



COALITION OF LA CITY UNIONS

November 16, 2010

AFSCME LA City Local Unions

- 164 – CRA Basic Unit
- 585 – CRA Professional Unit
- 741 – LA City Part Time Recreation Unit
- 901 – Recreation and Parks Prof. Unit
- 1890 – CRA Management Assn.
- 2006 – LA City Prof. Medical Employees
- 2204 – CRA Supervisory Unit
- 2626 – Librarians' Guild, Supervisory and Rank & File
- 3090 – LA City Clerical and Support Services Employees
- 3672 – Executive Administrative Assistants

International Union of Operating Engineers Local 501

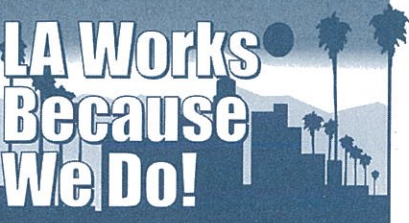
Laborers' Local 777

LA/Orange Counties Building & Construction Trades Council

Service Employees International Union Local 721

- LAPMA – LA Prof. Managers' Assn.
- LACAA – LA City Attorneys' Assn.

Teamsters Local 911



VIA EMAIL

Councilmember Dennis P. Zine, Chair
 Councilmember Paul Koretz
 Councilmember Bernard C. Parks
 City Hall
 200 North Spring Street
 Los Angeles, CA 90012

Dear Councilmembers:

The October 15, 2010, communication before you from CAO Miguel Santana and Personnel Department General Manager Margaret Whelan asks the City Council to sanction a course of action – increasing co-pays and eliminating flex credit – that will throw the health care benefits of all civilian City employees into a state of uncertainty under the new federal Health Care Reform law, that will undo the Joint Labor-Management Benefits Committee (JLMBC) structure that keeps benefits uniform for all City employees, that violates the City's MOUs, and that risks a negative fiscal impact on the City which currently cannot be estimated.

ANY CHANGES TO THE CITY'S FLEXIBLE BENEFITS PLAN MUST BE APPROVED BY THE JLMBC.

The JLMBC was created by a Special Memorandum of Understanding between the City and various City employee Unions on October 3, 1989. The JLMBC consists of five Union representatives and five management representatives and is charged with administering flexible benefits for all City employees. Through labor-management cooperation, the JLMBC allows the City and its Unions to coordinate uniform benefits across City employment to create the largest possible pool to purchase benefits cost-effectively. The JLMBC has now served this goal well for over 21 years.

Cheryl Parisi, Chair



The Special MOU states:

"All proposals which result in changes of existing benefits coverage or establishing new benefits under the Flexible Benefit Plan (including the impact of changes mandated by the State or Federal government) *will be* presented to the Joint Committee for review *and approval.*" [I(C); emphasis supplied].

Contrary to the CAO's speculation in the October 15 communication before you, City Unions did not give up their rights to require the City to bargain collectively over health care benefits to the JLMBC or at all. Health care benefits are indisputably within the scope of representation subject to mandatory bargaining. *DWP* (2000) ERB Dec. No. U-135 (choice of health insurance plans and benefits within scope of required bargaining); *City of Modesto* (2004) PERB Dec. No. 1724-M, 29 PERC 36 (health care premiums are within scope of representation).

In fact, the City and its Unions have bargained over health care benefits, and those benefits are set forth in individual MOUs currently in effect. Moreover, the City and the Coalition of L.A. City Unions entered into a Letter of Agreement in October 2009, by which the parties reached agreement over far-ranging wage and benefit issues to deal with the City's budget deficit, in exchange for extension of their MOUs through June 30, 2013; the comprehensive LOA did not authorize a change in health benefits. The various MOUs expressly provide that changes to benefits can only be made with a positive recommendation from the JLMBC:

During the term of this MOU, the City will provide benefits in accordance with the Civilian Modified Flexible Benefits Program (hereinafter Flex Program) and any modifications thereto as *recommended* by the JLMBC and approved by the City Council.¹

The JLMBC's rules require that, for any motion to pass, *i.e.*, for any "recommendation," "three (3) City Employee Organization and three (3) Management Committee members must vote to pass the motion." Policies Governing the JLMBC, at F(4); emphasis in policy.²

¹ This provision is from MOU No. 3, covering the clerical and support services unit [emphasis supplied]. All of the MOUs between the City and civilian employee organizations contain substantially similar language.

