

# Office of Audit Services



# CalPERS

## Public Agency Review

### City of Barstow

Employer Code: 0562  
CalPERS ID: 6859832526  
Job Number: P13-007

May 2014



California Public Employees' Retirement System  
Office of Audit Services  
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Sacramento, CA 94229-2701  
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May 30, 2014

Employer Code: 0562  
CalPERS ID: 6859832526  
Job Number: P13-007

City of Barstow  
Ava Reyes, Administrative Services Manager  
220 East Mountain View Street, Suite A  
Barstow, CA 92311-2839

Dear Ms. Reyes:

Enclosed is our final report on the results of the public agency review completed for the City of Barstow (Agency). Your written response, included as an appendix to the report, indicates agreement or partial agreement with the issues noted in the report except for Finding 6. We appreciate the additional information regarding Finding 6 that you provided in your response; however, after careful consideration of this information, our recommendation remains 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 and we appreciate the time and assistance of you and your staff during this review.

Sincerely,

Original signed by Margaret Junker  
MARGARET JUNKER, Chief  
Office of Audit Services

Enclosure

cc: Council, City of Barstow  
Oliver Chi, Assistant City Manager  
Risk and Audit Committee Members, CalPERS  
Gina M. Ratto, Interim General Counsel, CalPERS  
Karen DeFrank, Chief, CASD, CalPERS  
Anthony Suine, Chief, BNSD, CalPERS

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# CITY OF BARSTOW

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## RESULTS IN BRIEF

The primary objective of our review was to determine whether the City of Barstow (Agency) complied with applicable sections of the California Government Code, 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 the requirements of the CCR.
- Special compensation was incorrectly reported.
- Payroll information was incorrectly reported.
- Eligible part-time employee was not enrolled.
- Unused sick leave was incorrectly reported.
- Employee misclassified as Independent Contractor was not enrolled.

OAS recommends the Agency comply with applicable sections of the California Government Code, 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 January 3, 1965 to provide retirement benefits for local miscellaneous and safety employees. The contract was amended effective November 6, 1992 to exclude retirement benefits for fire fighters. 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 2013/2014, OAS reviewed the Agency's payroll reporting and member enrollment processes as these processes relate to the Agency's retirement contract with CalPERS. The review period was limited to the examination of sampled employees, records and pay periods from July 1, 2010 through June 30, 2013. The on-site fieldwork for this review was conducted from August 12, 2013 through August 14, 2013. The review objectives and a summary of the procedures performed are listed in Appendix A.

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## OFFICE OF AUDIT SERVICES REVIEW RESULTS

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

### ***Condition:***

The Agency's pay schedule did not identify position titles or the payrate for each listed position as required by the CCR. For purposes of determining the amount of compensation earnable, a member's payrate is limited to the amount identified on a 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.
- Not reference another document in lieu of disclosing the payrate.

### ***Recommendation:***

The Agency should ensure its pay schedule meets all the CCR requirements.

The Agency should work with CalPERS Customer Account Services Division (CASD) to make all necessary adjustments, if any, to active and retired member accounts pursuant to Government Code section 20160.

### ***Criteria:***

Government Codes: § 20160, § 20636 (a), § 20636 (b)(1), § 20636 (d)  
CCR: § 570.5

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**2:** The Agency did not correctly report special compensation.

***Condition:***

Reportable special compensation is exclusively listed and defined in the CCR section 571. Reportable special compensation is required to be contained in a written labor policy or agreement that includes the amount and conditions for payment of the item of special compensation.

- A. The Agency did not report the monetary value and maintenance of uniforms for employees in certain job classifications within Unit 1 and Unit 6. The labor agreement requires employees in these classifications to wear Agency provided non-safety uniforms. In addition, the Agency's written labor agreements did not indicate the conditions for payment of the uniforms. The Agency indicated these uniforms were safety items since they are soiled with contaminants. However, the Agency did not provide documentation to support the uniforms were solely for personal health and safety. California Code of Regulations section 571 excludes items that are solely for personal health and safety such as protective vests, pistols, bullets and safety shoes.
- B. The Agency did not report the value of Employer Paid Member Contributions (EPMC) for six safety employees as specified in resolution number 4634-2011 with an effective date of December 6, 2010. The value of EPMC is reportable to CalPERS as special compensation since it meets the criteria defined in CCR section 571.
- C. The Agency did not report special compensation for holiday credit cash-out, nor did it report the related EPMC. Government Code 20636(c) requires a contracting agency to report these elements if they meet specified criteria. However, the Agency is currently not able to identify reportable holiday credit cash-out because the Agency's records combine non-reportable holiday pay (birthdays and floating holidays) with reportable holiday credit. Because of this, the Agency also cannot identify the related reportable EPMC, which is reportable as it relates to reportable compensation.
- D. The Agency incorrectly reported special compensation for earnings resulting from a part-time position. Since the compensation for this position is considered overtime, it is not reportable to CalPERS. Specifically, the City Service Manager (formerly the Municipal Records Supervisor) who worked full-time also held the position of Elected City Clerk which was a part-time position. The Agency incorrectly reported \$250 bi-weekly pay (\$500 a month) as special compensation for the Elected City Clerk position.

