



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Nadine N. Nader

SUBJECT: SEE BELOW

DATE: October 11, 2005

Approved

Ray Warner

Date

10/11/05

SUBJECT: DEFINITION OF SURVIVING CHILD

On October 5, 2005, the Rules Committee referred the issue of the definition of surviving child to the full Council for discussion.

Please find attached the Rules Committee memo on this topic.

Nadine Nader
NADINE N. NADER
City Manager's Office

Attachment



Memorandum

TO: Rules Committee

FROM: Alex Gurza

SUBJECT: Revision of Definition of
Surviving Child

DATE: September 23, 2005

Approved

Kay Winer

Date

9/23/05

At the September 14, 2005, Rules Committee, the Committee directed staff to provide a memo to move this item to the City Council without triggering the "me-too" clauses that have been negotiated with other bargaining units. This memo provides background on the revision of the Definition of Surviving Child item and the process for making retirement benefit enhancements, including the process to approve a retirement benefit enhancement outside of the negotiation process.

The Police and Fire Retirement Board has requested that the expansion of the definition of a "surviving child" in the San Jose Municipal Code be approved and adopted. The proposed revision would include children born to or adopted by retirees after the individual retires. In September 2002, the Board's actuary completed a study to determine what the cost would be, if any, of changing the definition of a surviving child to include all children of retirees, regardless of their date of birth, conception or adoption. The Board's actuary in 2002 indicated that this implementation would cost the City 0.037% of payroll or \$64,000 per year.

Benefit changes to the Retirement Plan are subject to the meet and confer process; therefore, this item was deferred to the negotiation process. In May 2003, the Board brought this item before the Committee for consideration. At the request of the Committee, the City Attorney provided that a waiver of the right to meet and confer by one party does not suspend the duty to bargain. Both parties to an agreement must agree to waive their rights to meet and confer in order to implement a retirement benefit enhancement (see attached).

The Tripartite MOA with the Police Officers' Association and International Association of Firefighters, Local 230 expired on June 30, 2004 and the City is still in negotiations with these bargaining groups. Updates on negotiations have been provided to City Council in Closed Session, which have taken place periodically.

In August 2005, the Board requested that this item be referred back to the Committee for further action (see attached). At the September 14, 2005, Rules Committee, the Committee directed staff to provide a memo to move this item to the City Council without triggering the "me-too" clauses that have been negotiated with other bargaining units.

The City has reached agreements with several bargaining units. Some of these agreements have included "me-too" clause provisions which indicate that any wages and/or benefits in excess of the net total cost that are provided through negotiations or Council direction to any other employee/bargaining unit would also be awarded to the bargaining unit with this provision. The remaining bargaining unit contract with a "me-too" clause provision is scheduled to expire on April 14, 2006.

Any retirement benefit that is provided to a bargaining unit outside of the negotiation process could potentially result in other bargaining units requesting a benefit of equal value during their negotiation process. The City continues negotiations with the POA and IAFF and it is undetermined when agreements will be reached with these bargaining units. If the City Council decides to approve the benefit enhancement outside of the negotiation process, but without triggering the "me-too" clause, the benefit change would need to be made on or after April 15, 2006. Waivers of the right to meet and confer would have been obtained from the POA and Local 230.



Alex Gurza
Director of Employee Relations

Rules Committee: 8/17/05
Item: 6.1



Memorandum

TO: Rules Committee

FROM: Alex Gurza

SUBJECT: Revision of Definition of
Surviving Child

DATE: August 15, 2005

Approved

Kay Winer

Date

8/15/05

This is a supplement to the memo that was issued to the Rules Committee from the Police and Fire Retirement Board of Administration on or about August 11, 2005.

The Board has requested that the expansion of the definition of a "surviving child" in the San Jose Municipal Code be approved and adopted. The proposed revision would include children born to or adopted by retirees after the individual retires. Currently, "surviving child" in the San Jose Municipal Code means the natural or adopted child or children of such deceased person that meets all of the following requirements:

- i.) The child survives the deceased person's death; and
- ii.) The child is unmarried at the time of the deceased person's death; and
- iii.) The child is under the age of eighteen years at the time of the deceased person's death; and
- iv.) The child is in existence or conceived at the time the deceased person retired for disability or service; and
- v.) If the child is an adopted child of the deceased person, the adoption was completed pursuant to law prior to deceased person's death.

