

Sonoma County Association of Retired Employees (SCARE)
P. O. Box 5513, Santa Rosa, CA 95402
October 10, 2016

Dear SCARE Member:

Attached is a summary of the proposed final settlement agreement with the County regarding retiree medical coverage. The full version of the agreement is posted on the SCARE website at <http://sonomacountyretirees.com/legal.shtml>.

As you know, SCARE filed a lawsuit against the County in September of 2009 after the County reduced the County contribution for retirees to five hundred dollars (\$500) per month. Before filing the suit, SCARE participated in a mediation with the County and employee organizations to try to work out an arrangement that was acceptable to all parties but the County would not agree to anything reasonable.

The federal judge to whom the case was assigned dismissed it, ruling that there was no legal theory on which we could base a claim that retirees had any right to lifetime medical benefits (at higher than \$500/month *or at all*). We were able to get an appeals court to reverse that decision, allowing us to at least try to prove facts supporting a claim. However, after legal battles, the judge did the following, some or all of which you may recall:

- dismissed all claims for unrepresented retirees (both managers and confidential) and pre-1990 retirees and
- indicated that she would let us go to trial on a limited claim for the rest of the retirees, but likely only that they had a right to the \$600/month that employees have been receiving in addition to the \$500. At trial, the County would be able to try to convince her that:
 - retirees had no vested rights at all,
 - that even if they had such rights, they didn't have a right to the \$600
 - that even if they had such rights, they had no right to be pooled with actives so as to get lower premium rates.

As a result, we engaged in two mediation sessions with the County (the first one being ineffective) and finally came to a proposed settlement agreement in the second.

As with all settlements, the settlement proposal is a compromise between what we asked for and what the County offered. While the SCARE Board of Directors is very disappointed that we could not get a better settlement, we feel that the proposed settlement is the best we could achieve under the circumstances.

Please know that during two full days of mediation with a retired judge as mediator, we tried very hard to get a better benefit package than we ended up with but the County is opposed to doing anything that might increase its OPEB liability (the liability due to retiree health benefits).

Here is what we achieved in the proposed settlement:

- It guarantees some level of County contribution and participation in County health plans for 25 years (see last page for details). If we were to lose the lawsuit, the County could cut its contributions below \$500/month or even eliminate them entirely *at any time*.
- The settlement includes all retirees, plus their dependents and surviving spouses, who retired at any time before July 1, 2016. As indicated above, the Judge had dismissed all claims on behalf of retirees who retired before 1990 as well as those of retirees who were not covered by a union contract. Additionally, no one who retired after we filed the lawsuit in 2009 would be covered. We estimate that this means at least 45% of retirees would not be covered if we went forward with our lawsuit. This compromise provides coverage for all of the retirees in those excluded groups.
- The County will pay \$12 million into a Health Reimbursement Account (HRA) that will be funded over a three-year period starting approximately June 1, 2017. It will be allocated among all covered retirees and surviving spouses, who can use the funds at any time for allowed medical expenses. This is in addition to continuing to pay the \$500 for premiums during those years.
- We avoid the large expense of a trial and the risk that at the end of a trial the Court might rule that the County has no obligation to pay anything at all for any period of time for any retirees. Even if we were to win a trial in whole or in part, it is likely that the County would appeal and this could drag on for more years. It is also possible that a win at trial could be reversed by an appeals court. In other words, we might spend a large amount of money and wind up with nothing.

RECOMMENDATION

The SCARE Board recommends approval of this agreement. In light of the current legal and political climate, the SCARE Board believes this is the best deal available. While we wish the settlement was much more in line with what we were promised, at least it offers protection of our benefits over the next 25 years. It is important to keep in mind that the Courts have not been kind to retirees in other counties who have filed lawsuits over cuts to retiree health benefits. The most notable involved Orange County retirees. The federal judge in that case dismissed their claims. They appealed to the federal appeals court. That court referred the case to California Supreme Court and then it went back to the federal trial court. The trial court again dismissed the claims. An appeal of that dismissal was unsuccessful. The retirees lost entirely after years of litigation.

We are at least getting the things described above, including guaranteed contributions for 25 years. And while we are not getting the retroactive benefits that some hoped for or the full \$500 for as many years as we would like, we are getting some additional funds in the form of County contributions to HRAs that can be used for premiums or other health related costs. The exact amount retirees will get through the HRAs is unknown as it will depend on how many retirees end up being in the class but should be around \$3,500-\$4,000 paid over 3 years.

The County wanted to discontinue the pooling of employees and early retirees in June, 2017, but we were able to get them to extend that to May 31, 2019. SCARE, working with the unions, can still try to convince the BOS to continue pooling after that time. For those of you who don't understand pooling - it means that early retirees (under 65) are pooled with the active employees (i.e., younger) for purpose of setting rates. This results in slightly higher rates for employees and much lower rates for early retirees. Medicare-eligible retirees have never been pooled.