² The JLMBC borrows its structure from a common model in the private sector, joint labor-management trust funds, known as Taft-Hartley trusts, governed by federal labor and pension law. Under this model, employers and unions negotiate collective bargaining agreements in which they agree to participate in health, retirement, apprenticeship, and other benefit plans administered industry-wide by trust funds jointly managed by labor and management, through equal numbers of labor trustees and management trustees and unit (consensus) voting. Unions and employers have full rights to bargain over benefits. Like the

Thus, the documents governing the JLMBC and the MOUs, both of which bind the City, require JLMBC *approval* and *recommendation* in order to change the purchase of benefits. Absent joint labor-management approval, benefits cannot be changed through the JLMBC.

THE PLAN DESIGN CHANGES BEING PURSUED BY THE CAO WERE PROPOSED TO, AND REJECTED BY, THE JLMBC.

At its June 3, 2010, meeting, the JLMBC voted to adopt baseline rate increases of 9.6% from Anthem Blue Cross and 6.6% from Kaiser. The JLMBC did not approve any plan design changes in approving the rate increases. These are the only rate increases approved by the JLMBC.

Just over a month later, at the July 15th meeting of the JLMBC, the City proposed changing benefits by increasing co-pays for office visits and emergency room visits and eliminating Flex credits – the modifications proposed here. JLMBC Vice-chairperson Cheryl Parisi, a Union representative, raised concerns that a co-pay increase could cause the City to lose its grandfathered status under the new national Health Care Reform law. A representative of Mercer Human Resource Consulting acknowledged that at least Kaiser would immediately increase premiums if grandfathered status were lost but could not give an exact figure. Three specific motions were brought by the City representatives to approve the benefit changes. Each motion failed for lack of a majority vote.

Thus, there was no approval of the modifications proposed by the City nor a recommendation reached, as required by the JLMBC Special MOU. The modifications sought by the CAO and Personnel Department General Manager in their October 15 communication are, therefore, not legitimately before this Committee or the City Council.

DESPITE THE JLMBC'S VOTE AGAINST MODIFICATIONS, THE CAO SEEKS TO HAVE THE CITY UNLAWFULLY IMPLEMENT INCREASED CO-PAYS.

After the JLMBC rejected the proposed co-pay increases, the City purportedly negotiated a separate agreement with the Engineers and Architects Association (EAA) containing the increased co-pays proposed and rejected at the July 15 meeting. The CAO and Personnel Department General Manager admit in their October 15 communication that the agreement with EAA, which covers only a minor portion of City employees, has triggered a loss of

JLMBC, the trust purchases and administers benefits and determines employee claims for benefits. Like the JLMBC, Taft-Hartley trust funds have the advantage of providing employees with better benefits at lower rates through increased buying power. They do not, however, supplant the rights of the parties to bargain benefits and to enforce bargained labor agreements.

grandfathered status under the national health care law and has thus caused an *increase in premiums for all civilian City employees.*

While the authority of EAA to negotiate the underlying agreement in light of the JLMBC vote is itself questionable, it is beyond dispute that EAA did not have authority to bargain away the benefits of federal grandfathered status for all City employees.

Following the JLMBC's rejection of the increased co-pays, the City sought to have the Employee Relations Board declare the City and the Unions at impasse on the benefit changes. On August 23, 2010, the ERB denied the City's request and refused to refer the request to its impasse procedures. ERB members opined that the JLMBC's specific language limiting changes in benefits to those changes which had secured the JLMBC's joint labor-management "approval" did not give the ERB jurisdiction to implement impasse procedures through which the City could circumvent the JLMBC approval requirement.

