

# **Office of Audit Services**



# **CalPERS**

## **Public Agency Review**

## **City of Chula Vista**

**CalPERS ID: 4698580102**  
**Job Number: P13-043**

**November 2014**



California Public Employees' Retirement System  
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November 26, 2014

CalPERS ID: 4698580102  
Job Number: P13-043

Kelley Bacon, Deputy City Manager  
City of Chula Vista  
276 Fourth Avenue  
Chula Vista, CA 91910

Dear Ms. Bacon:

Enclosed is our final report on the results of the public agency review completed for the City of Chula Vista (Agency). Your written response, included as an appendix to the report, indicates agreement with the issues noted in the report except for Finding 1, 2, and 3B, second bullet point. We appreciate the additional information regarding Finding 2 that you provided in your response. However, 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 and we appreciate the time and assistance of you and your staff during this review.

Sincerely,

Original signed by Phyllis Miller  
PHYLLIS MILLER, Acting Chief  
Office of Audit Services

Enclosure

cc: City Council Members, City of Chula Vista  
Risk and Audit Committee Members, CalPERS  
Matthew G. Jacobs, General Counsel, CalPERS  
Anthony Suine, Chief, BNSD, CalPERS  
Renee Ostrander, Assistant Chief, CASD, CalPERS

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# CITY OF CHULA VISTA

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# CITY OF CHULA VISTA

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## RESULTS IN BRIEF

The primary objective of our review was to determine whether the City of Chula Vista (Agency) complied with applicable sections of the California Government Code, 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 during the review. Details are noted in the Results section beginning on page two of this report.

- Payrates exceeded amounts listed on publicly available pay schedule.
- Member contributions were incorrectly reported.
- Special compensation was not reported as required by CCR Section 571.
- An employee was not enrolled as required.
- Unused sick leave was incorrectly reported.

OAS recommends the Agency comply with applicable sections of the California Government Code, 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 October 1, 1948 to provide retirement benefits for local miscellaneous employees, local firefighters and police officers. By way of the Agency's contract with CalPERS, the Agency agreed to be bound by the terms of the contract and by 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 Board approved plan for fiscal year 2013-14, the OAS reviewed the Agency's payroll reporting and member enrollment processes as related to the Agency's retirement contract with CalPERS. The review period was limited to the examination of sampled employees, records, and pay periods from January 1, 2011 through December 31, 2013. The sample selection included employees subject to the Public Employees' Pension Reform Act of 2013 (PEPRA). The review objectives and a summary of the procedures performed are listed in Appendix A.

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# CITY OF CHULA VISTA

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## OFFICE OF AUDIT SERVICES REVIEW RESULTS

1: Reported payrate exceeded the amount listed in a public pay schedule.

***Condition:***

The Agency reported payrates that exceeded the maximum payrate listed in the Agency's published pay schedule. OAS found that the Agency approved a two percent salary increase for a Senior Civil Engineer, increasing the salary amount to \$8,865 monthly. However, the maximum salary listed on the pay schedule for the Senior Civil Engineer did not reflect the increase and was listed as \$8,691.17. In addition, OAS noted a City Council member received a 1.4 percent salary increase, increasing the salary amount to \$1,840.81 monthly. However, the maximum salary listed on the pay schedule for the City Council member did not reflect the salary increase and was listed as \$3,933.36.

***Recommendation:***

The Agency should ensure that payrates and earnings are correctly reported to CalPERS in accordance with approved pay schedules.

The Agency should work with CalPERS Customer Account Services Division (CASD) to make any necessary adjustments to active and retired member accounts pursuant to Government Code Section 20160.

***Criteria:***

Government Codes: § 20160, § 20636  
CCR: § 570.5

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## CITY OF CHULA VISTA

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2: The Agency incorrectly reported member contributions.

***Condition:***

The Agency incorrectly reported member contributions during pay period ending December 26, 2013. The Agency paid the full normal member contributions for miscellaneous (eight percent) and safety (nine percent) employees hired prior to April 22, 2011. However, the Agency incorrectly reported a portion of the Employer Paid Member Contributions (EPMC) as Tax Deferred Member Paid Contributions.

