Office of Audit Services

Public Agency Review

North County Fire Protection District of San Diego County

CalPERS ID: 3891469960
Job Number: P14-010

June 2015

California Public Employees' Retirement System
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June 26, 2015

CalPERS ID: 3891469960
Job Number: P14-010

Stephen Abbott, Division Chief/Administration
North County Fire Protection District of San Diego County
330 S. Main Street
Fallbrook, CA 92028-2138

Dear Mr. Abbott:

Enclosed is our final report on the results of the public agency review completed for the North County Fire Protection District of San Diego County (Agency). Your written response, included as an appendix to the report, indicates agreement with the issues noted in the report except for Findings 3F and 4C. We appreciate the additional information regarding Findings 3F and 4C that you provided in your response. However, after consideration of this information, our recommendations remain as stated in the report. Furthermore, we expanded Finding 3F and revised Finding 4C to further clarify the uniform allowance and member contribution finding.

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, North County Fire Protection District of San Diego County
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

NORTH COUNTY FIRE PROTECTION DISTRICT OF SAN DIEGO COUNTY

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NORTH COUNTY FIRE PROTECTION DISTRICT OF SAN DIEGO COUNTY

RESULTS IN BRIEF

The primary objective of our review was to determine whether the North County Fire Protection District of San Diego County (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.

- Pay schedule did not meet all of the Government Code and CCR requirements.
- Payrate and earnings were incorrectly reported.
- Special compensation was not reported as required.
- Member contributions were incorrectly paid and reported.

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 January 7, 1968 to provide retirement benefits for local firefighters and subsequently amended the contract to include local miscellaneous 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 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 July 1, 2011 through June 30, 2014. The review objectives and a summary of the procedures performed are listed in Appendix A.

NORTH COUNTY FIRE PROTECTION DISTRICT OF SAN DIEGO COUNTY

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 maintain a pay schedule that met all of the Government Code and CCR requirements. Specifically, the Agency did not have a pay schedule that listed all position titles and payrates. Although many of the employee payrates were listed in Memorandum of Understandings and employment agreements, not all payrates were approved by the Agency's governing body. In addition, the time base and effective dates were not always listed.

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 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 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

NORTH COUNTY FIRE PROTECTION DISTRICT OF SAN DIEGO COUNTY

2: The Agency incorrectly reported payrate and earnings.

Condition:

The Reserve Firefighters work on a part-time basis sharing duties that have been established as 56-hour work week positions. In this case the Agency reported the correct hours, 56 hours per week; however, the Agency incorrectly reported payrates.

A. The Agency over reported payrates for two Reserve Firefighters during pay period ending May 31, 2014. The Agency reported a monthly payrate of $2,500.00 for both employees. However, the employees' hourly payrates were $8.50 and $9.00, which convert to monthly payrates of $2,062.67 and $2,184.00, respectively. Although the employees do not work full-time, the Agency should report monthly payrates based on a 56-hour regular work schedule.

B. The Agency under reported regular earnings for one of the Reserve Firefighters mentioned above during the same pay period. The Agency paid and reported earnings in the amount of $954.00 ($9.00 x 106 hours). The employee worked above 112 hours and as previously discussed, the average work schedule was set at 56 hours per week or 112 hours per pay period. Therefore, the Agency should have reported regular earnings for 112 hours, or $1,008.00. Compensation for the remaining hours would be considered overtime and not reportable.

It is important that part-time employees' payrates, regular earnings, and the average number of hours established for the positions are accurately reported in order for part-time employees to receive the appropriate amount of service credit. Payrate and earnings are an important factor in computing a member's retirement allowance because service credit and final compensation are directly related to the payrate and earnings reported for a member.

Recommendation:

The Agency should ensure to report the payrate and earnings correctly.

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.

NORTH COUNTY FIRE PROTECTION DISTRICT OF SAN DIEGO COUNTY

Criteria:

Government Codes: § 20160, § 20630, § 20636

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

Condition:

A. The Agency did not report six hours of Fair Labor Standard Act (FLSA) premium pay for a Reserve Firefighter in pay period ending May 31, 2014. This is the same employee discussed in Finding 2B. Government Code Section 20636(c)(6) states that the premium pay for hours worked within the normally scheduled or regular working hours that are in excess of the maximum work week or period established by FLSA are to be reported as special compensation. The Agency paid the employee FLSA premium pay in the amount of $27.00. However, the pay was not reported as special compensation.

B. The Agency incorrectly included special compensation in payrate and regular earnings. Specifically, the Agency reported Paramedic Pay as part of the payrate and regular earnings for one employee in the pay period ending May 17, 2014. Special compensation must be reported separately from payrate and regular earnings if it meets the criteria listed in CCR Section 571.

C. The Agency did not report compensation that qualifies as special compensation. Specifically, the employee noted in Finding 3B received additional compensation for working in an upgraded position in the pay period ending May 17, 2014. Temporary Upgrade Pay meets the definition in CCR Section 571 and was included in the Agency's written labor policy. As a result, Temporary Upgrade Pay should have been reported as special compensation.

