



MEMORANDUM

TO: Members of the Finance Committee

FROM: Rich Olson, City Manager

DATE: June 6, 2016

REF: Information/Discussion – Changes in Retiree Health Insurance Benefits

During the City Council meeting of May 23, 2016, Mayor Pro Tem Hummer requested that City staff provide information to the Finance Committee regarding whether the City had the right to change health insurance coverage for retirees.

City staff has been working on this issue for several years, trying to determine the rights of the City and the rights of the retirees under the Affordable Care Act. The Affordable Care Act requires that any employer with more than 50 employees must provide their employees with health insurance coverage. The Act only requires the benefit to be provided for active employees, not retirees.

Staff had a concern that the Affordable Care Act, as adopted, may have circumvented the need for the City to provide health insurance coverage to retirees. In April 2013, I requested an opinion from our labor attorney, John Leidy, regarding this issue (attached).

Prior to the City approving the new health insurance plan, which includes a “buy up” provision, I consulted with John Leidy to determine if there would be any issues with the City migrating to a split plan. I received a verbal opinion from him on this matter. Following the inquiry from Mayor Pro Tem Hummer, I requested that Mr. Leidy provide a written opinion on this matter (attached).

In both Mr. Leidy’s April 2013 and May 2016 letters, he states that retirees have the same rights as existing employees as it pertains to health insurance coverage. The City has the right to make modifications to its plan, change coverage, and change deductibles and co-pay amounts, but we cannot differentiate between retirees and City employees. I informed the Pierce Group that the City’s plan design must allow retirees the option to “buy up” and the plan was designed to do just that. Retirees will be required to pay the same amount annually as current City employees, if they choose this option. There is one difference in the method of payment, however. Since employees receive a paycheck, their “buy up” will be handled as a payroll deduction. Retirees do not receive a check, so City staff will need to bill them for their “buy up” premium.

Under the terms of the Health Insurance Plan, an employee or retiree will need to make an irrevocable selection on the "buy up" provision. Employees and retirees will have to live with the decisions made during open enrollment, which is occurring this week, until the next open enrollment period in June 2017. In the case of a City employee, we will continue to withhold the "buy up" premium over the entire fiscal year. In the case of retirees, the issue is what happens if they fail to pay an invoice for their "buy up" coverage? (The City does charge retirees for dependent coverage and there are a number of retirees who owe the City money. They are extremely slow in paying the City for dependent coverage.)

Pursuant to John Leidy's letter, the City will make multiple attempts to have the retiree pay the City's invoice for coverage. However, if they fail to pay, they will be dropped from the City's plan. This, once again, only applies to retirees who at their option elect to "buy up." If they are dropped because of non-payment, they will be offered COBRA coverage. They will be allowed to re-enroll in the City's plan at the next open enrollment period.

I would like to conclude by stating that City employees and retirees are being treated the same as it pertains to health insurance coverage.

STAFF RECOMMENDATION:

Provide direction to City staff regarding whether this information is to be presented to the City Council during the June 13, 2016 meeting.

RCO/vdw

HORNTHAL, RILEY, ELLIS & MALAND, L.L.P.

M. H. HOOD ELLIS
DAVID C. GADD
BENJAMIN M. GALLOP
ROBERT B. HOBBS, JR.
L. P. HORNTHAL, JR.
L. PHILLIP HORNTHAL, III
ANDREW W. HOWLE
A. VANN IRVIN
JOHN D. LEIDY
W. BROCK MITCHELL
JOHN R. PARKER, JR.
DONALD C. PRENTISS

ATTORNEYS AT LAW
301 EAST MAIN STREET

ELIZABETH CITY, NORTH CAROLINA 27909

TELEPHONE (252) 335-0871
TELEFAX (252) 335-4223
INTERNET: www.hrem.com

OF COUNSEL
CHARLES W. OGLETREE
J. FRED RILEY

RETIRED
MARK M. MALAND
THOMAS L. WHITE, JR.

OTHER OFFICES
NAGS HEAD, NC
COLUMBIA, NC

April 8, 2013

Rich Olson, City Manager
City of Elizabeth City
P.O. Box 347
Elizabeth City, NC 27907

Re: Changes in Retiree Health Insurance Benefits

Dear Rich:

I have reviewed the documents that you provided to me regarding potential changes in retiree health insurance benefits. Specifically, you wanted to know whether the City could change its retiree medical program slightly by reducing the percentage that it pays for health insurance coverage for retirees.

We did not have documentation concerning the City's original action by which a retirement health insurance benefit was enacted or established. However, from reviewing the May 31, 1996 memo from Steve Harrell, it appears that there was at that time a program in place by which anyone then employed with the City would be eligible to retire and have the City pay for their health insurance premiums if they had twenty years of service with the City (even if they were working somewhere else when they retired); or if they met the retirement criteria established by the State health insurance plan. No details about the health insurance plan are provided in these documents. What is clear is that the City "paid the health insurance premiums after retirement". The implication from this is that the City did not pay a fixed amount, but did pay the full cost of the premium for health insurance coverage for such employees.

Benefits earned by employees create property rights, and may be considered vested and irrevocable, when contingencies were not clearly set forth by the employer at or before the time the benefits were earned. In this particular situation, those employees who worked for the City on the understanding

that they would receive health insurance provided by the City, without having to pay for any portion of the premiums, have a vested right to such. Thus, it is my opinion that the City cannot change its program of paying for the entire premium due for health insurance coverage for employees following their retirement.