Furthermore, the Agency incorrectly reported the member contributions for a PEPRA employee. Specifically, the Agency incorrectly paid and reported a portion of the normal member contribution as EPMC for an employee subject to PEPRA requirements. The employee was required to pay the entire member's share of contributions. Government Code Section 7522.30(a) requires equal sharing of normal cost between public employers and public employees. The standard shall be that employees pay at least 50 percent of normal costs and employers not pay any of the required employee contribution.

***Recommendation:***

The Agency should ensure it correctly reports member contributions.

The Agency should work with CASD to make any necessary adjustments to active and retired member accounts pursuant to Government Code Section 20160.

***Criteria:***

Government Codes: § 7522.30, § 20120, § 20121, § 20160, § 20221, § 20691  
CCR: § 569

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## CITY OF CHULA VISTA

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**3:** The Agency did not report special compensation as required by the CCR.

**Condition:**

- A. The Agency incorrectly reported Fair Labor Standard Act (FLSA) premium pay for a fire suppression employee. According to the firefighters' written labor agreement, fire suppression personnel received overtime pay or compensatory time off at one and one half rate of pay for hours worked over 182 hours in a 24-day period. The Agency incorrectly paid and reported an average of five hours FLSA premium pay at the half time rate each biweekly period. The normal number of FLSA hours worked over a 52 week period averages to 156 hours annually. The correct number of FLSA premium pay hours reported should be six hours biweekly. The Agency only reported an average of FLSA premium pay for 130 hours annually instead of 156 hours. As a result, FLSA premium pay was under reported.
- B. The Agency did not report special compensation of Uniform Allowance as required by the CCR. Specifically, OAS noted the following instances.
- The Agency did not report the monetary value of the uniforms provided for a Safety-Fire and Safety-Police employee. In addition, the Agency paid a \$175.00 uniform cleaning allowance for certain miscellaneous employees annually; however, did not report the Uniform Allowance. Furthermore, the written labor agreement did not indicate the monetary value of the uniforms provided as required by CCR 571(b).
  - In another instance, the Agency incorrectly reported the maintenance of the uniform cleaning allowance for a Safety-Fire and Safety-Police employee as a lump sum instead of when earned. Specifically, the Agency paid and reported \$200.00 and \$300.00 of Uniform Cleaning Allowance in October and November 2013. The International Association of Fire Fighters labor policy provides for a \$200.00 Uniform Cleaning Allowance on the first payday following November 1 each year. The Police Officers Association labor policy provides for a \$300.00 Uniform Cleaning Allowance on the first pay period ending in December each year. Pursuant to Government Code Section 20636(c)(3), the Agency shall identify the pay period(s) in which compensation was earned.

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- The Agency reported the monetary value of the uniforms as special compensation for a miscellaneous employee. However, the written labor agreement did not indicate the amount of the monetary value of the uniforms provided as required by CCR 571(b).

Reportable special compensation is required to be contained in a written labor policy or agreement with conditions for payment including amounts indicated, available to all members in the group or class, part of normally required duties, performed during normal hours of employment, paid periodically as earned, historically consistent with prior payments for the job classification, not paid exclusively in the final compensation period, and not final settlement pay.

***Recommendation:***

The Agency should report an average of six hours of FLSA premium pay each biweekly pay period for fire suppression personnel.

The Agency should ensure that the Uniform Allowance is reported as a special compensation for each pay period in which it was earned.

The Agency should ensure the monetary value of Uniform Allowance is contained in a written labor policy or agreement as required by the CCR.

The Agency should work with CASD make any necessary adjustments to active and retired member accounts pursuant to Government Code Section 20160.

***Criteria:***

Government Codes: § 20160, § 20636

CCR: § 571



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4: The Agency did not enroll an employee who was incorrectly classified as an independent contractor.

**Condition:**

The Agency incorrectly classified an employee as an independent contractor and failed to enroll the employee into membership. OAS determined the individual worked in an employer/employee relationship performing services including, but not limited to, managing servers, computer maintenance, trouble shooting, configuring work stations and networks. The employee was previously employed by the Agency performing similar services in the position of Information Technology Support Specialist until separated on January 6, 2011. The employee had active CalPERS membership; therefore, the Agency should have enrolled the employee upon hire, September 1, 2012.