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Pursuant to Government Code section 20635, if a member concurrently renders service in two or more positions, one or more of which is full time, service in the part-time position shall constitute overtime and is not reportable compensation.

***Recommendation:***

The Agency should work with CASD to ensure all items that meet the definition of special compensation are reported and the conditions of payment are contained in a written labor policy or agreement.

The Agency should discontinue reporting the City Clerk pay as special compensation.

The Agency should work with CASD to determine the impact of this non-reporting and make the necessary adjustments to active and retired member accounts pursuant to Government Code section 20160.

***Criteria:***

Government Codes: § 20049, § 20160, § 20630 (b), § 20635, § 20636 (a), § 20636 (c)(1), § 20636 (c)(2), § 20636 (c)(6)

CCR: § 571 (a), § 571 (b), § 571 (b)(1)(B)

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**3:** The Agency reported incorrect payroll information.

***Condition:***

- A. The Agency reported incorrect monthly and hourly payrates for four employees. For example, the Agency reported a monthly payrate of \$66,323.67 instead of the correct payrate of \$6,323.67. Similarly, the Agency reported an hourly payrate of \$2,647.14 for an employee when it was the monthly payrate.
- B. The Agency incorrectly reported items of special compensation as base payrate and regular earnings for an employee. Educational incentive, POST certificate, and special assignment pay are considered special compensation and must be reported separate from base payrate and regular earnings.

***Recommendation:***

The Agency should correctly report payrate and payrate type and discontinue reporting special compensation as base payrate and regular earnings.

The Agency should work with CASD 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 Codes: § 20160, § 20630, § 20636 (a), § 20636 (b)(1), § 20636 (c)(1), § 20636 (c)(2), § 20636 (c)(6)



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4: The Agency did not enroll an eligible part-time employee.

***Condition:***

The Agency did not enroll a part-time employee who worked more than 1,000 hours. The part-time employee was compensated for 1,021.50 hours in fiscal year 2011/2012, and met the CalPERS 1,000-hour membership eligibility requirement in the pay period ending June 30, 2012. Employees who work 1,000 hours within a fiscal year shall be enrolled into membership effective not later than the first day of the first pay period of the month following the month in which 1,000 hours of service were completed.

***Recommendation:***

The Agency should monitor the hours worked by temporary/part-time employees to ensure employees are enrolled timely when membership eligibility requirements are met.

The Agency should work with CASD to assess the impact of these membership requirement issues and determine what adjustments, if any, are needed pursuant to Government Code section 20160.

***Criteria:***

Government Codes: § 20044, § 20160, § 20305(a)(3)(B)

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**5:** The Agency reported an incorrect unused sick leave balance.

***Condition:***

The Agency certified an incorrect number of sick leave days for a retiree. At the time of retirement, the retiree did not have a sick leave balance. However, the Agency certified .083 years, which equated to 20.75 days at retirement. The Agency should have certified a zero balance. 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 the additional service credit.

***Recommendation:***

The Agency should ensure the correct balance for unused sick leave is certified and reported for retiring members.

The Agency should work with CASD to assess the impact of this incorrect reporting and determine what adjustments, if any, are needed pursuant to Government Code section 20160.

***Criteria:***

Government Codes: § 20160, § 20965

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**6:** The Agency did not enroll an employee that was incorrectly classified as an independent contractor.

