

CONTRA COSTA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

Meeting Date
05/22/13
Agenda Item
#3

April 10, 2013

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The Board of Retirement met in regular session at 9:00 a.m. on Wednesday, April 10, 2013 in the Conference Room of the Contra Costa County Employees' Retirement Association, 1355 Willow Way, Suite 221, Concord, CA.

Present: Debora Allen, Terry Buck, Richard Cabral, John Gioia, Brian Hast, Jerry Holcombe, John Phillips, Gabe Rodrigues, Jerry Telles, Maria Theresa Viramontes and Russell Watts

Absent: Sharon Naramore

Staff: Marilyn Leedom, Retirement Chief Executive Officer; Kurt Schneider, Retirement Deputy Chief Executive Officer; Karen Levy, General Counsel; Vickie Kaplan, Retirement Accounting Manager; and Christina Dunn, Retirement Administration Manager

Outside Professional Support: Harvey Leiderman
Representing: Reed Smith LLP

Other Attendees:

Luz Casas	Contra Costa County Employees' Retirement Association (CCCERA) Staff
Karen Davis	CCCERA Staff
Jessica Huffman	CCCERA Staff
Tracy Kroll	CCCERA Staff
Justine Rossini	CCCERA Staff
Marie Rulloda	Auditor-Controller's Office
Elizabeth Chebotarev	Auditor-Controller's Office
Bill Cullen	Retiree
Laura Strobel	County Administrator's Office
Gloriann Sasser	San Ramon Valley Fire District
Todd Smithey	Central Contra Costa Sanitary District
Mike Sloan	Contra Costa County Retired Employees Association
Pat Patterson	RSG of Contra Costa County
Jackie Lorrekovich	Contra Costa County Fire District
Donna Heymans	Rodeo Hercules Fire District
Thea Vassallo	Central Contra Costa Sanitary District
Sue Casey	Moraga Orinda Fire District
Keith White	PDOCC
William Pigeon	Local 1230
Scott Loeliger	PDOCC
Steve Beall	Rodeo Sanitary District
David McDonald	Contra Costa County Hospital
Bob Campbell	Auditor-Controller's Office
Kris Hunt	Contra Costa County Taxpayers Association
Supervisor Mitchoff	Contra Costa County Board of Supervisors

1. Pledge of Allegiance

Phillips led all in the *Pledge of Allegiance*.

2. Public Comment

No members of the public offered comment.

Viramontes reported Item 14 has been pulled from the agenda.

3. Approval of Minutes

It was *M/S/C* to approve the minutes of the February 27, 2013 Board meeting. (Yes: Allen, Buck, Cabral, Gioia, Hast, Phillips, Viramontes and Watts)

It was *M/S/C* to approve the minutes of the March 14, 2013 Board meeting. (Yes: Allen, Buck, Cabral, Gioia, Hast, Phillips, Viramontes and Watts)

4. Routine Items

It was *M/S/C* to approve the routine items of the April 10, 2013 Board meeting. (Yes: Allen, Buck, Cabral, Gioia, Hast, Phillips, Viramontes and Watts)

5. Discussion on whether pay items beyond base pay are "Pensionable Compensation" under PEPR A G.C. Sec. 7522.34

Levy explained the Board directed staff to compile pay item information from all CCCERA participating employers and conduct a preliminary analysis of whether each pay item meets the statutory requirements set forth in the California Public Employees' Pension Reform Act of 2013 (PEPRA) to qualify as "pensionable compensation". She noted that in order for a pay item to qualify as "pensionable compensation" under PEPRA, the item must meet four requirements. She reviewed the four requirements: 1) Pay must be the normal monthly rate of pay or base pay of the member, 2) Pay must be paid in cash to similarly situated members of the same group or class of employment, 3) Pay must be for services rendered on a full-time basis during normal working hours, and 4) Pay must be paid pursuant to publicly available pay schedules.

Levy reviewed both the specific and general exclusions from "pensionable compensation" under PEPRA. She also reviewed the methodology staff used to analyze the pay items.

The Board discussed the differences between a permanent and a temporary pay item.

Telles was present for subsequent discussion and voting.

Levy reviewed the results from the information collected regarding each pay item for each of CCCERA's participating employers. She noted if an employer revises their publicly available pay schedule then the pay items inclusion/exclusion recommendation would change.

It was *M/S* to continue including only "base pay" in "pensionable compensation" for new PEPRA members.

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The Board discussed notifying employers of the four requirements outlined in PEPPRA for a pay item to qualify as "pensionable compensation".

The Board also discussed special locations, special assignments, bilingual, longevity and on-call pay items. Levy stated special locations and assignment pay items would not meet the requirements because not everyone in the classification is receiving the pay. She explained staff review of the MOU provisions to see if the wording states that the special location or special assignment pay is ongoing and permanent. She noted on-call pay is listed as a special exclusion for additional compensation for services outside of normal working hours and therefore does not qualify as "pensionable compensation".

The Board discussed the timeframe for determining if additional pay items would be included in "pensionable compensation". They also discussed the possibility of collecting contributions on the additional pay items prospectively.

