

Office of Audit Services



Public Agency Review

Orange Cove Fire Protection District

**Employer Code: 1417
Job Number: P11-009**

February 2013



California Public Employees' Retirement System
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February 4, 2013

Employer Code: 1417
CalPERS ID: 5945366665
Job Number: P11-009

Orange Cove Fire Protection District
Lee Bailey, President, Board of Commissioners
550 Center Street
Orange Cove, CA 93646

Dear Mr. Bailey:

Enclosed is our final report on the results of the public agency review completed for the Orange Cove Fire Protection District. Your agency's 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 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: Risk and Audit Committee Members, CalPERS
Peter Mixon, General Counsel, CalPERS
Karen DeFrank, Chief, CASD, CalPERS
Anthony Suine, Chief, BNSD, CalPERS
Ralph Michaels, Fire Chief, Orange Cove Fire Protection District

ORANGE COVE FIRE PROTECTION DISTRICT

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RESULTS IN BRIEF

The Office of Audit Services (OAS) reviewed the Orange Cove Fire Protection District's enrolled individuals, member compensation, required retirement information and other documentation for individuals included in test samples. A detail of the findings is noted in the Results section beginning on page three of this report. Specifically, the following findings were noted during the review:

- Retired annuitant was unlawfully employed.
- Temporary/part-time employees were not enrolled in CalPERS membership.
- Reported payrate was not contained on a publicly available pay schedule.
- Payrate and earnings were incorrectly reported.

DISTRICT BACKGROUND

The Orange Cove Fire Protection District was formed in 1950 under the Community District Law and is governed by a three-member Board of Commissioners. The District's major operations include fire protection in Fresno and Tulare County. The District contracted with CalPERS effective March 1, 1987, to provide retirement benefits for fire employees. The District's current contract amendment identifies the length of the final compensation period as 36 months.

All contracting public agencies, including the District, are responsible for the following:

- Determining CalPERS membership eligibility for its employees.
- Enrolling employees into CalPERS upon meeting membership eligibility criteria.
- Enrolling employees in the appropriate membership category.
- Establishing the payrates for its employees.
- Approving and adopting all compensation through its governing body in accordance with requirements of applicable public meeting laws.
- Publishing all employees' payrates in a publicly available pay schedule.
- Identifying and reporting compensation during the period it was earned.
- Ensuring special compensation is properly identified and reported.
- Reporting payroll accurately.
- Notifying CalPERS when employees meet Internal Revenue Code annual compensation limits.
- Ensuring the employment of a retired annuitant is lawful and reinstating retired annuitants that work more than 960 hours in a fiscal year.

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SCOPE

As part of the Board approved plan for fiscal year 2011/2012, the OAS reviewed the District's payroll reporting and member enrollment processes as these processes relate to the District's retirement contract with CalPERS. The review period was limited to the examination of sampled records and processes from July 1, 2008, through June 30, 2011. The on-site fieldwork for this review was conducted on October 10, 2011, through October 12, 2011. The review objectives and a summary of the procedures performed are listed in Appendix B.

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OFFICE OF AUDIT SERVICES REVIEW RESULTS

Finding 1: The District unlawfully employed a retired annuitant.

The District should monitor the hours worked by retired annuitants in order to limit the hours worked to 960 hours in a fiscal year, or immediately reinstate a retired annuitant into CalPERS membership if the retired annuitant's employment continues beyond the 960-hour threshold.

OAS recommends BNSD have the District pay CalPERS the employer contributions, which should have been paid during the period the retired annuitant was unlawfully employed, plus interest and administrative expenses per Government Code Section 21220(c).

In addition, OAS recommends BNSD have the retired annuitant reimburse CalPERS for any retirement allowance received during the period of unlawful employment, pay CalPERS employee contributions that should have been paid during the period of unlawful employment, and reimburse CalPERS for administrative expenses incurred in handling the situation per Government Code Section 21220(b).