The Public Employees' Retirement Law (PERL) Section 20125 provides that the CalPERS Board of Administration (Board) shall determine who are employees and is the sole judge of the conditions under which persons may be admitted to and continue to receive benefits under this system. For the purposes of the PERL and for programs administered by the Board, the standard used for determining whether an individual is the employee of another person is the California common law employment test as set forth in the California Supreme Court case titled *Tieberg v. Unemployment Ins. App. Bd.*, (1970) 2 Cal. 3d 943, which was cited with approval in *Metropolitan Water Dist. v. Superior Court (Cargill)*, (2004) 32 Cal. 4th 491, and which was adopted by the Board in two precedential decisions, *In the Matter of Lee Neidengard*, Precedential Decision No. 05-01, effective April 22, 2005, and *In the Matter of Galt Services Authority*, Precedential Decision No. 08-01, effective October 22, 2008.

Applying the California common law employment test, the most important factor in determining whether an individual performs services for another as employee is the right of the principal to control the manner and means of job performance and the desired result, whether or not this right is exercised. Where there is independent evidence that the principal has the right to control the manner and means of performing the service in question, CalPERS will determine that an employer-employee relationship exists between the employee and the principal.

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Other factors to be taken into consideration under the common law employment test are as follows:

- (a) whether or not the one performing services is engaged in a distinct occupation or business;
- (b) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of a principal or by a specialist without supervision;
- (c) the skill required in the particular occupation;
- (d) whether the principal or the individual performing the services supplies the instrumentalities, tools, and the place of work for the person doing the work;
- (e) the length of time for which the services are to be performed;
- (f) the method of payment, whether by the time or by the job;
- (g) whether or not the work is a part of the regular business of the principal; and
- (h) whether or not the parties believe they are creating the relationship of employer-employee.

***Recommendation:***

The Agency should ensure that all of its common law employees are enrolled and reported to CalPERS.

The Agency should work with CASD to make any necessary adjustments to active and retired member accounts pursuant to Government Code Section 20160.

***Criteria:***

Government Codes: § 20028, § 20056, § 20120, § 20122, § 200125, § 20160

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**5:** The Agency incorrectly reported unused sick leave.

***Condition:***

The Agency over reported the balance of unused sick leave days for two retiring members. Specifically, the retiring members had a balance of 1,019.05 hours or 127.38 days and 3.84 hours or .48 days. The Agency incorrectly certified 137.13 days and 135 days, respectively. The Agency had a similar finding in a prior CalPERS review dated January 2007.

***Recommendation:***

The Agency should ensure the retiring member's unused sick leave balances are correctly reported to CalPERS.

The Agency should work with CASD to make any necessary adjustments to the retired member's account pursuant to Government Code Section 20160.

***Criteria:***

Government Code: § 20160, § 20965

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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 A. 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 Phyllis Miller

PHYLLIS MILLER, CPA, CIA

Acting Chief, Office of Audit Services

Staff: Cheryl Dietz, CPA, Assistant Division Chief  
Diana Thomas, CIA, CIDA, Manager  
Alan Feblowitz, CFE, Manager  
Terry Heffelfinger, Lead Auditor  
Aileen Wong, Lead Auditor  
Dennis Szeto, Auditor

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**CITY OF CHULA VISTA**

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# **APPENDIX A**

## **OBJECTIVES**

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# CITY OF CHULA VISTA

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## OBJECTIVES

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

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

## SUMMARY

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 hours worked records
  - Agency payroll information including Contribution Detail Transaction History reports
  - Other documents used to specify payrate, special compensation, and benefits for employees
  - Various other documents as necessary
- ✓ 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 meeting laws.
- ✓ Reviewed CalPERS reports to determine whether the payroll reporting elements were reported correctly.

