



SOCIAL SECURITY

MAR 22 2022

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Re: Social Security Coverage Status of School Police at the San Diego Community College District under California Modification No. 839

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You asked the Social Security Administration (SSA) to examine the Social Security coverage status of school police officers at the San Diego Community College District (SDCC) under California Section 218 Modification No. 839 (Mod 839). SSA has determined that the school police officers at SDCC remain covered for Social Security under Mod 839.

California provided Social Security coverage for several California school districts and community college districts (then called "junior college" districts), including SDCC, under Mod 839, which was executed by SSA on July 22, 1970. The modification and the attached appendices provide that the listed entities were covered as divided vote retirement-system-coverage-groups under Section 218(d)(6)(c). With such modifications, after the initial vote, all employees who are subsequently hired into the entity, and who are eligible to participate in the retirement system, are covered under the divided vote retirement-system-coverage-group modification, with some possible exceptions not relevant here. Mod 839 does not specify any exclusions.

The issue regarding Social Security coverage for the subject positions arose because SDCC ceased withholding FICA for the school police officer positions in February 2017. By way of background, from the information provided by CalPERS, it appears that SDCC "security officers" had been covered for Social Security under Mod 839 since the creation of the district. At that time, they, and all other covered employees, were members of the CalPERS retirement system. The security officer positions, occupied

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by individuals who voted for coverage in the original referendum, and all workers subsequently hired into the positions, were part of SDCC's deemed "retirement system coverage group" under Section 218(d)(6) and received Social Security coverage.

In May 1987, the security officer positions were reclassified by California as college (school) police officers under Cal. Ed. Code § 72330 and Penal Code § 830.32. SDCC continued FICA payments for the employees in the school police officer position after the reclassification. California (through CalPERS) allowed employers to elect how to provide retirement coverage for the reclassified positions. SDCC could place school police officers in "Safety PERS" (for qualified positions) at their discretion. At that time, SDCC elected to continue covering the college police officers in CalPERS and did not move the positions into the Safety PERS retirement benefit level. However, in February 2017, SDCC elected to cover the college police officers under Safety PERS. At that time, for unknown reasons, SDCC stopped paying FICA contributions for these positions.

Generally, once the State's Agreement provides coverage to a position, that position continues to be covered by Social Security unless an event occurs that results in the effective termination of the coverage. POMS SL 30001.380; *see also* SL 30001.387. We conclude that no event triggered loss of Section 218 coverage for the college police officer positions under Social Security's rule. Thus, the school police officer positions remained covered, and SDCC should have continued paying FICA contributions for these positions.

In making this determination, we evaluated whether the re-classification of the security officer position to school police officer triggered a loss of coverage under Mod 839. A reclassified position is part of the retirement system coverage group if it would have been part of the coverage if it had existed when the group was covered. POMS SL 30001.324. If the school police officer position had existed when Modification No. 839 became applicable, the position would have been covered as part of the coverage group because, at that time, all SDCC positions were placed under CalPERS.<sup>1</sup> Thus, reclassification did not terminate coverage.

We also considered whether switching the school police officers to the Safety PERS benefit level in February 2017 had any impact on coverage under Mod 839. We conclude that it does not, because the change in benefit level under CalPERS does not mean that the positions were removed from the retirement system for purposes of Social Security's Section 218 continuation of coverage rules. *See* POMS SL 30001.380.C. We defer to CalPERS and California's interpretation of their own retirement system rules. According to information provided by CalPERS, it does not consider Safety PERS to be a different retirement system, but rather a different benefit formula. Thus, the positions were not removed from the retirement system.

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<sup>1</sup> We have no information indicating that California law precludes coverage for police officer positions under a 218 agreement. California was specifically authorized to cover police positions under a retirement system, including divided-vote retirement system coverage. POMS SL 30001.347.B.3.

In sum, SDCC school police officer positions are covered for Social Security under Mod 839. There was no loss of coverage triggered by reclassification of the position or change in CalPERS benefit level. Employees in these positions must contribute to Social Security.

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