THE CITY CANNOT UNILATERALLY IMPLEMENT PLAN DESIGN CHANGES REJECTED BY THE JLMBC.

The CAO and Personnel Department General Manager now seek to press their plan – which has triggered the loss of grandfathered status under the new federal health care law – through the City Council. The October 15 communication mischaracterizes the JLMBC as merely advisory (*see* discussion above) and argues that, if the JLMBC is not the bargaining party in place of the Unions, then the City must have sole authority to implement health care plan changes. This is an argument based on wishful thinking, not any legal authority. The point is the same: the Unions did not give up their rights and authority to bargain health benefits collectively, except in the event that all of them agree with the City for coordination purposes and, based on such limited *approval*, act across the spectrum of City Unions.

Absent such joint labor-management agreement, none of the Unions gave up its authority to bargain over health benefits. A waiver of the right to bargain over a mandatory subject of bargaining must be "clear and unmistakable" and intentional. *California State Employees' Assn. v. PERB* (1996) 51 Cal.App.4th 923, 937-38. Waiver of such a right cannot be imposed by argument, as the CAO implies in the October 15 letter. The City may not force a waiver through bargaining with EAA. *See* Gov. Code sec. 3504.5(c) (City may not disqualify or restrict ability to participate in a health benefit plan on the basis that employees have selected or supported a recognized employee organization). The Coalition Unions have MOUs in effect through June 2013, with health benefits; without agreement to change those benefits through the JLMBC, as provided in the MOUs and JLMBC Special MOU, the benefits must remain as they were agreed.

PLAN DESIGN CHANGES BEING PURSUED BY THE CAO RISK SIGNIFICANT, UNKNOWN FUTURE COST INCREASES BY SACRIFICING THE CITY HEALTH PLAN 'S FEDERALLY GRANDFATHERED STATUS.

A central promise of the new Health Care Reform law was that anybody who liked the coverage they had would be able to keep it. In keeping with this promise, the law grants a special "grandfathered" status to plans already existing when the law was enacted. In recognition of the value of collective bargaining over employee benefits, the law gives a special grandfathered status to collectively bargained plans.³ The current benefit structure for City employees is the product of decades of collective bargaining and of consequent cooperative benefit purchasing decisions by the JLMBC. It is exactly the type of plan that the grandfathering provisions of Health Care Reform were designed to protect. By seeking to increase co-pays for short-term budgetary savings reasons, the CAO would have the City blindly step off into the long-term unknown of how the new Health Care Reform law will affect the country.

The CAO and Personnel Department General Manager concede in their October 15, 2010, letter to the Council that the increase in co-pays from the purported agreement with EAA, which they now seek to implement for all City workers, will cause the City plan to lose its federally grandfathered status and has caused an increase in premiums attributable to the loss of grandfathered status. While they try to downplay the significance of the increased co-pays by citing their initial cost to the City, the proposed co-pay increases far exceed the increases that the federal government has deemed acceptable for a plan to maintain its grandfathered status.⁴

The consequences of losing grandfathered status through at least June 2013 are

³Federal Register Vol. 75, No. 116, p. 34542.

⁴ Paragraph g(1)(iv) of 26 CFR 54.9815-1251T, 29 CFR 2590.715-1251, and 45 CFR 147.140 <http://www.hhs.gov/ociio/regulations/grandfather/index.html>. The October 15 communication notes that the loss of grandfathered status requires the City to eliminate co-pays for preventative care and claims that "[f]rom the employee's perspective, it can be argued that the benefit of free preventative care outweighs the increase in co-pay amounts for office visits, emergency rooms and generic drugs." The relative benefit of free preventative care under the federal act versus higher co-pays for office and emergency room visits is not for the City to determine unilaterally. It may be that, because federal law now requires preventative care without co-pays, the JLMBC could cost-effectively achieve such care, *without* the loss of grandfathering, *without* the attendant premium increases now and in the future, and *without* the increase in co-pays the CAO seeks to impose as part of its current or future purchase of benefits. Furthermore, these are not the only effects of the loss of grandfathered status which may occur between now and 2013 by reason of the federal law itself or further federal or state regulations. In any event, as quoted above, the JLMBC Special MOU requires that benefit changes involving "the impact of changes mandated by the State or Federal government" must be presented to the JLMBC for review and approval.