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- ✓ Reviewed the Agency's enrollment practices for temporary and part-time employees to determine whether individuals met CalPERS membership requirements.
- ✓ Reviewed the Agency's employment practices for retired annuitants to determine if retirees were lawfully employed and reinstated when 960 hours were worked in a fiscal year.
- ✓ 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 entities to determine if the Agency shared employees with an affiliated entity and if the employees were CalPERS members and whether their earnings were reported by the Agency or by the affiliated entity.
- ✓ Reviewed the Agency's calculation and reporting of unused sick leave balances, if contracted to provide for additional service credits for unused sick leave.

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# APPENDIX B

## Agency Response

Note: The City provided an attachment to the response that was intentionally omitted from this appendix. Additionally, the names of individuals mentioned in the Agency's response were intentionally omitted from this appendix.





**Office of the City Manager**

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Kelley Bacon  
Deputy City Manager  
276 Fourth Avenue  
Chula Vista, CA 91910

October 24, 2014

Phyllis Miller, Acting Chief  
CalPERS- Office of Audit Services  
P.O. Box 942701  
Sacramento, CA 94229-2701

Dear Ms. Miller:

The City of Chula Vista values the opportunity to review its personnel and payroll procedures in accordance with the California Government Code. Our Agency will utilize the report you presented to improve our operations and governance.

The City's response to CalPERS' draft findings is attached for your consideration before you draft your final audit report.

We thank you and your staff for your time and effort putting together this review. Should you have any questions, please call Edith Quicho at (619) 585-5620.

Sincerely,

Kelley Bacon  
Deputy City Manager  
City of Chula Vista

Enclosures

cc: Aileen Wong, Staff Program Evaluator

## City of Chula Vista's Response to Office of Audit Services Review Results

### 1. Reported pay rate exceeded the amount listed in a public pay schedule.

#### **Condition:**

- a. Effective 08/09/2013, the employee's bargaining unit received a 2% salary adjustment increasing the employee's monthly salary from \$8,691.17 to \$8,865. Council approved Salary Schedule on record (RESO 2013-166) indicated a monthly rate of \$8,691.17. The City's Salary Schedule was submitted for Council approval only once a year.
- b. The employee's pay rate is based on the judicial salary as per the City Charter. The new pay rate was posted on 11/29/2013 increasing the employee's monthly salary from \$3,933.36 to \$3,988.42. Council approved Salary Schedule on record (RESO 2013-166) indicated a monthly rate of \$3,933.36. The City's Salary Schedule was submitted for Council approval only once a year.

#### **Audit Recommendation:**

The Agency should ensure that pay rates and earnings are correctly reported to CalPERS in accordance with approved pay schedules.

The Agency should work with Customer Account Service Division (CASD) to make any necessary adjustments to active and retired member accounts pursuant to Government Code Section 20160

#### **Agency Response:**

The City agrees that pay rate must be commensurate with a publicly available pay schedule. The City disagrees that a violation occurred simply because the salary schedule was not updated in a more rapid manner after the salary increases became effective. Title 2 of the California Code of Regulations section 570.5 does not state *when* the publicly available pay schedule must be amended to reflect recently enacted salary increases. There is no regulation or statutory obligation on an agency to update their salary schedule in a specified amount of time after the effective date of salary increases. The salary schedules were updated less than a year after the salary increases took effect and therefore, the City was in substantial compliance. Nonetheless, the City will comply with the auditors' recommended action.

Effective immediately, the City of Chula Vista will submit all salary adjustments to Council for approval and will ensure immediate compliance with the requirements for a publicly available pay schedule pursuant to CCR 570.5. The City will contact CASD for guidance on necessary adjustments.

**2. The Agency incorrectly reported member contributions.**

**Condition:**

- a. The Agency incorrectly reported a portion of the Employer Paid Member Contributions (EPMC) as Tax Deferred Member Paid Contributions.
- b. The Agency incorrectly reported the member contribution of a PEPRA safety employee. The employee paid 9% of the member contribution and the Agency paid 3.25% of the member contribution. The employee is required to pay the entire member's share of normal cost.

**Audit Recommendation:**

The Agency should ensure it correctly reports member contributions.

The Agency should work with CASD to make any necessary adjustments to active and retired member accounts pursuant to Government Code Section 20160.

