

Office of Audit Services



CalPERS

Public Agency Review

City of Industry

CalPERS ID: 4633577005
Job Number: P15-004

June 2016



California Public Employees' Retirement System
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June 23, 2016

CalPERS ID: 4633577005
Job Number: P15-004

Paul Philips, City Manager
City of Industry
15625 E. Stafford Street, Suite 100
City of Industry, CA 91744

Dear Mr. Philips:

Enclosed is our final report on the results of the public agency review completed for the City of Industry (Agency). Your written response, included as an appendix to the report, indicates agreement with the issues noted in the report except for Finding 2. We appreciate the additional information you provided in your response. After consideration of this information, our recommendations remain as stated 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. We appreciate the time and assistance of you and your staff during this review.

Sincerely,

Original signed by Beliz Chappuie

BELIZ CHAPPUIE, Chief
Office of Audit Services

Enclosure

cc: Council Members, City of Industry
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

CITY OF INDUSTRY

TABLE OF CONTENTS

<u>SUBJECT</u>	<u>PAGE</u>
Results in Brief.....	1
Scope.....	1
Office of Audit Services Review Results	2
1: Pay Schedule	2
2: Payrate and Earnings.....	4
3: Retired Annuitant.....	5
4: Member Reciprocal Self-Certification	7
Observation: Golden Handshake	8
Conclusion	9
Objectives	Appendix A
Agency's Written Response	Appendix B

CITY OF INDUSTRY

RESULTS IN BRIEF

The objective of our review was to determine whether the City of Industry (Agency) complied with applicable sections of the California Government Code (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 and observation 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 regular earnings were incorrectly reported.
- Retired annuitant's employment did not comply with all Government Code requirements.
- Member reciprocal self-certification forms were not maintained.
- Observation: Member may not be eligible for additional service credit (Golden Handshake).

OAS recommends the Agency comply with applicable sections of the 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 May 1, 1977 to provide retirement benefits for 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 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 CalPERS Board of Administration (Board) approved plan, OAS reviewed the Agency's payroll reporting and member enrollment processes related to the Agency's retirement contract with CalPERS. The review was limited to the examination of sampled employees, records, and pay periods from January 1, 2009 through December 31, 2015. The review objectives and methodology are listed in Appendix A.

CITY OF INDUSTRY

OFFICE OF AUDIT SERVICES REVIEW RESULTS

1: The Agency did not have a pay schedule that met all of the Government Code and CCR requirements.

Condition:

The Agency did not have a pay schedule that met all of the Government Code and CCR requirements. Specifically, the salary schedule effective November 12, 2015 did not include position title and payrate for the Council Members.

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 payrate definition and 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). 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.

CITY OF INDUSTRY

Recommendation:

The Agency should ensure its pay schedule meets all of 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

CITY OF INDUSTRY

2: The Agency incorrectly reported payrate and earnings.

Condition:

The City Engineer/Director of Public Work's payrate and corresponding earnings exceeded the maximum payrate listed in the Agency's salary schedule. Specifically, the Agency reported a monthly payrate of \$17,842.62 in the pay period ended November 30, 2015. However, the maximum monthly payrate listed on the November 12, 2015 salary schedule was \$16,250.00. The Agency explained that they reduced the salary range for the Director of Public Works position effective November 12, 2015. However, the Agency continued to pay the employee at the rate of pay earned prior to the salary reduction which was \$17,842.62 per month. Government Code Section 20636 requires that payrates reported to CalPERS are pursuant to publicly available pay schedules. Similarly, CCR Section 570.5 limits payrate to the amounts listed on a pay schedule that meets all of the enumerated requirements.

Recommendation:

The Agency should ensure that payrates and earnings are reported in accordance with a pay schedule that meets all Government Code and CCR requirements.

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: § 20160, § 20630, § 20636
CCR: § 570.5

CITY OF INDUSTRY

3: Retired annuitant's employment did not comply with all Government Code requirements.

Condition:

The Agency unlawfully employed a retired annuitant. Specifically, the retired annuitant worked more than 960 hours in a fiscal year. The annuitant was also compensated at a rate of pay that exceeded amounts paid to other employees performing comparable duties.

The City Controller retired on October 1, 2010 and was hired as a retired annuitant on January 1, 2011 to perform the duties of the vacant City Controller position. During Fiscal Year 2011-12, the retired annuitant worked over 1,000 hours and exceeded the 960 hours worked threshold set by Government Code Section 21224. The Government Code limits the hours worked by a retired annuitant to 960 hours for all employers in any fiscal year. The Agency did not reinstate the retired annuitant who exceeded the 960-hour threshold in Fiscal Year 2011-12.