**Condition:**

The Agency incorrectly classified an employee as an independent contractor and therefore did not enroll this employee into CalPERS membership. OAS determined this individual worked in an employer/employee relationship. The Agency engaged the individual to serve as the Public Information Officer for \$58,200.00 per year payable in twelve equal monthly installments of \$4,850.00. The Agency's contract with the individual requires reporting to the City Manager and duties include overseeing the Agency's communications, media relations, intergovernmental relations, community outreach, marketing, and special event coordination.

The Agency's Council approved funding for the Public Information Officer as part of fiscal year 2012/13 budget. The budget included an allocation of one Public Information Officer as a full-time position. The pay schedule for the fiscal year listed the Public Information Officer position with a monthly pay range of \$7,451.00 to \$9,509.00. A full time employee with a pay range of \$7,451.00 to \$9,509.00 would equate to a half-time rate of \$3,725.50 to \$4,754.50.

Based on the full-time rate for the Public Information Officer position, OAS determined the employee was eligible for CalPERS membership upon the initial contract date of July 2, 2012, based on the contract terms and monthly salary. A monthly payment of \$4,850.00 for twelve months is equivalent to a time base of at least an average of 20 hours a week. The contract was for the term of one year. An employee whose appointment or employment contract does not fix a term of full-time, is excluded from this system unless his position requires service that is equivalent to at least an average of 20 hours a week for one year or longer. Therefore, the District should have enrolled the employee on July 2, 2012.

For the purposes of the Public Employees' Retirement Law and for programs administered by the Board of Administration of CalPERS (Board), the standard used for determining whether an individual is the employee of another person is the California common law as set forth in the California Supreme Court case titled *Tieberg v. Unemployment Ins. App. Bd.*, (1970) 2 Cal. 3d 943, which was cited with approval in *Metropolitan Water Dist. v. Superior Court*, (2004) 32 Cal. 4th 491, and which was adopted by the Board in a precedential decision, *In the Matter of Lee Neidengard*, precedential Decision No. 05-01, effective April 22, 2005.

Applying the California common law, the most important factor in determining whether an individual performs services for another as an employee is the right of the principal to control the manner and means of job performance and the desired

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## CITY OF BARSTOW

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result, whether or not this right is exercised. Where there is independent evidence that the principal has the right to control the manner and means of performing the service in question, CalPERS will determine that an employer-employee relationship exists between the employee and the principal.

Where there is no clear independent evidence that the principal has the right to control the manner and means of an individual's performance of the services in question, CalPERS, applying the California common law, will consider the following additional factors in determining whether an individual is an employee:

- (a) whether or not the one performing services is engaged in a distinct occupation or business;
- (b) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of a principal or by a specialist without supervision;
- (c) the skill required in the particular occupation;
- (d) whether the principal or the individual performing the services supplies the instrumentalities, tools, and the place of work for the person doing the work;
- (e) the length of time for which the services are to be performed;
- (f) the method of payment, whether by the time or by the job;
- (g) whether or not the work is a part of the regular business of the principal; and
- (h) whether or not the parties believe they are creating the relationship of employer-employee.

***Recommendation:***

The Agency should ensure independent contractors are properly classified and not working in an employer/employee relationship.

The Agency should also ensure employees are enrolled into CalPERS membership when eligibility requirements are met.

The Agency should work with CalPERS CASD to assess the impact of this membership enrollment issue and determine what adjustments are needed.

***Criteria:***

Government Codes: § 20160, § 20300, § 20305 (2)(a), § 20505

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**Observation:** The Agency's contract included an hourly exclusion that was not in use.

The Agency's retirement contract with CalPERS included membership exclusions for two classifications: (1) firefighters and (2) hourly rated/hourly basis employees. OAS reviewed the Agency's employee roster and did not identify classifications for firefighters or employees designated to be excluded based on hourly rated or hourly basis employment with the Agency. OAS also reviewed the Agency's written labor policies and found it did not provide information for determining the classification for the hourly rated or hourly basis employees excluded from membership. A sample of six temporary/part time employees were reviewed and OAS found that three employees met membership eligibility and were enrolled timely pursuant to Government Code section 20305. Agency personnel stated that the hourly exclusions were not being applied. The Agency should work with CalPERS CASD to amend its contract to reflect the Agency practices.

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## CONCLUSION

OAS limited this review to the areas specified in the scope section of this report and in the objectives as 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, California Code of Regulations.

