

Serving:

Anaheim

Brea

Buena Park

Cypress

Fountain Valley

Fullerton

Garden Grove

Huntington Beach

Irvine

La Habra

La Palma

Los Alamitos

Newport Beach

Orange

Placentia

Santa Ana

Seal Beach

Stanton

Tustin

Villa Park

County of Orange

Costa Mesa
Sanitary District

Midway City
Sanitary District

Irvine Ranch
Water District

Yorba Linda
Water District



Orange County Sanitation District

10844 Ellis Avenue, Fountain Valley, CA 92708

714.962.2411 • www.ocsd.com

July 26, 2017

The Honorable Charles Margines
Presiding Judge
Orange County Superior Court
700 Civic Center Drive West
Santa Ana, CA 92701

Dear Presiding Judge Margines:

The Orange County Sanitation District (the "District") has received the Orange County Grand Jury Report entitled "Pension Enhancements: A Question of Government Code Compliance." In summary, the District responds as follows:

1. The District has been unable to locate any documentation confirming that the District's actuarial report was made public two weeks before the District approved MOUs, with enhanced retirement benefits, in 2003.
2. Assuming that the District failed to make its actuarial report public two weeks before the District approved MOUs in 2003, it is unclear whether that would have violated Government Code Section 7507. Under applicable law, the Orange County Employees Retirement System ("OCERS"), not the District, has the authority to adopt changes in retirement benefits. Thus, it appears that the two-week notice requirement does not apply to the District.
3. The District wholeheartedly supports transparency in government, and especially when it comes to the expenditure of taxpayer and ratepayer funds. Thus, the District Board of Directors welcomes the attention that the Grand Jury has brought to this issue, and has adopted the attached Resolution. Under the Resolution, the District will comply with the notice requirements of Government Code Section 7507 regardless of whether those requirements are deemed to apply to the District.

Response

The District responds in detail to the Grand Jury's findings and recommendations as follows:

Findings

F.2 The Sanitation District did not provide documentary evidence that the operative code requirements were met by the Sanitation District Board of Directors when they approved 2.5% at 55 pension formula for sanitation workers in 2004.

District Response: The District wholly disagrees with this finding.

Our Mission: To protect public health and the environment by providing effective wastewater collection, treatment, and recycling.

Facts

The District began considering an increased retirement benefit during labor negotiations in 2002. The District retained an actuary to estimate the cost of increasing the benefit formula from approximately 2% at 57 or 61¹ to 2.5% at 55.² The actuarial report was completed on October 21, 2002.

The District ultimately reached agreement on MOUs with the District's bargaining units in 2003. The MOUs included, among other things, a commitment by the District to seek a contract with OCERS that would increase the retirement benefit formula to 2.5% at 55.³ On November 19, 2003, at a regular meeting, the District Board of Directors authorized the General Manager to enter into the MOUs.⁴

Throughout 2004 and into 2005 the District discussed with OCERS a contract amendment that would implement the enhanced benefit formula and establish the required contribution rates. At the conclusion of these discussions, the OCERS Board adopted the increased benefit formula and contribution rates at a regular, public meeting on March 28, 2005. The OCERS Board had before them an actuarial study that calculated contribution rates for an increased pension benefit of 2.5% at 55.⁵

Response

The District has been unable to locate any documents to show that the District made the actuarial report public at a public meeting two weeks prior to the meeting of November 19, 2003, when the District approved the MOUs. The District, therefore, could not, and did not, provide any such documents to the Grand Jury.

The Grand Jury's finding, however, makes an assumption that may not be correct. The finding assumes that the District, in approving the MOUs, "adopted" the increased benefits within the meaning of Government Code Section 7507 ("Section 7507").⁶ Under another reading of

¹ Prior to the pension benefit enhancement adopted in 2005, the District utilized a tiered system in which both the District and its employees made contributions to OCERS. At retirement, employees received a monthly allowance based on their age, average monthly compensation during service, years of service, and tier selected. Tier I employees were hired on or before September 20, 1979, and Tier II employees were hired after that date. The average monthly compensation for Tier I employees was determined by taking the sum of the highest consecutive 12 months of compensation earnable and dividing by 12. The average monthly compensation for Tier II employees was determined by taking the sum of the highest consecutive 36 months of compensation earnable and dividing by 36. Although the tiered benefit structure did not use a percentage "measurement" to describe the structure, the resulting monthly compensation was approximately 2% at 57 for Tier I employees and 2% at 61 for Tier II employees.

² The District provided a copy of the actuarial study, attached hereto as Attachment "B", to the Grand Jury.

³ Copies of the MOUs provided to the Grand Jury are attached here as Attachment "D."

⁴ The Board approved the MOUs in 2003, not 2004 as assumed in the Grand Jury request. Copies of all agendas and minutes from District Board of Directors meetings held in 2004 are attached hereto as Attachment "A."

⁵ The relevant portion of OCERS' published agenda, meeting minutes, and the memorandum reporting the actuarial study previously provided to the Grand Jury are attached hereto as Attachment "C."

⁶ While the Grand Jury Report cites a number of code sections, the only section that imposes any requirements on the District is Government Code section 7507.

Section 7507, however, it was OCERS, not the District, which “adopted” the increased benefits. Under this reading, the two-week notice requirement did not apply to the District’s action in approving the MOUs.

Prior to 2008, Government Code section 7507 stated as follows:

The Legislature and local legislative bodies shall secure the services of an enrolled actuary to provide a statement of the actuarial impact upon future annual costs before authorizing increases in public retirement plan benefits. An “enrolled actuary” means an actuary enrolled under subtitle C of Title III of the federal Employee Retirement Income Security Act of 1974 and “future annual costs” shall include, but not be limited to, annual dollar increases or the total dollar increases involved when available.

