

# **Office of Audit Services**



# **CalPERS**

## **Public Agency Review**

## **City of Pasadena**

**CalPERS ID: 6556986602**  
**Job Number: BI15-017**

**September 2016**



California Public Employees' Retirement System  
Office of Audit Services  
P.O. Box 942701  
Sacramento, CA 94229-2701  
TTY: (877) 249-7442  
(916) 795-0802 phone, (916) 795-7836 fax  
[www.calpers.ca.gov](http://www.calpers.ca.gov)

September 29, 2016

CalPERS ID: 6556986602  
Job Number: BI15-017

Norma Thomas, Payroll Services Manager  
City of Pasadena  
P.O. Box 7115  
Pasadena, CA 91109-7215

Dear Ms. Thomas:

Enclosed is our final report on the results of the public agency review completed for the City of Pasadena (Agency). Your written response, included as an appendix to the report, indicates agreement with the issues noted in the report except for Finding 1A and 1C. We appreciate the additional information regarding these findings that you provided in your response. After consideration of this information, our recommendations remain as stated in the report. However, we added clarifying language to Finding 1A and revised Finding 1C.

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: City Council Members, City of Pasadena  
Robert Ridley, Controller, City of Pasadena  
Jennifer Curtis, HR Director, City of Pasadena  
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 PASADENA

---

## TABLE OF CONTENTS

<u>SUBJECT</u>	<u>PAGE</u>
Results in Brief.....	1
Scope.....	1
Office of Audit Services Review Results .....	2
1: Compensation .....	2
Conclusion .....	5
Objectives .....	Appendix A
Agency's Written Response .....	Appendix B

---

# CITY OF PASADENA

---

## RESULTS IN BRIEF

The objective of our review was to determine whether the City of Pasadena (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 during the review. Details are noted in the Results section beginning on page two of this report.

- Compensation was incorrectly reported.

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 July 1, 1945 to provide retirement benefits for local miscellaneous and safety employees (police and fire). 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 compliance with the PERL and its contract related to compensation and payroll reporting. The review was limited to the examination of the sampled fire safety employees, records, and pay periods from July 1, 2013 through October 31, 2015. OAS did not review the Agency's compliance with membership enrollment or employment after retirement. The review objectives and methodology are listed in Appendix A.

---

# CITY OF PASADENA

---

## OFFICE OF AUDIT SERVICES REVIEW RESULTS

**1: The Agency incorrectly reported regular earnings and special compensation.**

- A. The Agency incorrectly reported regular earnings and FLSA Premium Pay for a retired Fire Captain. The Fire Captain retired after 30 years of service with a 3% @ 55 retirement formula on March 15, 2014. The normal work week established for the Fire Captain was 56 hours per week. The Agency reported compensation on a bi-weekly basis. The Fire Captain was paid time and a half for the three hours worked above 53 and up to 56. Government Code Section 20630(a) identifies compensation as payment for the member's services performed during normal working hours. Additionally, Government Code Section 20636(c)(6) and CCR Section 571(a) state the premium paid for the hours worked within the normally scheduled working hours that are in excess of the statutory maximum work week shall be included as special compensation. Therefore, the Agency should have reported three hours of FLSA Premium Pay at a half-time rate of pay for each week and reported regular earnings for 56 hours each week. However, the Agency reported FLSA Premium Pay for three hours at one and one half times the hourly rate of pay, and regular earnings for 53 hours at the regular hourly rate of pay. Consequently, the Agency over reported special compensation and under reported regular earnings amounts each bi-weekly pay period.

The incorrect reporting may have over stated the Fire Captain's retirement allowance because final compensation is calculated using payrate and special compensation. Specifically, the Fire Captain's monthly retirement allowance was based on a consecutive 12-month period with the highest amount of compensation earnable. The service year used for the Fire Captain was from December 2010 through December 2011. The Fire Captain's monthly payrate and special compensation for the service year averaged approximately \$12,350.32 which was used in determining the monthly retirement allowance. In Fiscal Year 2013-2014, the Agency reported the correct base rate of pay for the Fire Captain with the exception noted in Finding 1C. However, FLSA was over reported by \$222.06 a month. If the Agency also over reported FLSA from December 2010 until December 2011, then the monthly average compensation would have been approximately \$12,128.27. As a result, the Fire Captain's monthly retirement allowance could be overstated by as much as \$199.85 a month.

