

Office of Audit Services



CalPERS

Public Agency Review

City of Cudahy

CalPERS ID: 4039665656
Job Number: P13-066

September 2014



California Public Employees' Retirement System
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September 29, 2014

CalPERS ID: 4039665656
Job Number: P13-066

Jose E. Pulido, City Manager
City of Cudahy
P.O. Box 1007
Cudahy, CA 90201-6024

Dear Mr. Pulido:

Enclosed is our final report on the results of the public agency review completed for the City of Cudahy (Agency). Your written response, included as an appendix to the report, indicates agreement with the issues noted in the report, except for Finding 4. We reviewed the additional information regarding Finding 4 that you provided prior to your written response and revised our recommendations for this Finding.

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: Board, City of Cudahy
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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RESULTS IN BRIEF

The primary objective of our review was to determine whether the City of Cudahy (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.

- Pay schedule did not meet the requirements of the Government Code and CCR.
- Payrate and Earnings were incorrectly reported.
- Special compensation was not reported as required by CCR Section 571.
- Retired annuitants were unlawfully employed.
- Optional members were not offered optional membership.

There were no issues identified related to employees subject to the Public Employees' Pension Reform Act of 2013 (PEPRA).

Observation: Agency has an hourly exclusion in its contract with CalPERS.

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 March 16, 1966 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 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 July 1, 2010 through June 30, 2013. The on-site fieldwork for this review was conducted from March 26-28, 2014. The review objectives and a summary of the procedures performed are listed in Appendix A.

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OFFICE OF AUDIT SERVICES REVIEW RESULTS

1: The Agency's pay schedule did not meet all the requirements of the Government Code and CCR.

Condition:

The Agency's pay schedule did not meet the requirements of CCR Section 570.5. The Agency approved a salary increase for the Cudahy Miscellaneous Employees Association and Management employees. However, the pay schedule was not updated to reflect the increased payrates and was not approved and adopted by the Agency's governing body. In addition, the Agency did not have one pay schedule that identified position titles for every employee position and showed payrates for each identified position. Specifically, the positions of City Council, City Manager, and Senior Accountant were not listed on a pay schedule. Additionally, the Cudahy Miscellaneous Employees Association pay schedule did not indicate the time base. Lastly, the Agency referenced another document in lieu of disclosing the payrate. The Agency had separate documents containing the position titles and payrates for the elected/appointed officials, management employees, and part-time employees.

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. 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.
- Not reference another document in lieu of disclosing the payrate.

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Pay amounts reported for positions that do not comply with the 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). There are no exceptions included in Government Code Section 20636(b)(1).

Recommendation:

The Agency should ensure its pay schedules meet all Government Code and CCR requirements and payrates are correctly listed within the Agency's 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(a), § 20636 (b)(1), § 20636 (d)
CCR: § 570.5

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2: The Agency incorrectly reported payrate and earnings.

Condition:

- A. The Agency incorrectly reported payrate and earnings for three employees in pay period ending June 22, 2013. Specifically, the employees' personnel action forms indicated a higher payrate than that listed on the Agency's pay schedule. As a result, payrates for these employees were over reported and did not agree with the payrates listed in the Agency's pay schedule.
- B. The Agency reported incorrect payrate amounts for an employee in fiscal year 2012-13. The Agency reported payrates of \$3,833.27 per hour in pay period ending September 29, 2012 and \$3,908.29 per hour in pay period ending October 13, 2012. The correct payrate for these pay periods should have been \$24.47 per hour or \$4,241.47 per month. Additionally, the Agency reported incorrect payrate types within the fiscal year 2012-13. Specifically, the Agency reported payrates as hourly for the period of September 24, 2012 through October 13, 2012 and then reported payrates as monthly in the period of October 14, 2012 through November 24, 2012. In the following pay periods, the Agency again reported payrates as hourly.
- C. The Agency did not report a retroactive salary adjustment to correct the payrate for an employee identified above. The Agency miscalculated the hourly payrate at the time of hire. On July 3, 2013, the Agency approved a retroactive pay increase totaling \$2,905.65 which was to correct the hourly payrate to \$24.47 for the period of September 24, 2012 through the June 22, 2013. However, a retroactive salary adjustment was not reported. When reporting a retroactive salary adjustment, the beginning and end dates for the earned period, the new hourly payrate of \$24.47, and the difference earned should be reported to CalPERS.

Payrate is an important factor in computing a member's retirement allowance because service credit and final compensation are directly related to the payrate and earnings reported for a member.

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Recommendation:

The Agency should correctly report payrate type, payrates, earnings and retroactive salary adjustments.

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: § 20120, 20121, 20122, § 20160, § 20636

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3: The Agency did not report special compensation as required by CCR Section 571.

Condition:

The Agency did not report the monetary value for the purchase of uniforms as special compensation. As specified in the Agency's written labor policies, the Agency required and purchased uniforms for maintenance and municipal enforcement employees. However, the Agency did not report the value of uniforms as special compensation. CCR Section 571 requires that the monetary value for the purchase, rental, and/or maintenance of required clothing, a statutory item, be reported as special compensation.

Recommendation:

The Agency should report the monetary value of uniforms as special compensation.

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: § 20160, § 20636

CCR: § 571

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4: The Agency unlawfully employed a retired annuitant.