Respectfully submitted,

Original signed by Margaret Junker  
MARGARET JUNKER, CPA, CIA, CIDA  
Chief, Office of Audit Services

Staff: Cheryl Dietz, CPA, Assistant Division Chief  
Diana Thomas, CIA, CIDA, Senior Manager  
Mel Lanse, CPA, CIA, Staff Program Evaluator  
Nuntawan Camyre, Auditor  
Edward Fama, Auditor

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**CITY OF BARSTOW**

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# **APPENDIX A**

## **OBJECTIVES**

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# CITY OF BARSTOW

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## OBJECTIVES

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

- Whether the Agency complied with applicable sections of the California Government Code and Title 2 of the California Code of Regulations.
- Whether prescribed reporting and enrollment procedures as they relate to the Agency's retirement contract with CalPERS were followed.

This review covers the period of July 1, 2010 through June 30, 2013.

## 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:
  - Provisions of the contract and contract amendments between the Agency and CalPERS
  - Correspondence files maintained at CalPERS
  - City Council minutes and resolutions
  - Agency written labor policies and agreements
  - Agency salary, wage and benefit agreements including applicable resolutions
  - Agency personnel records and employee hours worked records
  - Agency payroll information including Summary Reports and CalPERS listings
  - Other documents used to specify payrate, special compensation, and benefits for all employees
  - 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 meeting laws.



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- ✓ Reviewed CalPERS listing reports to determine whether the payroll reporting elements were reported correctly.
- ✓ Reviewed the Agency's enrollment practices for temporary and part-time employees to determine whether individuals met CalPERS membership requirements.
- ✓ Reviewed the Agency's enrollment practices for retired annuitants to determine if retirees were lawfully employed and reinstated when 960 hours were worked in a fiscal year.
- ✓ 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 entities to determine if the Agency shared employees with an affiliated entity and if the employees were CalPERS members and whether their earnings were reported by the Agency or by the affiliated entity.
- ✓ Reviewed the Agency's calculation and reporting of unused sick leave balances, if contracted to provide for additional service credits for unused sick leave.

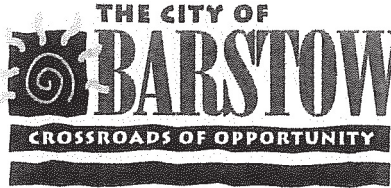
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**CITY OF BARSTOW**

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# **APPENDIX B**

## **AGENCY RESPONSE**



January 29, 2014

Ms. Margaret Junker, Chief Office of Audit Services  
California Public Employees' Retirement System  
PO Box 942701  
Sacramento, CA 94229-27010

RE: City of Barstow Draft Report Dated December 20, 2013  
Employer Code: 0562 – CalPERS ID 6859832526 – Job Number P13-007

Dear Ms. Junker:

The City of Barstow (City) is in receipt of the above-reference report regarding the compliance review in relation to the City of Barstow's contract with the California Public Employees' Retirement System (CalPERS). This attached letter provides the City's written responses to the finding of the report.

Thank you to CalPERS Staff member for their assistance and cooperation in conducting the City of Barstow's compliance review and related report.

Sincerely,

Ava Reyes  
Administrative Services Manager

Enclosed: City of Barstow Compliance Review Responses

CC: Oliver Chi, Assistant City Manager

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**CITY OF BARSTOW  
COMPLIANCE REVIEW RESPONSES  
JANUARY 29, 2014**

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**Finding 1: The Agency's pay schedule did not meet all the requirement of the CCR.**

***Condition:***

The Agency's pay schedule did not identify positions or the payrate for each listed position as required by the CCR. For purposes of determining the amount of compensation earnable, a member's payrate is limited to the amount identified on a 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.
- Not reference another document in lieu of disclosing the payrate.

**City of Barstow Response – Partially Agree:**

The City does agree the pay schedule itself did not conform to the exact stated provisions of the California Code of Regulations (CCR). It is important to note the following:

- 1) On 06/03/13 via a public meeting, the City Council did approve a Fiscal Year 13/14 Budget that included the salary schedule and indicated the following:
  - a. Position titles
  - b. Indicated the monthly salary range of the positions
  - c. The amount of authorized personnel employees for each position, which included Council Members
- 2) The salary schedule is available in the Administrative Manager's Office for public viewing during normal business hours.
- 3) On 05/21/2011, the salary for the City Council Members had been established by City Ordinance No. 770-2001.

The City and will work with the Customer Account Services Division (CASD) to ensure the posted pay schedule meets all requirements as per the cited Government Code.