**Agency Response:**

- a. EPMC: The City agrees with the auditors' comments, and the recommended action. The City will revise its payroll programming to correctly report EPMC to CalPERS. CASD will be contacted for guidance on necessary adjustments.
- b. PEPRA member contribution: The City does not agree with the auditors' comments. The City submits the following discussion on the proposed Finding:

**THE MOU (CONTRACT) BETWEEN THE CITY AND IAFF HAS NOT EXPIRED AND, AS SUCH, PEPRA'S COST SHARING PROVISIONS MAY NOT BE IMPLEMENTED BECAUSE TO DO SO WOULD IMPAIR THE MOU**

CalPERS has proposed to make a "Finding" that the City should have required firefighters subject to PEPRA to pay the full amount of their normal member contributions (12.25%), rather than the City picking-up a portion of these member contributions (9%), thereby only requiring them to pay 3.25% of their normal member contributions. CalPERS proposed finding is not supported because the MOU between the City and IAFF has not been terminated. While Government Code section 7522.30 requires "new members" under the PEPRA to pay 50% of the normal cost of the benefit, and that employers may not pay any part of the new member's contribution rate, section 7522.30(F) also provides that if the terms of an MOU between the City and a labor organization, that is in effect on January 1, 2013, would be impaired by any provision of

this section, that provision of section 7522.30 shall not apply to the City and the labor organization subject to that contract until the expiration of that contract. The City submits, for the reasons discussed below, the MOU between the City and IAFF did not terminate on June 30, 2013 and, in fact, the MOU in effect on January 1, 2013 has not terminated nor been extended or renewed. Instead, the current MOU, which has been in effect since January 1, 2013, by the very terms of the contract, will not terminate until the City and the IAFF reach agreement on a successor MOU or completion of the required impasse procedures, as set forth in Government Code sections 3505.2 and 3505.4 to 3505.7, and the City's submission of a last, best and final offer to IAFF—none of which have occurred. Accordingly, because the MOU in place as of January 1, 2013 between the City and IAFF has not terminated, nor been extended or renewed, and is in fact the current contract, the pension cost sharing mandates under section 7522.30 of the PEPRA cannot yet be implemented. As a result, no finding should be made on this issue.

**A. RELEVANT FACTS**

The City entered into a contract ("MOU") with IAFF for the period of July 1, 2005 to June 30, 2010. Article 1.07(I) of the MOU contained the following term:

"This Memorandum of Understanding shall remain in full force and effect from July 1, 2005 through June 30, 2010 and is it understood and agreed that the terms and conditions, wages , and all provisions of this MOU shall continue in effect until a new MOU is negotiated and ratified by Local 2180 and the City Council. Local 2180 shall endeavor to submit written proposals to the City for a successor MOU by March 1, 2010 and the parties will endeavor to begin negotiating not later than April 15, 2010." (See Attachment 1; Underline added.)

The MOU, including Article 1.07(I), was extended, via side letter a dated February 9, 2009, to June 30, 2013. (See Attachment 1.)

The MOU was amended via a Side Letter dated January 14, 2011 to include provisions on pension cost sharing, as set forth in paragraphs 1 and 2 of the Side Letter. (Attachment 1.)

AB 340 (Public Employees' Pension Reform Act or "PEPRA") was signed by the Governor on September 12, 2012 and was effective on January 1, 2013. Government Code section 7522.30(f), states:

"If the terms of a contract, including a memorandum of understanding, between a public employer and its public employees, that is in effect on January 1, 2013, would be impaired by any provision of this section, that provision shall not apply to the public employer and public employees subject to that contract until the expiration of that contract. A renewal, amendment, or other extension of that contact shall be subject to the requirements of this section."

The City began labor negotiations with IAFF in 2013 for a successor MOU on or about June 25, 2013, and is still in labor negotiations with IAFF as of the date of this response. (See Government Code section 3505 [requirement to meet and confer in good faith]; Attachment 2.) The parties are not at impasse and, as a result, impasse procedures have not begun. (See Government Code sections 3505.2, 3505.4-3505.7 [impasse procedures]; Attachment 2.)

