPD, there does not appear to be any basis upon which the UPD could participate in this program on a prospective basis.

Our analysis follows:

BACKGROUND

The City withdrew from participation in the Social Security System effective January 1, 1982. (Ordinance No. O-15758, adopted on June 1, 1982.) In lieu of Social Security participation, the City established a program for City-sponsored group health insurance for eligible retirees of the City. (Resolution No. R-255610, dated January 4, 1982.)

According to Ordinance No. O-15758 and Resolution No. R-255610 it was the intent of the Council for the City of San Diego ("Council") to provide City-sponsored health insurance to eligible retirees as a permanent benefit for eligible retirees. Council also directed that premiums for this new benefit were to be paid from and subsequent to July 1, 1982, by the City from the City's share of Surplus Undistributed Earnings.

Concurrent with the Council's direction, the City Attorney was directed to amend the SDMC retirement ordinances as necessary to accomplish the stated objective. As a result, SDMC section 24.0907.2 entitled "City-Sponsored Group Health Insurance for Eligible Retirees" was enacted. As originally enacted, eligibility for the benefit was limited inter alia, to employees who were on the City's active payroll on or after January 1, 1982, and who retired on or after January 8, 1982.

SDMC section 24.0907.2 was amended on June 30, 1986 by Ordinance No. O-16679. As amended, eligibility for the City-sponsored group health insurance benefit was amended to include those employees who were on the City's active payroll on or after October 5, 1980 and who retired on or after October 6, 1980. The amendment was endorsed by the employee organizations, approved by a vote of the active membership of the Retirement System and approved by the Council. According to Ordinance No. O-16679, the above-described amendment was the result of the settlement of the Andrews lawsuit. Significantly, the Andrews case file indicates that the UPD members were not named parties to the Andrews lawsuit.

However, even though the UPD members were not parties to the Andrews lawsuit, they received all of the benefits (other than those concerning post retirement health insurance) which resulted from the settlement of the Andrews lawsuit. These benefits included a one time distribution of \$9.7 million to CERS members plus 10% interest from April 1, 1986, the creation of "stand-alone" 13th check supplemental benefits account with a \$30 per year cap on creditable service, an increase in the Cost of Living Adjustment from 1.5% to 2.0% for all retirees who retired between October 6, 1980 and June 30, 1985 and an additional incremental adjustment in the 13th check for those general members who retired between January 8, 1982 and June 30, 1985 for each creditable year of service. Retirement System records further indicate that the active membership of the UPD voted on all of the benefit changes (other than health insurance) proposed to settle the Andrews lawsuit. As a result, the SDMC was amended to reflect these benefit changes.

DISCUSSION

UPD employees are members of CERS pursuant to a contractual arrangement between the City and the UPD. According to the Retirement Agreement between the City and the UPD dated February 11, 1964, the UPD employees are "classified as general members . . . and their contributions to the retirement system and their benefits therefrom shall be identical with those of 'general members' who are employed by the City." With respect to the health insurance benefit, however, not all general members of CERS who are employed by the City are eligible for this benefit. Eligibility is dependent upon satisfying the criteria set forth in Resolution No. R-255610 which has been codified in SDMC section 24.0907.2.

Resolution No. R-255610, adopted on January 4, 1982, established

the City-sponsored group health insurance plan for eligible retirees of the City. According to this resolution, the City Manager was authorized to establish a City-sponsored group health insurance plan for eligible City retirees which would provide the same choice of program coverage as was offered to active City employees. The plain meaning of this resolution evidences an unambiguous intent to limit this benefit to City employees.

Further support for this conclusion is found in Attachment A to Resolution No. R-255610. According to this document, the following criteria were established for eligibility of retirees to participate in the City-Sponsored Retiree Health Insurance Plan:

1. Employee must be on the active payroll of The City of San Diego on January 1, 1982, and
2. Employee must be eligible for and receive a retirement allowance from The City of San Diego, and
3. Employee must retire on or after January 8, 1982, and
4. The Plan is limited to:
 - a. All employees eligible for general membership in the City's Retirement System, or
 - b. Legislative officers, or
 - c. Safety members covered by Social Security Coverage as of December 31, 1981.

Recognizing the well-settled rule of statutory construction that ordinances are construed as a whole, giving effect wherever possible to the usual and ordinary import of the language used, the repeated references to "employee" and "The City of San Diego" indicate a clear intent to limit this benefit to certain specified employees of The City of San Diego. *Longshore v. County of Ventura*, 25 Cal. 3d 14, 24 (1979). This conclusion is further supported by the stated intent of Council in giving this benefit to City employees as a result of its decision to withdraw the City from participation in the Social Security System effective January 1, 1982. (Resolution No. R-255610; Ordinance No. O-15758.)

According to Resolution No. R-255610, the City Manager was authorized to "cause premiums for said insurance to be paid out of the City-Sponsored Retiree Health Insurance Plan Fund." (Resolution No. R-255610.) Although the "insurance plan fund" referenced above was not further defined, Ordinance No. O-15758 adopted on June 1, 1982 indicates that "premiums for said City-sponsored group health insurance were to be paid from and subsequent to July 1, 1982 by the City from the City's share of Surplus Undistributed Earnings." Significantly, SDMC section 24.0907.2 provides that "if sufficient funds are not available for the payment of health insurance premiums under this section, it shall be the responsibility of the City to provide such funds from sources as may be applicable." The fact that the City is the guarantor of this benefit

further supports the conclusion that this benefit is limited to City employees.

In light of the foregoing, it is clear that the UPD general members of CERS were never entitled to the health insurance benefit set forth in SDMC section 24.0907.2. This section clearly limits coverage to specified City employees. The settlement of the Andrews lawsuit does not change this conclusion. The Andrews lawsuit itself did not address the post retirement health insurance described in SDMC section 24.0907.2. In addition, the UPD employees were not parties to this lawsuit.

Finally, it is our understanding that the UPD still participates in the Social Security System and further that the UPD provides a post retirement health insurance benefit for its retired UPD employees. These facts also support the conclusion that the City-sponsored health insurance benefit for eligible retirees set forth in SDMC section 24.0907.2 was limited to City employees.

CONCLUSION

The City-sponsored group health insurance for eligible retirees set forth in SDMC section 24.0907.2 is not available to UPD members of CERS. It is limited to City employees. The legislative intent behind the establishment of this benefit is clear and unambiguous. Simply stated, eligibility is restricted to those City employees who were on the City's active payroll as of October 5, 1980 and who retired on or after October 6, 1980.

On a prospective basis we note that, absent a change in the SDMC or an agreement between the UPD and the City concerning the availability of the post-retirement health insurance benefit and the related associated costs, there is no basis upon which UPD would participate in the benefit set forth in SDMC section 24.0907.2. I hope this Memorandum of Law addresses your concerns.

Please contact me if I can be of further assistance.

JOHN W. WITT, City Attorney

By

Loraine L. Etherington

Deputy City Attorney

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