OFFICE OF THE INSPECTOR GENERAL
FINAL AUDIT REPORT on the
Dade County Police Benevolent Association's
Administration of the *Retirees Health Insurance Supplement Program*

INTRODUCTION

The Office of the Inspector General (OIG) conducted an audit of the *Retiree's Health Insurance Supplement Program* (Program), which is administered by the Dade County Police Benevolent Association (PBA). The purpose of our audit was to determine whether Miami-Dade County (County) funds were distributed to bargaining unit retirees in accordance with the collective bargaining agreement's terms and conditions, or other approved policies and procedures.

Results Summary

The PBA has been disbursing County funds to Program participants selectively by charging former non-PBA bargaining unit retirees with application and annual administration fees of $250, which are not levied against former PBA bargaining unit retirees, notwithstanding the fact that past PBA membership is not a requirement for receiving this benefit.

The Program is open to all bargaining unit retirees, which include police and other retirees from County service who were working in the job classifications covered by the collective bargaining agreement between the PBA and the County.[1] For example, the PBA charged twenty-one (21) non-PBA retirees almost $5,200 in 2002, which is the last year wherein the PBA distributed funds to individual retirees. This had the impact of increasing that year's funds available for distribution to the Program's PBA retirees by over $9 per individual.

Moreover, for the most recent year of 2003, the PBA did not disburse any of the $350,000 of County contributed funds to the retirees. The PBA, instead, used the Program's entire current year's funds towards a payment to the Nationwide Public Employees Trust (NPET). The NPET is the PBA's self-insurance fund, which was an available health care coverage plan for police officers and other bargaining unit employees. NPET also provided healthcare coverage to many, but not all, bargaining unit retirees. Thus, those retirees not enrolled in the NPET plan received no benefit of the County's supplement benefit funds in 2003. In the past, Program funds were disbursed directly to individual Program participants regardless of their enrollment in the NPET.

---

[1] Covered job classifications are Police Officer, Police Sergeant, Fingerprint Technician 1 & 2, Photographer, Photographic Supervisor, Police Complaint Officer, Aircraft Operator, Animal Control Specialist, Animal Control Supervisor, Police Technician, Police Dispatcher, Police Communication Supervisor, Fire-Rescue Dispatch Supervisor, Court Service Officer 1 & 2, Police Property Evidence Specialist 1 & 2, Criminalist 1 & 2, Correctional Officer, Correctional Corporal, Correctional Sergeant, and Ordnance Technician.

The OIG believes that it is not unreasonable to assume the intent of the Board of County Commissioners to be, and as a matter of public policy and consistent with Florida Public Employees Labor Law, that all retirees of the bargaining unit should receive equal benefit of the County funds appropriated for this Program. <u>The application of different policies, based on union membership, in the distribution of these funds may be in violation of Florida statutes governing public employees and unfair labor practices. With specific regard to this Program, intended to benefit retirees of the bargaining unit and whose funds are appropriated as a result of the collective bargaining agreement, the PBA, as the exclusive bargaining agent for the unit, has a duty of fair representation to all those covered by the agreement. This includes all police officers and other covered personnel regardless of union membership.</u>

GOVERNING AUTHORITY

In accordance with Section 2-1076 of the Miami-Dade Code, the OIG has the authority to review past, present and proposed County programs, accounts, records, contracts and transactions.

BACKGROUND

Current Events

The *Retiree's Health Insurance Supplement Program* is funded by Miami-Dade County in the form of an annual lump-sum amount paid to the PBA pursuant to the collective bargaining agreement between it and the County. The most recent collective bargaining agreement covers the period from October 1, 2002 to September 30, 2005, and provides for a $350,000 annual County contribution to the Program. Prior collective bargaining agreements provided for a $275,000 annual County contribution.

The PBA Board of Directors, during its meeting held on March 12, 2003, passed a motion to use the Program's entire current year's County funding ($350,000) towards a payment to the Nationwide Public Employees Trust (NPET). The PBA issued Program checks on April 18, 2003, to the NPET. Shortly thereafter, in mid-May 2003, representatives from Florida's Department of Financial Services took control of the NPET declaring it insolvent. The NPET is the PBA's self-insurance fund, which was an available health care coverage plan for police officers and other bargaining unit employees. NPET also provided healthcare coverage to many, but not all, bargaining unit retirees. In the past, Program funds were disbursed directly to individual Program participants regardless of their enrollment in the NPET.