- B. The Agency over reported Paramedic Pay and Educational Incentive Pay for the retired Fire Captain mentioned above in Finding 1A from July 1, 2013 through January 12, 2014. The Pasadena Fire Fighters Association, Local 809's written labor agreement allows for Paramedic Pay of \$900.00 per month

---

## CITY OF PASADENA

---

and Educational Incentive Pay of \$175.00 per month. However, the Agency reported Paramedic Pay of \$424.93 and Education Incentive Pay of \$82.57 each bi-weekly pay period which is equivalent to a monthly amount of \$920.68 and \$178.90 respectively. As a result, the Paramedic Pay and Educational Incentive Pay were over reported.

- C. The Agency incorrectly reported the Paramedic Pay, Educational Incentive Pay and FLSA Premium Pay for the retired Fire Captain mentioned above in Finding 1B. The incorrect reporting began part way through the pay period ending January 26, 2014 until the employee retired on March 15, 2014. During this time the Fire Captain was out on worker's compensation and the Agency reported the employee's regular earnings pursuant to Government Code Section 20630. The Agency included Paramedic Pay and Education Incentive Pay as part of the employee's base payrate and regular earnings. However, the pays should have been reported separately as special compensation. Additionally, the Agency included FLSA Premium Pay in regular earnings. The FLSA Premium Pay is a form of special compensation but it was not reportable for the period the retired Fire Captain was on worker's compensation leave. Government Code Section 20636(b)(1) defines payrate as the normal monthly rate of pay or base pay paid to members pursuant to a publicly available pay schedule. Government Code Section 20636(c)(1) identifies special compensation as a payment for special skills, knowledge, abilities, work assignment, work days or hours, or other work conditions. The Agency should report special compensation separately from base payrate and regular earnings.

Reportable special compensation is defined in CCR Section 571 (a) and must be reported if it conforms with all of the requirements listed in CCR Section 571 (b). Specifically, special compensation is required to be contained in a written labor policy or agreement indicating the eligibility and amount of special compensation. Also, special compensation must be available to all members in the group or class, part of normally required duties, performed during normal hours of employment, paid periodically as earned, and historically consistent with prior payments for the job classification.

- D. The Agency reported a payrate that exceeded the maximum payrate listed in the Agency's publicly available pay schedule for a Fire Battalion Chief. The Agency reported an hourly payrate of \$48.59 for the Fire Battalion Chief beginning July 1, 2013 through December 15, 2013. However, the maximum hourly payrate listed in the pay schedule effective for that time frame was \$45.67. Although the Agency did approve a change in salary for the Battalion Chief position, the salary schedule was not updated to reflect the new payrate.

---

# CITY OF PASADENA

---

Payrate, earnings and special compensation are important factors in computing a member's retirement allowance. 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 pay rate is limited to the amount identified on a publicly available pay schedule. 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.

***Recommendation:***

The Agency should ensure the correct amount of regular earnings and FLSA Premium Pay are reported for all employees.

The Agency should ensure the correct amount of Paramedic Pay and Education Incentive Pay is reported in accordance with written labor policy or agreement that has been duly approved and adopted by the Agency's governing body.

The Agency should ensure that payrate and earnings are reported to CalPERS in accordance with the Agency's publicly available pay schedule.

The Agency should work with CalPERS Employer Account Management Division (EAMD) to make any necessary adjustments to active and retired member accounts pursuant to Government Code section 20160.