**Finding 2: The Agency did not correctly report special compensation.**

**Condition:**

Reportable special compensation is exclusively listed and defined in the CCR section 571. Reportable special compensation is required to be contained in a written labor policy or agreement with the conditions for payment of the item of special compensation.

- A. The Agency did not report the monetary value and maintenance of uniforms for employees in certain job classifications within Unit 1 and Unit 6. The labor agreement requires employees in these classifications to wear Agency provided non-safety uniforms. In addition, the Agency's written labor agreements did not indicate the conditions for payment of the uniforms. The Agency indicated these uniforms were safety items since they are soiled with contaminants. However, the Agency did not provide documentation to support the uniforms were solely for personal health and safety. California Code of Regulations section 571 excludes items that are solely for personal health and safety such as protective vests, pistols, bullets and safety shoes.
- B. The Agency did not report the value of Member Contributions (EPMC) for six safety employees as specified in resolution number 4634-2011 with an effective date of December 6, 2010. The value of EPMC is reportable to CalPERS as special compensation since it meets the criteria defined in CCR section 571.
- C. The Agency did not report special compensation for holiday credit cash-out, nor did it report the related EPMC. Government Code 20636(c) requires a contracting agency to report these elements if they meet specified criteria. However, the Agency is currently not able to identify reportable holiday credit cash-out because the Agency's records combine non-reportable holiday pay (birthdays and floating holidays) with reportable holiday credit. Because of this, the Agency also cannot identify the related reportable EPMC, which is reportable as it relates to reportable compensation.
- D. The Agency incorrectly reported special compensation for earnings resulting from a part-time position. Since the compensation for this position is considered overtime, it is not reportable to CalPERS. Specifically, the City Service Manager (formerly the Municipal Records Supervisor) who worked full-time also held the position of Elected City Clerk which was a part-time position. The Agency incorrectly reported \$250 bi-weekly pay (\$500 a month) as special compensation for the Elected City Clerk position. Pursuant to Government Code section 20635, if a member concurrently renders service in two or more positions, one or more of which is full time, service in the part-time position shall constitute overtime and is not reportable compensation.

**City of Barstow Response - Condition 2A Partially Agree:**

The City agrees with the finding and will work with CASD to correct the reporting. In addition, to correct the written labor agreements, City Staff will address the items as a discussion topic to be considered for the inclusion in the next MOU negotiations for Unit 1 and Unit 6. It is important to note, the uniforms that are in question are for the Wastewater Treatment Plant employees and could be considered used for health reasons to prevent exposure from solid waste contaminants.

**City of Barstow Response - Condition 2B Agree:**

The City agrees with the finding. When the City was made aware of this situation, the City proactively began reporting the EPMC for safety officers. The City will work with CASD to correct the remaining issue of “back reporting” from the effective date of December 6, 2010.

**City of Barstow Response - Condition 2C Agree:**

The City agrees with the finding and will work with CASD to correct the reporting.

**City of Barstow Response - Condition 2D Partially Agree:**

The City of Barstow partially agrees with the finding. City Staff had contacted CalPERS Center to discuss how to report the pay rate of the Elected City Clerk who is also employed as full-time employee. Through recommendation of the CalPERS representative, the City was advised to report the pay as special compensation. However, the City learned during the CalPers Review period that reporting the Elected City Clerk pay is not correct. Since the City discovered that reporting the Elected City Clerk pay as special compensation was incorrect, the City has stopped reporting the pay. The City partially agrees with finding due to the fact that the City was reporting the Elected City Clerk Pay under the guidelines from a CalPERS Representative. The City will continue to work with CASD to correct the reporting issue.

**Finding 3: The Agency reported incorrect payroll information.**

***Condition:***

- A. The Agency reported incorrect monthly and hourly payrates for four employees. For example, the Agency reported a monthly payrate of \$66,323.67 instead of the correct payrate of \$6,323.67. Similarly, the Agency reported an hourly payrate of \$2,647.14 for an employee when it was the monthly payrate.
- B. The Agency incorrectly reported items of special compensation as base payrate and regular earnings for an employee. Educational incentive, POST certificate, and special assignment pay are considered special compensation and must be reported separate from base payrate and regular earnings.

**City of Barstow Response - Condition 3A Agree:**

The City will work with CASD to correct the values of the incorrect payrates.