We tried to get the County to agree to reinstate retirees or dependents who had to drop their coverage due to the high cost of premiums during the past few years, but we were unable to get agreement on this. Retirees who waived coverage under County rules are covered.

The process for accepting or rejecting this proposed settlement is as follows: SCARE members will vote on agreement at a meeting on Thursday, November 3, 2016.

SCARE Special Membership Meeting
November 3, 2016 at 1 p.m. -- come at 12:30 p.m. for refreshments
in the Auditorium at Finley Community Center
2060 West College Ave, Santa Rosa, CA

The SCARE Bylaws limit voting to those members present at the meeting. We understand that many members will not be able to attend but hope that the group that does attend will represent your interests. At the meeting, there will be a presentation on the offer followed by questions and answers to SCARE's Board members and negotiators and our attorney. SCARE regular members in attendance at the meeting will then vote on accepting or rejecting the offer. Associate members like spouses and widows/widowers cannot vote, but we still encourage you to attend the meeting. This meeting is limited to SCARE members and associate members.

If the proposed settlement is approved, it will go to the Board of Supervisors for their final approval. After that, pursuant to the terms of our agreement with the County, we will amend our lawsuit to make it a class action suit and submit the settlement to the judge for preliminary approval. This action was required by the County as a condition of settlement. If the judge preliminarily approves the settlement, a court-approved notice describing the settlement will be sent to all retirees and surviving spouses who are in the class -- essentially all those currently receiving medical benefits through the County who retired on or before June 30, 2016. At that point, any individual can object to or opt out of the settlement. Retirees who opt out can try to bring their own lawsuit(s), but otherwise will be completely at the mercy of the County. If more than 5 percent of the class opts out, the County can withdraw from the agreement. If the County were to withdraw, SCARE's options would be to go to trial or to drop the lawsuit.

I hope this information answers many of your questions. Please attend the meeting on November 3, 2016 and we will be glad to answer other questions you may have.

Carol Bauer (original signature on file)

Carol Bauer, SCARE President

SUMMARY OF PROPOSED AGREEMENT BETWEEN THE SONOMA COUNTY
ASSOCIATION OF RETIRED EMPLOYEES (SCARE) AND THE COUNTY OF SONOMA

The following applies to the Class, which is essentially all retirees and surviving spouses of retirees who retired on or before June 30, 2016 and are getting a contribution for health care from Sonoma County (as well as those who waived coverage but with the specific right to reinstatement).

Retirees, eligible dependents and surviving spouses are covered.

1. The County will continue to pay up to \$500.00 per month toward eligible retiree and dependents or surviving spouse's health care premiums for 10 years starting June 1, 2016 and ending May 31, 2026. This means the lesser of the full actual premium or \$500.
2. The County will pay up to \$200.00 per month toward eligible retiree and dependents or surviving spouse's healthcare premiums for 15 years starting June 1, 2026 and ending May 31, 2041. This means the lesser of the full actual premium or \$200.
3. Thereafter the County will have no obligation to pay any portion of retiree health care costs.
4. The County will continue the practice of pooling non-Medicare retirees with active employees until June 1, 2019. After that date, the County has no obligation to continue pooling non-Medicare retirees with employees but may continue to do so.
5. The County will pay \$13 million as follows: (i) \$12 million will be paid on a pro-rata basis into HRA accounts for class members. The HRA money will be paid over 3 years but can be used over a much longer period of time. If the retiree dies, a dependent spouse on a County health plan will get the HRA contribution. If a retiree has no dependent spouse, any money remaining in that HRA account will return to the pool and be distributed to other members. (ii) The remaining \$1 million is for reimbursement of SCARE's legal fees and costs. The vast majority of the payment to SCARE will go to pay costs associated with the settlement and to pay the attorneys what we owe them. The rest will restore to SCARE some of what it paid to the attorneys previously.
6. Retirees will continue to have access to all County-sponsored health plans that offer retiree coverage through 2041. If the County does not have a plan available for a class member, then the County will reimburse what it would have paid for the retiree's (and/or dependents or surviving spouse's) premiums (i.e., the \$500 or \$200) into the person's HRA account so that it can be used to pay for health insurance obtained outside the County system.
7. Our lawsuit will be amended to a class action suit that will include all retirees retiring on or before June 30, 2016 who are receiving a County contribution toward health care or who waived the County contribution but have reinstatement rights.
8. Class members and SCARE will release all claims that were or could have been brought against the County. In other words, this will resolve the issue of what the County is and is not required to pay and provide for retiree medical benefits for class members, including SCARE members. Included in this are any future claims if the County chooses to reduce or eliminate its contribution to Medicare Part B premiums.