***Criteria:***

Government Code: § 20120, § 20121, § 20160, § 20630, § 20636  
CCR: § 570.5, § 571

---

# CITY OF PASADENA

---

## 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  
Alicia Watts, Manager  
Emma Shaw, Auditor  
Michelle O'Connor, CPA, Auditor



---

**CITY OF PASADENA**

---

# **APPENDIX A**

## **OBJECTIVES**

---

# CITY OF PASADENA

---

## OBJECTIVES

The objectives of this review were to determine whether member information was accurate and the Agency complied with:

- Applicable sections of the Government Code (Sections 20000 et seq.), PEPRA, and Title 2 of the CCR.
- Reporting procedure 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 written labor policies and agreements
  - Agency salary, wage, and benefit agreements including applicable resolutions
  - Agency personnel records and employee time records
  - Agency payroll information
  - CalPERS payroll reports
  - Documents related to employee payrate 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 payroll information reported to CalPERS and reconciled payroll records, personnel records, pay schedules, and written labor policies to determine whether the Agency correctly reported scheduled work hours, whether service credit was accurate, and whether retirement benefits were correct.

---

**CITY OF PASADENA**

---

# **APPENDIX B**

**AGENCY'S WRITTEN RESPONSE**

May 24, 2016

**VIA EMAIL & U.S. EXPRESS MAIL***Beliz.Chappuie@calpers.ca.gov*Ms. Beliz Chappuie  
Chief, Office of Audit Services  
California Public Employees' Retirement System  
P.O. Box 942701  
Sacramento, CA 94229-2701**Re:     *Response by City of Pasadena to CalPERS Draft Public Agency Review***  
***CalPERS ID: 6556986602***  
**Client-Matter: PA100/113**

Dear Ms. Chappuie:

The City of Pasadena ("City") received the draft public agency review ("Audit") prepared by the California Public Employees' Retirement System ("CalPERS"), Office of Audit Services ("OAS").<sup>1</sup> The City intends to work cooperatively with CalPERS staff in response to the Audit. However, the City does dispute some of the findings and recommendations. The City's rationale underlying those disputes is set forth below.

**FINDINGS, RECOMMENDATIONS, AND CITY RESPONSE**

CalPERS made a general principal proposed finding that the City incorrectly reported earnings and special compensation. Within this general finding, CalPERS made the following specific findings and recommendations, which are set forth below and followed by the City's response to each finding and recommendation.

**Finding 1A:**

The Agency incorrectly reported regular earnings and FLSA Premium Pay for a retired Fire Captain. The Fire Captain retired after 30 years of service with a 3% @ 55 retirement formula on March 15, 2014. The normal work week established for the Fire Captain was 56 hours per week. The Agency reported compensation on a bi-weekly basis. The Fire Captain was paid time and a half for the three hours worked above 53 and up to 56. Government Code Section 20630(a) identifies compensation as payment for the member's services performed during normal working hours. Additionally, Government Code Section 20636(c)(6) and CCR Section 571(a) state the premium paid for the hours worked within the normally scheduled working hours that are in excess of the statutory maximum work week shall be included as special compensation. Therefore, the Agency should have reported three hours of FLSA Premium Pay at a half-time rate of pay for each week and reported regular earnings for 56 hours each week. However, the Agency reported FLSA Premium Pay for three hours at one and one half times the

---

<sup>1</sup> The City was granted an extension until May 25, 2016 to respond to the draft public agency review.

Ms. Beliz Chappuie

**Re: Response by City of Pasadena to CalPERS Draft Public Agency Review**

**CalPERS ID: 6556986602**

May 24, 2016

Page 2

hourly rate of pay, and regular earnings for 53 hours at the regular hourly rate of pay. Consequently, the Agency over reported special compensation and under reported regular earnings amounts each bi-weekly pay period.

The incorrect reporting may have over stated the Fire Captain's retirement allowance because final compensation is calculated using payrate and special compensation. Specifically, the Fire Captain's monthly retirement allowance was based on a consecutive 12-month period with the highest amount of compensation earnable. The service year used for the Fire Captain was from December 2010 through December 2011. The Fire Captain's monthly payrate and special compensation for the service year averaged approximately \$12,350.32 which was used in determining the monthly retirement allowance. In Fiscal Year 2013-2014, the Agency over reported FLSA by \$222.06 a month. If the Agency also over reported FLSA from December 2010 until December 2011, then the monthly average compensation would have been approximately \$12,128.27. As a result, the Fire Captain's monthly retirement allowance could be overstated by as much as \$199.85 a month.

