Office of Audit Services

CalPERS

Public Agency Review

Arcata Fire Protection District

CalPERS ID: 2301813735 August 2016
Job Number: P14-072

California Public Employees' Retirement System
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August 31, 2016

CalPERS ID: 2301813735
Job Number: P14-072

Justin McDonald, Interim Fire Chief
Arcata Fire District
905 6th Street
Arcata CA, 95521

Dear Mr. McDonald:

Enclosed is our final report on the results of the public agency review completed for the Arcata Fire Protection District (Agency). Your written response, included as an appendix to the report, indicates agreement with the issues noted in the report except for Findings 2A-2D and 3. We appreciate the additional information that you provided in your response. After consideration of this information, we clarified the language for the findings. However, all recommendations remain as stated in the report.

In accordance with our resolution policy, we have referred the issues identified in the report to the appropriate divisions at CalPERS. Please work with these divisions to address the recommendations specified in our report. It was our pleasure to work with your Agency. We appreciate the time and assistance of you and your staff during this review.

Sincerely,

Original signed by Beliz Chappuie

BELIZ CHAPPUIE, Chief
Office of Audit Services

Enclosure

cc: Board of Directors, Arcata Fire Protection District
Risk and Audit Committee Members, CalPERS
Matthew G. Jacobs, General Counsel, CalPERS
Anthony Suine, Chief, BNSD, CalPERS
Renee Ostrander, Chief, EAMD, CalPERS
Carene Carolan, Chief, MAMD, CalPERS

ARCATA FIRE PROTECTION DISTRICT

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ARCATA FIRE PROTECTION DISTRICT

RESULTS IN BRIEF

The objective of our review was to determine whether the Arcata Fire Protection District (Agency) complied with applicable sections of the California Government Code (Government Code), California Public Employees' Pension Reform Act of 2013 (PEPRA), California Code of Regulations (CCR) and its contract with the California Public Employees' Retirement System (CalPERS).

The Office of Audit Services (OAS) noted the following findings during the review. Details are noted in the Results section beginning on page two of this report.

- Pay schedule did not meet all of the Government Code and CCR requirements.
- Special compensation was not reported in accordance with the Government Code and CCR.
- Payrate and earnings included non-reportable compensation.
- Contributions were incorrectly reported.
- Unused sick leave was incorrectly reported.
- Member reciprocal self-certification was not maintained.
- Observation: Agency records did not agree with my|CalPERS information.

OAS recommends the Agency comply with applicable sections of the Government Code, PEPRA, CCR and its contract with CalPERS. We also recommend the Agency work with the appropriate CalPERS divisions to resolve issues identified in this report.

SCOPE

The Agency contracted with CalPERS effective July 7, 1968 to provide retirement benefits for local miscellaneous and safety (fire) employees. By way of the Agency's contract with CalPERS, the Agency agreed to be bound by the terms of the contract and the Public Employees' Retirement Law (PERL). The Agency also agreed to make its employees members of CalPERS subject to all provisions of the PERL.

As part of the CalPERS Board of Administration (Board) approved audit plan, OAS reviewed the Agency's payroll reporting and member enrollment processes related to the Agency's retirement contract with CalPERS. The review was limited to the examination of sampled employees, records, and pay periods from July 1, 2011 through June 30, 2014. The review objectives and methodology are listed in Appendix A.

ARCATA FIRE PROTECTION DISTRICT

OFFICE OF AUDIT SERVICES REVIEW RESULTS

1: The Agency's pay schedule did not meet all of the Government Code and CCR requirements.

Condition:

The Agency did not have a pay schedule that met all the requirements of the Government Code and CCR. Specifically, the Agency provided three pay schedules for various employee groups. The Agency did not provide one pay schedule that listed every employee position; furthermore, the Fire Chief position was not included on the pay schedules that were provided. In addition, the pay schedules did not identify the time base for positions and dates of revisions including a two percent payrate increase effective March 18, 2013.

