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Contra Costa County Grand Jury Report 1010

PENSION SPIKING: WHO REALLY GETS STUCK?

Contra Costa County Employees Retirement Association: Wake Up!

**TO: Contra Costa County Board of Supervisors
Contra Costa County Employees' Retirement Association
Bethel Island Municipal Improvement District
Byron, Brentwood, Knightsen Union Cemetery District
Central Contra Costa Sanitary District
Contra Costa Housing Authority
Contra Costa Mosquito and Vector Control District
Local Agency Formation Commission (LAFCO)
Rodeo Sanitary District
In-Home Supportive Services Authority (IHSS)
First 5 – Children & Families Commission
Contra Costa County Fire Protection District
East Contra Costa Fire Protection District
Moraga-Orinda Fire District
Rodeo-Hercules Fire Protection District
San Ramon Valley Fire District**

SUMMARY

Increased public employee pension costs result in less revenue available for public services and programs. Pension costs are increasing and will continue to increase, partially due to what is commonly referred to as “pension spiking.” Spiking is the act of including additional non-salary cash amounts in the final compensation calculation. This calculation is used to determine an individual’s retirement amount. Spiking can result in a retiree’s pension that is greater than the employee’s highest salary.

Not all Contra Costa County Employees Retirement Association (CCCERA) employer members include pay elements that permit pension spiking. CCCERA, its employer members and the California Legislature are looking at the issue of pension costs. Many employer board members are not well versed in pension law, particularly pension spiking and its impact on expenditures and services. Employer board members must become more informed to independently evaluate the impact of their pension decisions. This will result in less dependency on staff that may have a vested interest in specific pension outcomes.

Due to the complexity of pension policy and funding, CCCERA, its employer board members and all contract and benefits negotiators need to become more knowledgeable about pension spiking. They must also understand impacts on future budget and service delivery.

BACKGROUND

CCCERA administers the retirement plan for most County employees and fifteen other entities in the County in accordance with the County Employees Retirement Law of 1937. Periodically, the courts have issued opinions regarding provisions of the Law. The CCCERA Board consists of:

- Four members representing retirees and employees
- Four members appointed by the Board of Supervisors
- The County Treasurer/Tax Collector

The cost of the retirement plan is covered by employer and employee contributions and CCCERA investment income. If these resources are not sufficient to cover pension costs, it is ultimately the responsibility of the taxpayer to pay the shortfall.

In February 2010, two bills were introduced in the California Legislature to reform California public pensions and pension spiking.¹ As of April 2010, these bills have not been debated. If passed, these laws will take precedence over current CCCERA policy.

The County pension shortfall has been increasing over the last several years and is projected to increase in the future. From 1999 to 2009 pension shortfalls have increased from **\$67,000,000** to **\$202,000,000** and the shortfall is projected to be **\$293,000,000** by 2016. Past pension shortfalls have been funded through the general budget. In the past ten years, two previous Grand Jury reports made findings and recommendations regarding public employee retirement issues.

The final compensation used to determine an individual's retirement amount is not limited to the employee's annual salary. It may also include many other cash benefits (pay elements), such as:

- Sale back of vacation leave
- Uniform allowance
- Educational incentive pay
- Vehicle allowance
- Others (Appendix)

The compensation must have been earned by and payable to the employee during the final compensation period. Within the law, employer members have discretion over

¹ *Assembly Bill 1987 and Senate Bill 1425*

certain pay elements which may be included as part of final compensation. For example, subject to contractual rights, some employer members cap the number of vacation hours that can be accrued or counted towards final compensation. An employer member providing a vehicle for official use to an employee rather than providing a cash allowance is another example.

Employer board members, as well as a CCCERA retiree, stated during interviews they did not fully comprehend the consequences of long-term pension liabilities with respect to the approval of an employee agreement. Spiking elements occur at the levels of rank-and-file, supervisor, manager and executive. Collective bargaining negotiations which deal with retirement benefits among other benefits, are held between managers and represented employees. Managers, in turn, negotiate with their respective employer. The current process provides for the opportunity of managers “to get what the staff gets” in spiking benefits. This may provide a disincentive for managers to be objective in negotiations with staff. Managers generally have more facts and knowledge about compensation impacts than employer board members. The salaries and benefits resulting from these negotiations may have a ‘trickle up’ effect in the determination of the salary and benefits for managers.