**Recommendation 1A:**

The Agency should ensure the correct amount of regular earnings and FLSA Premium Pay are reported for all employees.

The Agency should work with CalPERS Employer Account Management Division (EAMD) to make any necessary adjustments to active and retired member accounts pursuant to Government Code section 20160.

**City's Response to Finding and Recommendation 1A:**

To the extent CalPERS' position is that the City made a reporting error when it reported the Fire Captain's regular earnings and FLSA Premium Pay by under reporting payrate and over reporting special compensation, the City does not dispute this finding and recommendation. However, if CalPERS' position is that the City over reported the Fire Captain's final compensation, the City disputes this finding and recommendation.

CalPERS accurately states that the City's Fire Captain worked a normal work week of 56 hours per week, with three (3) of those hours constituting FLSA premium pay for hours worked in excess of the statutory maximum work week, which is a special compensation item. CalPERS asserts that the City incorrectly calculated the Fire Captain's regular earnings by calculating the Fire Captain's regular earnings for 53 hours and special compensation of time and a half for three hours of FLSA Premium Pay. CalPERS further asserts that the City should have reported three hours of FLSA Premium Pay at a half-time pay for each week and reported regular earnings (i.e., payrate) for 56 straight time hours each week.

If the City erred in the way it reported compensation for this employee, this error was not substantive as total compensation was accurately reported. The City does dispute the speculation in the Audit that this error resulted in over reporting of final compensation. The Fire Captain's final compensation was correctly calculated using payrate *and* special compensation. Under reporting payrate and over reporting FLSA Premium Pay by an equal amount did not change reportable compensation and would have resulted in the same final compensation. Moreover, the Fire Captain's retirement allowance

Ms. Beliz Chappuie

**Re: *Response by City of Pasadena to CalPERS Draft Public Agency Review***

**CalPERS ID: 6556986602**

May 24, 2016

Page 3

was based on a consecutive 12-month period from December 2010 – December 2011 and not the pay periods reviewed in the audit.

For these reasons, to the extent that the City made reporting errors in the way it reported the Fire Captain's FLSA Premium Pay and payrate, it will work with appropriate CalPERS staff to make any necessary corrections.

**Finding 1B:**

The Agency over reported Paramedic Pay and Educational Incentive Pay for the retired Fire Captain mentioned above in Finding 1A from July 1, 2013 through January 12, 2014. The Pasadena Fire Fighters Association, Local 809's written labor agreement allows for Paramedic Pay of \$900.00 per month and Educational Incentive Pay of \$175.00 per month. However, the Agency reported Paramedic Pay of \$424.93 and Education Incentive Pay of \$82.57 each bi-weekly pay period which is equivalent to a monthly amount of \$920.68 and \$178.90 respectively. As a result, the Paramedic Pay and Educational Incentive Pay were over reported.

***Recommendation 1B:***

The Agency should ensure the correct amount of Paramedic Pay and Education Incentive Pay is reported in accordance with written labor policy or agreement that has been duly approved and adopted by the Agency's governing body.

The Agency should work with CalPERS Employer Account Management Division (EAMD) to make any necessary adjustments to active and retired member accounts pursuant to Government Code section 20160.

**City's Response to Finding and Recommendation 1B:**

The City does not dispute CalPERS' finding and recommendation. The City's Payroll department breaks down the annual dollar value of Paramedic Pay and Educational Incentive Pay into hourly amounts, rather than distributing the special compensation in lump sums on a bi-weekly basis. The City failed to take into account the three hours of FLSA premium pay ("PERSable built-in overtime") when calculating the number of hours worked per year to arrive at the hourly rate for the Paramedic Pay and Educational Incentive Pay. Therefore, the City underestimated the number of hours worked per year when distributing the special compensation. The City will work with appropriate CalPERS staff to make any necessary corrections.