Only compensation earnable as defined under Government Code Section 20636 and corresponding regulations can be reported to CalPERS and considered in calculating retirement benefits. For purposes of determining the amount of compensation earnable, a member's payrate is limited to the amount identified on a publicly available pay schedule. Per CCR Section 570.5, a pay schedule, among other things, must:

- Be duly approved and adopted by the employer's governing body in accordance with requirements of applicable public meetings laws;
- Identify the position title for every employee position;
- Show the payrate as a single amount or multiple amounts within a range for each identified position;
- Indicate the time base such as hourly, daily, bi-weekly, monthly, bi-monthly, or annually;
- Be posted at the office of the employer or immediately accessible and available for public review from the employer during normal business hours or posted on the employer's internet website;
- Indicate an effective date and date of any revisions;
- Be retained by the employer and available for public inspection for not less than five years; and
- Not reference another document in lieu of disclosing the payrate.

Pay amounts reported for positions that do not comply with the payrate definition and pay schedule requirements cannot be used to calculate retirement benefits because the amounts do not meet the definition of payrate under Government Code Section 20636(b)(1). When an employer does not meet the requirements for a publicly available pay schedule, CalPERS, in its sole discretion, may determine an amount that will be considered to be payrate as detailed in CCR Section 570.5.

Recommendation:

The Agency should ensure it has a pay schedule that meets all of the Government Code and CCR requirements.

The Agency should work with CalPERS Employer Account Management Division (EAMD) to identify and make adjustments, if necessary, to any impacted active and retired member accounts pursuant to Government Code Section 20160.

Criteria:

Government Codes: § 20160, § 20636
CCR: § 570.5

2: The Agency did not report special compensation in accordance with the Government Code and CCR.

Condition:

A. The Agency incorrectly reported Uniform Allowance as a lump sum amount instead of when earned. Specifically, the Agency reported up to $750.00 in Uniform Allowance for safety employees as lump sum amounts in the pay period ended June 21, 2014. The Agency’s labor policy allows for reimbursement to its safety employees required to wear uniforms for the value of the uniforms purchases not to exceed an annual allowance of $750.00. Government Code Section 20636(c)(3) requires the Agency to identify the pay period(s) in which special compensation was earned.

B. The Agency incorrectly reported Holiday Pay as a lump sum amount instead of when earned for 24-hour shift fire employees required to work without regard to holidays. The Agency reported Holiday Pay in December 2013 and June 2014 instead of in the pay periods in which the holiday hours were earned. Government Code Section 20636(c)(3) requires the Agency to identify the pay period(s) in which special compensation was earned.

C. The Agency incorrectly reported Holiday Pay cash-outs as special compensation for employees of the Management and Administrative Assistant Confidential Group and Senior Management Group in December 2013 and June 2014 pay periods. Although the employees of the Senior Management Group are to be available and provide services during holidays, they do not work in positions that require scheduled staffing without regard to holidays. Therefore, Holiday Pay cash-outs are not reportable as special compensation. CCR Section 571 defines Holiday Pay as additional compensation for employees who are normally required to work on an approved holiday because they work in positions that require scheduled staffing without regard to holidays.

D. The Agency incorrectly included Fair Labor Standards Act (FLSA) Premium Pay in base payrate and earnings for fire fighters in the pay period ended June 21, 2014. FLSA Premium Pay is a statutory item that is required to be reported as special compensation pursuant to Government Code Section 20636 and CCR Section 571. Therefore, FLSA Premium Pay should be reported separately from base payrate and regular earnings.

E. The Agency's written labor agreement for fire employees did not meet all the requirements of the CCR. Specifically, the written labor agreement did not include the conditions for payment of FLSA Premium Pay. CCR Section 571(b) requires the written labor policy or agreement contain the conditions for payment, including, but not limited to, eligibility for, and amount of, the special compensation.