In 2003, the proposal to expand the definition of a "surviving child" was forwarded to the Rules Committee for further action, including agendaizing this item on the City Council Agenda for approval. It was determined that a change in the Police and Fire Retirement Plan to expand the "surviving child" benefit is subject to the meet and confer process. Therefore, this item was deferred to the Police and Fire Tripartite Retirement Memorandum of Agreement (MOA) negotiation process.

In August, 2004, the City Manager's Office of Employee Relations provided an update to the Rules Committee on this item (see attached). It was noted in this memo that the Tripartite Retirement MOA with the Police Officers' Association and International Association of Firefighters, Local 230 expired on June 30, 2004 and that the City was

Rules Committee
Subject: Revision of Definition of Surviving Child
August 15, 2005
Page 2

still in negotiations with these bargaining groups. Further, any updates on negotiations would be provided to City Council in Closed Session, which have taken place periodically.

At the September 15, 2004 Rules Committee meeting it was requested that the City Attorney report back on the question of a waiver of the meet and confer process in order to expand the "surviving child" benefit. The City Attorney's Office issued a memo on or about September 27, 2004 (see attached) in response to this question and stated that in order for a waiver to be effective for purposes of implementation of a benefit, agreement between the City and a labor organization to mutually waive the meet and confer process is required. Additionally, the City Attorney's memo mentioned that the implementation of a retirement benefit for one or more employee organizations may trigger the reopener or "Me too" provisions of negotiated labor agreements with other bargaining groups.

While we are unable to disclose details of the negotiations, retirement benefits, including the expansion to the definition of "surviving child" for the Police and Fire Retirement Plan, is subject to the meet and confer process. We will continue to provide updates on negotiations to City Council in Closed Session.



Alex Gurza
Office of Employee Relations



Memorandum

TO: Rules Committee

FROM: Board of Administration -
P&F Retirement

SUBJECT: Revision of Definition of Surviving
Child

DATE: August 11, 2005

RECOMMENDATION

Approval of the Police and Fire Department Retirement Plan Board of Administration's (the Board) request to revise the current definition of "surviving child".

BACKGROUND

At the August 2005 Police & Fire Retirement Board Meeting, this item was agendized again for discussion. The Board requested this item again be referred to Rules Committee. The following is an updated version of the memo that was submitted to the Rules Committee in July and again in September 2004.

The San Jose Police and Fire Retirement Plan awards benefits to surviving children of retirees only if they were born, conceived or adopted before the member retired. In June 2002, the Board requested their actuary complete a study to determine what the cost would be, if any, of changing that definition to include all children of retirees, regardless of their date of birth, conception or adoption. In September 2002, the Board's actuary presented their study indicating that to implement this definition change would cost the City of San Jose 0.037% of payroll (based upon June 30, 2001 payroll of \$171,779,000) or \$64,000.

In November 2002, the Board forwarded a memo to the City Manager requesting that this benefit be approved and adopted.

In April 2003, the Board directed staff to send a memo to the Rules Committee requesting action by the City Council. That memo was sent to Rules Committee on May 1, 2003. At that time, the City Manager asked that his response to the Board's request be included with the Board's memo. The City Manager's memo indicated that Administration would not recommend the adoption of the Board's proposal and that the issue should be forwarded through the retirement negotiations process.

The Rules Committee discussed this matter on May 14, 2004, and the issue was referred back to the Retirement Board with a recommendation from Rule's that the issue be addressed during

retirement negotiations. At the June 2003 meeting, the Retirement Board complied with the Rules Committee request and forwarded the issue to the retirement negotiations process.

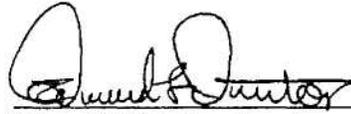
In May 2004, the Retirement Board asked for an update on the status of this proposal. City Administration responded in June 2004 by indicating that no action had been taken on this matter.

ANALYSIS

This issue was sent to the retirement negotiations process based on the belief that this was the venue in which this matter should be heard. At this point in time, the issue remains unresolved.