**Finding 1C:**

The Agency incorrectly reported the Paramedic Pay, Educational Incentive Pay and FLSA Premium Pay for the retired Fire Captain mentioned above in Finding 1B. The incorrect reporting began part way through the pay period ending January 26, 2014 until the employee retired on March 15, 2014. During this time the Fire Captain was out on worker's compensation and the Agency continued to report the employee's regular earnings pursuant to Government Code Section 20630. However, the Agency also reported Paramedic Pay and Education Incentive Pay in base payrate and regular earnings. Additionally, the Agency reported FLSA Premium Pay in regular earnings, but not the base payrate. The retired Fire

Ms. Beliz Chappuie

**Re: Response by City of Pasadena to CalPERS Draft Public Agency Review**

**CalPERS ID: 6556986602**

May 24, 2016

Page 4

Captain did not work while out on worker's compensation, and therefore was not entitled to special compensation during this period. As a result, the employee's reported payrate and earnings were overstated during this period. Although the Fire Captain retired on March 15, 2014 and the employee's final compensation was calculated using a different period, the Agency should have reported the correct payrate to CalPERS in case the Fire Captain had opted to use the 12-month period prior to retirement.

Reportable special compensation is defined in CCR Section 571(a) and must be reported if it conforms with all of the requirements listed in CCR Section 571 (b). Specifically, special compensation is required to be contained in a written labor policy or agreement indicating the eligibility, and amount of special compensation. Also, special compensation must be available to all members in the group or class, part of normally required duties, performed during normal hours of employment, paid periodically as earned, and historically consistent with prior payments for the job classification.

***Recommendation 1C:***

The Agency should work with CalPERS Employer Account Management Division (EAMD) to make any necessary adjustments to active and retired member accounts pursuant to Government Code section 20160.

**City's Response to Finding and Recommendation 1C:**

To the extent that CalPERS' position is that the City should not have reported the Fire Captain's FLSA Premium Pay during the period he did not work due to industrial injury, the City does not dispute CalPERS' findings. However, the City disagrees to the extent that CalPERS' position is that the City should not have reported the Fire Captain's Paramedic Pay or Educational Incentive Pay during the period he was out of work due to industrial injury.

CalPERS has made the preliminary finding that the City should not have reported the Fire Captain's Paramedic Pay and Education Incentive Pay in base payrate and regular earnings during the pay period ending January 26, 2014 until the Fire Captain retired on March 15, 2014 because, during this time period, the Fire Captain was on worker's compensation leave. CalPERS' own guidance, however, defines reportable compensation pursuant to Government Code section 20630 as "payment to employees for services performed during normal working hours *or for time during which employee is excused from work because of* holidays, sick leave, industrial disability (payments under Labor Code section 4800 . . .)" and requires that an employer "identify and report compensation for the pay period in which the compensation was 'earned' regardless of when paid." (Public Agency & Schools Reference Guide, at p. 79.) (Emphasis added.)

From the pay period ending January 26, 2014 until March 15, 2015, the Fire Captain was out on worker's compensation leave. This leave constitutes Labor Code section 4850 industrial disability leave ("Section 4850 Leave"). Thus, by the terms of its own guidance, CalPERS considers pay earned during Section 4850 Leave as reportable compensation. The City therefore should have reported the Fire Captain's Paramedic Pay and Education Incentive Pay in base payrate and regular earnings during the period in which he was out on Section 4850 Leave.