Conditions:

We reviewed the hours worked for one retired annuitant in fiscal years 2008/2009, 2009/2010, and 2010/2011. The retired annuitant performed the duties of a Fire Chief beginning in February 2008. Our sample testing indicated that the retired annuitant exceeded the 960-hour threshold and was not reinstated to active service. Specifically, the retired annuitant evidently worked 4,435 hours in fiscal year 2008/2009, 2,415 hours in fiscal year 2009/2010, and 925 hours in fiscal year 2010/2011. The hours worked were derived from amounts paid divided by the daily rate (\$177.50) multiplied by 16 hours for fiscal year 2008/2009 and from June to January of fiscal year 2009/2010, and the actual hours worked for the remainder of fiscal year 2009/2010 and all of fiscal year 2010/2011 as the District shifted from a daily rate to an hourly rate.

OAS expanded the scope of the test to February 2003 to include the individual's initial hire date as a retired annuitant. The retired annuitant worked part time on Sundays as a volunteer and also worked to provide coverage when the fire chief was off on Friday, Saturday and holidays. The District assigned the work day as 24-hour coverage with 16 hours paid and 8 hours on call, therefore for Fridays and Saturdays (not counting holidays and night coverage), OAS used 16 hours a day as

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hours worked. OAS found that the retired annuitant evidently worked 1,844, 2,073, 2,440 and 2,501 in calendar years 2003, 2004, 2005, and 2006.

In January 2007, the retired annuitant held the position of Acting Fire Chief. OAS was not able to determine the hours worked for fiscal years 2006/2007 and 2007/2008 due to the unavailability of records for hours worked on a fiscal year basis. However; IRS 1099 forms for calendar years 2006, 2007, and 2008 showed payment amounts of \$27,746, \$41,149 and \$45,920 (based on a daily rate of \$177.50 and 16-hour days), which translates to 2,501, 3,709, and 4,138 hours worked respectively. Based on the records reviewed, OAS determined that the retired annuitant had historically exceeded the 960-hour threshold since his hire date in 2003 without being reinstated into active CalPERS membership.

Government Code Section 21220(a) provides that a retired member receiving a monthly allowance from CalPERS, shall not, except as otherwise provided, be employed in any capacity thereafter by a CalPERS employer unless the member has first been reinstated from retirement. Any person employed in violation of Section 21220 shall be reinstated to CalPERS membership as of the date the unlawful employment began.

Criteria:

Government Code §20160, § 21220(a),(b),(c), §21221, § 21224(a),

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Finding 2: The District did not enroll eligible part-time employees into CalPERS membership.

Recommendation:

The District should review and monitor all hours worked in a fiscal year by all part-time employees and enroll those that meet membership eligibility requirements.

OAS recommends CASD work with the District to enroll all eligible employees into CalPERS membership. CASD should make the appropriate adjustments to members' accounts pursuant to Government Code Section 20160.

Condition:

OAS reviewed the work history of two sampled part-time employees who worked during the review period to determine membership eligibility. The District was unable to provide the total hours worked during the July 1, 2008, through November 30, 2009 period; therefore, the number of hours worked was derived by taking total payroll amounts that were available for each employee divided by the hourly payrate.

Based on our review, the two sampled employees met membership eligibility requirements when they completed 1,000 hours of work within the fiscal year; however, the District did not enroll the two employees into membership. From the records available, OAS concluded:

- One employee worked 1,847 hours in fiscal year 2008/2009 and completed 1,000 hours of work in November 2008.
- A second employee worked 1,220 hours in fiscal year 2010/2011 and completed 1,000 hours of work in April 2011.

Criteria:

Government Code: § 20028(b), § 20125, § 20305(a)(3)(B)

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Finding 3: The District reported payrates that were not contained in a publicly available pay schedule.

Recommendation:

Only compensation earnable, as defined under Government Code Section 20636 and corresponding regulations, can be reported to CalPERS and considered in calculating retirement benefits. The District must ensure that reported payrates are set forth in a publicly available pay schedule and meet the definition of payrate under the PERL. Additionally, the District must ensure that all employees' salaries are properly reviewed, authorized and approved by the District's governing body in accordance with public meeting laws. Furthermore, calculation of retirement benefits should be limited to a member's last authorized payrate listed in a publicly available pay schedule.