In today's world, it is not unusual for members of this Plan to have children who are adopted, conceived or born after retirement. As it stands now, if the member parent dies these children are not eligible for a survivorship benefits

Therefore, the Board has again recommended that this issue be referred back to the Rules Committee for further action, preferably agendaizing on the next available City Council Agenda for their approval.



Edward F. Overton, Secretary
Board of Administration
Police & Fire Retirement Plan



RECEIVED
CITY MANAGER

2004 SEP 28 A 11: 35

Memorandum

TO: Rules Committee

FROM: Richard Doyle
City Attorney

SUBJECT: Police and Fire Department
Retirement Plan – Surviving
Child

DATE: September 27, 2004

Background

At the September 15, 2004 Rules Committee Meeting, Board of Administration for the Police and Fire Department Retirement Plan requested that the current definition of "surviving child" in the San Jose Municipal Code be revised. The proposed revision would include children born to or adopted by retirees after the individual retires. The Rules Committee requested that the City Attorney to report back on the question of a waiver of the meet and confer process in order to implement the "surviving child" benefit.

Discussion

A. Meet and Confer - Waiver

The duty to meet and confer in good faith under the Meyers-Milias-Brown Act (MMBA) (Gov. Code Section 3500 *et seq.*) requires both the City as a public employer and a recognized employee organization to meet and confer about any proposed change in work rules or regulations within the scope of representation. (Gov. Code Section 3504.5.)

A change in the Police and Fire Department Retirement Plan to provide for the "surviving child" benefit is subject to the meet and confer process under the MMBA since it affects a condition of employment for current active employees. In other words, implementation of the benefit by the City would require notice and an opportunity to meet and confer with the affected labor organizations.

A labor organization may waive its right to meet and confer through its own action by a "clear and unmistakable" waiver. A party may also waive the right to meet and confer by inaction after notice of a proposed change in working conditions.

Waiver of the right to meet and confer by one party, such as a employee organization, does not suspend the duty to bargain. The MMBA imposes a mutual obligation to meet and confer on the request by either party and to endeavor to reach agreement on

matters within the scope of representation. (Gov. Code Section 3505); Independent Union of Public Service Employees v. County of Sacramento (1983) 147 Cal.App.3d 482. Therefore, in order for a waiver to be effective for purposes of implementation of a benefit, agreement between the City and a labor organization to **mutually** waive the meet and confer process is required.

B. Reopening of Negotiations in Other Labor Agreements

Implementation of the "surviving child" benefit for the Police and Fire Department Retirement Plan will trigger the reopener provision in current memoranda of agreement (MOAs) with City employee organizations. Current reopener provisions in side letters address situations where another employee bargaining unit may receive through negotiation or direction by the City Council any modification, adjustment or increase of economic benefits resulting in a net increase in total cost to the City effective during the first year of an MOA. These "Me too" provisions provide that the affected employee organization and the City will meet for the purpose of exchanging proposals to determine the implementation of the equivalent net percentage of increase for the bargaining unit.

This means that if the "surviving child" retirement benefit is implemented, the reopener provision in current MOAs with other employee organizations will become operative. This should appropriately be discussed in the context of labor negotiations in closed session.

Conclusion

Waiver of the right to meet and confer by one party, such as a employee organization, does not suspend the duty to bargain. State law imposes a mutual obligation to meet and confer on matters within the scope of representation. Thus, both parties to an agreement must agree to waive their rights to meet and confer in order to implement a retirement benefit enhancement.

Implementation of a retirement benefit for one or more employee organizations will trigger the reopener or "Me too" provisions of recently negotiated labor agreements.



Richard Doyle
City Attorney

cc: Mayor and City Council
Del Borgsdorf ✓



Memorandum

TO: Rules Committee

FROM: Alex Gurza

SUBJECT: Revision of Definition of Surviving Child **DATE: August 18, 2004**

In November 2002, our office received notification that the Police & Fire Retirement Board had requested a revision to the definition of "surviving child" for the Police & Fire Department Retirement Plan that would include children born to or adopted by retirees after the individual retires. The Police & Fire Retirement Board's actuary estimated that this enhanced benefit for retirees would produce an increased cost of .037% to the Police & Fire payroll (\$64,000 per year) and the City of San Jose determined that this enhanced benefit for future retirees is subject to the meet and confer process. Therefore, as stated in our Memorandum to the Director of Retirement Services on April 28, 2003, this item was deferred to the retirement negotiation process.

