



King County
Metropolitan King County Council

STAFF REPORT

Agenda Item:		Name:	Nick Wagner
Proposed No.:	2013-0190	Date:	17 June 2013

SUBJECT

Proposed adoption of a memorandum of agreement between King County and the Joint Labor Management Insurance Committee regarding medical, dental, vision, and life insurance benefits for most county employees for the years 2014 through 2016.

SUMMARY

Through the Joint Labor Management Insurance Committee (JLMIC), the county has negotiated a memorandum of agreement (MOA) prescribing medical, dental, vision, and life insurance benefits for the years 2014 through 2016 for:

1. All represented county employees, except those represented by the Amalgamated Transit Union ("ATU"), Local 587 (principally bus drivers), or the King County Police Officers Guild (KCPOG) (deputy sheriffs); and
2. All non-represented county employees who are eligible for benefits.

Proposed Ordinance 2013-0190 (Att. 1) would approve and adopt the MOA.

BACKGROUND

The JLMIC consists of representatives of the county and several of the labor unions that represent county employees.¹ For a number of years, the health benefits plan for the vast majority of county employees has been negotiated through the JLMIC. The current JLMIC benefits plan, which expires at the end of 2013, covers all county employees except those represented by the King County Police Officers Guild (KCPOG), who are covered by a variation of the JLMIC benefits plan. Although the current plan covers the 3,864 employees who are represented by ATU, ATU has chosen not to support the proposed new benefit plan and instead is proceeding to interest arbitration under state law. That arbitration is scheduled to begin on July 8.

¹ The union representatives on the JLMIC are listed on the signature page of the MOA (Att. 1-A, p. 4).

THE PROPOSED NEW MOA

The proposed new MOA would continue the county's existing benefit plan for all county employees except those represented by ATU or KCPOG for an additional three years (through 2016), unless the parties agreed to change the plan or an arbitration panel ordered the plan to be changed.² During that time, county health care costs are projected to increase by 6.5% each year. To cover that cost, the MOA provides that the county's per-employee contribution toward benefit costs (also known as the "flex rate") will be increased by 4% each year and that the additional 2.5% will be covered from the county Benefits Fund.³ About \$26 million of the Benefits Fund has been earmarked as a Protected Fund Reserve (PFR) for that purpose.

Possible Scenarios

If health care costs increase by less than 6.5% in a given year, the drawdown from the PFR will be correspondingly less. If costs increase by less than 4%, there will be no PFR drawdown, and the amount by which the increase in costs falls below four percent will be added to the PFR. If costs increase by more than 6.5%, the drawdown from the PFR will be correspondingly more.

By April 15 each year during the term of the MOA, the JLMIC must hold an Annual Reconciliation Meeting to assess, among other things, whether the PFR is projected to fall below \$10 million. (MOA § 9) If it is, the MOA provides that "the JLMIC must consider plan changes and may consider other funding options to be implemented by the following January 1." (MOA § 10)

Interest Arbitration

Since the PFR is currently projected to fall below \$10 million during 2016, as indicated in the Fiscal Note⁴ (Att. 5), the MOA could be viewed as a one-year extension of the current JLMIC benefits agreement, with an agreement to reopen negotiations in early 2014, but the MOA includes new provisions about what will happen if the reopened negotiations reach an impasse. If the JLMIC is unable to reach agreement by June 1 on changes that will keep the PFR from falling below \$10 million, the MOA provides for interest arbitration⁵: "the matter will be submitted to a Panel of three (3) subject matter experts for final and binding resolution, whose decision must be issued no later than August 15 of the same calendar year." (MOA § 10) The MOA further provides: "The Panel shall be comprised of one expert selected by the County, one expert selected by

² The central elements of the current benefit plan design are summarized in MOA Attachments A and B (Attachments B and C, respectively, to Proposed Ordinance 2013-0190).

³ The Benefits Fund consists of the amount by which, in years past, the county's flex rate contributions for employee health care have exceeded actual health care costs.

⁴ The Fiscal Note shows that the cumulative amount spent from the PFR is projected to be \$22,621,852 by the end of 2016.

⁵ This is interest arbitration in the generic sense—i.e., a third party's binding decision establishing terms of an agreement—not the specific form of interest arbitration that is provided for under state law for uniformed employees. Interest arbitration is different from "rights arbitration," in which a third party makes a binding decision applying an existing agreement to a particular fact situation. (See Att. 2)

the coalition of unions, and one expert selected jointly by the two selected partisan experts.”

The “other funding options” that are available to the arbitration panel change from year to year during the term of the MOA:

- “In 2014, for implementation January 1, 2015, the Panel shall be empowered to make plan design changes, but not employee premium share and/or employer contribution increases.”
- “In 2015, for implementation January 1, 2016, the Panel shall be empowered to make plan design changes and/or adding employee premium share and/or employer contribution increases.” (MOA § 10)

The MOA provides no other criteria or guidelines for the panel.