The Board discussed the perceived intention of the legislature; some Board members felt it was unclear if the legislature meant to include additional items with base pay.

The Board discussed differentials, noting they feel longevity pay should be included in "pensionable compensation" because it is offered to everyone and is automatic.

A substitute motion was **M/S/C** to include base pay and additional pay items which meet the first three of the four requirements outlined in PEPPRA as "pensionable compensation" once the employer complies with the fourth requirement. For these additional pay item to be included in "pensionable compensation", CCCERA will notify the employers of the reason the item is not included and provide the employer an opportunity to add the item to their publicly available pay schedule. (Yes: Buck, Cabral, Hast, Telles and Viramontes. No: Allen, Gioia, Phillips and Watts)

Viramontes reported the vote will be recorded again after Public Comment.

Public Comment

Bill Cullen, retiree, believes the statute provides for the Board to make a determination as to what is normal and that it should not be determined by CalPERS. He feels giving employers the option of meeting the fourth requirement could cause the same pay item to be included by some employers and not others. He feels this could open CCCERA up to a lawsuit. He requested the Board get more information from employers and employee groups before making a decision.

Donna Heymans, Rodeo-Hercules Fire Department, stated they use the County payroll system and have the same pay codes. The pay code for longevity is listed in their MOU and published on their website but it is not published on the County website.

Steve Beall, Rodeo Sanitary District, urged the Board to be cautious with including additional pay items above base pay in "pensionable compensation". He feels it is the employer's responsibility to include the additional pay items in base pay. He feels including additional pay items above base pay could open CCCERA up to a potential lawsuit.

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Scott Loeliger, representative for health care physicians, feels physicians are indicative of a problematic employee class. He stated he is a legacy ("classic") employee and not affected by PEPRA definitions. He feels the way regular and on-call work days are categorized is crucial to new employees and puts the regional medical center at risk once the legacy employees retire. He feels it will also affect their ability to recruit competitively since other retirement systems could determine additional pay items are included in "pensionable compensation". He questioned what the consequence would be if CCCERA did not comply with PEPRA.

David McDonald, County Hospital Physician, questioned if the determination made regarding additional pay items included in "pensionable compensation" could affect legacy ("classic") employees. Leiderman stated this discussion applies to PEPRA members only and PEPRA rules have nothing to do with legacy ("classic") employees although there are some comparable items (same exclusions). McDonald also questioned what the process would be to change pay items in order for them to meet the requirements of "pensionable compensation". He encouraged the Board to receive input from employers and employees.

Bob Campbell, Auditor-Controller, stated board resolutions and MOU's are available on the County website but are not being used in determining if pay items are "pensionable compensation". He asked what needs to be done for them to be included. Levy stated the salary schedules on the website were used to determine if pay items are "pensionable compensation" but the MOUs were not considered to be publicly available pay schedules for the purpose of the preliminary analysis.

The Board discussed MOUs and if they should be considered a publicly available pay schedule.

Kris Hunt, Contra Costa County Taxpayers Association, felt employers should be given the opportunity to decide what pay items they want included as pensionable compensation and need to be educated on how to change pay item categories and job descriptions. She stated she is an advocate of staying at base pay only and feels the governor was very clear that all of these costs need to be transparent.

Supervisor Mitchoff asked for clarification regarding which groups of employees currently have base pay only.

A substitute motion was **M/S/C** to include base pay and additional pay items which meet the first three of the four requirements outlined in PEPRA as "pensionable compensation" once the employer complies with the fourth requirement. For the additional pay item to be included in "pensionable compensation", CCCERA will notify the employer of the reason the item is not included and provide the employer an opportunity to add the item to their publicly available pay schedule. (Yes: Buck, Cabral, Hast, Telles and Viramontes. No: Allen, Gioia, Phillips and Watts)

6. Consider and take possible action to direct staff on pay items beyond base pay for PEPRA tiers

There was a lengthy discussion on the wording used in the methodology for determining if pay items are included in "pensionable compensation".

The timeframe was discussed for completing the analysis of pay items. The Board directed staff to notify the employers and employee groups of the methodology used to determine if a pay item was

included in "pensionable compensation" and provide employers an opportunity to include the pay item in their publicly available pay schedule.

Public Comment

Bob Campbell, Auditor-Controller, questioned if the changes will be retroactive and asked the Board to operationally look at making the changes prospectively.

Leedom commended Levy and Schneider for all of their work.

Gioia was no longer present for subsequent discussion and voting.

Viramontes reported Item 10 has been pulled from agenda.

7. Discussion of whether standby, on-call and call back pay are "Compensation Earnable" for "Classic" (pre-PEPRA) employees under G.C. Sec. 31641 as amended by AB 197

Levy reported AB197 changed the definition of "compensation earnable" to exclude payments for additional services rendered outside of normal working hours. CCCERA's current policy includes standby, on-call and call back pay as compensation for retirement purposes. She stated in an effort to provide its members and stakeholders with ample information the Board should determine whether or not these pay items are to be excluded as compensation earnable for "classic" members. Levy noted this issue is currently being litigated and a stay order is in place. CCCERA will not implement any changes mandated by AB197 as long as the stay order is in place.