**City of Barstow Response - Condition 3B Agree:**

The City erroneously reported the rate as regular pay versus special compensation. The City has corrected the way retroactive special compensation is reported. The City will work with CASD to correct the error in reporting of regular pay.

**4: The Agency did not enroll an eligible part-time employee.**

***Condition:***

The Agency did not enroll a part-time employee who worked more than 1,000 hours. The part-time employee was compensated for 1,021.50 hours in fiscal year 2011/2012, and met the CalPERS 1,000 hour membership eligibility requirement in the pay period ending June 30, 2012. Employees who work 1,000 hours within a fiscal year shall be enrolled into membership effective not later than the first day of the first pay period of the month following the month which 1,000 hours of service were completed.

**City of Barstow Response – Agree:**

The City agrees with the finding. The City does have a system in place to keep track and account for part-time employees' hours. However, for Fiscal Year 2011/12, two pay-periods were inadvertently not accounted for which led to the unseen overages of hours. The system has been corrected and the City will be more diligent with ensuring that part-time employees' hours are properly accounted. The City will work with CASD to correct resolve the situation.

**5: The Agency reported an incorrect unused sick leave balance.**

***Condition:***

The Agency certified an incorrect number of sick leave days for a retiree. At the time of retirement, the retiree did not have a sick leave balance. However, the Agency certified .083 years, which equated to 20.75 days at retirement. The Agency should have certified a zero balance. 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 unused sick leave hours at retirement is converted to days to determine the additional service credit.

**City of Barstow Response – Agree:**

The City agrees with the finding. The City has implemented new procedures to ensure correct number of sick hours are reported at the time of retirement. The City will work with CASD to correct resolve the situation.

**6: The Agency did not enroll an employee incorrectly classified as an independent contractor.**

***Condition:***

The Agency incorrectly classified an employee as an independent contractor and therefore did not enroll this employee into CalPERS membership. OAS determined this individual worked in an employer/employee relationship. The Agency engaged the individual to serve as the Public Information Officer for \$58,200.00 per year payable in twelve equal monthly installments of \$4,850.00. The Agency's contract with the individual requires reporting to the City Manager and duties include overseeing the Agency's communications, media relations, intergovernmental relations, community outreach, marketing, and special event coordination.

**City of Barstow Response – Disagree:**

The City disagrees with CalPERS assessment that the employee hired as a Public Information Officer meets the criteria of an employee/employer relationship. Based on the Common Law Test and the 20 factors associated with the test, the Employee meet only 8 Factors which represent a "yes" he was an employee and 12 of the factors that indicated that "no" he was not an employee. At the time the contract was negotiated, the Employee was providing services to several other clients (and offered those services to the general public, such as non-profit entities). The Employee did not have to comply with employer instructions about how to do the work – in essence the work needed to be completed without a set sequence by the City. The Employee did not receive training from the City. The Employee did not hire, supervise or pays other employees for the City. The Employee did not have to follow a set hours of work. The Employee did not work a full-time schedule. The City did not require Employee to submit oral or written reports. The Employee did not receive payments for business and/or travel expenses. The Employee did not rely on the City to furnish tools and materials. The Employee can make a profit and suffer a loss from not performing the service. Therefore, the City disagrees that an employee-employer relationship existed between the independent contractor and the City of Barstow.

**Observation: The Agency's contract included an hourly exclusion that was not in use.**

The Agency's retirement contract with CalPERS included membership exclusions for two classifications: (1) firefighters and (2) hourly rated/hourly basis employees. OAS reviewed the Agency's employee roster and did not identify classifications for firefighters or employees designated to be excluded based on hourly rated or hourly basis employment with the Agency. OAS also reviewed the Agency's written labor policies and found it did not provide information for determining the classification for the hourly rated or hourly basis employees excluded from membership. A sample of six temporary/part time employees were reviewed and OAS found that three employees met membership eligibility and were enrolled timely pursuant to Government Code section 20305. Agency personnel stated that that the hourly exclusions were not being applied. The Agency should work with CalPERS CASD to amend its contract to reflect the Agency practices.



**City of Barstow Response:**

The City's CalPERS contract does state the exclusion of the Hourly employees, per Government Section 20502. However, Government Section 20502, explicitly states "This section shall not be constructed to supersede Sections 20303 and 20305." Pursuant to Government section 20305 a.3.B, the City enrolled employees who meet the 1,000 hours requirement. City agrees to work with CalPERS to discuss the contract regarding the hourly exclusion.