

October 14, 2009

The Honorable Nick Dickson, President
And Members of the District Board of Directors
San Ramon Valley Fire Protection District
1500 Bollinger Canyon Road
San Ramon, CA 94583

**RE: Efforts by the District to Address
Final Compensation Affecting Management Pension Allowances:
Analysis of Committee Recommendations**

Dear President Dickson and Members of the District Board:

We write as a follow up to our letter dated August 19, 2009, and our public presentation to the Board of Directors on August 25, 2009. The Board requested our analysis and opinion regarding its action plan to remediate its compensation plan affecting management personnel. The Board's objective is to take affirmative and specific steps to immediately moderate compensation that counts toward "final compensation," as well as payout practices that contribute to final compensation, so that pension allowances are not exaggerated or inflated.

I. Executive Summary

We believe the proposed action plan is sound and will achieve the Board's key objective to mitigate against the effect of certain pay premiums on final compensation. We note that certain benefits will simply be eliminated outright. Other compensation adjustments will only apply to new managers, thereby avoiding potential legal disputes. The plan is prudent, reasonable and will have a significant effect. The Board's action plan will likely serve as a model for other agencies facing similar concerns.

II. Background

Earlier this year, the Board asked for advice relative to its local discretion to make changes to pension payouts. The Board was concerned, and remains concerned, about inflated pensions that appear higher than intended.

By letter dated August 19, 2009, we advised that there were significant limitations on what the Board could do to change the pension formula. Specifically, the District is bound by pension law concerning what forms of pay must be counted toward a retiring member's final compensation. The California Supreme Court has interpreted the County Employees' Retirement Law (CERL) and

ruled that most premiums and payouts which are paid during a member's final year must count toward pension, and the District has no discretion to change that outcome.

We also advised that the District can, in various instances, reduce premiums and payout formulae, and this will have the effect of reducing the amount of the "final compensation" component in pension allowances. In taking such action, we advised that the District should be mindful of its existing contracts with employee groups.

III. Creation of an Ad Hoc Committee

At the meeting of the Board of Directors on August 25, the Board created an ad hoc committee ("the Committee") tasked to formulate an action plan to address the Board's concerns about retirement benefits. The Committee developed a ten point plan aimed at immediately addressing perceived problems.

IV. Response and Analysis of Committee Proposals

The Board asked us to provide independent comment on its proposals, and to advise whether the proposals would have the desired impact. The ten points are listed below with our response.

A. Retirement Law Counsel Review

Under this proposal, the Board would require a legal review of all benefit changes prior to adoption by the Board of Directors. Subject to Board policy, the special counsel's final report regarding this legal review would be publicly disclosed.

Comment: A legal review is essential for the Board to understand the consequences of its future actions in the area of pensions. This proposal is clearly supportable and very prudent.

We note that the proposal to publicly disclose legal advice is unusual. This proposal shows a unique commitment to ensure the Board and public are informed about the consequences of adopting changes to pension programs.

B. Public Disclosure of Retirement Calculations

Under this proposal, the District would publicly disclose retirement calculations. The public and the Board would thus be informed of the specific amount of retirement allowances, and the basis for the calculation.

Comment: According to a recent Superior Court decision, *Irwin v. Contra Costa County Employees Retirement Association*, a county's pension records are subject to public disclosure. The Superior Court relied, in part, on the Supreme Court's decision *IFPTE, Local 21 v.*

Superior Court, 42 Cal. 4th 319 (2007), where the Court held that the City of Oakland was obligated to disclose employee salaries for those making \$100,000 or more.

Other agencies (for example, the Orange County Employees Retirement System - OCERS) are refusing to disclose retirement computations on the grounds that they constitute "individual records of members" and thus "shall be confidential" pursuant to section 31532 of the California Government Code. OCERS specifically argues that *Irwin* is not precedent in Orange County. It appears likely that this issue will be resolved at some point by a court of appeal.

Insofar as the *Irwin* decision concerns CCCERA – the retirement system covering the District – the District should be relatively safe in disclosing such information, at least until there is a binding court of appeal decision. Disclosure of such information represents a bold step to ensure the Board and public are fully apprised of the outcomes with respect to pension benefits. However, such disclosure should be limited to the amount of the employee's pension benefits and the calculation of such benefits (and should not disclose any other personal information relating to the individual employee).

C. Monitoring Legislative Activity

This proposal would require a quarterly review of legislative activity related to applicable retirement law, to be presented by the District's Legislative Analyst.

Comment: This proposal appears entirely prudent. The reality is that the District has no local control over pension formulae, which are enacted and ultimately controlled by the State legislature. The key place to achieve changes in pension law is at the State level. This proposal will permit the Board and the public to stay informed and to educate and advocate about pension impacts at the local level.

D. Support of an Actuarial Study

Under this proposal, the District's President of the Board of Directors would send a letter expressing support for an actuarial study concerning the effect of pooling on District pension costs.

Comment: Pension plans are funded by employer and employee contributions plus investment income over time. The employee rate is a fixed percentage of payroll. The employer contribution fluctuates depending on a number of factors, including actuarial analyses that estimate the cost to fund the pension benefit. These analyses are affected by the returns from the trust, as well as the experiences of the covered pool of active employees and retirees.

