



Southern Marin Fire Protection District

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June 25, 2015

Faye D'Opal, Presiding Judge
Marin County Superior Court
Marin County Civil Grand Jury
3501 Civic Center Drive, Room 275
San Rafael, CA 94903-4257

Re: Marin County Civil Grand Jury Report - "Pension Enhancements: A Case of Government Code Violations and A Lack of Transparency"
Report Date: April 9, 2015
Public Release Date: April 16, 2015

Dear Judge D'Opal,

Attached is the response of the Board of Directors of the Southern Marin Fire Protection District to the findings and recommendations of the Grand Jury's Report titled, "Pension Enhancements: A Case of Government Code Violations and A Lack of Transparency". The response was approved during the Board's public meeting on June 24, 2015.

Sincerely,

Christian Tubbs
Interim Fire Chief/District Manager

Cc: Board of Directors
Gregory W. Stepanicich, Richards, Watson & Gershon

Enclosure: Response

Southern Marin Fire Protection District
Response to Marin County Civil Grand Jury Report
“Pension Enhancements: A Case of Government Code Violations and Lack of
Transparency”

FINDINGS

The Marin County Civil Grand Jury reviewed thirty-eight pension enhancements from 2001-2006 involving four Employers and suggests the Employers appear to have violated California Government Code §§ 7507, 23026, 31515.5, and 31516. Only four of the changes involve the Southern Marin Fire Protection District and all are listed as involving § 7507. The District’s response is limited to the four items that relate to the District.

F1. The Employers appear to have repeatedly violated Cal. Gov’t Code § 7507 by using the same actuarial evaluation report for many different pension increases and by failing to publicly disclose those increased costs before adopting them. The evaluations did not review the proposed increases for each individual bargaining unit; the Employers continued using the evaluation after years had passed. These factors appear to have contributed to the current unfunded liabilities of MCERA.

Response: The District partially disagrees with this finding. The District secured four different Retirement Benefit Studies from William Mercer, Inc., dated March 16, 2001, before making two retirement plan changes in Resolution 00-01-9, dated May 23, 2001. The Mercer documents contain separate studies for the miscellaneous and safety membership categories. Thus, the Mercer documents reviewed proposed increases for the separate membership groups. Unlike employers with larger and more varied workforces, the District is not comprised of many different bargaining groups. The records of the District are unclear as to whether the reports were publically disclosed during a meeting at least two weeks before adoption of the benefit increases. The change made by Resolution 05-06-8 was a benefit formula decrease from 3% @ 50 to 3% @ 55. During the period of review, § 7507 only addressed benefit increases, not decreases. The District’s records are unclear regarding the report and disclosure for the change made by Resolution 2006-07-6. Although the 2001 report may have informed that decision, the District agrees that it would have been preferable to secure an updated report. Many factors have contributed to the unfunded liabilities of MCERA involving many employers. However, the District disagrees that factors in Finding 1 with regard to the District “appear to have contributed to the current unfunded liabilities of MCERA.” This item appears to be focused on the other employers since the vast majority of the incidents involve other employers and the information on unfunded liability is limited to the other employers. The District does agree, as noted below, that other factors contributed to the current unfunded liability.

F2. The County appears to have violated Cal. Gov’t Code § 23026 by (a) failing to make the pension increases public through a “regularly scheduled meeting” of the Board, including through the use of consent agendas; (b) failing to provide public notice of that increase on a board agenda; (c) failing to provide a public notice of the “financial impact” that the increase

would have on MCERA. These violations excluded the public from examining the fiscal impact of the pension increases and from participating in the board's decision process.

Response: This finding involves the County and not the District. The District has not investigated or analyzed the County's actions with regard to this finding. As a result, the District is unable to agree or disagree.

F3. The County appears to have violated Cal. Gov't Code § 31515.5 by (a) failing to make the pension increases public through a "regularly scheduled meeting" of the board, including through the use of consent agendas, (b) failing to provide prior public notice of that increase on board agendas, and (c) failing to provide a public notice of the "financial impact" that the increase would have on MCERA. The public appears to have been excluded from examining the fiscal impact of the pension increases and from participating in the approval process. It also appears that the public was unaware of potential future financial obligations.

Response: This finding involves the County and not the District. The District has not investigated or analyzed the County's actions with regard to this finding. As a result, the District is unable to agree or disagree.

F4. The County appears to have violated Cal. Gov't Code § 31516 by (a) failing to secure an actuarial statement that explains the financial impact of the specific pension increase on MCERA and by (b) failing to make that actuarial report public at least two weeks prior to the adoption of the increase of benefits. This appears to have excluded the public from examining the fiscal impact of the pension increases, from participating in the board's decision-making process, and from understanding their potential future financial obligations.

Response: This finding involves the County and not the District. The District has not investigated or analyzed the County's actions with regard to this finding. As a result, the District is unable to agree or disagree.

F5. If the pension increases were not made in accordance with the California Government Code, the citizens of Marin County were never given proper notice about pension increases that are now costing them millions of dollars. These increases and associated liabilities are a contributing factor to why MCERA has a collective unfunded pension liability of approximately \$536.8 million.

Response: The District partially disagrees with this finding. Even partial compliance will provide notice to interested citizens regarding increases in pension plan benefits. For example, the Memoranda of Understanding and resolutions were all adopted at noticed public meetings as new business items (not on the consent calendar). Many factors contributed to the unfunded pension liability, making it difficult to isolate the impact of any particular factor. However, the District agrees that the benefit increases of the Employers are a factor.

F6. Because there appear to have been statutory violations, the future pension benefits provided for by the enhancements may or may not have vested as rights of the public employees under California law.

Response: This finding does not reach a conclusion. As a result, is it unclear how the District can agree or disagree, since the statement simply asserts that something “may or may not” exist. The District is not aware of any reported California case or statute that prevents benefits from vesting in the event of incomplete compliance with Government Code 7507.

RECOMMENDATIONS

R1. The Employers develop, adopt and implement a policy and procedures (including staff training) to prevent future violations of the California Government Code when increases in pension benefits are proposed. The Employers should consider making their legal counsel responsible for ensuring compliance with the Government Code.

Response: The recommendation has not yet been implemented, but will be implemented within the next six months. The District is a relatively small employer with a limited budget. The procedures will need to be adapted to the District’s size and structure. Since the current version of § 7507 requires the chief executive officer in the entity to be informed regarding a covered change, that person is in the best position, with advice of legal counsel when needed, to ensure compliance.

R2. The Employers develop, adopt and implement a policy for “reporting out” to the public regarding the employment and pension costs in terms of the amount and the Employer’s ability to pay on a current cash flow basis.

Response: This recommendation has not been formally adopted and implemented, but will be implemented within the next six months. This information is already reported through the documents utilized by the Finance Committee and the full Board in the development and adoption of the District’s budget. The policy will seek to formalize and expand on this process consistent with the recommendation.

R3. Each Employer establish a Citizens’ Pension Oversight Committee comprised of resident tax payers who would: 1.) review pension funding levels in light of the Employer’s ability to pay; 2.) review proposed pension changes before final Employer approval of any collective bargaining agreement; 3.) review the Employer’s compliance with Government Codes related to pensions; 4.) develop written quarterly reports for the public as to the financial security of the pension fund.

Response: This recommendation requires further analysis which will be completed within six months from the date of publication of the Grand Jury Report. This District is a relatively small employer with a limited administrative staff. This recommendation is better suited to the larger employers with more active retirement programs. The District needs to determine if this recommendation is reasonable and practical for its organization or how it may be adapted.