The MOA provides for interest arbitration using the same process if the parties are unable to reach agreement on a successor MOA to be effective starting in January of 2017. (MOA § 11) The MOA does not specify the duration of the successor MOA or whether it, too, will include an interest arbitration provision for arriving at subsequent successor MOAs. Those issues would be decided by the arbitration panel if the parties were unable to reach agreement.

ANALYSIS

The proposed MOA can be viewed as providing for a 100% health care COLA with a 4% floor and no ceiling, subject to a possible reopener for the second or third year, with interest arbitration if the parties are unable to reach agreement on necessary changes.

The MOA provides for the current benefits plan to continue and for the county to be liable for the entire increase in health care costs, which is projected by the county’s actuaries to be about 6.5% per year during the three-year term of the MOA (2014-2016). Employees would be liable for none of the increase. In the unlikely event that the annual increase in health care costs fell below 4%, the amount by which the increase fell below 4% would be deposited into the reserve (the PFR) to be applied against future cost increases; this is analogous to a 4% COLA floor.

There are no cost containment or cost shifting provisions in the MOA itself. Although the MOA provides that the annual increase in the flex rate will be limited to 4%, the county is required to make up the 2.5% deficit (6.5% minus 4%) by drawing down the \$26 million reserve (the PFR) that has been earmarked from health care cost savings in prior years.

Unless the MOA is renegotiated or an interest arbitration panel orders changes in the MOA, the reserve is projected to be exhausted shortly after the MOA expires at the end of 2016, as shown in the tables below, which are based on the Fiscal Note (Att. 5).

Projected Deficit:

	2014	2015	2016
Cumulative <u>contribution increase</u> over 2013 (4% per year)	\$5,640,196	\$11,506,000	\$17,606,436
Cumulative <u>projected cost increase</u> over 2013 (6.5% per year)	\$9,063,221	\$18,911,408	\$29,399,857
Cost increase not covered by contribution increase	(\$3,423,025)	(\$7,405,407)	(\$11,793,420)

Projected Drawdown from Protected Fund Reserve:

	2014	2015	2016
Protected Fund Reserve (PFR) at beginning of year	\$25,854,690	\$22,431,665	\$15,026,258
<u>PFR drawdown</u> (= cost increase not covered by contribution increase)	(\$3,423,025)	(\$7,405,407)	(\$11,793,420)
PFR at end of year	\$22,431,665	\$15,026,258	\$3,232,838

Implicitly recognizing that the MOA is likely to be fiscally unsustainable beyond its term, the MOA provides: (1) for the parties to reopen negotiations if the PFR is projected to fall below \$10 million (it already is projected to do so in the third year of the MOA, as shown in the table above) and (2) if the parties are unable to reach agreement on necessary changes, for an interest arbitration panel of health care financing experts to order necessary changes.⁶

2015

For 2015, the panel-ordered changes would be limited to changes in the benefit plan. Since the only benefit plan changes that would slow the drawdown of the reserve are increases in point-of-service charges (e.g., deductibles, copays, coinsurance, and out-of-pocket maximum payments), the costs of those changes would be borne entirely by county employees; however, the magnitude of any service plan changes is unknown, since that would be up to the arbitration panel, and it is uncertain whether the arbitration panel would make any changes for 2015, since the PFR is not projected to fall below \$10 million until 2016.

⁶ As described above, the county would appoint one expert; the unions would appoint one expert; and those two experts would agree on a third.

2016

For 2016, the panel-ordered changes could include benefit plan changes, employee health care premiums, and increases of more than 4% in the flex rate. There is no way of knowing in advance what those changes would be or how the arbitration panel would apportion the costs between the county and its employees.

2017 and Beyond

The MOA provides that if the parties are unable to reach agreement on a successor benefits agreement (for 2017 and potentially beyond), a similar arbitration panel will “resolve any outstanding issues including employer contribution rates, plan design changes, and any employee premium share.” The MOA is silent about the duration of the successor agreement and whether it, too, will include an interest arbitration provision for arriving at subsequent successor MOAs. Those issues would be decided by the arbitration panel if the parties were unable to reach agreement.

Pros and Cons of Interest Arbitration

Interest arbitration has been recommended by some as an equitable measure to balance bargaining power between public employees, who are prohibited under state law from striking, and public employers, who (in the absence of interest arbitration) are permitted under state law, after bargaining in good faith to impasse, to unilaterally implement their last best offer.