Program Operations

To receive Program benefits, bargaining unit retirees must submit notarized applications for benefits to the PBA at the time of their retirements. The PBA's practice has been to distribute Program funds to all enrolled retirees, in accordance with a formula using service years, age and specified rates as the variables. For example, the collective bargaining agreement for the period October 1, 1996 to September 30, 1999, stated that retirees aged less than 65-years old would have their benefit calculated using a monthly rate of $3.00, while retirees aged 65 to 74 would have their benefit calculated using a monthly rate of $2.00. The benefit expired for retirees aged 75 or older. All retirees' service years were capped at 30 for purposes of calculating their benefits. A thirty-year service retiree less than 65-years old would receive $1,080 annually and the same retiree aged between 65 and 74-years old would receive $720 annually.

Moreover, this collective bargaining agreement required the establishment of a *Retirees Group Health Insurance Premium Contribution Fund Committee* to be responsible for overseeing the Program and administering benefit payments. The Committee also was to "develop and implement the necessary policy statements, operating procedures and other administrative actions deemed appropriate to effectuate this benefit program . . ."

This Committee was never established and, in its absence, the PBA assumed Program administrative duties by implementing informal policies and practices to provide for the enrollment of retirees and the payment of benefits. The two subsequent collective bargaining agreements to the 1996-99 agreement, including the most recent one, among other changes, do not detail the mechanism or formula for Program benefits distribution. Nonetheless, the PBA has continued using the formula with some modification. For example, there are now lower monthly rates paid to the participants. According to the PBA, the lower rates are attributable to a growing number of enrolled retirees.

Moreover, the PBA decided to broaden the Program's coverage to include those bargaining unit retirees aged 75 and older who wish to enroll in the Program. The PBA initially calculated these retirees' annual benefits using the same annual rate for those retirees 65 and older. The PBA was to have used the same annual rate of $1.90 per service year for all retirees when making the 2002 distribution. However, as mentioned earlier, the funds to pay for this distribution went to the NPET instead.

SCOPE AND METHODOLOGY

The OIG auditors reviewed PBA records of funds received from Miami-Dade County for this Program and all Program expenditures, for the years of 1998- 2003. During this period, three (3) collective bargaining agreements were, or are in place—the first covered the period from October 1, 1996 to September 30, 1999; the second agreement covered the period from October 1, 1999 to September 30, 2002; and the third and currently operative agreement, covers the period from October 1, 2002 to September 30, 2005.

We interviewed PBA representatives about the Program's operations to the extent necessary to gain an understanding of the PBA's Program administrative activities. We reviewed Program bank account records, including bank statements, checking account registers and reconciliations. Also, we tested Program membership rolls to verify the correctness of the listed information to the individual participant applications and checked that the participants' annual benefits were calculated accurately and in accordance with the stated guidelines.

FINDINGS AND RECOMMENDATIONS

According to PBA representatives, the PBA established an informal policy to begin charging each Program enrollee with an initial application fee of $250 and, thereafter, with an annual administrative fee of $250. <u>However, these fees are charged only to former non-PBA bargaining unit retirees.</u>

While the PBA policy may be informal, the PBA has stated in writing that: "PBA Membership at the time of retirement is not a requirement for this program, any eligible retiree may apply. **PLEASE BE ADVISED THAT A $250 ADMINISTRATION FEE WILL BE APPLIED FOR PROCESSING** . . ." (Emphasis in original.) This statement is included on the Program's current application form.

PBA representatives stated that, notwithstanding this statement, the union has an informal policy to waive this fee for former PBA member retirees upon their enrollment. While this policy may not have been reduced to writing, the fact that only non-PBA retirees are charged with the $250 application fee or annual fee is evidenced by the union's books and records administering the Program.