Reportable special compensation is defined in CCR Section 571(a) and must be reported if it conforms to all of the requirements listed in CCR Section 571(b). Specifically, special compensation is required to be contained in a written labor policy or agreement indicating the eligibility and amount of special compensation. Also, special compensation must be available to all members in the group or class, part of normally required duties, performed during normal hours of employment, paid periodically as earned, and historically consistent with prior payments for the job classification.

Recommendation:

The Agency should ensure that special compensation is reported in the pay periods earned.

The Agency should only report Holiday Pay for eligible employees.

The Agency should report special compensation separately from base payrate and regular earnings.

The Agency should ensure the conditions for payment of FLSA premium pay is contained in a current written labor agreement as required by the CCR.

The Agency should work with EAMD to identify and make adjustments, if necessary, to any impacted active and retired member accounts pursuant to Government Code Section 20160.

Criteria:

Government Code: § 20160, § 20630, § 20636
CCR: § 571

3: The Agency incorrectly included non-reportable compensation with base payrate and earnings.

Condition:

The Agency incorrectly reported Duty Chief Assignment Pay for the Fire Chief, Assistant Fire Chief, and Battalion Chief. Specifically, the Agency reported Duty Chief Assignment Pay in the employees' payrate and earnings. However, the pay did not meet the definition of special compensation and included compensation for overtime. Pursuant to Government Code Section 20635 Compensation for overtime does not meet the definition of reportable compensation.

The written labor agreement for the Senior Management Group stated that the Agency required a Chief Officer to be available as Duty Chief to provide specialized supervisory, management, and incident command capabilities. Due to the unique nature of these assignments, represented Chief Officers consisting of Battalion Chiefs and Assistant Chiefs are compensated with Management Incentive Pay. In addition, the written labor policy stated that the Chief Officers will arrange a seven day rotation, from Wednesday to Wednesday, so that one Chief Officer is assigned as Duty Chief at all times. As compensation for working the Duty Chief rotation, employees were paid $690.85 plus $212.83 each biweekly pay period. The pay was effective February 2, 2013.

OAS reviewed the duties required of a Duty Chief and found that a Duty Chief is on-call for seven days. During this time the Duty Chief is required to carry a pager/phone and respond as needed to incidents. In addition, the Duty Chief provides management oversight of the organization after 5:00 p.m. on weekdays and all weekends. These duties were in addition to normal daily work assignments.

OAS found that the Duty Chief Assignment Pay included overtime and additionally, the pay did not meet the definition of special compensation pursuant to Government Code Section 20636 and CCR Section 571. Specifically, the pay did not meet the definition of Management Incentive Pay which states, in part, that the compensation must be for duties performed during normal work hours, and the compensation cannot be for overtime. OAS concluded the pay was not reportable as compensation earnable, either in payrate or as special compensation.

Recommendation:

The Agency should not report compensation that does not meet the definition of compensation pursuant to the Government Code and CCR.

The Agency should work with EAMD to determine the impact of this erroneous reporting and make the necessary adjustments to active and retired member accounts pursuant to Government Code Section 20160.

Criteria:

Government Code: § 20160, § 20635, § 20636
CCR: § 571

4: The Agency incorrectly reported member contributions.

Condition:

The Agency incorrectly paid and reported the required member contributions for an employee subject to PEPRA. Government Code Section 7522.30(a) requires equal sharing of the normal cost between public employers and employees. However, the Agency incorrectly paid and reported the entire 12.25 percent of the member's normal contributions as Employer Paid Member Contributions (EPMC). Government Code Section 7522.30(a) states, the standard shall be that employees pay at least 50 percent of normal costs and that employers do not pay any of the required employee contribution.

Recommendation:

The Agency should ensure it correctly pays and reports member contributions in accordance with the Government Code and CCR requirements listed below.

The Agency should work with EAMD to identify and make adjustments, if necessary, to any active and retired members' accounts pursuant to Government Code Section 20160.

Criteria:

Government Codes: § 20120, § 20121, § 20160, § 20691, § 7522.30
CCR: § 569

5: The Agency did not report the unused sick leave balance for a retiree.

