Office of Audit Services

Public Agency Review

Kensington Community Services District

CalPERS ID: 7381511111
Job Number: P14-060

January 2016

California Public Employees' Retirement System
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January 29, 2016

CalPERS ID: 7381511111
Job Number: P14-060

Kevin Hart, Interim General Manager/Chief of Police
Kensington Police Protection and Community Services District
217 Arlington Ave.
Kensington, CA 94707

Dear Mr. Hart:

Enclosed is our final report on the results of the public agency review completed for the Kensington Police Protection and Community Services District (Agency). Your written response is included as an appendix to the report. After consideration of the information included in your response, we have added clarifying language to Finding 2. All of the other issues will remain as stated.

In accordance with our resolution policy, we have referred the issues identified in the report to the appropriate divisions at CalPERS. The appropriate CalPERS division will notify you of final determinations and provide any appeal rights. 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, Kensington Police Protection and Community Services 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

KENSINGTON COMMUNITY SERVICES DISTRICT

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RESULTS IN BRIEF

The primary objective of our review was to determine whether the Kensington Community Services 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.

- Special compensation was not reported in accordance with the Government Code and CCR.
- Non-reportable compensation was incorrectly included with earnings.
- Retroactive salary adjustment was incorrectly reported.
- Unused sick leave was not reported as required.
- Observation: The General Manager/Chief of Police was enrolled and reported as a full-time safety employee.

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 January 1, 1971 to provide retirement benefits for safety (police) employees. 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 CalPERS Board of Administration (Board) approved 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 December 31, 2014. The review objectives and methodology are listed in Appendix A.

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OFFICE OF AUDIT SERVICES REVIEW RESULTS

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

Condition:

A. The Agency incorrectly reported Longevity Pay for a police officer as a lump sum amount instead of when the special compensation was earned. Specifically, the Agency's labor agreement stated eligible officers will receive an annual bonus of $100.00 for each year of service with the Agency, beginning with the tenth year. The Agency incorrectly reported a lump sum amount of $1,700.00 for an employee with 17 years of service in the pay period ended December 15, 2014. Government Code Section 20636(c)(3) requires agencies to identify the pay period(s) in which special compensation was earned.

B. The Agency incorrectly reported compensation for birthdays as special compensation. Specifically, the Agency reported Holiday Pay for nine employees in the pay period ended December 31, 2014 that included birthdays. The Kensington Police Officers' Association Memorandum of Understanding (written labor policy) stated police officers receive holiday compensation for birthdays. However, additional compensation for birthdays does not meet the definition of Holiday Pay. 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. Therefore, birthdays are not reportable as special compensation.

Recommendation:

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

The Agency should only report items that qualify as special compensation.

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.

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Criteria:

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

2: The Agency incorrectly included non-reportable compensation with regular earnings.

Condition:

The Agency incorrectly included non-reportable compensation with regular earnings for the General Manager/Chief of Police in the pay period ended July 31, 2012. Specifically, the Agency granted a one-time lump sum payment of $16,754.00 because the Agency had not provided the employee with performance evaluations between 2009 and 2011. Minutes from a July 12, 2012 Board of Directors meeting stated the payment was a “true-up” approved by the Board “in consideration of the failure to provide evaluations for the period between 2009 and 2011”. Additionally, the payment did not qualify as special compensation because it was not available to all members in the group or class. The payment was not reportable per Government Code Section 20630 which requires that compensation must be reported in accordance with Section 20636, and cannot exceed compensation earnable as defined in Section 20636.

Government Code Section 20636(a) defines “compensation earnable” as payrate and special compensation for a member. Government Code Section 20636(b)(1) defines “payrate” as the normal monthly rate of pay or base pay of a member pursuant to publicly available pay schedules.

Reportable special compensation is defined in CCR Section 571(a) and must be reported if it conforms with 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.

Payrate and earnings are important factors in computing a member’s retirement allowance because service credit and final compensation are directly related to the payrate and earnings reported for the member. Only compensation earnable, as defined under Government Code Section 20636 and the corresponding regulations, can be reported to CalPERS and considered in calculating retirement benefits.

Recommendation:

The Agency should only report earnings that qualify as compensation pursuant to Government Codes 20630 and 20636.

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, § 20636
CCR: § 571

3: The Agency incorrectly reported retroactive salary adjustments.

Condition:

The Agency incorrectly reported two retroactive salary adjustments for the General Manager/Chief of Police as lump sum amounts instead of when earned. Specifically, the employee received a five percent payrate increase in the pay period ended August 31, 2012 that was retroactive to July 1, 2012. The employee also received a second payrate increase of one percent in the pay period ended January 15, 2014 that was retroactive to July 1, 2013. However, in both instances the Agency incorrectly reported the retroactive salary adjustment to CalPERS as a lump sum amount by adding the entire adjustment to payrate and earnings in the pay period the adjustment was paid.