Additionally, PBA representatives stated that it had another informal policy to charge non-PBA Program participants with a $250 annual administrative fee. Beginning in 1998 and notwithstanding the wording of the letter which reflected this second informal policy, the PBA sent letters to non-PBA retirees, which states that "effectively immediately ***all*** retirees enrolled in the Dade County PBA Retiree Insurance Premium Supplement Program will be charged an *annual* $250.00 administrative fee for processing." (Emphasis added.) Similar to the waiver of the application processing fee, the PBA had another unwritten policy, which waived the annual administration fees for PBA retirees.

The PBA charges these fees to non-PBA retiree Program participants but does not keep the fees. The PBA deducts these fees from non-PBA retiree payments and uses them to subsidize payments to its PBA retiree participants. For the most recent year wherein the PBA distributed funds to Program participants—2002—there were 21 non-PBA retirees charged with the $250 annual administrative fee. In fact, there were two non-PBA retirees whose annual benefits were eliminated, in their entirety, because the fees charged exceeded their benefit payments.

PBA *Retirees Health Insurance Supplement Program* Receipts and Disbursements and Non-PBA Member Fees for the Years 1998 – 2003

Year	County Contribution	Funds Disbursed	Over/ (Under) Funds Disbursed	Total Listed Retirees	Total non-PBA Member Retirees	Total Fees @ $250 per non-PBA Member
1998	$ 275,000	$ 261,492	$ (13,508)	367	17	$ 4,250
1999	$ 275,000	$ 286,125	$ 11,125	395	15	$ 3,750
2000	$ 275,000	$ 294,603	$ 19,603	457	16	$ 4,000
2001	$ 275,000	$ 274,780	$ (220)	521	17	$ 4,250
2002	$ 275,000	$ 267,645	$ (7,355)	563	21	$ 5,200
2003	$ 350,000	$ 350,000	$ 0	N / A	N / A	N / A

All totaled, the PBA charged the non-PBA retirees almost $5,200 in 2002. PBA records show that there were 563 enrolled Program participants that year, including the 21 non-PBA retirees. The PBA imposing these fees had the impact of increasing that year's funds available for distribution to the Program's PBA retirees by over $9 per individual. Notwithstanding the additional funds, the PBA in 2002 only distributed about $268,000 out of the County's $275,000 annual contribution. Unexpended funds from this (or any previous year) remain in the PBA bank account established solely to accommodate its handling of Program funds and are available for future distribution. As of the end of April 2003, this bank account had a balance of $12,043.

OIG auditors noted no other source of funds, other than County funds appropriated pursuant to the collective bargaining agreement, deposited into this bank account and noted no other source of funding, including PBA union dues, to fund this Program. The funds provided by the County are not a gift; they are a result of the collective bargaining agreement. To impose administrative costs on retirees of the bargaining unit who were not union members, amounts to treating retirees differently based on past union membership. To continue to apply different policies based on union membership in the distribution of the appropriated public monies may be in violation of Florida statutes governing public employees and unfair labor practices.

SUPPLEMENT TO THE FINAL REPORT

In its response, the PBA takes great exception to the OIG's finding that the $250 application fee is only assessed against non-union members. The PBA states in its response that: "Apparently, the author does not like the fact that the PBA charges a processing fee for the application. The fee is applicable to ALL who submit an application: however, as an organization, the PBA has chosen to waive the fee for its members. Whether one likes the policy or not, it is not a violation of law, nor is it subject to scrutiny by your office. To imply that it is rises to the level of irresponsible oversight."

As for the PBA's rejoinder, several observations are in order. First, the PBA states, unequivocally, that it, in fact, charges an application processing fee. The OIG audit further establishes that this "application" fee is actually applied annually as demonstrated by the PBA's books and ledgers.[2] *Should the fee be actually collected against ALL Program*

[2] The PBA's ledgers indicate that the $250 fee is assessed annually, and is not a one-time only application processing fee. For program participants assessed the $250 fee, the OIG auditor found that during the audit period, the individual was assessed $250 for every year he/she was enrolled in

participants, as assessed, the PBA would be collecting over $100,000 annually.[3] As such, the costs to administer this program approximates to 29% of program funds available for distribution among program participants.