Furthermore, case law supports the City's disbursement of Paramedic Pay and Educational Incentive Pay to the Fire Captain during this period. In *Fenn v. Workers' Comp. Appeals Bd.* (2003) 107

Ms. Beliz Chappuie

**Re: Response by City of Pasadena to CalPERS Draft Public Agency Review**

**CalPERS ID: 6556986602**

May 24, 2016

Page 5

Cal.App.4th 1292, a California court of appeal held that in determining the scope of benefits that shall be provided pursuant to Section 4850, the Court must consider the language of the applicable memorandum of understanding (“MOU”). (Fenn, supra, 107 Cal.App.4th at 1297; see also *Mannetter v County of Marin* (1976) 62 Cal.App.3d 518.) The Fenn court cited *Mannetter* as authority for this proposition. In *Mannetter*, the court analyzed the County’s applicable MOU, which provided that an employee who is “required to work” on a day celebrated as a holiday would be compensated at one and one-half time rates. (*Mannetter*, supra, 62 Cal.App.3d at pp. 520-521.) The court found that the “required to work” language in the MOU should be interpreted to mean that an employee only is “entitled to time and one-half when he is required to work and does actually work, not when he does not render any service.”

Here, the applicable MOU is the agreement between the City of Pasadena and the Pasadena Fire Fighters Association (“PFFA”). Section B, Article IV(B) provides for Paramedic Pay. In pertinent part, an employee in the classification of Fire Captain who holds a “valid certification from the California State EMS authority as an EMT-Paramedic shall receive pay as follows: \$500 per month upon initial license; \$900 per month after completion of the second year as a licensed Paramedic in the City of Pasadena . . . .” (PFFA MOU, at pp. 9 – 10.) Such pay shall constitute “special compensation and shall be reported as such pursuant to Title 2 CCR, Section 571(a)(2) . . . as special compensation.” Those employees “assigned to non-shift work (i.e., fire prevention, etc.) shall continue to receive the paramedic pay in lieu of any other special assignment pay (provided that it is a higher bonus) if they maintain their certification.” (*Id.*) An employee who is “no longer subject to assignment as a Paramedic will not be eligible for a bonus.” (*Id.*) Unlike *Mannetter*, this language provides that the Fire Captain would have been entitled to special compensation if not actually working. The special compensation is contingent upon the employee’s assignment and maintaining a paramedic certification. Here, while the Fire Captain was on Section 4850 Leave, he was still assigned to his position as Fire Captain.

Similarly, Section B, Article IV(G) of the PFFA MOU provides for Education Pay and states, in pertinent part, that an employee “holding an Associate of Arts Degree from an accredited college shall receive education incentive of \$175 per month . . . . this pay is special compensation and shall be reported as such pursuant to Title 2 CCR, Section 571(a)(2) . . . .” (PFFA MOU, at p. 11.) There are no other restrictions placed upon receipt of Education Incentive Pay.

For these reasons, the Fire Captain was entitled to Paramedic Pay and Education Incentive Pay while on Section 4850 Leave and, per the language of the CalPERS guidelines and the PFFA MOU, the Paramedic Pay and Education Pay were reportable as special compensation. To the extent that adjustments need to be made in regards to FLSA Premium Pay, the City will work with appropriate CalPERS staff to make any necessary corrections.

**Finding 1D:**

The Agency reported a payrate that exceed the maximum payrate listed in the Agency’s publicly available pay schedule for a Fire Battalion Chief. The Agency reported an hourly payrate of \$48.59 for the Fire Battalion Chief beginning July 1, 2013 through December 15, 2013. However, the maximum hourly payrate listed in the pay schedule effective for that time frame was \$45.67. Although the Agency did approve a change in salary for the Battalion Chief position, the salary schedule was not updated to reflect the new payrate.



Ms. Beliz Chappuie

**Re: Response by City of Pasadena to CalPERS Draft Public Agency Review**

**CalPERS ID: 6556986602**

May 24, 2016

Page 6

Payrate, earnings and special compensation are important factors in computing a member's retirement allowance. 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 pay rate is limited to the amount identified on a publicly available pay schedule. 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.

***Recommendation:***

The Agency should ensure that payrate and earnings are reported to CalPERS in accordance with the Agency's publicly available pay schedule.

The Agency should work with CalPERS Employer Account Management Division (EAMD) to make any necessary adjustments to active and retired member accounts pursuant to Government Code section 20160.