The District should work with CalPERS CASD to determine the impact of this incorrect reporting and determine what adjustments are needed. To the extent that amounts of pay were improperly included in the retirement allowance afforded individuals who have already retired, a correction must be made pursuant to Government Code section 20160.

Condition:

We reviewed the payrate reported to CalPERS for one sampled employee to determine whether the payrate was authorized and listed on a publicly available pay schedule. The payrate was listed in the employee's initial employment agreement and was approved by the District's Board of Commissioners on August 31, 2009. However, the payrate was not listed in a publicly available pay schedule in accordance with the requirements of Government Code Section 20636(b)(1) and California Code of Regulations Section 570.5.

The employee retired effective December 1, 2010. OAS found the District was unable to provide any pay schedules applicable to the review period. Per Government Code Section 20636, an employee's payrate is the base pay pursuant to publicly available pay schedules and shall be public records available for public scrutiny. Section 570.5 of California Code of Regulations clarifies existing law and specifies the requirements for "publicly available pay schedule" as that phrase is used in the definition of payrate.

California Code of Regulations Section 570.5 specifies that payrate shall be limited to the amount listed on a pay schedule that meets all of the following requirements:

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- (1) Has been duly approved and adopted by the employers governing body in accordance with requirements of applicable public meetings laws;
- (2) Identifies the position title for every employee position;
- (3) Shows the payrate for each identified position, which may be stated as a single amount or as multiple amounts within a range;
- (4) Indicates the time base, including, but not limited to, whether the time base is hourly, daily, bi-weekly, monthly, bi-monthly, or annually;
- (5) Is 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 employers internet website;
- (6) Indicates an effective date and date of any revisions;
- (7) Is retained by the employer and available for public inspection for not less than five years; and
- (8) Does not reference another document in lieu of disclosing the payrate.

Criteria:

Government Code: § 20636(b)(1)

California Code of Regulations: § 570.5

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Findings 4: The District reported incorrect payrate and earnings.

Recommendation:

The District should ensure the correct payrate and earnings are reported to CalPERS in the period earned.

OAS recommends CASD work with the District to ensure the correct payrate and earnings are reported to CalPERS. CASD should make the necessary adjustments to the member's account pursuant to Government Code Section 20160.

Condition:

OAS reviewed the reported payrates and earnings for a sampled employee during fiscal years 2009/2010 and 2010/2011. We found that the District incorrectly reported the employee's payrate and earnings in service period 11/09-0. Specifically, the employee was paid a per diem payrate of \$150 effective September 1, 2009, through November 8, 2009. Beginning November 9, 2009, the employee began full-time employment and was paid a monthly salary of \$5,541.66. The District incorrectly reported the combined total compensation (\$7,076.28) earned during the months of September, October, and November as one line item in the 11/09-0 service period. The District should have reported the per diem payrate of \$150 and applicable compensation earned using pay code 08 in September 2009 and October 2009. In November 2009, the District should have reported two separate line items; one with the per diem payrate of \$150 and applicable earnings and another with the monthly payrate of \$5,541.66 and applicable earnings.

Criteria:

Government Code: § 20630(b), § 20636(b)(1)

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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 B. 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

Date: February 2013

Staff: Michael Dutil, CIA, CRMA, Senior Manager

Diana Thomas, CIA, CIDA, Manager

Terry Heffelfinger

Nuntawan Camyre

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APPENDIX A

BACKGROUND

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BACKGROUND

California Public Employees' Retirement System

The California Public Employees' Retirement System (CalPERS) provides a variety of programs serving members employed by more than 2,500 local public agencies as well as state agencies and state universities. The agencies contract with CalPERS for retirement benefits, with CalPERS providing actuarial services necessary for the agencies to fund their benefit structure. In addition, CalPERS provides services which facilitate the retirement process.