D. The Agency did not report Holiday Pay for a Reserve Firefighter who worked on a holiday. Reserve Firefighters are required to work without regard to holidays. The Agency compensated the Reserve Firefighter $75.00 for working on December 25, 2013. However, the Agency did not report the Holiday Pay to CalPERS as special compensation. Government Code Section 20636 (c)(6) and CCR Section 571 require Holiday Pay be reported as special compensation.

E. The amount of uniform allowance reported for fire safety and miscellaneous employees did not match the amount of the uniform allowance listed in the Agency's policy manual. The Agency reported a bi-weekly uniform allowance

of $26.92 during pay period ending May 31, 2014. The amount converts to $700.00 per year. However, the Agency's uniform policy listed an annual uniform allowance of $400.00. The Agency explained the allowance was increased to $700.00 per year several years ago. However, the policy manual had not been updated. Subsequent to the onsite fieldwork, the Agency updated the policy manual to reflect the increase of uniform allowance that was approved by the Agency's Board of Directors.

F. In addition to providing a uniform allowance to fire safety and miscellaneous employees, the Agency provided employees with other uniform items such as tee-shirts, tank tops, shorts and hats. Specifically, the uniform policy states in part: "In each fiscal year, employees will have the opportunity to receive the following, which does not count against their uniform allowance: Two (2) tee-shirts, one (1) long sleeve tee-shirt, one (1) tank top, one (1) pair of shorts, and one (1) hat." Therefore, the monetary value of the uniforms provided should be reportable as special compensation. However, the Agency did not report the monetary value of the uniforms.

G. The Agency's written labor policy did not include the conditions for payment of the uniforms discussed above (Finding 3F). CCR requires that the written labor policy or agreement must contain the conditions for payment of the item of special compensation, including, but not limited to, eligibility for, and amount of, the special compensation.

H. The Agency's written labor policies did not agree with resolutions on file at CalPERS to pay and report the value of Employer Paid Member Contributions (EPMC) as special compensation. Specifically, the Agency's written policies stated it would pay and report five percent EPMC for classic fire safety employees, four percent EPMC for classic miscellaneous employees and zero percent EPMC for Reserve Firefighters. However, the resolutions on file with CalPERS stated the Agency would pay and report the value of EPMC at nine percent for fire safety employees and seven percent for miscellaneous employees. During the period ending May 31, 2014, OAS noted the Agency paid and reported the value of EPMC pursuant to the written labor policies.

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.

Recommendation:

The Agency should report FLSA premium pay for all safety employees who are paid a premium for hours worked within the normally scheduled hours that are in excess of the maximum workweek or period established by FLSA.

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

The Agency should report Temporary Upgrade pay as special compensation.

The Agency should ensure it reports Holiday Pay for all employees who are normally scheduled to work on holidays because they work in positions that require scheduled staffing.

The Agency should report the uniform allowance for its classic members in accordance to its uniform policy.

The Agency should ensure the monetary value of the uniforms provided is reported as special compensation and the amount is contained in a written labor policy or agreement.

The Agency should ensure resolutions on file at CalPERS contain accurate information.

The Agency should work 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

NORTH COUNTY FIRE PROTECTION DISTRICT OF SAN DIEGO COUNTY

4: The Agency incorrectly reported member contributions.

Condition:

A. The Agency remitted the appropriate amount of contributions to CalPERS; however, employees who are classic members underpaid their portion of the contributions and the Agency overpaid its portion of the contributions. Specifically, the Agency agreed to split the member contributions with full-time fire safety employees and miscellaneous employees, and the split was on all compensation earnable. However, the Agency did not split the contributions paid on special compensation specifically the value of EPMC. Instead the Agency paid the full amount of the contributions.

B. The Agency incorrectly reported contributions to CalPERS in pay period ending May 31, 2014. Specifically, the contributions that were split between the Agency and employees were identified solely as EPMC when they were reported to CalPERS.

C. The Agency incorrectly paid and reported the 1959 Survivor Benefit. The contribution was paid and reported twice during pay period ending May 31, 2014.

Recommendation:

The Agency should ensure contributions are paid and reported to CalPERS in accordance with its written labor policy and pursuant to Government Code Section 20636.

The Agency should ensure the contribution for 1959 Survivor Benefit is only paid once.

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: § 20120, § 20121, § 20160, § 20221, § 20636, § 20691
CCR: § 569

NORTH COUNTY FIRE PROTECTION DISTRICT OF SAN DIEGO COUNTY

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
Diana Thomas, CIA, Senior Manager
Alan Feblowitz, CFE, Senior Manager
Aileen Wong, Lead Auditor
Sean Gerardo, Auditor

NORTH COUNTY FIRE PROTECTION DISTRICT OF SAN DIEGO COUNTY

APPENDIX A

OBJECTIVES

NORTH COUNTY FIRE PROTECTION DISTRICT OF SAN DIEGO COUNTY

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.) 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.