Condition:

The Agency did not report the balance of unused sick leave for a retiree. Specifically, the member had an unused sick leave balance of 1,422 hours or 177.75 days. However, the Agency did not report the unused sick leave to CalPERS. Retiring members are eligible for additional service credit for unused sick leave accrued by the member during the normal course of employment. The total number of unused sick leave hours at retirement is converted to days to determine additional service credit.

Recommendation:

The Agency should ensure unused sick leave is certified to CalPERS for retiring members.

The Agency should work with EAMD to assess the impact of this incorrect reporting and make any necessary adjustments to retired member accounts pursuant to Government Code Section 20160.

Criteria:

Government Codes: § 20160, § 20965

6: The Agency did not maintain the required member reciprocal self-certification.

Condition:

The Agency did not maintain the required member reciprocal self-certification for employees hired after January 1, 2013. CCR 579.3 requires individuals to self-certify in writing as to whether he or she is also a member of another public retirement system and is eligible for reciprocity. Agencies are required to retain the retirement and benefit-related information provided by the newly-hired individuals.

Recommendation:

The Agency should ensure employees hired on or after January 1, 2013 certify in writing whether they are a member of another public retirement system and provide the additional required information if reciprocity exists. Further, the Agency should ensure it retains the information provided.

The Agency should work with EAMD to identify and make adjustments, if necessary, to any impacted active and retired member accounts pursuant to Government Code Section 20160.

Criteria:

Government Code: § 20160, §7522.02, §7522.04
CCR: § 579.3

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Observation: The Agency's records do not agree with my|CalPERS information.

Condition:

OAS reviewed active member census data used to calculate pension liability for financial reporting purpose pursuant to the Governmental Accounting Standards Board (GASB) Statement No. 67: *Financial Reporting for Pension Plans*. The significant census data elements include, but are not limited to, date of birth, date of hire or years of service, marital status, gender, employment status (active, inactive, or retired), class of employee, and eligible compensation.

OAS identified one employee whose reported service credit was greater than the service credit calculated using Agency records. OAS recommends the Agency work with the appropriate CalPERS division to make any corrections, if necessary.

CONCLUSION

OAS limited this review to the areas specified in the scope section of this report and in the objectives outlined in Appendix A. The procedures performed provide reasonable, but not absolute, assurance that the Agency complied with the specific provisions of the PERL and CalPERS contract except as noted.

The findings and conclusions outlined in this report are based on information made available or otherwise obtained at the time this report was prepared. This report does not constitute a final determination in regard to the findings noted within the report. The appropriate CalPERS divisions will notify the Agency of the final determinations on the report findings and provide appeal rights, if applicable, at that time. All appeals must be made to the appropriate CalPERS division by filing a written appeal with CalPERS, in Sacramento, within 30 days of the date of the mailing of the determination letter, in accordance with Government Code Section 20134 and Sections 555-555.4, Title 2, of California Code of Regulations.

Respectfully submitted,

Original signed by Beliz Chappuie

BELIZ CHAPPUIE, CPA, MBA
Chief, Office of Audit Services

Staff: Cheryl Dietz, CPA, Assistant Division Chief
Diana Thomas, CIA, CIDA, Senior Manager
Edward Fama, Auditor

APPENDIX A

OBJECTIVES

ARCATA FIRE PROTECTION DISTRICT

OBJECTIVES

The objectives of this review were limited to determine whether the Agency complied with:

- Applicable sections of the Government Code (Sections 20000 et seq.), PEPRA, and Title 2 of the CCR.
- Reporting and enrollment procedures prescribed in the Agency's retirement contract with CalPERS.

METHODOLOGY

To accomplish the review objectives, OAS interviewed key staff members to obtain an understanding of the Agency's personnel and payroll procedures, reviewed documents, and performed the following procedures.