Levy reported AB197 also provides that "compensation earnable" does not include any compensation determined by the Board to have been paid to enhance a member's retirement benefit. Examples are: 1) auto allowances received during the final average salary period but were previously received in kind as use of automobile, and 2) cash for waiving health insurance during the final average salary period but previously received in kind as health coverage. She stated there must be a determination made by the Board of Retirement that the item of compensation was paid to enhance the member's retirement benefit. CCCERA's policy regarding assessment and determination of compensation enhancements mandates review of final compensation by staff, with possible pension enhancements to be brought before the Board for determination of whether the item was paid to enhance the member's retirement benefit and therefore should be excluded.

There was a discussion on vested rights. Leiderman recommended the Board make a determination that standby pay is excluded from "compensation earnable" for "classic" (pre-PEPRA) members under AB 197 but not implemented due to the stay order.

8. Consider and take possible action to direct staff on standby, on-call and call back pay for "classic" employees

It was *M/S/C* to support counsel's recommendation to eliminate standby, on-call and call back pay from compensation earnable and directed staff to notify members, but hold off implementation during the

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pendency of the stay order. (Yes: Allen, Buck, Hast, Holcombe, Phillips, Telles and Watts. Abs.: Cabral and Viramontes)

Public Comment

David McDonald, County Hospital Physician, asked for clarification on the definition of what on-call means instead of a blanket definition.

Scott Loeliger, Representative for health care physicians, felt each employer has a different definition of what call back and on-call pay is and feels excluding on-call pay from pensionable compensation will affect the hospital's ability to recruit.

Cabral was no longer present for subsequent discussion and voting.

9. Update from staff on Assessment and Determination of Compensation Enhancements

This item was pulled from the Agenda

10. Educational Session on the Disability process for CCCERA

This item was pulled from the Agenda

Allen was no longer present for subsequent discussion and voting.

Holcombe was no longer present for subsequent discussion and voting.

Telles was no longer present for subsequent discussion and voting.

Watts was no longer present for subsequent discussion and voting.

Viramontes thanked Kroll for the work on her presentation and apologized for having to pull it from the Agenda.

Allen was present for subsequent discussion and voting.

11. Consider and take possible action on SACRS Board of Directors Elections

It was **M/S/C** to support the SACRS Nominating Committee recommendation for the 2013-2014 SACRS officers. (Yes: Allen, Buck, Hast, Phillips, Rodrigues and Viramontes)

12. Consider and take possible action on SACRS Voting Proxy Form

It was **M/S/C** to designate Telles as the voting delegate and Viramontes as the alternate voting delegate at the SACRS Spring Conference. (Yes: Allen, Buck, Hast, Phillips, Rodrigues and Viramontes)

It was the consensus of the Board to move to Item 15.

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15. Conference Seminar Attendance

- a. It was **M/S/C** to authorize the attendance of 1 Board member and 1 staff member at the Annual Meeting, Bay Area Equity Fund, June 12, 2013, San Francisco, CA (Yes: Allen, Buck, Hast, Phillips, Rodrigues and Viramontes)

Telles was present for subsequent discussion and voting.

16. Miscellaneous

- (a) Staff Report -

Leedom reported letters were sent to retiree groups regarding the process of filling the vacant retiree alternate seat.

She gave an update on the status of audio recording the Board meetings, noting the microphones still need work.

Leedom reported she is working on a one to two sentence mission statement for approval at the next meeting.

- (b) Outside Professionals' Report -

None

Cabral was present for subsequent discussion and voting.

- (c) Trustees' Comments -

Telles reported there may be two candidates interested in the vacant alternate retiree position. He stated we need to establish a process if more than one person runs

Rodrigues asked for clarification from Roberts Rules of Order on the procedure for discussion once there has been a motion and a second.

He also asked for clarification if all the pay code items are going to be included in the letters sent to employers.

CLOSED SESSION

The Board moved into closed session pursuant to Govt. Code Section 54957.

The Board moved into open session.

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13. It was **M/S/C** to accept the Medical Advisor's recommendation and grant the following disability benefits:

- a. Trina Stewart - Service Connected (Yes: Allen, Buck, Cabral, Hast, Phillips, Telles and Viramontes).
- b. Orlando Conit - Service Connected (Yes: Allen, Buck, Cabral, Hast, Phillips, Telles and Viramontes).
- c. Timothy Diaz - Service Connected (Yes: Allen, Buck, Cabral, Hast, Phillips, Telles and Viramontes).
- d. Andrea Bancroft - Service Connected (Yes: Allen, Buck, Cabral, Hast, Phillips, Telles and Viramontes).
- e. Irene Paynter - Non-Service Connected (Yes: Allen, Buck, Cabral, Hast, Phillips, Telles and Viramontes).

14a. This item was pulled from the Agenda.

14b. This item was pulled from the Agenda.

It was **M/S/C** to adjourn the meeting. (Yes: Allen, Buck, Cabral, Hast, Phillips, Telles and Viramontes)

Maria Theresa Viramontes, Chairman

John B. Phillips, Secretary