What is less clear is whether, and to what extent, the terms of the coverage may change. Under any plan, the employee has certain expenses including co-pays, deductibles and expenses incurred for excluded treatments or conditions. The concept of providing for health insurance for retirees is pretty vague, and it is also quite common for the terms of such plans to change from time to time when the City enters into new plans.

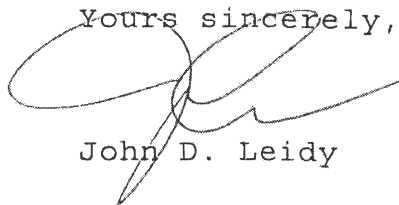
Thus, the City can probably change the specific terms of coverage provided for retirees. However, these changes probably cannot result in substantial changes that would change the nature of whether coverage was actually provided or the general type of coverage actually provided.

If the City paid for an employee to continue to participate in the State sponsored plan following their retirement from the City (or after they left work with the City, if they fell under the "20 years of service" category), then the City probably has to continue to pay for their coverage in the plan offered by the State. But if employees are not eligible to participate in the State plan after they leave employment with the City until they become eligible for retiree medical coverage, then the City has some flexibility on the type of plan for which it will pay the full premium. There may be a more cost effective option for such continued coverage until the employee becomes eligible for retiree medical coverage.

Thus, I would not recommend that the City decrease the percentage of the premium that it pays for any former employee, whether a real retiree or not, who is receiving continued medical insurance coverage at the City's cost.

I will be glad to discuss this in further detail. I am

Yours sincerely,

A handwritten signature in black ink, appearing to read "John D. Leidy", written over the typed name below.

John D. Leidy

HORNTHAL, RILEY, ELLIS & MALAND, L.L.P.

ATTORNEYS AT LAW

301 EAST MAIN STREET

ELIZABETH CITY, NORTH CAROLINA 27909

TELEPHONE (252) 335-0871

TELEFAX (252) 335-4223

INTERNET: www.hrem.com

OF COUNSEL

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RETIRED

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A. VANN IRVIN**
JOHN D. LEIDY
W. BROCK MITCHELL
DONALD C. PRENTISS**

***BOARD CERTIFIED SPECIALIST IN
REAL PROPERTY LAW**

**** BOARD CERTIFIED SPECIALIST IN
ESTATE PLANNING AND PROBATE
LAW**

May 27, 2016

Rich Olson, City Manager
City of Elizabeth City
P.O. Box 347
Elizabeth City, NC 27907

Re: Changes in Retiree Health Insurance Benefits

Dear Rich:

I am writing to follow-up on the opinion that I provided on April 8, 2013 and to address some newer issues that you have raised regarding retiree health insurance benefits. In particular, we have examined whether a retiree who participates in the Retiree Medical Insurance Plan (paid entirely at the City's cost) who elects to enroll in the City's "80/20 buy-up option" in order to receive enhanced coverage can have their coverage terminated when they fail to pay their premium for the enhanced coverage. In our opinion, the short answer is "yes".

It is clear that the City may, at its option, provide health insurance for retirees; it is also clear that "such health insurance may be paid entirely by the city, partly by the city and former employee, or entirely by the former employee, at the option of the City." N.C.G.S. Section 160A-163.

There is very little statutory guidance on the respective rights and responsibilities of a retiree and the City regarding a retiree medical plan beyond the Statute cited above. However, I have addressed the vested rights and expectations that retirees have in continuing medical insurance in my prior letter.

The North Carolina General Statutes do not address the more detailed issues regarding these types of plans and options. However, there is good authority that the City, as an employer, has the right to change the type of insurance benefit provided to retirees in certain circumstances. There is an even better argument that the City has the right to reach an agreement with a retiree to change or amend the terms of a retiree insurance benefit.

By offering the "80/20 buy-up option", the City is giving a retiree an option to agree to an amendment to their insurance plan. It will be critical to specify and get an express agreement from the retiree that they voluntarily elect to participate in the buy-up option, in order to receive enhanced coverage, and that they understand that they are responsible for paying the premium for that option. It is important to make clear to the employee that by so electing, the employee is agreeing to amended retiree medical coverage, and that they understand and agree that upon their failure to pay their portion of the premium for the enhanced coverage as it comes due that their insurance coverage, and participation in the plan, may be terminated.

I recommend that the City agree to send a notice to an employee who has failed to make their premium payment, and that if they fail to cure their failure to make that payment within a reasonable amount of time, that their coverage may be terminated. This needs to be expressed in the same document in which they make their election to participate in the "80/20 buy-up option" and to receive the enhanced coverage.

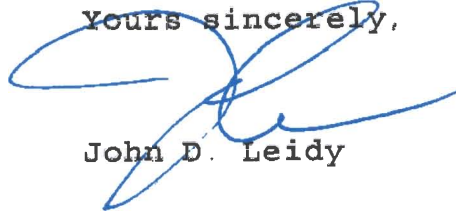
It also appears that an employee whose coverage is terminated because they have failed to pay their share of premium for enhanced coverage, is probably entitled to re-enroll in the plan at the next open enrollment period. I do not see any reason why they would be entitled to enroll earlier than that, but I do believe there is an argument that they have a right to re-enroll even though their coverage has been terminated.

Also, we recommend that you ask your insurance provider whether they will extend COBRA continuation rights to other

Rich Olson
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people who participate in a retiree's plan (i.e. their spouse) and would treat a termination of coverage for the retiree's non-payment of their portion of the premium as something that triggers the beneficiary's right to elect continuation coverage. I am doubtful about that, but recommend that you discuss this with the carrier. Please let me know if you have any further questions on this issue. I am

Yours sincerely,



John D. Leidy

JDL/lp
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