✓ Reviewed:
  - Provisions of the contract and contract amendments between the Agency and CalPERS
  - Correspondence files maintained at CalPERS
  - Agency Board minutes and Agency Board resolutions
  - Agency written labor policies and agreements
  - Agency salary, wage, and benefit agreements including applicable resolutions
  - Agency personnel records and employee time records
  - Agency payroll information including Contribution Detail Transaction History reports
  - Documents related to employee payrate, special compensation, and benefits
  - Various other relevant documents

✓ Reviewed Agency payroll records and compared the records to data reported to CalPERS to determine whether the Agency correctly reported compensation.

✓ Reviewed payrates reported to CalPERS and reconciled the payrates to Agency public salary records to determine whether base payrates reported were accurate, pursuant to publicly available pay schedules that identify the position title, payrate and time base for each position, and duly approved by the Agency's governing body in accordance with requirements of applicable public meetings laws.

✓ Reviewed CalPERS reports to determine whether the payroll reporting elements were reported correctly.

ARCATA FIRE PROTECTION DISTRICT

- ✓ Reviewed the Agency’s enrollment practices for temporary and part-time employees to determine whether individuals met CalPERS membership requirements.
- ✓ Reviewed the Agency’s employment practices for retired annuitants to determine if retirees were lawfully employed and reinstated when unlawful employment occurs.
- ✓ Reviewed the Agency’s independent contractors to determine whether the individuals were either eligible or correctly excluded from CalPERS membership.
- ✓ Reviewed the Agency’s affiliated entity organizational structure to determine whether employees of the affiliated entity qualified for CalPERS membership and were enrolled as required.
- ✓ Reviewed the Agency’s calculation and reporting of unused sick leave balances, if contracted to provide additional service credits for unused sick leave.
- ✓ Reviewed the Agency’s records to determine whether member census data agreed with my|CalPERS information.

APPENDIX B

AGENCY'S WRITTEN RESPONSE

Note: The Agency provided an attachment to the response that was intentionally omitted from this appendix.

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June 24, 2016

VIA FACSIMILE & U.S. MAIL

Ms. Beliz Chappuie
Chief
CalPERS Office of Audit Services
P.O. Box 942701
Sacramento, California 94229-2701

Re: ***Response by Arcata Fire District to CalPERS Draft Public Agency Review***
CalPERS ID: 2301813735
Client-Matter: AR035/001

Dear Ms. Chappuie:

The Arcata Fire District ("District") received the draft public agency review ("Audit") prepared by the California Public Employees' Retirement System ("CalPERS"), Office of Audit Services ("OAS"). The District intends to work with CalPERS staff to make required corrections and amendments. However, the District does dispute some of the findings and recommendations. The District's position and rationale is set forth below.

FINDINGS, RECOMMENDATIONS, AND DISTRICT RESPONSE

CalPERS made the following proposed findings and recommendations, which are set forth below and followed by the District's response to each finding and recommendation.

Finding 1: The Agency's pay schedule did not meet all of the Government Code and CCR requirements.

Recommendation:

The Agency should ensure it has a pay schedule that meets all of the Government Code and CCR requirements.

The Agency should work with CalPERS Employer Account Management Division (EAMD) to identify and make adjustments, if necessary, to any active and retired member accounts pursuant to Government Code section 20160.

District's Response to Finding and Recommendation 1:

The District does not dispute CalPERS' recommendation and finding. Following the field audit, the District's Board of Directors adopted an updated salary schedule that complies with 2 CCR section 570.5. At all times, the memoranda of understanding ("MOUs") and employment contracts adopted by the District's Board of Directors indicated the rate of pay for all District employees. All of the contracts and MOUs were available on the District's website and readily available to the public. CalPERS should take the MOUs, contracts, and updated salary schedules into consideration in determining payrate for any affected employees. (Cal. Code Regs., tit. 2, § 570.5(b)(1).) The District will work with appropriate CalPERS staff to make any necessary corrections and provide any necessary meeting minutes.

Finding 2: The Agency did not report special compensation in accordance with the Government Code and CCR.

Recommendation:

The Agency should ensure that special compensation is reported in the pay periods earned.