CalPERS Customer Account Services Division (CASD) manages contract coverage for public agencies and receives, processes, and posts payroll information. In addition, CASD provides eligibility and enrollment services to the members and employers that participate in the CalPERS Health Benefits Program, including state agencies, public agencies, and school districts. CalPERS Benefit Services Division (BNSD) sets up retirees' accounts, processes applications, calculates retirement allowances, prepares monthly retirement benefit payment rolls, and makes adjustments to retirement benefits.

Retirement allowances are computed using three factors: years of service, age at retirement and final compensation. Final compensation is defined as the highest average annual compensation earnable by a member during the last one or three consecutive years of employment, unless the member elects a different period with a higher average. State and school members use the one-year period. Local public agency members' final compensation period is three years unless the agency contracts with CalPERS for a one-year period.

The employer's knowledge of the laws relating to membership and payroll reporting facilitates the employer in providing CalPERS with appropriate employee information. Appropriately enrolling eligible employees and correctly reporting payroll information is necessary to accurately compute a member's retirement allowance.

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APPENDIX B

OBJECTIVES

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OBJECTIVES

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

- Whether the District complied with applicable sections of the California Government Code (Sections 20000 et seq.) and Title 2 of the California Code of Regulations.
- Whether prescribed reporting and enrollment procedures as they relate to the District's retirement contract with CalPERS were followed.

This review covers the period of July 1, 2008, through June 30, 2011.

SUMMARY

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

- ✓ Reviewed:
 - Provisions of the Contract and contract amendments between the District and CalPERS
 - Correspondence files maintained at CalPERS
 - Board of Commissioners minutes
 - Employment agreement
 - District personnel records and employee hours worked records
 - District payroll information
 - Other documents used to specify payrate, special compensation, and benefits for all employees
 - Various other documents as necessary
- ✓ Reviewed District payroll records and compared the records to data reported to CalPERS to determine whether the District correctly reported compensation.
- ✓ Reviewed payrates reported to CalPERS and reconciled the payrates to District 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 District's governing body in accordance with requirements of applicable public meeting laws.
- ✓ Reviewed the District's enrollment practices for temporary and part-time employees to determine whether individuals met CalPERS membership requirements.

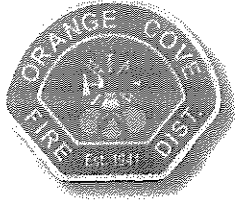
ORANGE COVE FIRE PROTECTION DISTRICT

- ✓ Reviewed the District'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 District's independent contractors to determine whether the individuals were either eligible or correctly excluded from CalPERS membership.
- ✓ Reviewed the District's affiliated entities to determine if the District shared employees with an affiliated entity and if the employees were CalPERS members and whether their earnings were reported by the District or by the affiliated entity.
- ✓ Reviewed the District's calculation and reporting of unused sick leave balances, if contracted to provide for additional service credits for unused sick.

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APPENDIX C

DISTRICT'S WRITTEN RESPONSE



ORANGE COVE FIRE PROTECTION DISTRICT

550 Center Street • Orange Cove, CA 93646

Office (559) 626-7758 • Fax (559) 626-3909

On the web visit: www.orangecovefire.com

January 24, 2013

Employer Code: 1417

CalPERS ID: 5945366665

Job Number: P11-009

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

Dear Ms. Junker:

In response to the draft report on your review of the Orange Cove Fire Protection District mailed to us on January 4, 2013, we acknowledge receipt of your review. Due to the fact that this current Board of Commissioners was not in office during much of the time you have referred to in your audit, we do not feel that we have any grounds to disagree with the finding and recommendations in your report. What we can do is offer our assistance and cooperation to correct errors made by past administrations. It is the goal of this current Board to correct past errors made by former District officials. We are very eager to have this audit resolved, and we apologize for the inconvenience this issue has caused you and your staff.

Sincerely,

A handwritten signature in cursive script that reads "Lee Bailey".

Lee Bailey, President

Orange Cove Fire Protection District