The Agency also compensated the retired annuitant with a payrate that exceeded comparable amounts. Specifically, the retired annuitant received an hourly payrate of \$135.00 to perform duties of the City Controller. The Agency stated that the City Controller position was vacant during the extent of the retired annuitant's employment and it did not have other employees performing comparable duties. The City Controller's payrate prior to retirement was \$10,609.00 per month, or \$61.21 per hour. Government Code Section 21224 states that the rate of pay for the employment shall not be less than the minimum, nor exceed that paid by the employer to other employees performing comparable duties. As a result, OAS determined that the retired annuitant's rate of pay exceeded a comparable amount for the City Controller position.

Government Code Section 21220 addresses the conditions and consequences of unlawful employment of a person who has been retired under this system. The Government Code states that any retired member employed in violation of this article shall reimburse this system for any retirement allowance received during the period or periods of employment that are in violation of law, pay to this system an amount of money equal to the employee contributions that would otherwise have been paid during the period or periods of unlawful employment plus interest thereon and contribute toward reimbursement of this system for administrative expenses incurred in responding to this situation, to the extent the member is determined by the executive officer to be at fault.

The Government Code also states that any public employer that employs a retired member in violation of this article shall pay to this system an amount of money

CITY OF INDUSTRY

equal to employer contributions that would otherwise have been paid for the period or periods of time that the member is employed in violation of this article, plus interest thereon and contribute toward reimbursement of this system for administrative expenses incurred in responding to this situation, to the extent the employer is determined by the executive officer of this system to be at fault.

Recommendation:

The Agency should monitor hours worked by retired annuitants in order to limit the hours worked to 960 hours in a fiscal year, and immediately reinstate retired annuitants who exceed the 960-hour threshold.

The Agency should ensure that compensation paid to retired annuitants is in accordance with the Government Code.

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 Code: § 20160, § 21202, § 21220, § 21221, § 21224

CITY OF INDUSTRY

4: The Agency did not maintain the required member reciprocal self-certification.

Condition:

The Agency did not maintain the required member self-certification for employees hired after January 1, 2013. CCR Section 579.3 requires individuals to self-certify in writing as to whether he or she is also a member of another public retirement system and is eligible for reciprocity. Agencies are required to retain the retirement and benefit-related information provided by the newly-hired individuals.

Recommendation:

The Agency should ensure employees hired on or after January 1, 2013 certify in writing whether they are members of another public retirement system and provide the additional required information if reciprocity exists. Further, the Agency should ensure it retains the information provided.

The Agency should work with EAMD to assess the impact of this incorrect reporting and make any adjustments, if necessary, to any impacted retired member accounts pursuant to Government Code Section 20160.

Criteria:

Government Codes: § 20160, § 7522.02, § 7522.04
CCR: § 579.3

CITY OF INDUSTRY

Observation: A member may not be eligible for additional service credit (Golden Handshake).

Condition:

The Agency and the prior City Manager entered into an agreement effective July 1, 2015 which provided the individual with an early retirement incentive. As a part of the agreement, the individual stopped performing the job duties of the City Manager as of June 22, 2015. However, the Agency was to continue to pay the individual's normal monthly salary of \$17,842.62 through June 30, 2016. Although the Agency initially reported these monthly payments as compensation earnable, the Agency corrected the misreporting after notification from CalPERS that the payments were not reportable as compensation earnable.

In addition, the agreement required the individual to retire on June 30, 2016 and stated that the Agency would offer a Golden Handshake for two additional years of service credit. The agreement also stated if the Golden Handshake was not approved by the City Council or CalPERS, the Agency would pay the prior City Manager a lump sum amount of \$191,559.51.

The Agency's contract with CalPERS contained a provision for Golden Handshakes as allowed by Government Code Section 20903. However, the Government Code states a member is eligible for a Golden Handshake under certain conditions which include an impending curtailment or a change in the manner of performing service. The Golden Handshake must serve the best interests of the agency and the governing body must elect to exercise the provision because of impending mandatory transfers, demotions, and layoffs.

Although the individual was not performing City Manager job duties, the Agency continued to pay the individual normal wages of \$17,842.62 per month for a one-year period. In addition, the Agency hired a new City Manager at a higher rate of pay, \$22,916.67 per month, at the time the individual stopped performing duties. As a result, it appears the Agency offered the Golden Handshake as part of a settlement agreement to retire. Therefore, it doesn't appear that the Golden Handshake was due to an impending curtailment as required by Government Code Section 20903. OAS recommends that the Agency work with CalPERS prior to the individual's retirement to determine if the individual is eligible for the Golden Handshake.