## **B. DISCUSSION**

The MOU between the City and IAFF did not terminate on June 30, 2013. Instead, pursuant to the MOU's contract language that "the terms and conditions, wages, and all provisions of this MOU shall continue in effect until a new MOU is negotiated and ratified by Local 2180 and the City Council," the MOU between the City and IAFF is still in effect because the City and IAFF are still in labor negotiations. However, such contract language does not mean that the MOU continues in perpetuity until an agreement is reached. Instead, it means that the MOU continues until an agreement is reached on a successor MOU or the required impasse procedures are completed and the City conveys its last, best and final offer to IAFF, and, at which point, the MOU is terminated.

In *City of El Cajon v. El Cajon Police Officers' Assn.* (1996) 49 Cal.App.4<sup>th</sup> 64, the Court of Appeal examined MOU language similar to the one at hand to determine when the MOU terminated. (Attachment 3.) In the case, the Court of Appeal examined the following language in the MOU between the City of El Cajon and El Cajon Police Officers' Association ("ECPOA"):

"This MOU shall become effective only after the ratification by members of the ECPOA and the adoption by the City Council of the CITY and continue in effect through June 30, 1992.

Should either party to this MOU desire to meet and confer on a successor MOU, that party shall serve upon the other a written request for such meet and confer, on or about March 1, 1992, and the meet and confer process should commence on or about April 15, 1992. Should the parties hereto fail to reach agreement on the successor MOU, the terms of this MOU shall remain in effect until a successor MOU is agreed upon and implemented." (*El Cajon v. El Cajon Police Officers' Association, supra*, 49 Cal.App.4<sup>th</sup> at p. 68-69; underline added.)

The Court reasoned that the duration language in the MOU converted the MOU into a contract that was of "indeterminate duration" and terminable upon "reasonable notice." (*Id.*, at pp. 70-73.) The Court concluded that reasonable notice, in the context of a labor MOU, occurred when the City completed the required impasse procedures and had given the ECPOA its last, best and final offer, after which the City could impose its last, best and final offer. (*Id.*, at pp. 77-78.)

Here, the MOU between the City of Chula Vista and IAFF has language similar to that found in the *El Cajon v. El Cajon Police Officers' Association* case and, as such, the Chula Vista/IAFF MOU term is of indeterminate duration and terminates upon completion of the required impasse procedures (i.e. Government Code sections 3505.2 and 3505.4 to 3505.7) and submission of the City's last, best and final offer to IAFF. The City of Chula Vista/IAFF MOU has not terminated and is still in effect. The City is currently in labor negotiations with IAFF and impasse has not been declared. In addition, the City has not undergone the required impasse procedures nor has the last, best and final offer been conveyed to IAFF. As a result, the MOU has not terminated and is still in effect.

Accordingly, given that the MOU between the City and IAFF has not terminated (nor extended or amended since January 1, 2013), the City has not and cannot implement pension cost sharing as required by PEPRAs with IAFF members subject to PEPRAs because to do so would impair the terms of the MOU with IAFF, specifically the term contained in Article 1.07(I) which requires that "the terms and conditions, wages, and all provisions of this MOU shall continue in effect until a new MOU is negotiated and ratified by Local 2180 and the City Council."

**3. The Agency did not report special compensation as required by the CCR.**

**Condition:**

- a. FLSA Premium: The Agency incorrectly reported Fair Labor Standard Act (FLSA) premium for fire suppression employee. The Agency paid and reported an average of five (5) hours per pay period instead of six (6) hours.
- b. Uniform Allowance :
  - (1) City did not report monetary value of uniforms provided to safety police and fire
  - (2) City did not report monetary value of uniforms of CVEA employees listed in CVEA MOU-Appendix C
  - (3) Annual maintenance and cleaning allowance for police (\$300) and fire (\$200) were reported as lump sum amount. The value must be reported as compensation earned by pay period.
  - (4) CVEA MOU, Article 2.16 (I) did not specify the value of uniforms supplied and maintained by the City.

**Audit Recommendation:**

The Agency should report an average of six (6) hours of FLSA premium pay each biweekly pay period for fire suppression personnel.

The Agency should ensure that the Uniform Allowance is reported as a special compensation for each pay period in which it was earned.

The Agency should ensure the monetary value of Uniform Allowance is contained in a written labor policy or agreement as required by the CCR.