Current law (Lexin v. Superior Court 2010 Lexis 115.) holds that there is neither a conflict-of-interest nor an ethical issue with managers negotiating on self-benefiting issues. Although employer members cannot adopt less stringent conflict-of-interest or ethics codes than required by law; they can adopt more stringent codes. Current circumstances would suggest that employer members adopt more stringent procedures in salary and benefit negotiations.

METHODOLOGY

In September of 2009, the Grand Jury began looking into the issue of pension spiking and its financial and service delivery impact. The Grand Jury interviewed current and former employer members. Members of the Grand Jury attended several public meetings of CCCERA and the San Ramon Valley Protection District at which pension policies and spiking were discussed. Opinions prepared by legal counsel for the San Ramon Valley Fire Protection District and for CCCERA, which were made available to the public, were reviewed. The Grand Jury also received and analyzed County Administrator’s financial report which included pension shortfalls.

FINDINGS:

- 1: Increased pension costs directly reduce funds available for services. Higher pension obligations also become a debt to taxpayers of Contra Costa County.
- 2: Some CCCERA employer members are not fully knowledgeable about pension law and the financial impact of their decisions relating to the calculation of pension obligations on revenues and services.

3: Some employer board members rely heavily on input from staff. As members of the same pension system, the staff may benefit from actions recommended to their employer.

4: Many of the pay elements and policies related to calculating final compensation are at the discretion of the employer member.

5: Some employer member policies permitting pension spiking increase pension obligations, which in turn will annually increase the amount of pension funds needed.

RECOMMENDATIONS:

1: CCCERA, as the pension fund administrator, shall develop and make training available annually on pension fund law and management to employer members.

2: Employer members shall adopt procedures that require board members/directors to annually attend pension fund training provided directly or indirectly by CCCERA.

3: Within 120 days of this report CCCERA and its employer members shall review the list of current pay elements to determine which elements are required to be included by law, which are optional and which by law are to be excluded. If a pay element is not permitted by law, action shall be taken to comply with the law. Additionally, a review shall be done when employee labor contracts or agreements are negotiated.

4: Within 120 days CCCERA and employer members shall evaluate the current and future budget impact of pay elements. If employer and employee contributions plus projected investment income do not cover pension costs, employer members shall consider appropriate action to eliminate or modify those pay elements.

CONCLUSION:

The Grand Jury recognizes that CCCERA and employer members must consider the legal, administrative, budgetary and collective bargaining implications of proposed changes. However, unless action is taken to contain rising pension costs, increasingly more resources will go to cover pension costs and less for essential services. The first step is to assure that all decision makers are fully knowledgeable about pension laws and policies.

CCCERA and its employer members must make decisions that are best for the County. To do otherwise ultimately dumps the staggering overruns on the back of the taxpayer, rather than with the employer/employee members who receive the benefit.

REQUIRED RESPONSES:

Findings

CCCERA	1 through 5
CCCERA Employer Members	1 through 5

Recommendations

CCCERA	1 through 4
CCCERA Employer Members	2 through 4

Appendix

Description	County	Fire	Special District
Allowance First 5 Cell Phone			X
Truck Allowance	X		
Uniform Allowance \$25	X		
Uniform Allowance East FD		X	
Uniform Allowance Rodeo Fire			X
Uniform Allowance - Fire		X	
Uniform Allowance	X		
Uniform Allowance Sheriff	X		
Uniform Allow Sher. Mgmt	X		
Uniform Allow - \$50		X	
Adjustment Uniform Allowance	X	X	X
POST Cert Allow 2.5	X		
POST Cert Allow 5%	X		
Education Allow Annual 2.5%	X		
Earnings Adjustment	X	X	X
Auto Allowance	X		
Auto Allowance 2		X	
Auto Allow Department Heads	X	X	X
Auto Allow Elected Dept Head	X		
Bonus RN/CN Weekend Shift Pay	X		
Bonus Weekend Shift Pay	X		
Bonus Weekend Shift \$25	X		
Bonus FNP Weekend Assignment	X		
Bonus Emerg Room Assignment	X		
Bonus - EHSD Recruitment	X		
Bonus RN Special Assignment	X		
Bonus ISW Cook Relief	X		
Bonus Special Pay		X	X
Bonus Weekend Clinics	X		
Bonus Sat/Sun Assignment Pay	X		
Bonus Hazard Matl Response TM	X		
Bonus Lead Counselor Duties	X		
Bonus Inst Serv Wkr Relief Pay	X		
Certificate Agriculture Commn	X		
Certificate Weights/Measurers	X		
Certificate Prof Dev Tr/TaxCol	X		
Certificate Ca Prof Engineer	X		
Certificate Hazardous Materials	X		