CITY OF INDUSTRY

CONCLUSION

OAS limited this review to the areas specified in the scope section of this report and in the objectives outlined in Appendix A. The procedures performed provide reasonable, but not absolute, assurance that the Agency complied with the specific provisions of the PERL and CalPERS contract 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 Beliz Chappuie

BELIZ CHAPPUIE, CPA, MBA
Chief, Office of Audit Services

Staff: Cheryl Dietz, CPA, Assistant Division Chief
Alan Feblowitz, CFE, Senior Manager
Patrick McCasland, CPA, Lead Auditor
Billy Vi, CFE, Auditor

CITY OF INDUSTRY

APPENDIX A

OBJECTIVES

CITY OF INDUSTRY

OBJECTIVES

The objectives of this review were to determine whether the Agency complied with:

- Applicable sections of the Government Code (Sections 20000 et seq.), PEPRA, and Title 2 of the CCR.
- Reporting procedures prescribed in the Agency's retirement contract with CalPERS.

METHODOLOGY

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:
 - Provisions of the contract and contract amendments between the Agency and CalPERS
 - Correspondence files maintained at CalPERS
 - Agency Board minutes and Agency Board resolutions
 - Agency written labor policies and agreements
 - Agency salary, wage, and benefit agreements including applicable resolutions
 - Agency personnel records and employee time records
 - Agency payroll information including Contribution Detail Transaction History reports
 - Documents related to employee payrate, special compensation, and benefits
 - Various other relevant documents
- ✓ 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.
- ✓ 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.

CITY OF INDUSTRY

- ✓ 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 entity organizational structure to determine whether employees of the affiliated entity qualified for CalPERS membership and were enrolled as required.
- ✓ Reviewed the Agency's calculation and reporting of unused sick leave balances, if contracted to provide additional service credits for unused sick leave.

CITY OF INDUSTRY

APPENDIX B

AGENCY'S WRITTEN RESPONSE



CITY OF INDUSTRY

Incorporated June 18, 1957

June 2, 2016

Beliz Chappuie, Chief
Office of Audit Services
California Public Employees' Retirement System
P.O. Box 942701
Sacramento, CA 94229-2701

RE: City of Industry's Response to Draft Audit Findings
CalPERS ID: 4633577005
Job Number: P15-004

Dear Ms. Chappuie:

Thank you for the opportunity to comment on the draft report of the Office of Audit Services' (OAS) compliance review of the City of Industry's contract with the California Public Employee's Retirement System (CalPERS). After receiving an extension to June 2, 2016, the City has reviewed your letter of May 6, 2016 and the draft report attached to it. The following is the City's response to the findings and recommendations set forth in the draft report.

Finding #1: The City did not have a pay schedule that met all of the Government Code and CCR requirements.

The City concurs with the recommendation. After the exit review with CalPERS audit staff on March 23, 2016, the City immediately moved to correct this issue at its next scheduled City Council meeting. On April 14, 2016 the City adopted Resolution No. CC 2016-21 which complied with the Government Code and CCR requirements.

Finding #2: The City incorrectly reported pay rate and earnings.

The City respectfully disputes CalPERS' preliminary finding that the City incorrectly reported pay rate and earnings for one employee. The City adopted Resolution No. 2015-39 on November 12, 2015 which *reduced* the salary range schedule for the position in question to align with the salary range for other Executive Management salary ranges. The employee in question was then y-rated above the salary range when the new range went into effect, so that the employee would not suffer a detrimental compensation action. The practice of y-rating employee compensation to limit adverse compensation actions when a municipality adjusts a salary range downwards is a common practice in municipalities to protect employees from harm. This action did not affect the employee's highest year, in terms of retirement compensation calculations, and the City reserves the right to adjust its salary schedules downwards as it deems appropriate while

simultaneously protecting the rights of employees in a manner that is commonly employed by California municipalities.

Finding #3: Retired annuitant's employment did not comply with all Government Code requirements.

The City concurs with the recommendation. The City has contracted with Regional Government Services, a professional human resources firm that works exclusively with public agencies, and is currently completing a class and compensation study and developing foundational documents for an update of its personnel systems to meet all sections of the Government Code.

Finding #4: The City did not maintain the required member reciprocal Self-certification.

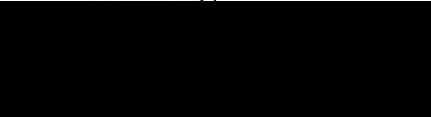
The City concurs with the recommendation. After the exit review with CalPERS audit staff on March 23, 2016, the City immediately moved to correct this issue. As of April 1, 2016 the City is in compliance.

Finding #5: A member may not be eligible for additional service credit (Golden Handshake).

The City concurs with the recommendation. It should be noted that in sections 1.2.4, 1.5, and 1.51 of the agreement approved on September 17, 2015 with said retiree, the City clearly states that said clauses are acceptable only if they are, "pursuant to CalPERS' rules and regulations."

Thank you for the opportunity to provide a response to the draft report. If you have any questions or require further clarification of the comments provided, please contact Alex Gonzalez, Director of Development Services and Administration, at (626) 333-2211.

Sincerely,



Original signed by Paul Philips

Paul Philips
City Manager
City of Industry