The future annual costs as determined by the actuary shall be made public at a public meeting at least two weeks prior to the adoption of any increases in public retirement plan benefits.

The notice requirement is set forth entirely in the second paragraph of Section 7507. The paragraph states that the actuarial report “shall be made public at a public meeting” at least two weeks “prior to adoption.” The Grand Jury finding assumes that the notice requirement applies to the “local legislative bodies” referenced in the first paragraph. That interpretation, however, appears to be inconsistent with the County Employees Retirement Law of 1937 (“CERL”)⁷ and relevant case law.

Under the CERL, it is OCERS, not the District, which has final authority to adopt changes in retirement benefits.⁸ The District’s role is limited to negotiating and approving MOUs with its bargaining units.⁹ In the parlance of retirement benefit practice, agency employers like the District are considered “sponsors” of benefit changes. Sponsors must present retirement benefit changes to their retirement board – in this case, OCERS – for adoption. Unless and until OCERS adopts changes to retirement benefits, the District’s approval of the MOUs has no effect. It follows that the two-week notice requirement does not apply to the District, because the District does not have the authority to “adopt” increases in retirement plan benefits.

The California Supreme Court case *Voters for Responsible Retirement v. Board of Supervisors of Trinity County* (1994) 8 Cal.4th 765 supports this interpretation. In *Voters for Responsible Retirement*, a County Board of Supervisors approved an MOU in November of 1991. The MOU set forth an enhanced retirement benefit formula. In order to implement the changes described in the MOU, the County sought, and obtained, a contract amendment with the County’s retirement

⁷ Gov. Code § 31450 et seq.

⁸ Gov. Code, §§ 31520; *Howard Jarvis Taxpayers' Assn. v. Board of Supervisors* (1996) 41 Cal.App.4th 1363, 1373 (“[t]he Board of Retirement is vested with powers under CERL to manage the county's retirement system, including the responsibility of determining the amount of retirement allowance to which members are entitled”).

⁹ The process for negotiating and approving MOUs is set forth in the Meyers-Milias-Brown Act, Gov. Code § 3500 et seq.

July 26, 2017

system, the Public Employees Retirement System. The Supreme Court held that the County did not “adopt” the enhanced retirement benefits within the meaning of the PERS law or Section 7507 when the County approved the MOUs in 1991.¹⁰ Rather, the benefit changes were not “adopted” until later, after PERS had considered and approved the enhanced retirement formula and the contribution rates.¹¹ The same reasoning appears to apply here.

Recommendations

R.2 The Sanitation District should implement procedures that ensure compliance with all transparency requirements including those relating to the approval of pension enhancements.

District Response: The District agrees with this recommendation. To that end, the District adopted a Resolution at its meeting on July 26, 2017 setting forth requirements identical to those contained in Section 7507. Attached hereto as Attachment “E” is Resolution No. OCSD 17-13 adopted by the Board on July 26, 2017. The Resolution requires the District to provide two weeks’ notice of any changes in retirement plan benefits.

Additional Information

The Grand Jury Report describes, in a complementary manner, actions taken by the County Board of Supervisors to reduce pension benefits pursuant to the 2012 California Public Employees’ Pension Reform Act (“PEPRA”). This acknowledgment is well deserved.

The District would like to point out that the District has also played a significant leadership role in pension reform in Orange County. In fact, the District lowered pension costs in 2010 by adopting a two-tier retirement system – a full three years before PEPRA (AB 340) took effect. Then, in 2011, the District’s Board of Directors successfully negotiated with employees to reduce pension benefit rates for new hires to 1.667% at 57.5. This is lower than the 2.5% at 67 maximum benefit ratio established in 2013 by PEPRA.

The Grand Jury also expressed concern regarding the County’s Unfunded Actuarial Accrued Liability (“UAAL”). The District would like the Grand Jury to know that the District has aggressively reduced its UAAL through additional payments. In 2013, the District had an UAAL of close to \$200 million. Although OCERS developed a long-term funding plan to allow agencies to pay these liabilities over a period of 20 to 30 years, the District paid its UAAL entirely in three years, thereby saving tens of millions of dollars in additional payments. Most recently, in January 2017, the District’s Board of Directors adopted Resolution No. OCSD 17-01 which authorized the General Manager to enter into an MOU with OCERS to fully eliminate its existing unfunded pension liability and save tens of millions of dollars in premium payments.

¹⁰ *Voters for Responsible Retirement v. Board of Supervisors of Trinity County* (1994) 8 Cal.4th 765, 785.

¹¹ *Ibid.* (“the PERS statutes . . . required that the County not ultimately commit itself to amendment of the PERS contract at the time of adoption of the MOU’s, but undertake additional procedures dictated by those statutes”).

The Honorable Charles Margines

Page 5

July 26, 2017

Finally, it bears noting that, in 2011, the District Board of Director's passed Resolution No. OCSD 11-22 to require all final action on compensation for represented employees take place in open session meetings. This requirement exceeds State law transparency requirements in that, under the Brown Act, votes on compensation for represented employees can be taken in closed session. This Resolution further demonstrates the District's commitment to transparency.

If you have any further questions, please do not hesitate to contact me at (714) 593-7110.

Sincerely,

A handwritten signature in blue ink, appearing to read "Gregory C. Sebourn". The signature is fluid and cursive, with a large initial "G" and a stylized "S" at the end.

Gregory C. Sebourn, PLS
Board Chairman
Orange County Sanitation District