The Agency should only report holiday pay for eligible employees.

The Agency should report special compensation separately from base payrate and regular earnings.

The Agency should ensure the conditions for payment of FLSA premium pay is contained in a current written labor agreement as required by the CCR.

The Agency should work with EAMD to identify and make adjustments, if necessary, to any impacted active and retired member accounts pursuant to Government Code section 20160.

District's Response to Finding and Recommendation 2:

2.A. Uniform Allowance Reporting

The District disagrees with the finding and recommendation. During separate time periods, the District used two different methods to pay uniform allowances. Under the first method, the District provided employees with a bank for their uniform allowance that could be drawn against during the fiscal year. Under the second method, employees who are members of the Union received a payout of one-half of the annual amount of the uniform allowance in a pay period specified under the MOU.

Under the first method, the amount used was reported CalPERS as special compensation at the end of the fiscal year when the total amount became ascertainable. Under the second method, the payment was reported to CalPERS as special compensation in the pay period it was paid because it is not earned until it is received in the pay period identified under the MOU. These methods for paying and reporting uniform allowances are consistent with 2 CCR section 571(b) and Government Code section 20636(c)(3). However, subject to its obligations under the Meyers-Milias-Brown Act ("MMBA"), the District will work with CalPERS staff to make any necessary corrections.

2.B. Holiday Pay Reporting

The District disagrees with the finding and recommendation. The District provides holiday credits for employees who are required to work without regard to holidays. The holiday credits are front-loaded annually. An employee may elect to use all of the holiday credits as soon as the credits are provided or take time off at a later date in the period. An employee may also receive a cash-out of up to four shifts in January and June. The District reports the Holiday Pay when the time is actually taken or when it is cashed out. This manner of reporting Holiday Pay is more accurate than prorating it or reporting it all when it is first credited to employee leave banks. The District's reporting of Holiday Pay is consistent with 2 CCR section 571(b) and Government Code section 20636(c)(3). However, subject to its obligations under the MMBA, the District will work with CalPERS staff to make any necessary corrections.

2.C. Holiday Pay Cash-outs

The District agrees in part and disagrees in part with the finding and recommendation. With respect to the Administrative Assistant-Confidential, the District agrees that the position does not work without regard to holidays. As to the Senior Management Group, the District disagrees that Holiday Pay was not properly reported. The Chief Officers are exempt employees under the Fair Labor Standards Act ("FLSA") that generally work an administrative schedule. However, Chief Officers are required to work, respond to incidents, and provide management and supervision during holidays. Since Chief Officers are required to be available and provide services during holidays, "they work in positions that require scheduled staffing without regard to holidays." Therefore, the compensation should be reportable to CalPERS as Holiday Pay for these employees.

2.D. Fair Labor Standards Act Premium Pay

The District agrees in part and disagrees in part with this finding and recommendation. The District appropriately paid FLSA Premium Pay, but the District did not report the item separately for the pay period ending June 21, 2014. The District agrees that the FLSA premium pay should be reported separately. The District will work with appropriate staff to make any other necessary corrections and will ensure that it is reported separately going forward.

However, the District disagrees with CalPERS' statement that the MOU does not provide for the conditions of payment for FLSA Premium Pay. The MOU provides for the payment of overtime in accordance with a 24-day FLSA work period. (See Arcata Professional Firefighters Local 4981 MOU, Article 6, Article 8, Appendix D, available at: http://media.wix.com/ugd/c6e049_103687da9f064f5489e6eb683909628d.pdf.) FLSA overtime pay is set forth in various provisions of the FLSA that need not be replicated in the MOU.

Finding 3: The Agency incorrectly included non-reportable compensation with base payrate and earnings.

Recommendation:

The Agency should not report compensation that does not meet the definition of compensation pursuant to Government Code and CCR.

The Agency should work with EAMD to determine the impact of this erroneous reporting and make the necessary adjustments to active and retired member accounts pursuant to Government Code Section 20160.