The Agency should work with CASD make any necessary adjustments to active and retire member accounts pursuant to Government Code Section 20160.

**Agency Response:**

- a. FLSA Premium: The City does not agree with the auditors' comments.

The City maintains a FLSA 7(k) exempt work period for the City's fire suppression employees (fire safety members). The work period is defined as 24-days during which the fire safety member's normal work schedule consists of 192 hours in that 24-day period. Under the FLSA, this means that 182 hours are non-overtime hours and paid at the regular rate of pay. Ten hours are overtime hours paid at one and one-half of the regular rate of pay.

Pursuant to Title 2 of the California Code of Regulations, section 571(a) (5), "Compensation paid for normal full-time work schedule including premium pay required by FLSA," is reportable special compensation of the safety member. Here, because the work period is 24 days, there will be 15.2, 24-day work periods in a single year (365 days a year / 24 days = 15.2). Accordingly, 10 hours of premium pay for each of the 15.2 work periods in a year will be reportable special compensation, for a total of 152 hours a year (15.2 x 10 = 152 hours). The City will therefore report a maximum of 152 hours of premium pay each year as special compensation for the City's fire safety members. This is equivalent to 5.84 hours of premium pay per bi-weekly pay check (152 hours / 26 pay periods = 5.84 hours). Therefore, the City will round up to report to CalPERS 6 hours of premium pay per bi-weekly pay check, up to a maximum of 152 hours per year, as reportable special compensation, provided the fire safety member works the requisite number of hours to be eligible for premium pay.

- b. Uniform Allowance: The City agrees in part and disagrees in part with the auditors' comments and the recommended actions. The City submits the following:

1. Effective immediately, the City will require all departments to report the monetary value of issued uniforms. The value will be reported to CalPERS as special compensation.

2. The City has a concern about reporting Cleaning/Laundry Allowance "as earned" per pay period versus a lump sum amount and, as such, does not agree with reporting as requested. The City pays it uniform and cleaning allowances in a lump sum as noted in the proposed findings. The City is concerned that reporting the allowances "as earned" on a bi-weekly

basis, as opposed to the actual lump sum payment date, does not correctly reflect the City's actual payment practices and creates a situation where the reportable compensation is not accurate. For example, if the City paid an allowance of \$120 per year in June, under the proposed recommendation, we would report that as \$4.61 per pay period ( $120/26=4.61$ ). However, if an employee retired prior to June, say March, he would not be paid the \$120 allowance because he was not employed in June (the City does not pay a pro-rated amount). However, the City would have reported \$27.66 (using six (6) pay periods between March and June), but the employee would not have earned that amount. The City seeks additional clarification on this issue.

3. Finally, with regard ensuring that the monetary value Uniform Allowances is contained in the relevant labor MOU, the City submits that the CalPERS' recommendation may require a meet-and-confer with the attendant bargaining unit(s).

4. The Agency did not enroll an employee who was incorrectly classified as an independent contractor.

**Condition:**

The Agency incorrectly classified an employee as an independent contractor and failed to enroll the employee into membership effective 09/01/2012.

**Audit Recommendation:**

The Agency should ensure that all of its common law employees are enrolled and reported to CalPERS.

**Agency Response:**

The City agrees with the auditors' comments, and the recommended action. CASD will be contacted to make the necessary adjustments.

5. The Agency incorrectly report unused sick leave.

**Condition:**

The Agency over reported the balance of unused sick leave days for two retiring members, incorrectly certifying 137.13 days and 135 days.

**Audit Recommendation:**



The Agency should ensure the retiring members unused sick leave balances are correctly reported to CalPERS.

The Agency should work with CASD to make any necessary adjustments to the retired member's account pursuant to Government Code Section 20160.

**Agency Response:**

Although the City agrees with the auditors' recommended action, the City notes that unused sick leave was correctly certified. The attached document submitted to CalPERS in September 2012 clearly reflects 1.35 days of unused sick leave as opposed to 135 days. On the City submitted his certification to CalPERS upon his retirement. However, since the City's access to the new platform was not fully operational until February 2013, unused sick leave balance was not entered into my|calpers.