substantial. As of July, Kaiser was unable to provide an exact figure as to how much premiums would increase for the coming year because of a loss of grandfathered status. Critically, the amount rates will increase in coming years because of lost grandfathered status is unknowable. The Obama administration concedes that new regulations will cause an increase in premiums and estimates this increase as being 1-2%, which for a plan as large as the City's is significant.⁵ Other estimates are higher. Of course, when limitations are lifted, insurers may be expected to raise rates as much as they can. The Obama administration recognizes that insurance companies are already raising rates above the actual cost increases caused by the new regulations while citing the new regulations as the reason for the increase.

It should be of concern to the Council that the CAO acted – seemingly without forethought and certainly without Council direction – to sacrifice the City's grandfathered status under the federal Health Care Reform law and now seeks to minimize the potential consequences by way of explanation.

THE CAO'S URGED REJECTION OF THE JLMBC PROCESS AND REQUIREMENT OF APPROVAL JEOPARDIZES THE PRINCIPLE AND PRACTICAL AND ECONOMIC NECESSITY OF COORDINATING BENEFITS FOR ALL CITY EMPLOYEES, ACROSS DEPARTMENTS AND MOUs.

The modifications put before you in the October 15 communication are short-sighted in another respect. In walking away from grandfathered status by negotiating a problematic separate benefit with one union, the City walks away from coordinated uniform benefits City-wide. Perhaps the CAO thinks that the City will simply bring the other Unions in line with EAA through the unilateral modifications he now brings to the City Council. But that is not the only, or even most likely, possibility. If the City breaches the Special MOU and abandons the cooperative and comprehensive JLMBC model, then there will be no reason for the Unions to continue to participate either. The JLMBC would fall apart, leading to the administrative problems that the JLMBC was created to alleviate, and has effectively alleviated, over the past two decades. Rather than administering a single flexible benefits structure for all civilian City employees, the City could be required to bargain separate plans for each of the various bargaining units of City employees. Some unions might bargain to include their City employees in other plans, such as industry plans in which their local, regional, or international unions participate. The City could face the administrative nightmare and costs of administering different plans with different benefits for different groups of employees and, additionally, making contributions to and fulfilling the administrative requirements of plans operated outside of the City.


⁵<http://thehill.com/blogs/healthwatch/health-reform-implementation/121203-study-health-reform-law-will-hike-premiums-between-1-and-2-percent->

**IT IS NECESSARY FOR THE LONG-TERM WELFARE OF THE CITY THAT
THE COUNCIL UNDO THE LOSS OF GRANDFATHERED STATUS AND
DAMAGE TO THE JLMBC STRUCTURE.**

It is absolutely vital to the long-term welfare of the City and its ability to provide adequate benefits to City employees in an efficient and cost-effective manner that the City not follow the short-sighted course sought by the CAO and Personnel Department General Manager. It is also vital that the City take all actions necessary to undo the damage that has already been done. The City must not adopt the proposed co-pay increases, as doing so would violate the City's agreements with the Unions and throw the entire benefits system for City employees into a state of chaos. The City must also recognize the questionable effects of the City's purported deal with EAA, and take all actions necessary to restore the status quo and the grandfathered status of the City's health care plan. The City should reaffirm its commitment to the JLMBC, a partnership that has operated to the mutual benefit of the City and its employees for over twenty years.

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cc: Coalition Unions