The Memorandum of Agreement on Retirement Benefits between the City of San Jose, International Association of Firefighters, Local No. 230 and the San Jose Police Officers' Association expired on June 30, 2004. The City of San Jose is still in negotiations with the POA and Local 230. While we are unable to disclose any details on the negotiations, this is an item that has been requested by the Police & Fire Retirement Board and is one of several proposed revisions to the Police & Fire Retirement Plan that are subject to the meet and confer process. We will continue to provide updates on negotiations to City Council in Closed Session.

Alex Gurza
Director of Employee Relations



Memorandum

TO: Ed Overton, Director
Retirement Services

FROM: Del D. Borgsdorf
City Manager

SUBJECT: Amendment to Police & Fire
Department Retirement Plan

DATE: April 28, 2003

It is my understanding that at the request of the Police & Fire Retirement Board, you are preparing a memorandum to the Rules Committee requesting that the City Council hear a proposal from the Board to amend the retirement plan regarding the definition of "surviving child". Please include this memo with your request to the Rules Committee, so that my response to this proposal is noted.

The Police and Fire Retirement Board proposes a revision to the definition of "surviving child" for the Police & Fire Department Retirement Plan that would include children born to or adopted by retirees after the individual retires. While this may be a proposal that bears careful consideration, I cannot recommend any additional retirement benefit enhancements at this time, given the City's fiscal condition. Since the Tripartite Retirement MOA with the POA and Local 230 expires in June 2004, this proposal can be considered at that time. Although the negotiations would apply only to future retirees, extending the benefit enhancements to persons who have already retired can be included if this proposal is adopted.

Del D. Borgsdorf
City Manager



Memorandum

TO: Del Borgsdorf

FROM: Edward F. Overton

SUBJECT: Surviving Child Definition Revision

DATE: 20 February 2003

Under the current provisions of Chapter 3.36, part b, surviving child is defined as:
"Surviving child"...means the natural or adopted child or children of such deceased person that meets all of the following requirements:

- i. The child survives the deceased person's death; and
- ii. The child is unmarried at the time of the deceased person's death; and
- iii. The child is under the age of eighteen years at the time of the deceased person's death; and
- iv. The child is in existence or conceived at the time the deceased person retired for disability or service; and
- v. If the child is an adopted child of the deceased person, the adoption was completed pursuant to law prior to the time the deceased person retired for disability or service."

The Police & Fire Retirement Board has asked that this definition be revised to include children who were born to retirees, either service or disability, or who were adopted after the person retired. This matter was referred to the Office of Employee Relations in November 2002. In recent conversation with the Employee Relations' director, I was informed that the matter was being folded into the retirement MOU discussions that are to occur in 2004.

Since the meet-and-confer process with Local 230 and POA does not include retired members, the Retirement Board Vice Chair, and retired member, has asked that this matter be brought directly to your attention.

The Plan's actuary reviewed the benefit improvement in September 2002. The actuarial review produced a cost of .037% of the City's payroll. At that time, the actuary estimated that dollar amount would be \$64,000 per year.

Please let me know if there is anything that I should do to assist in resolving this issue.

Edward F. Overton, Director
Retirement Services

c: Kay Winer
Ken Heredia

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Human Resource Consulting

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andy.yeung@mercer.com
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25 September 2002

Ed Overton
Retirement Administrator
City of San Jose Police and Fire Department Retirement Plan
1737 North First Street, Suite 580
San Jose, CA 95112

Subject:
Extending Retirement Plan for New Dependent

Dear Ed:

We are pleased to present the results of our study for the cost to provide retirement and health benefits for a new dependent.