Certificate Prof Accounting	X		
Cert Elect/Regist Admin Diff	X		
Differential Adjustment	X	X	X
Differential BOMI Certificate	X		
Differential RPA Sr Memb Cert	X		
Differential Assessor Educ Ach	X		
Differential Appr Standard Div	X		
Differential Call Back	X		
Differential Phys Call Back	X		
Differential Unit Leader 5%	X		
Differential Call Back @ 1.5	X		
Differential Weekend Rounds	X		
Differential Phone Call Back	X		
Differential M S W II Lead	X		
Differential Lieut On-Call	X		
Differential On Call DSA/DAI	X		
Differential Investigative Dut	X		
Differential DSA Training 5%	X		
Differential DSA NonSworn Trng	X		
Differential On Call Pay @ 1.0	X		
Differential On Call	X	X	
Differential On Call Local 1	X		
Differential Word Processing	X		
Differential VDT	X		
Differential In House OB GYN	X		
Differtial Recordble Docs Tech	X		
Differential Office of Emg Svc	X		
Differential Charge Pay	X		
Differential Charge Nurse	X		
Differential Special Proj 5%	X		
Differential Spec Proj 10%	X		
Differential Building Supv Pay	X		
Differential Spec Preced \$500/	X		
Differential Special Procedure	X		
Differential Comp Ops Supv	X		
Differential DA Office Mnger	X		
Differential PS Project Manger	X		
Differential Search Wrt Occurs	X		
Differential Police Svcs 10%	X		
Differential FACS	X		
Differential Police Mgr 4.5%	X		

Differential Police Manager 3%	X		
Differential Hospital PSO	X		
Differential Police Manager 6%	X		
Differential Police Manager 9%	X		
Differential Police Mgr 15%	X		
Differential Longevity Law Enf	X		
Differential EHSD Spec Proj	X		
Differential Stat/Code 10%	X		
Differential Stat/Code Gry P	X		
Differential Heavy Equip Op/In	X		
Differential Bldg Management	X		
Differential Mgmt Struct Eng	X		
CNA Code Grey Team Assgn 10%	X		
CNA Code Grey Team Assgn 5%	X		
Differential Stat /Code Gr 10%	X		
Differential Stat/Code Gry 5%	X		
Differential Physican FallBack	X		
Differential K9 Premium	X		
Lump Sum Differential	X	X	X
Differential Canine Team	X		
Differential MH Unit Leader	X		
Differential Sterile Process	X		
Differential ORC Legal Desk	X		
Differential Training Assignmt	X		
Differential Prob WorkTraining	X		
Differential OBGYN On Call	X		
Differential HM Prog Coord	X		
Differential HM Program Leader	X		
Differential Tower Climbing	X		
Differential GS Driver Clerk	X		
Differential Hazard Mat	X		
Differential Supv Tele/Tele	X		
Differential Code Gray Prem	X		
Differential CNA Det Assignm	X		
Differential CNA Emergency	X		
Differential CNA Psych Assignm	X		
Differential CNA Detent Fac'ty	X		
Differential Exec Adv Notice		X	
Fire Mgmt Educ Incentive		X	
Fire Mgmt Educ Incentive		X	
Fire Mgmt Educ Incent Conting		X	