Condition:

The Agency did not reinstate a retired annuitant who worked over the 960-hour threshold in a fiscal year. Specifically, the retired annuitant worked a total of 1,669 hours in fiscal year 2012-13, exceeding the 960-hour threshold in pay period ending March 2, 2013. In addition, the Agency did not enroll and report the retired annuitant's hours worked and earnings to CalPERS. Government Code Section 21224 limits the number of hours a retired person works to no more than 960 hours each fiscal year.

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:

- (1) Reimburse this system for any retirement allowance received during the period or periods of employment that are in violation of law;
- (2) 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;
- (3) 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:

- (1) Pay to this system an amount of money equal to employer contributions that would otherwise have been paid for the period(s) of time that the member is employed in violation of this article, plus interest thereon;
- (2) 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 the hours worked by retired annuitants in order to ensure the Agency complies with applicable Government Codes.

OAS recommends the Agency work with CalPERS Benefit Services Division (BNSD) to determine the appropriate course of action.

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Criteria:

Government Codes: § 20160, § 21202, § 21220, § 21221, § 21224

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5: The Agency did not offer optional membership to City Council Members.

Condition:

The Agency did not have four elective officers complete the Optional Membership Form, AESD-59, prior to enrollment in membership. In addition to enrolling the elective officers prior to the completion of the required form, the Agency also incorrectly enrolled the elective officers as regular members. The Agency should have required the elective officers to complete the Optional Membership Form, submitted the form to CalPERS, and enrolled the individuals in CalPERS as an optional member. An elective officer is excluded from membership unless the officer files with the Board an election in writing to become a member. An elective officer includes persons elected to a City Council or County Board of Supervisors.

Recommendation:

The Agency should work with CASD to ensure elective officers are advised of their CalPERS optional membership rights when first elected and file the appropriate election in writing with CalPERS for those who elect to be members.

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

Criteria:

Government Codes: § 20160, § 20322

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Observation: The Agency's administration of a contract exclusion for hourly compensated employees is not clearly defined.

The contract between CalPERS and the Agency excludes employees compensated on an hourly basis hired after March 16, 1966. In response to a CalPERS request made in 1999, the Agency provided its use and interpretation of the hourly exclusion and those employee classifications compensated on an hourly basis. The Agency indicated the current job classifications and description of excluded employees consist of the Administrative Intern, Clerk Typist, Account Clerk, Maintenance Aide, Maintenance Worker, Recreation Aide, Recreation Leader, Senior Recreation Leader, and Municipal Enforcement Officer hourly part-time positions. However, in 2014, the Agency informed OAS that the hourly exclusion was applicable to safety employees and persons compensated on an hourly basis. As a result, it is no longer clear which employees the Agency intends to exclude. OAS recommends the Agency work with CASD to clearly define the Agency's application of the contract exclusion for hourly compensated employees.

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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, CIA, CPA

Acting Chief, Office of Audit Services

Staff: Cheryl Dietz, CPA, Assistant Division Chief
Diana Thomas, CIA, CIDA, Manager
Alan Feblowitz, CFE, Manager
Nuntawan Camyre, Auditor

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APPENDIX A

OBJECTIVES

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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



CITY OF CUDAHY CALIFORNIA

Incorporated November 10, 1960

P.O. Box 1007
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Cudahy, California 90201-6024
(323) 773-5143
Fax: (323) 771-2072

September 8, 2014

Cheryl Dietz, CPA, Assistant Division Chief
California Public Employee's Retirement System
Office of Audit Services
P.O. Box 942701
Sacramento, CA 94229-2701

Dear Ms. Dietz:

The City of Cudahy acknowledges receipt of the compliance review draft report packet sent by your office on June 27, 2014. Below please find the City of Cudahy's responses to the draft report:

1. The Agency's pay schedule did not meet all the requirements of the CCR.

Response to Recommendation:

The City agrees with the recommendation.

2. The Agency incorrectly reported pay-rate and earnings.

Response to Recommendation:

The City agrees with the recommendation.

3. The agency did not report special compensation as required by CCR Section 571.

Response to Recommendation:

The City agrees with the recommendation.

4. The Agency unlawfully employed a retired annuitant.

Response to Recommendation:

The City neither agrees nor disagrees with the Recommendation. Information was presented during fieldwork which has not been considered in the draft report. The City is willing to work with CalPERS Benefit Services Division (BNSD) to determine the appropriate course of action.

5. The Agency did not offer optional membership to City Council Members.

Response to Recommendation:

The City agrees with the recommendation.

Observation: The Agency's administration of contract exclusion for hourly compensated employees is not clearly defined.

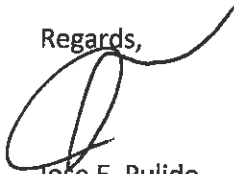
Response to Observation:

It was discussed with the CalPERS representative that the response to the response to a CalPERS request made in 1999 was misinterpreted. There were two distinct questions that were asked. The response to the first question was accurately stated. The second question that CalPERS asked needs to be interpreted with the response to the first question in mind. The response to the second question asked was a listing of hourly employees and did not represent employee classifications that were to be excluded. The City does not have safety employees.

The City is willing to discuss this matter with CASD to help them to better present their questionnaires to participating Agencies and understand the contract between the City and CalPERS.

I thank you in advance for your taking time to review and consider our responses. Should you require any additional information, please feel free to contact Jennifer Hernandez at (323) 773-5143, ext. 223.

Regards,

A handwritten signature in black ink, appearing to read 'Jose E. Pulido', with a long, sweeping flourish extending to the right.

Jose E. Pulido
City Manager