It is unrealistic to accept that actual administration costs could come anywhere near that figure. This conclusion is clearly demonstrated by the massive waiver of fees accorded to PBA-retirees (see chart below). Moreover, since the PBA does not retain the processing fees charged to non-union retirees and, instead, uses their fees to increase the amount each PBA retiree receives (by approximately $9), the "processing" fee was never intended to cover administrative costs. In short, the $250 fee exacted on non-union retirees amounts to a reduction of their insurance supplement for the benefit of the union member retirees.

Second, Mr. Rivera, in responding for the PBA, claims that the PBA decided to waive the $250 fee for its members. He notes that this policy is not subject to scrutiny by the OIG. We disagree. In the first place, Mr. Rivera's assertions that the fees were waived for union members is a thinly veiled attempt to rationalize the fee's lop-sided application. An organization that uniformly applies a fee, only to waive the fee for an overwhelming majority of program participants, based on a criterion of union membership, creates a de facto surcharge against non-union program participants. This type of discrimination must be scrutinized closely, particularly where it impacts county funded programs, such as the health insurance supplement program.

For the years audited (see table on page 5), the PBA waived the fee as follows:

1998 – fee waived for 95% of all program participants
1999 – fee waived for 96% of all program participants
2000 – fee waived for 96% of all program participants
2001 – fee waived for 97% of all program participants
2002 – fee waived for 96% of all program participants
2003 – n/a program funds allocated to NPET

---

the program. For the period audited, the OIG auditor did not find any occasion where an individual (non-union retiree) was assessed both the $250 application fee and the $250 annual processing fee.
[3] This figure is based on 400 program participants each year. The average for the five years audited is actually 460 participants.

Third, the sole source of funding for this program is County tax dollars and the vehicle for funding the program is through the collective bargaining agreement between the County and the PBA. In this instance and with respect to the distribution of these public funds, the PBA is not empowered so that "[it can chose] to waive the fee for its members." Rather, the PBA, as the collective bargaining agent, is the only authorized agent allowed to bargain for the bargaining unit. The PBA must represent all bargaining unit members and benefits accorded under the collective bargaining agreement must be distributed equally to non-union and union members alike. To impose administrative costs on retirees of the bargaining unit who were not union members, amounts to treating retirees differently based on past union membership. See Steele v. Luoisville & Nashville R. Co., 323 U.S. 192 (1944); Vaca v. Sipes, 386 U.S. 171, 177, 87 S.Ct. 903, 910, 17 L.Ed.2d 842 (1967); International Brotherhood of Painters and Allied Trades, AFL-CIO, Local 1010 v. Anderson, 401 So. 2d 824 (Fla. 5th DCA 1981), rev. den. 411 So.2d 382 (Fla. 1981); Lucas v. N.L.R.B., 333 F. 3d 927 (9th Cir. 2003); Intl'. Brotherhood of Teamesters, Chauffers, Warehousemen and Helpres of America Local No. 310 v. N.L.R.B., 587 F. 2d 1176 (D.C. Cir. 1978); Spiegel v. Dade County P.B.A., Inc., 14 FPER ¶ 19092.

Recommendations (unchanged from the Draft Report)

The OIG recommends to PBA management that it should:

1. Review its informal policies and practices and determine to what extent Program participants have been detrimentally treated in the disbursement of the supplemental funds. The PBA should remunerate these participants for the amount of such detriment and, for future disbursements, stop charging non-PBA retirees application and annual administrative fees.

The OIG recommends to the County's Labor Management and Employee Appeals Division that it should:

2. Review and periodically monitor all collective bargaining agreements of county employees to ensure that benefits and supplements, especially those fully funded by the County, are being equally distributed among bargaining unit members (and/or retirees of the bargaining unit, as in this instance) regardless of union membership.

MANAGEMENT RESPONSE and APPENDICES

*PBA management was given an opportunity to respond during the audit process to the above findings. A copy of the Draft Audit Report was provided to PBA (see **APPENDIX 1**) for copy of the advance notification letter to the PBA and the response received from the PBA. A copy of the Draft was also issued to County management, specifically the Employee Relations Department (see **APPENDIX 2**), as it is the countervailing department responsible for the collective bargaining agreement. No response has been received.*

The OIG appreciates the cooperation and courtesies extended by the PBA in its cooperation with our audit.