District's Response to Finding and Recommendation 3:

The District disputes the finding that Duty Chief Assignment Pay is not included in compensation earnable for classic members or pensionable compensation for new members. The Duty Chief Assignment Pay qualifies as payrate or special compensation. The Audit only provides one conclusory sentence stating that Duty Chief Assignment Pay does not qualify as payrate or special compensation. However, the Audit does not provide the rationale behind its conclusion, which makes it difficult for the District to respond.

Duty Chief Assignment Pay qualifies as special compensation. Specifically, Duty Chief Assignment Pay qualifies as Management Incentive Pay. Under 2 CCR 571(a)(1), Management Incentive Pay is defined as follows:

> Compensation granted to management employees in the form of *additional time off or extra pay due to the unique nature of their job*. Employees within the group cannot have the option to take time off or receive extra pay. This compensation must be reported periodically as earned and must be for duties performed during normal work hours. This compensation cannot be for overtime, nor in lieu of other benefits excluded under the statutes, nor for special compensation not otherwise listed in this Section 571. (Emphasis added.)

As the Audit notes, Duty Chief Assignment Pay is paid to certain employees who "*[d]ue to the unique nature of these assignments*, will be compensated with salary adjustments." (Draft Audit, p. 5, emphasis added.) The Audit's description of Duty Chief Assignment Pay tracks the language for Management Incentive Pay under 2 CCR section 571. The Duty Chief Assignment

Pay is also specifically identified as Management Incentive Pay in the 2013 and 2015 Senior Management MOU. Copies of the Duty Chief Assignment Pay provision and applicable side letter for the MOUs entered into in 2013 and 2015 MOU are attached as Exhibit "A." In the 2016/2017 Senior Management MOU, a specific provision was added identifying Chief Duty Assignment Pay as Management Incentive Pay. A copy of the 2016/2017 Senior Management MOU, Articles 7 and 15, and the applicable side letter are attached as Exhibit "B." To the extent there was any ambiguity, that ambiguity was clearly resolved.

The fact that the Senior Management MOU titled the payment "Duty Chief Assignment Pay" instead of "Management Incentive Pay" does not disqualify it, as CalPERS has not generally required agencies to use the specific titles contained in 2 CCR 571(a) in order for the items to qualify as special compensation. For example, CalPERS regularly accepts reporting for "out of class pay" under "temporary upgrade pay." It also accepts payments with a multitude of different names as "bonuses," as long as the items otherwise meet the requirements under the regulations. Moreover, the description of Duty Chief Assignment Pay identifies it as Management Incentive Pay.

The fact that the payment is referenced as a salary adjustment is also irrelevant, as MOUs frequently refer to items of special compensation as salary increases or increases to base pay. To the extent CalPERS believes Duty Chief Assignment Pay should have been reported separately, that is a technical defect that CalPERS regular requires agencies to cure as part of the audit or post-audit process, and should not lead to its complete disqualification from compensation earnable and pensionable compensation. (See e.g. finding and recommendation 2.D above.) This is especially true where there is no doubt that the District intended the item to be reportable to CalPERS.

Duty Chief Assignment Pay also meets all of the conditions set forth in 2 CCR 571(b), as it is contained in an MOU approved by the District's Governing Body and publicly available on the District's website. With respect to the Fire Chief, the only affected unrepresented employee, his employment contract provides that he receives the benefits provided to Senior Management and specifically sets forth a Management Incentive Pay provision substantially similar to that contained in the MOU. A copy of the Fire Chief's contract is available at: http://media.wix.com/ugd/c6e049_d047340673b64f4d9d001d653eb71dd6.pdf. His contract is approved by the District's Governing Body and available on the District's website on the same location as the District's MOUs. Thus, the Fire Chief is in the Senior Management Group for the purposes of receiving Management Incentive Pay as special compensation. Even if he was not in that group, the payment qualifies as special compensation for him because it is identical to that received by the next closest group or class, which is the Senior Management Group. (Gov. Code, § 20636(c)(2); See also *Prentice v. Board of Admin., California Public Employees' Retirement System* (2007) 157 Cal.App.4th 983, 992.)