Interest arbitration has been criticized by some on the grounds that (a) the availability of interest arbitration promotes an adversarial mindset in the labor-management relationship, rather than a collaborative mindset, and (b) if the county agrees to interest arbitration with some employees on some issues, other employees will ask for it on other issues, and the county may find it difficult to draw the line.

The County’s Alternatives to Interest Arbitration

If the council rejected the proposed MOA, the parties would need to resume bargaining. If no agreement was reached in time for implementation at the beginning of 2014, the current benefit plan would remain in place for another year, as provided under state law (just as it would under the proposed MOA); however, with the consent of the council, the executive could unilaterally set the annual flex rate increase at 4% per year and earmark part of the Benefits Fund to be drawn down to cover the amount by which actual health care costs exceeded 4%, just as provided in the proposed MOA. The earmarking and drawing down of a reserve for this purpose does not require agreement by the county’s labor unions.

If the county bargained in good faith, but was unable to reach agreement on a new JLMIC benefits agreement by the end of 2014, state law would permit the county to implement its last best offer unilaterally at the beginning of 2015, which is also the earliest that any benefit plan changes ordered by an arbitration panel under the proposed MOA could take effect. The county’s offer could include any combination of

benefit plan changes, employee health insurance premiums, and increases in the flex rate.

FISCAL IMPACT

The fiscal impact of the proposed MOA is summarized in the table below, which is based on the Fiscal Note (Att. 5):

	2014	2015	2016
Increase from previous year	\$9,063,221	\$9,848,187	\$10,488,448
Cumulative increase	\$9,063,221	\$18,911,408	\$29,399,857

The Fiscal Note assumes annual increases in health care costs of about 6.5 percent.

CONSISTENCY WITH COUNTY LABOR POLICIES

Current Labor Policy

The county's current labor policy on binding interest arbitration (Att. 3), which was adopted on 14 January 2013, provides in part: "It shall be the policy of King County that binding interest arbitration only be extended to those represented groups of County employees who are eligible for interest arbitration under state law, except as otherwise provided in county labor policy." The policy permits the county's bargaining agents to negotiate an interest arbitration provision with the county's court protection officers on a trial basis, but makes clear that there is no presumption that the trial will continue. In addition, the policy provides, with regard to the trial with the court protection officers: "The county's bargaining agents should attempt to negotiate a requirement that the arbitrator consider the county's obligation to protect and advance the interests and welfare of county residents and the financial ability of the county to do so."

More than three quarters of the employees who would be covered by the proposed JLMIC MOA are ineligible for interest arbitration under state law, and the interest arbitration trial with the court protection officers has not yet begun. In addition, the interest arbitration provisions in the MOA do not contain a requirement that the arbitration panel "consider the county's obligation to protect and advance the interests and welfare of county residents and the financial ability of the county to do so." For these reasons, the MOA appears to be inconsistent with the county's *current* labor policy on binding interest arbitration.

Former Labor Policy

According to executive staff, however, although the MOA was signed more than a month after the council adopted the county's current labor policy on interest arbitration,

tentative agreement on the MOA was reached before the current version was adopted. The former policy, which was in effect when tentative agreement was reached on the MOA, provided:

It shall be the policy of King County that binding interest arbitration only be extended to those represented groups of County employees where the provision of service by those employees is essential and absence of which would pose an immediate and dire threat to the public health, safety and welfare.

Most of the employees covered by the new MOA do not fit this description and therefore would not be granted binding interest arbitration under the previous labor policy; however, executive staff interpreted “binding interest arbitration” as being limited to interest arbitration as provided by state statute. Since the new MOA does not provide for that particular form of interest arbitration, executive staff did not consider the MOA to be inconsistent with the labor policy that existed when tentative agreement was reached.⁷

AMENDMENTS

No amendments are anticipated.

INVITED

1. Patti Cole-Tindall, Director of Labor Relations, King County Executive Office
2. Dwight Dively, Director of Performance, Strategy, and Budget, King County Executive Office
3. Caroline Whalen, County Administrative Officer, King County Department of Executive Services
4. Dustin Frederick, Co-Chair, King County Coalition of Unions
5. Jacob Metzger, Co-Chair, King County Coalition of Unions

ATTACHMENTS

1. Proposed Ordinance 2013-0190
 - Att. A: MOA
 - Att. B: 2013 KingCare expenses for JLMIC-eligible employees
 - Att. C: 2013 Group Health expenses for JLMIC-eligible employees
2. Definition of “interest arbitration”
3. Labor Policy on Binding Interest Arbitration
4. Transmittal letter
5. Fiscal note

⁷ Executive staff also disagrees that there is inconsistency between the proposed new MOA and the current labor policy on interest arbitration, on the ground that “interest arbitration” in the new policy should also be interpreted as being limited to interest arbitration as provided under state law.