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.

NORTH COUNTY FIRE PROTECTION DISTRICT OF SAN DIEGO COUNTY

- ✓ 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 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.

NORTH COUNTY FIRE PROTECTION DISTRICT OF SAN DIEGO COUNTY

APPENDIX B

AGENCY RESPONSE

NORTH COUNTY FIRE PROTECTION DISTRICT

315 East Ivy Street · Fallbrook, California 92028-2138 · (760) 723-2005 · Fax (760) 723-2004 · www.ncfire.org

BOARD OF DIRECTORS
RUTH HARRIS
WAYNE HOOPER
KEN MUNSON
PAUL SCHADEN
KATHLEEN THUNER

WILLIAM R. METCALF – Fire Chief/CEO
ROBERT H. JAMES – Counsel
LOREN A. STEPHEN-PORTER – Board Secretary

June 5, 2015

California Public Employees Retirement System
Office of Audit Services
PO Box 942701
Sacramento, CA 94229-2701

Chief Hamilton;

We are in receipt of the 5-15-2015 CalPERS draft report of compliance. Both during and subsequent to the audit process we have been in communication with various members of your staff in an attempt to either gain a better understanding of the issues or potentially resolve them. It is worth noting that your staff was very courteous, patient and professional in helping us to better understand and resolve these matters, which was particularly necessary given the lack of specificity noted in the findings. Based upon those conversations and our review, below is our response to this report.

1. Finding #1: Maintenance of a pay schedule conforming to the Calif. Govt. Code. Based upon subsequent conversations it would appear this finding pertains to the presence of a Board adopted pay schedule for Reserve Firefighters and the Executive Assistant. Both documents have subsequently been approved by the Board, the former of which was provided to CalPERS approximately 1 month ago, and the latter of which may be accessed via our website via the following link:
   http://www.ncfireprotectiondistrict.org/mem_of_understanding.html
   We therefore believe we have already satisfied Finding #1.
2. Finding #2A: Over reporting of earned income for two Reserve Firefighters. Agency concurs. To the extent that two different hourly rates of pay cannot possibly equate to the same monthly payrate, the agency will adjust accordingly.
3. Finding #2B: Under reporting of earned income for one Reserve Firefighter. Agency concurs. The work schedule for Reserve Firefighters will be based upon a 56 hour workweek or 112 hour pay period, with hours worked in excess of 106 and up to 112 reported as FLSA special compensation.
4. Finding #3A: Failure to report FLSA premium pay for one Reserve Firefighter. The agency concurs, as noted under comments for Finding #2A.
5. Finding #3B: Reporting of paramedic pay as part of regular earnings. Agency concurs, and will adjust reporting for those classifications defined in the Safety MOU as receiving paramedic education pay.

NORTH COUNTY FIRE PROTECTION DISTRICT

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6. Finding #3C: Failure to report temporary upgrade pay. The agency concurs, and has taken corrective measures by adjusting its internal recording procedure to ensure it captures temporary upgrade assignments.
7. Finding #3D: Failure to report holiday pay for a Reserve Firefighter. The agency concurs, and has taken corrective measures to ensure holiday pay is included for part-time employees.
8. Finding #3E: Inconsistency in reporting uniform allowance. Agency concurs, and has modified Uniform policy to reflect current practice, as noted in Finding #3E, which was submitted to CalPERS approximately 1 month ago. We therefore believe we have already satisfied Finding #3E.
9. Finding #3F: Reporting of monetary value of miscellaneous uniforms. Agency disagrees and believes this is a difference in interpretation of the Uniform policy as noted in item #3E. The value of the miscellaneous items is included in the total value of the uniform allowance, and the policy language in question pertains to the value of these items ***not*** counting toward the employee's *discretionary* portion of the uniform allowance. Notwithstanding, as this compensation policy resides outside the MOUs, and the existing language appears to be creating confusion, the agency will adopt simplified language in each of the bargaining unit MOUs, all of which are currently under revision.
10. Finding #3G: Labor policy does not include compensation for uniforms. Agency agrees and will modify MOUs as noted in Finding #3F.
11. Findings 3H, 4A & 4B: Reporting of EPMC agency split with employees inconsistent with CalPERS contract. Agency concurs. As this item is currently under review during contract negotiations, agency will make appropriate adjustments once this matter has been settled.
12. Finding #4C: Overpayment of 1959 Survivor Benefit. Agency disagrees. Agency practice has been consistent for years and has not received any notice before or since that this benefit has been improperly reported. Notwithstanding, if CalPERS can identify any current errors in reporting this agency will adjust reporting procedures accordingly.

Please contact me at your convenience if I may be of further assistance or provide clarification.

Sincerely,

[redacted] Original signed by Stephen Abbott

Stephen Abbott
Division Chief/Administration