**City's Response to Finding and Recommendation 1D:**

The City does not dispute that it reported a payrate that exceeded the maximum payrate listed on the Agency's publicly available pay schedule. The City requests that under the circumstances, however, CalPERS exercises its statutorily conferred discretion and not require the City to retroactively adjust payrate and resulting compensation earnable.

Title 2, Section 570.5 of the California Code of Regulations provides,

For purposes of determining the amount of "compensation earnable" pursuant to Government Code Sections 20630, 20636, and 20636.1, payrate shall be limited to the amount listed on a pay schedule that meets all of the following requirements:

- (1) Has been duly approved and adopted by the employer's governing body in accordance with requirements of applicable public meetings laws;

[ . . . ]

- (5) Has been duly approved and adopted by the employer's governing body in accordance with requirements of applicable public meetings laws;

[ . . . ]

(b) Whenever an employer fails to meet the requirements of subdivision (a) above, *the Board, in its sole discretion, may* determine an amount that will be considered to be payrate, taking into consideration all information it deems relevant including, but not limited to, the following:

Ms. Beliz Chappuie

**Re: *Response by City of Pasadena to CalPERS Draft Public Agency Review***

***CalPERS ID: 6556986602***

May 24, 2016

Page 7

- (1) Documents approved by the employer's governing body in accordance with requirements of public meetings laws and maintained by the employer;
- (2) Last payrate listed on a pay schedule that conforms to the requirements of subdivision (a) with the same employer for the position at issue;
- (3) Last payrate for the member that is listed on a pay schedule that conforms with the requirements of subdivision (a) with the same employer for a different position;
- (4) Last payrate for the member in a position that was held by the member and that is listed on a pay schedule that conforms with the requirements of subdivision (a) of a former CalPERS employer.

(Emphasis added.)

The City has ten (10) bargaining units. This number of bargaining units means that the salaries of some classifications within the City are always changing. Furthermore, changes to the salary schedule of one bargaining unit may trigger a change to the salaries of an employee in a separate bargaining unit. For example, the Fire Battalion Chiefs are represented by the Pasadena Firefighters Management Association ("PFMA") and Fire Captains are represented by the PFFA. The PFMA MOU requires that "[t]he minimum rate of the salary range for Fire Battalion Chief shall be at least eighteen percent (18%) above top step of Fire Captain." (PFMA MOU, Article 10(B), at p. 4.) Therefore, any increase in the salary to the Fire Captain classification triggers an increase to the Fire Battalion Chief salary range.

Here, when the salary range for the Fire Captain classification increased, the City was required to increase the Fire Battalion Chiefs' hourly payrate. That the City did not update the salary schedule was an oversight and not intended to hide this increase. The City did approve other publicly available documents indicating that the salary increase went into effect.

Given the above mitigating factors, the City requests that CalPERS exercise its discretion and not take action to reduce the final compensation of the Fire Battalion Chief. To the extent that adjustments are needed to the City's current salary schedules, the City will work with appropriate CalPERS staff to make any necessary corrections.

Ms. Beliz Chappuie

**Re: *Response by City of Pasadena to CalPERS Draft Public Agency Review***

**CalPERS ID: 6556986602**

May 24, 2016

Page 8

## CONCLUSION

While the City objects to some of the findings and recommendations set forth above, the City will work cooperatively with CalPERS to provide additional documentation or information required by CalPERS to address the disputed findings and recommendations. The City will continue to work cooperatively with CalPERS' staff in order to make the necessary corrections and resolve outstanding concerns on the finding and recommendations not in dispute.

Very truly yours,

LIEBERT CASSIDY WHITMORE

Original signed by Alysha Stein-Manes



Alysha Stein-Manes

SMB:ASM:syf

Cc: Michelle O'Connor, CPA, Auditor (via e-mail only, at [Michelle.o'connor@calpers.ca.gov](mailto:Michelle.o'connor@calpers.ca.gov))  
Alex Souto, Principal Human Resources Analyst, City of Pasadena (via e-mail only)  
Jennifer Curtis, Human Resources Director, City of Pasadena (via e-mail only)