Even assuming the Duty Chief Assignment Pay did not qualify as special compensation, it should be included in payrate. "'[C]ompensation' means the remuneration paid out of funds controlled by the employer in payment for the member's services performed during normal working hours or for time during which the member is excused from work [for specified reasons]." (Gov. Code, § 20630.) "'Payrate'" means the normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours, pursuant to publicly available pay schedules." (Gov. Code, § 20636.)

Duty Chief Assignment Pay is paid out in cash to similarly situated employees of the same group or class, as it is a cash payment made to Senior Management and the Fire Chief. The District has also amended its salary schedule to indicate Duty Chief Assignment Pay and include it in payrate. Moreover, if CalPERS disqualifies Duty Chief Assignment Pay from special compensation because CalPERS believes it was included in base pay, it would be inequitable to then hold it also does not qualify as payrate. Any ambiguities regarding the inclusion of the pay should be resolved in favor of the employees. (See *Lazan v. County of Riverside* (2006) 140 Cal.App.4th 453, 459 [Ambiguity should be resolved in favor of pensioners.].)

Therefore, Duty Chief Assignment Pay should be included in either payrate or special compensation and CalPERS should withdraw the finding. The District will work with CalPERS to make any necessary technical corrections that will allow Duty Chief Assignment Pay to be included for the purposes of calculating pension benefits.

Finding 4: The Agency incorrectly reported member contributions.

Recommendation:

The Agency should ensure it correctly pays and reports member contributions in accordance with Government Code and CCR requirements listed below.

The Agency should work with EAMD to identify and make any adjustments, if necessary, to any active and retired members' accounts pursuant to Government Code section 20160.

District's Response to Finding and Recommendation 4:

The District does not dispute this finding and recommendation. The District reported Employer Paid Member Contributions ("EPMC") for one employee defined as a "new member" under the Public Employees' Pension Reform Act of 2013 ("PEPRA"). The District will work with the appropriate CalPERS staff to make any necessary corrections.

Finding 5: The Agency did not report the unused sick leave balance for a retiree.

Recommendation:

The Agency should ensure that unused sick leave is credited to CalPERS for retiring members.

The Agency should work with EAMD to assess the impact of this incorrect reporting and make any necessary adjustments to retired member accounts pursuant to Government Code section 20160.

District's Response to Finding and Recommendation 5:

The District does not dispute this finding and recommendation. The District will ensure that unused sick leave balances are reported for retiring members. The District will work with CalPERS staff to ensure that any necessary adjustments are made for the impacted retiree.

Finding 6: The Agency did not maintain the required member reciprocal self-certification.

Recommendation:

The Agency should ensure that employees hired on or after January 1, 2013 certify in writing whether they are a member of another public retirement system and provide the additional required information if reciprocity exists. Further, the Agency should ensure it retains the information provided.

The Agency should work with EAMD to identify and make any adjustments, if necessary, to any impacted active and retired member accounts pursuant to Government Code section 20160.

District's Response to Finding and Recommendation 6:

The District does not dispute this finding and recommendation. The District will ensure that it retains self-certification information for employees hired on or after January 1, 2013. The District will work with CalPERS staff to make any necessary corrections or to provide the required information.

Observation: The Agency's records do not agree with my|CalPERS information.

District's Response to Observation:

The District does not dispute the observation. The District will work with appropriate CalPERS staff to make any necessary corrections.

CONCLUSION

The District objects to some of the findings and recommendations set forth above. However, the District will assist CalPERS by providing additional documentation or information required by CalPERS to assess the findings and recommendations disputed above. The District will work with CalPERS staff in order to make the necessary corrections and resolve outstanding concerns for undisputed items.

Very truly yours,

LIEBERT CASSIDY WHITMORE

Original signed by Michael D. Youril [redacted]

Michael D. Youril

JWH:MDY:kms