Fire Mgmt Longevity Pay		X	
Fire Mgmt Longevity 15 years	X	X	
Fire Scheduled FLSA Pay		X	
Fire Sched FLSA - Additional	X	X	X
Fire Dispatchers Schd FLSA Pay		X	
Fire Differential ALSEC Param		X	
Fire Schedule FLSA Adjustment	X	X	
Fire EMT Diff Rodeo Fire Only			X
Rodeo Fire Longevity			X
Paramedic Differential Rodeo			X
Fire Recall/Standby ECCCFPD		X	
Fire Investigation StandBy 1.6		X	
Fire Recall & Standby @ 5%	X	X	
Fire Investigation Standby		X	
Fire Recall & Standby @ 2.5%		X	
Diff Equip Mechanics	X		
Fire Traing/Prevnt Captains		X	
Fire Temp Training Diff 40hr		X	
Differential Off Duty Standby		X	
Holiday Comp Excess Hours Pay	X		
Holiday Pay Adjustment	X	X	X
Holiday Pay for PS Table	X		
Holiday Pay 1	X		
Holiday Pay @ 1.50	X	X	
Holiday Pay @ 1.00	X		
Holiday Comp Hrs Pay Off - Ret	X		
Hazard Duty Pay - 1	X		
Hazard Duty Pay	X		
Detention Division Diff NonSw	X		
Hazard Pay Adjustment	X		
CNA Detent Facility Assign	X		
CNA Emergency Dept Diff	X		
Detent Facility Clerical Supv	X		
Detent Facilities Differential	X		
Longevity Pay @ 2.5%	X		
Longevity Pay @ 5%	X		X
Longevity/Mgmt Inc Exempt @ 5%	X		
Longevity Exempt @ 7.5 %	X		
Longevity CNA 7 years	X		
Longevity CNA 10 years	X		
Longevity CNA 15 years	X		

Longevity CNA 20 Years	X		
Longevity Nurs Mgr 7 yrs	X		
Longevity Nurs Mgr 10 yrs	X		
Longevity Nurs Mgr 15 yrs	X		
Longevity Nurs Mgr 20 yrs	X		
Lump Sum Pay	X	X	X
CALWORKS Differential	X		
In Lieu of Def Comp Bene-Elect	X		
MH Supervisor Stipend	X		
Performance Stipend	X		
Annual Registrar Stipnd	X		
RDA Meeting Stipend	X		
Assessmt Appeals Brd Stipend	X		
LAFCO Meeting Stipend	X		
FCWCD Meetings Stipend	X		
Bi-Lingual Pay	X		X
Retirement Board Stipend	X		
Bilingual Pay	X		
Bi Lingual Pay \$80			X
Bi-Lingual Pay Safety	X		
Overtime Normal Work Scheduled	X		
Personal Holiday Hrs Pay Off	X	X	X
Pers Holiday Pay Off - L 2.5%	X	X	
Pers Hol Pay Off L 5%	X	X	
Additional Pay - Elections	X	X	
Lump Sum Pay	X	X	X
DSA School Security Detail	X		
Additional Pay County Fair	X		
Retirement CompRate	X	X	X
Sabbatical Hours Pay Off	X		
Shift Pay @ 5%	X		
Shift Pay @ 7.5%	X		
Shift Pay @ 10%	X		
Shift Pay @ 12%	X		
Shift Pay @ 15%	X		
Adjustment Shift Pay	X		
Shift Loc 1 Double Premium	X		
Shift CNA Double Premium	X		
Shift Clerical Grave Yard Pay	X		
Shift Pay - Night	X		
Differential Even Watch Shift	X		

Differential Morn Watch Shift	X		
Sale of Vacation	X	X	X
Vacation Hours Pay Off	X	X	X
Sale of Vacation L 2.5%	X	X	X
Vacation Pay Off L 2.5%	X	X	X
Sale of Vacation L 5.0%	X	X	X
Vacation Pay Off L 5.0%	X	X	X
Sale of Vacation L 7.5%	X		
Vacation Pay Off L 7.5%	X		
Sale of Vacation L10.0%	X		
Vacation Pay Off L10.0%	X		
Adjustment Sale of Vacation	X	X	X