Retroactive salary adjustments used to capture salary increases covering multiple periods should be reported to CalPERS as a separate transaction type rather than adding it to payrate and earnings in the pay period it was paid. For retroactive pay increases, the Agency should also provide the inclusive dates of the increase as well as the new payrate, total earnings, and contributions for the period of the increase.

Recommendation:

The Agency should ensure the retroactive salary adjustments are reported correctly and identify the pay period in which the special compensation was earned.

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

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4: The Agency did not report unused sick leave balance.

Condition:

The Agency did not certify unused sick leave days for one retiring member. Specifically, the retiring member had 52.25 days of unused sick leave upon retirement. However, the Agency did not certify the balance for additional service credit. As a result, the Agency understated the retiring member's unused sick leave. Retiring members are eligible for additional service credit for unused sick leave accrued by the member during the normal course of employment. The Agency should have reported the unused sick leave to CalPERS.

Recommendation:

The Agency should ensure that retiring members' leave balances are correctly reported to CalPERS.

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, § 20965

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Observation: The Agency enrolled and reported the General Manager/Chief of Police as a full-time safety employee.

The Agency contracted with CalPERS for safety, but excluded miscellaneous employees. OAS identified that the General Manager/Chief of Police was enrolled as a safety employee. However, the duty statement for the General Manager/Chief of Police position indicated the individual may provide services as a miscellaneous member. Although the duty statement required the position to be a sworn police officer, certain duties appear to be unrelated to police safety services. For example, the duty statement indicated oversight over several other departments including: Solid Waste Handling and Disposal, and Park and Recreational Services. OAS was unable to determine whether all compensation earnable should be reported under the police safety classification. The Agency should work with EAMD to determine the appropriate enrollment and reporting of this position.

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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
Alan Feblowitz, CFE, Senior Manager
Chris Wall, Senior Manager
Zachary Barlow, Auditor
Nuntawan Camyre, Auditor
Dennis Szeto, Auditor

APPENDIX A

OBJECTIVES

KENSINGTON COMMUNITY SERVICES 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.), California Public Employees' Pension Reform Act of 2013 (PEPRA), and Title 2 of the CCR.
- Reporting and enrollment procedures prescribed in the Agency's retirement contract with CalPERS.

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.

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:
  - 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 time records
  - o Agency payroll information including Contribution Detail Transaction History reports
  - o Documents related to employee payrate, special compensation, and benefits
  - o 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.
- ✓ 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 for additional service credits for unused sick leave.

APPENDIX B

AGENCY'S WRITTEN RESPONSE

KENSINGTON POLICE PROTECTION AND COMMUNITY SERVICES DISTRICT

January 6, 2016

California Public Employees' Retirement System
Office of Audit Services
P.O. Box 942701
Sacramento, CA 94229-2701
Attn: Beliz Chappuie,

Dear Mr. Chappuie;

Below are my responses and requests for appeal to the items identified in your letter to the Kensington Police Protection and Community Services District (KPPCSD) dated December 23, 2015.

1. Longevity Pay

   Per the KPOA-KPPCSD MOU, longevity pay is "to be paid every year at the end of the firs pay period in December". The year must have been completed for the officer to receive this bonus. Therefore is not treated as an accrual. It is a one-time payment and is reported to CalPERS as such for the December 15th pay period of every year.

   As such, the KPPCSD would like to appeal this conclusion.

   Birthdays

   The KPPCSD has ceased including birthdays as a "persable" element of compensation.

2. Compensation Rates for General Manager and Chief of Police

   My understanding it that this was meant to be in lieu of compensation that was not paid because the Board had failed to complete performance reviews for this employee for a period of three years. As an employee with his own employment contract, which was outside the MOU with the officers, I don't believe there were any other PERS employees "in the group or class" working for the District who could have qualified for this.

   As such, the KPPCSD would like to appeal this conclusion.

   In the future, the District will work with EAMD to ensure proper processing of one-time compensation.

3. Retroactive Salary Adjustments

   These payments were made four and two years ago, respectively.

KPPCSD will ensure that all future retroactive payments are processed with the assistance of CalPERS to ensure accuracy. However, given the fact that these payments were made quite some time ago and cover multiple pay periods, it would consume considerable KPPCSD resources to make any adjustments.

As such, KPPCSD would like to appeal this conclusion.

4. Unreported Sick Leave Balance

   Upon his retirement the retiring Chief, himself, reported his unused sick leave balance.

   If adjustments are needed KPPCSD will make such adjustments. And, in the future, KPPCSD will work to ensure that future reports are accurate.

5. The Agency enrolled and reported the General Manager/Chief of Police as a full-time safety employee.

   The positions of General Manager/Chief of Police are enmeshed. This position has been combined since the 1950's, when the KPPCSD added recreation to its primary police protection function. There is no way to identify the amount of time spent on the two roles.

Please advise what next steps we should take.

Sincerely,

Original signed by Kevin Hart

Kevin Hart
Interim General Manager/Chief of Police