In a column dated August 23, 2009, Daniel Borenstein wrote that the District was not paying its fair share of its costs owing to inflated pensions that were not appropriately funded. The Board has expressed a desire to verify the accuracy of this claim. An actuarial study could help resolve concerns whether the District's pension costs are fairly attributable to the District.

E. Vehicle Allowances

The Committee recommends that the Fire Chief's vehicle allowance be eliminated, and that no new future vehicle allowances be permitted.

Comment: As we previously advised, the vehicle allowance provided by the District has a direct effect on "final compensation." Under current law, the cash allowance is treated as compensation and must be counted toward pension allowances.

Elimination of the allowance will have a specific and direct effect on final compensation, and will reduce pension allowances for those affected employees.

F. Standby Pay

The Committee recommends that the Fire Chief's standby pay allowance be eliminated, and further, that the criteria for safety managers to receive standby pay be changed.

Comment: Just as with the cash vehicle allowance, the premium for standby pay must count toward final compensation, and count toward the calculation of pension allowances. By eliminating this pay allowance, the Fire Chief's final compensation will be reduced, and his final pension allowance will correspondingly be reduced.

The Committee also recommends new language that changes the criteria for safety managers to receive standby pay. We understand this proposal will reduce the number of employees who previously received standby pay.

Because the policy has the effect of reducing the number of employees who are assigned to be on standby, it will reduce the number of employees eligible to receive that differential.

G. Straddling of Administrative Leave

Under this proposal, the Committee addresses the problem known as "straddling" the sale of administrative leave. Under the proposal, the District would "cap" the amount of administrative leave that can be sold during the twelve month measuring period for purposes of calculating final compensation to the amount of administrative leave that is accrued in one year.

Comment: "Straddling" refers to annual compensation allowances that are cashed out and paid more than once during the twelve month measuring period used to calculate retirement allowances. As with other paid premiums, administrative leave cash outs that are paid during the measuring period count toward final compensation.

The District's proposal will "cap" administrative leave balances at the amount of administrative leave that can be accrued in one year. If an employee has "sold" his/her administrative leave within the twelve months prior to retirement, the employee may not sell any

further administrative leave during that twelve month period before retirement; rather, any unused administrative leave will be converted to vacation leave (subject to vacation accrual limitations). Any "sale" of vacation leave will be subject to the new Vacation Cash-Out rule.

This proposal will eliminate the possibility of an employee being paid out, in any 12-month period, for more than the amount of administrative leave that is accrued in a 12-month period, and thus eliminate straddling of sales of administrative leave, and limit the amount counting toward retirement to the annual accrued limitations.

We recommend, for the sake of clarity, that new language state: "Any employee who has sold administrative leave and retires within the same twelve-month period will have any unused administrative leave automatically converted to vacation hours at time of retirement (subject to vacation accrual limitations)."

It should be noted that this proposal has a direct impact on current managers, as it immediately eliminates 50% of the amount of administrative leave that can be sold during the measuring period for final compensation.

H. Administrative Leave

Under this proposal, the District would no longer advance administrative leave on a lump sum basis. Instead, employees would receive annual leave accrued on a monthly basis, capped at certain amounts.

Comment: This proposal should provide a secondary safeguard against straddling by eliminating lump sum advances.

I. Eliminate Straddling Vacation Leave

The Committee recommends, as a means of curbing the ability to straddle vacation leave, that the cash out of vacation leave occur only once in a calendar year in the final paycheck of that year. Thus, an employee desiring to cash out vacation leave must notify the District no later than November 1, with the amount paid in the final paycheck of the calendar year. This will eliminate the ability to receive more than one vacation payout within a 12-month period, and therefore eliminate the ability to straddle vacation cash-outs.

Comment: This proposal changes District policy by changing the time frame within which an employee may elect an annual vacation cash out, and requires the payout occur in the final paycheck of the calendar year. This proposal imposes a safeguard against straddling, by eliminating the ability to cash out a lump sum twice within the same measuring period.

We recommend, for the sake of clarity, that the new language state: "In no event shall the employee receive payment for vacation cash-out more than once in a 12-month period, except

that, upon separation or retirement, the employee is entitled to receive payment for unused vacation as required by law.”

J. Management Incentive Pay

Under this proposal, management incentive pay would be eliminated for those promoted into a management capacity after January 1, 2010.

Comment: As with other premiums, management incentive pay counts toward final compensation under established precedent. Eliminating this pay element will reduce final compensation, and will thus reduce final pension allowances.

V. Summary

It is apparent that the Board has taken immediate steps to deal with perceived excessive pension benefits. As a general matter, changes to compensation generally occur incrementally, but the proposals here appear well thought out and are being implemented quickly.

Based on retirement calculations provided to us concerning the prior Fire Chief's retirement, this proposal (if it had been in place at the time) would have reduced the amount of "final compensation" subject to pension by over \$38,000.

Thank you for this opportunity to assist the District in its effort to address the concerns expressed over its pension program.

Very truly yours,



Arthur A. Hartinger
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