Office of Audit Services

Public Agency Review

Belmont Fire Protection District

CalPERS ID: 1674807468
Job Number: P14-008

June 2015

California Public Employees' Retirement System
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June 26, 2015

CalPERS ID: 1674807468
Job Number: P14-008

Laura Kirby
Belmont Fire Protection District
1 Twin Pines Lane, Suite 330
Belmont, CA 94002-3866

Dear Ms. Kirby:

Enclosed is our final report on the results of the public agency review completed for the Belmont Fire Protection District (Agency). Your written response, included as an appendix to the report, indicates agreement with the issues noted 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 Young Hamilton

YOUNG HAMILTON, Acting Chief
Office of Audit Services

Enclosure

cc: Board of Directors, Belmont 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

BELMONT FIRE PROTECTION DISTRICT

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BELMONT FIRE PROTECTION DISTRICT

RESULTS IN BRIEF

The primary objective of our review was to determine whether the Belmont Fire Protection District (Agency) complied with applicable sections of the California 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.

- The pay schedule did not meet all of the Government Code and CCR requirements.
- Special compensation was not reported as required.

OAS recommends the Agency comply with applicable sections of the California 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 February 16, 2012 to provide retirement benefits for local firefighters. By way of the Agency's contract with CalPERS, the Agency agreed to be bound by the terms of the contract and by 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 Board approved plan for fiscal year 2014-15, the OAS reviewed the Agency's payroll reporting and member enrollment processes related to the Agency's retirement contract with CalPERS. The review period was limited to the examination of sampled employees, records, and pay periods from February 16, 2012, through June 30, 2014.

This review did not include a determination as to whether the Agency's Fire Chief, who was not enrolled or reported by the Agency, was an Agency employee or an employee of another entity. Therefore, OAS does not express an opinion or finding with respect to whether this individual was an employee of the Agency or another entity. OAS will continue with a focused review on the employee/employer relationship of the individual and will issue a separate report pertaining to the employee/employer status determination upon conclusion of our focused review. The review objectives and a summary of the procedures performed are listed in Appendix A.

BELMONT FIRE PROTECTION DISTRICT

OFFICE OF AUDIT SERVICES REVIEW RESULTS

1: The Agency did not have a pay schedule that met all of the Government Code and CCR requirements.

Condition:

The Agency did not maintain a pay schedule that met the Government Code and CCR requirements. The Agency listed position titles and payrates, with the exception of the Deputy Fire Chief, in two Memoranda of Understanding (written labor agreements) that were approved by the Board. One of the written labor agreements did not identify the time base such as hourly, daily, bi-weekly, monthly, or annually.

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). There are no exceptions included in 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 its pay schedule 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 incorrectly reported special compensation.

Condition:

A. The Agency incorrectly reported Holiday Pay for employees who were required to work on approved holidays. According to the Fire Management and Firefighters written labor agreements, Holiday Pay is provided at the regular base rate of pay. OAS reviewed the amount of Holiday Pay reported for employees in pay period ending April 15, 2014, and found the Agency incorrectly included the following items of special compensation in the Holiday Pay: Fire Staff Premium, Emergency Medical Technician Pay, Hazard Premium, Paramedic Pay, and Educational Incentive, depending on which items of compensation an employee was entitled. As a result, the Holiday Pay amounts reported as special compensation were over reported.

B. In addition to over reporting Holiday Pay noted in Finding 2A, the Agency incorrectly reported the Holiday Pay as a lump sum instead of as earned for the pay period ended April 15, 2014. The Fire Management and Firefighters' written labor agreements specified that Holiday Pay is paid in two installments, October 15 and April 15 of each year. Government Code Section 20636 requires the Agency to identify the pay period(s) in which the special compensation is earned.

C. The Agency did not report Fair Labor Standard Act (FLSA) Premium Pay in the period it was earned. The Agency reported FLSA Premium Pay for four fire shift employees in the pay period ended April 15, 2014. However, the reported FLSA Premium Pay was earned for hours worked from February 24, 2014 through March 19, 2014. The Agency should have reported the FLSA Premium Pay in the period it was earned.

D. The Agency's written labor agreements did not indicate the amount, or the monetary value, of uniforms. CCR Section 571 requires that the amount of special compensation be included in a written labor policy or agreement.

Reportable special compensation is exclusively listed and defined in CCR Section 571. Reportable special compensation is required to be contained in a written labor policy or agreement indicating the eligibility for 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. In addition, special compensation must not be paid exclusively in the final compensation period and not be final settlement pay.

BELMONT FIRE PROTECTION DISTRICT

Recommendation:

The Agency should ensure special compensation is correctly reported.

The Agency should report Holiday Pay and FLSA Premium Pay for the period in which the special compensation was earned.

The Agency should ensure the amount of uniforms provided to fire safety employees is included in a written labor policy or agreement.

