

MEMORANDUM OF LAW

DATE: April 4, 1995

TO: Val Vandeweghe, Benefits Administrator, Risk Management
Department

FROM: City Attorney

SUBJECT: Union Dues for COBRA Benefits

Questions Presented

May an employee organization, specifically the Municipal Employees Association or AFSCME Local 127, continue to collect union dues from retirees who exercise their COBRA option and continue health benefits in a union sponsored plan? If so, may the union also charge union dues for dependents of the retiree.

Short Answer

The union may continue to charge union dues for the retiree until COBRA benefits are exhausted if the retiree is a qualified retired member of the union.

Background

City employees receive health care benefits through the City's cafeteria plan as part of their overall benefit package. The City offers a number of health and dental plans and each of the City's employee unions sponsors a health and dental plan. Certain union plans require union membership as a condition precedent for enrollment in a union-sponsored plan. These plans remain available to employees upon retirement through COBRA benefits. The unions continue to charge union dues for retired members who remain with the union health plan. Additionally, the unions may charge dues for dependents who were not previously eligible to become members. You have asked if this practice is appropriate.

Analysis

COBRA benefits allow retirees to maintain their health care benefits for eighteen (18) months after retiring from the City or after another qualifying event. At the end of the eighteen (18) months, the individual must obtain alternative health coverage. The continuation coverage provided through COBRA must provide the same level of benefits as did the coverage provided prior to retirement or other qualifying event. 29 U.S.C. Section 1162(1) (1990). Additionally, the COBRA regulations provide that continuation coverage premium "shall not exceed 102 percent of the applicable premium for such period." 29 U.S.C.

Section 1162(3) (1990).

Union dues do not increase the cost of the premium coverage. They are a separate cost from premium rates. Thus, as long as coverage costs remains stable, it is permissible for a union sponsored plan to continue to require retiree union membership as a condition for accessibility to the union plan. However, whether the continued collection of union dues is permissible in a given case is dependent upon the constitution and/or bylaws of the union in question.

Local 127

The constitution of AFSCME Local 127 ("Local 127") provides in Article IV.

Section 1. Membership. All persons employed by the City of San Diego, City of Coronado and any other jurisdiction authorized by the International Union are eligible for membership in this local union, subject to the requirements of the Constitution of the International Union.

The International AFSCME constitution provides in Article III, section 1(H):

Any person who is retired and who, prior to such retirement, was eligible for membership in AFSCME and the spouse of any such person may become a member of an appropriate retired employee chapter chartered by AFSCME or may become a retired member-at-large if there is no retired employee chapter or sub-chapter to which such person can appropriately belong.

The constitutions thus provide for the continuation of union membership for Local 127 retirees and their spouses. However, no other family members or dependents may become retiree members of Local 127 and no dues may be required from such dependents as a condition of obtaining health benefits in a union-sponsored plan.

MEA

The MEA has a similar provision in its by-laws which permits retiree membership. Article II, section 2 indicates that "any employee of the City of San Diego employed in a bargaining unit which the Association exclusively represents, is eligible to become a Regular Member."

The by-laws go on to state at section 8 that "any Regular Member or Associate Member who retires from employment with the City of San Diego after continuous membership in the Association for one (1) full year immediately preceding his or her retirement, is eligible to become a Retiree Member."

The MEA by-laws make no allowances for spouses, family members or

dependents to become members in either an active or retiree status. Therefore, dues may not be charged for anyone but the City retiree.

Conclusion

COBRA regulations do not address whether union dues may be charged for retirees. The regulations stipulate only that COBRA benefit costs may not exceed 102% of the benefit costs of an employee for the same coverage. However, each of the unions in question has provisions in either its by-laws or constitution which permit retiree membership. As long as the parameters set forth in the provisions are followed, the unions may charge union dues for eligible retiree members. Retiree membership in the union thereby becomes a condition precedent for COBRA benefits in a union sponsored plan.

On the other hand, to require dues payments from individuals who are not eligible to be members is not permissible. Such a requirement is excluded by the plain language of the by-laws. To charge dues of individuals not eligible for membership would, in essence, be an increase in the premium cost. The mandatory language of the statute precludes imposition of additional costs as a condition of exercising one's COBRA rights unless the increase is no more than two percent (2%).

Thus, based upon the provisions of the applicable statutes and union by-laws, dues may continue for eligible retiree members.

JOHN W. WITT, City Attorney

By

Sharon A. Marshall

Deputy City Attorney

SAM:mrh:352.3(x043.2)

cc Cathy Lexin

ML-95-23