The results of our study are provided in the following table:

| Increase in Annual Contribution | |
|---|----------------------|
| <u>Employer</u> | <u>% of Payroll*</u> |
| Normal Cost | 0.007% |
| UAAL | 0.030% |
| Medical (Approximate) | 0.000% |
| Dental (Approximate) | <u>0.000%</u> |
| Total City Rate Impact | 0.037% |
| Estimated Annual City Amount: \$64,000 | |
| <u>Employee</u> | <u>% of Payroll*</u> |
| Normal Cost | 0.003% |
| UAAL | 0.000% |
| Medical (Approximate) | 0.000% |
| Dental (Approximate) | <u>0.000%</u> |
| Total Employee Rate Impact | 0.003% |
| Estimated Annual Employee Amount: \$5,000 | |

* Based upon June 30, 2001 payroll of \$171,779,000.

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Human Resource Consulting

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25 September 2002

Ed Overton

City of San Jose Police and Fire Department

Background

We understand that under the current City Ordinance, a member is required at date of retirement to identify his/her spouse as well as all dependents.

An eligible dependent will be entitled to receive a survivorship retirement allowance as well as medical and dental benefits until a certain age. However, if a dependent is not named at the member's date of retirement, he/she will not be entitled to any pension or health benefits.

The System is interested in the cost associated with extending pension and health benefits to new dependent(s) added after retirement through birth and/or adoption.

Data Used

The Department of Retirement Services provided us with a list of retirees who have added new child dependents after their date of retirement. The department also supplied the birth dates for those new dependents. We understand that this information was collected from retirees who chose to cover their new dependents.

From our actuarial valuation database, we were able to determine the level of benefit this improvement will add for each new dependent.

The department informed us that no surviving beneficiaries of deceased members have dependents born after the member's retirement date.

Assumptions

For purposes of this study, we have ignored mortality for children. We assume that each new dependent will remain an unmarried full-time student until the age of twenty-two years, as is

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Human Resource Consulting

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25 September 2002

Ed Overton

City of San Jose Police and Fire Department

required for receipt of the dependent survivor benefits. For retired members and their spouses, we use the same mortality assumptions as were used in our June 30, 2001 actuarial valuation. These assumptions are used to determine the likelihood and the length of time that a new dependent would receive a benefit from the Retirement Plan.

We assume this benefit improvement will be available to current actives as well as current retirees. We further assume that current actives and those who have terminated with a deferred benefit will exhibit the same patterns for taking new dependents after retirement as we have seen for current retirees.

Results

Retirement Benefit

We estimate that the increase in the present value of survivor benefits for current retirees who have taken new dependents is \$285,000 as of June 30, 2001.

As mentioned above, we have assumed that the new program will also benefit those who have not yet retired and that they will have the same patterns for new dependents. Under these assumptions, we calculate the increase in the total accrued liability (including current actives, terminated members, and retirees) for survivorship benefits to be \$623,000.

If we amortize the liability over 16 years, this will result in an increase in contributions of 0.03% of total payroll.

The increased total (i.e. City plus employee) Normal Cost for the inclusion of new dependents results in an increase in contributions of 0.01% of payroll. If we apply the current Normal Cost allocation policy, this benefit improvement will result in a Normal Cost increase of 0.007% and 0.003% of payroll for the City and the employees, respectively.

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25 September 2002

Ed Overton

City of San Jose Police and Fire Department

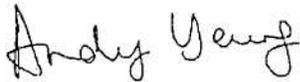
Health Benefit

We observe that most retirees with child beneficiaries who satisfy the definition of new dependents are already covered by a family health plan and the Health Premium Fund is paying the maximum subsidy. Therefore, we conclude that there is no additional cost for the Fund to cover these new dependents.

However, per our conversation with Ina Lancaster on September 19, if both the member and the spouse (if applicable) die in the future, their new dependent children would be entitled to health benefits and the Fund would have to continue to pay the premiums for those new dependents. We have estimated that the present value of the total increase in expenditures by the Fund under that scenario to be less than \$10,000. Thus, we conclude that the extension of health benefits to new dependents will not have a significant impact on the Fund.

Please let us know if you have any questions. We look forward to discussing this study with you on October 3.

Sincerely,



Andy Yeung, ASA, EA
AY/DW:bn



Daniel Wade, ASA, EA

Copy:
Ina Lancaster
Mercer Team