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 Codes: § 20160, § 20630, § 20636
CCR: § 571

BELMONT FIRE PROTECTION DISTRICT

CONCLUSION

OAS limited this review to the areas specified in the scope section of this report and in the objectives outlined in Appendix A. OAS limited the test of transactions to employee samples selected from the Agency's payroll records. Sample testing procedures provide reasonable, but not absolute, assurance that these transactions complied with the California Government Code 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 Young Hamilton

YOUNG HAMILTON, CPA, CIA, CISA
Acting Chief, Office of Audit Services

Staff: Cheryl Dietz, CPA, Assistant Division Chief
Alan Feblowitz, CFE, Senior Manager
Noah Schreier, Auditor

APPENDIX A

OBJECTIVES

BELMONT FIRE PROTECTION DISTRICT

OBJECTIVES

The objectives of this review were limited to the determination of:

- Whether the Agency complied with applicable sections of the California Government Code (Sections 20000 et seq.), California Public Employees' Pension Reform Act of 2013 (PEPRA) and Title 2 of the CCR.
- Whether prescribed reporting and enrollment procedures as they relate to the Agency's retirement contract with CalPERS were followed.

Effective January 1, 2013, new enrollments are checked against the PEPRA definition of "new member", regardless of whether the enrollment is for a first time CalPERS member or an existing member. All members that do not fit within the definition of a new member are referred to as "classic members".

This review did not include an assessment as to whether the Agency is a "public agency," and expresses no opinion or finding with respect to whether the Agency is a public agency or whether its employees are employed by a public agency.

SUMMARY

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:
- o Provisions of the contract and contract amendments between the Agency and CalPERS
- o Correspondence files maintained at CalPERS
- o Agency Board minutes and Agency Board resolutions
- o Agency written labor policies and agreements
- o Agency salary, wage and benefit agreements including applicable resolutions
- o Agency personnel records and employee hours worked records
- o Agency payroll information including Contribution Detail Transaction History reports
- o Other documents used to specify payrate, special compensation, and benefits for employees
- o Various other documents as necessary

✓ 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.
- ✓ 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 calculation and reporting of unused sick leave balances, if contracted to provide for additional service credits for unused sick leave.

APPENDIX B

AGENCY'S WRITTEN RESPONSE

BELMONT FIRE PROTECTION DISTRICT

One Twin Pines Lane, Suite 330, Belmont, CA 94002
(650) 595-7452 • Fax (650) 577-3323
www.belmont.gov

Human Resources Department

June 16, 2015

Ms. Young Hamilton
Acting Chief, Office of Audit Services
CalPERS
P.O. Box 942701
Sacramento, CA 94229-2701

Re: Agency Response – Draft Belmont Fire Protection District Public Agency Review
Job Number: P14-008

Dear Ms. Hamilton:

The Belmont Fire Protection District ("District") is in receipt of the above-referenced report, furnished under your cover letter dated June 4, 2015, pertaining to the District's contract with the California Public Employees' Retirement System (CalPERS). Per your request the District has reviewed the draft report and has provided responses to the findings as indicated below:

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

The draft report states the District did not maintain a pay schedule that met the Government Code and CCR requirements, specifically:

1. The District's Deputy Fire Chief payrate and applicable time base was not available in a publicy avalialbe pay schedule.

2. The District's labor agreement with IAFF Local 2400 (MOU Appendix A) did not identify a time base on the pay schedule.

Response: Concur, the District is in the process of implementing this finding.

Finding 2. The Agency incorrectly reported special compensation.

The draft report states the District incorrectly reported holiday, FLSA and uniform special compensation as follows:

<u>Holiday Pay – Over Reporting</u>

The District over reported holiday pay for employees by including special compensation (EMT, Paramedic Pay, etc.) in the amount reported to CalPERS. Holiday pay must be

reported in accordance with the District's labor agreements which currently indicate holiday pay is provided at the regular base rate of pay.

Response: Concur. The District will await direction from CalPERS on the treatment of past payroll submissions.

Holiday Pay Reporting – Lump Sum Versus as Earned

The District incorrectly reported the Holiday Pay as a lump sum instead of as earned for pay period ending April 15, 2014. Government Code Section 20636 requires the Agency to identify the pay period(s) in which the special compensation was earned.

Response: Concur. The District historically reported the holiday pay in this manner as instructed by CalPERS Employer Contact Center. The District will now report the pay periods in which the special compensation was earned.

Fair Labor Standard Act Premium – Not Reported as Earned

In the pay period ending April 15, 2014 the District reported Fair Labor Standard Act (FLSA) Premium pay for the period February 24, 2014 – March 19, 2014 for four employees. The
Agency should have reported the FLSA premium pay for the period in which it was earned.

Response: Concur.

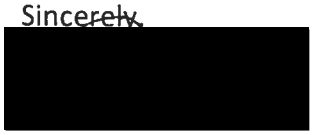
Uniform Allowance – Monetary Value

The District's labor agreements do not indicate the amount, or the monetary value of uniforms. CCR Section 571 requires the amount of special compensation be included in a written labor policy or agreement.

Response: Concur. The labor agreement will be revised to include this information.

The District appreciates the opportunity to provide responses to the agency compliance review findings. We look forward to working in conjunction with CalPERS Employer Account Management Division to clarify and correct these issues. Please feel free to contact me at (650) 595-7452 or lkirby@belmont.gov if you need additional information.

Sincerely,



Original signed by Laura Kirby

Laura Kirby
HR Management Analyst