

Broadmoor Police Protection District

CalPERS Office of Audit Services Employer Compliance Review

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California Public Employees' Retirement System
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Memorandum

December 9, 2021

To: Ronald Banta, Interim Chief of Police
Broadmoor Police Protection District
338 88th Street
Broadmoor Village, CA 94015-1717

From: Beliz Chappuie, Chief
Office of Audit Services

Original signed by Beliz Chappuie

Subject: Broadmoor Police Protection District Employer Compliance Review

Enclosed is the Office of Audit Services (OFAS) final report on the results of the Employer Compliance Review completed for Broadmoor Police Protection District. Your written response, included as an appendix to the report, indicates agreements with the issues noted in the report except for Observations 1A, 1C, 1D, 2A, 3, and 5B. We appreciate the additional information that you provided in your response. After consideration of this information, we have removed Observation 5B; however, the other observations and recommendations remain as stated.

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 employer. We appreciate the time and assistance of your staff during this review.

Attachment

cc: James Kucharszky, Police Commissioner, Broadmoor Police Protection District
Lisa Hernandez, Records Assistant, Broadmoor Police Protection District
Risk and Audit Committee Members
Matthew G. Jacobs, General Counsel, CalPERS
Anthony Suine, Deputy Executive Officer, CSS, CalPERS
Renee Ostrander, Chief, EAMD, CalPERS
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Results in Brief

The objective of the Office of Audit Services (OFAS) review was to determine if the Broadmoor Police Protection District (Employer) complied with applicable sections of the Public Employees' Retirement Law (PERL, Government Code [GC] sections 20000 et seq.), California Public Employees' Pension Reform Act of 2013 (PEPRA, GC sections 7522 et seq.), Title 2 of the California Code of Regulations (CCR) (collectively "the retirement laws"), and its contract with CalPERS.

The Employer was formed in 1948 and its governing body comprises of three elected Police Commissioners. The Employer contracted with CalPERS, effective July 1, 1996, to provide retirement benefits for miscellaneous and safety-police employees.

Our review included examination of personnel and payroll records for selected retired and active employees for the period January 1, 2011 through April 30, 2021. Based on the procedures performed, instances of non-compliance were identified, and we noted the following observations:

- For CalPERS purposes, any retiree employed in violation of the retirement laws is considered to be "unlawfully employed." The Employer unlawfully employed four retired annuitants. Specifically, three retired annuitants' employments were not temporary, interim, or for a limited duration, they received full-time compensation while receiving CalPERS retirement benefits, and their payrate exceeded the maximum paid by the Employer to other employees performing comparable duties. Additionally, two of the retired annuitants received lump-sum payments in addition to their hourly payrate; one retired annuitant was reinstated from retirement that resulted in an increase to their CalPERS retirement benefits; and one retired annuitant was employed in the same position approved for Industrial Disability Retirement and was not reinstated from CalPERS retirement. In addition, the Employer did not report the appointments for two retired annuitants and incorrectly reported payrates, compensation, and hours worked for two retired annuitants.
- Pay schedules were not approved by the Employer's governing body for two sampled employees. Additionally, position titles and payrates for three active employees and four retired annuitants were not listed on publicly available pay schedules.
- Payrate reported to CalPERS included special compensation for one active employee.
- Payrate and earnings were incorrectly reported for one active employee.
- Special compensation was not reported for one active employee.

Observations noted may result in reinstatement of retired annuitants, increased costs associated with the payment of contributions for reinstatement, repayment of retirement allowances during the periods of unlawful employment, and reimbursement of administrative expenses to CalPERS. Additionally, payrates reported for positions that

are not listed on a publicly available pay schedule and pay schedules not approved by the Employer's governing body in accordance with requirements of applicable public meeting laws cannot be used to calculate CalPERS retirement benefits; and incorrect reporting of payrates and earnings or non-reporting of special compensation may result in incorrect payments of CalPERS retirement benefits.

We recommend the Employer ensure compliance with applicable sections of the PERL, PEPR, Title 2 of the CCR, and its contract with CalPERS. The Employer should work with the appropriate CalPERS divisions to resolve the observations identified in this report.

Background

The Employer formed in 1948 and serves the unincorporated town of Broadmoor to provide police services to town residents. The Employer's governing body comprises of three elected Police Commissioners, who in turn selects and appoints the Chief of Police to serve as the District Manager and oversee all Employer operations.

The Employer contracted with CalPERS, effective July 1, 1996, to provide retirement benefits for miscellaneous and safety-police employees. By way of the Employer's contract with CalPERS, the Employer agreed to be bound by the terms of the contract and subject to all provisions of the PERL, PEPRA, and Title 2 of the CCR.

Scope

In accordance with GC section 20222.5, OFAS conducted a compliance review of the Employer. The review objective was to determine if the Employer complied with applicable sections of the PERL, PEPRA, Title 2 of the CCR, and its contract with CalPERS.

We reviewed personnel and payroll records for selected active and retired employees during the period January 1, 2011 through April 30, 2021. We interviewed key personnel and completed procedures to determine if the Employer:

- Lawfully employed retired annuitants, reported retired annuitant appointments to CalPERS, and accurately reported payrates, hours worked, and compensation to CalPERS in accordance with GC sections 21220.5, 21221, 21224, 21233, and 7522.56.
- Maintained publicly available pay schedules that met the requirements of GC section 20636 and CCR section 570.5.
- Reported payrates, earnings, and special compensation in accordance with GC sections 20630, 20636, 7522.34 and CCR sections 571 and 571.1.

Unless otherwise specified, we did not review the Employers' compliance with the PERL regarding other issues including but not limited to, member contributions, membership eligibility, workers compensation settlements, and Industrial Disability Retirement.

Review Results

Observation 1: Unlawful Employment of Retired Annuitants

The Employer unlawfully employed four retired annuitants. Specifically, three retired annuitants' employments were not temporary, interim, or for a limited duration, they received compensation equivalent to a full-time salary while receiving CalPERS retirement benefits, and their payrate exceeded the maximum paid by the Employer to other employees performing comparable duties; two retired annuitants received lump-sum payments that were in addition to their hourly payrate; one retired annuitant was reinstated from retirement that resulted in an increase to the CalPERS retirement benefits; one retired annuitant was employed in the same position approved for Industrial Disability Retirement; two retired annuitants' appointments were not reported to CalPERS; and two retired annuitants' payrates, compensation, and hours worked were incorrectly reported to CalPERS. Specific details and issues noted for the four sampled retired annuitants who were unlawfully employed are noted below.

A. Retired Annuitant 1

Based on our review of payroll and personnel records, we identified the following issues for the retired annuitant:

- Employment was not temporary, interim, or for a limited duration.
- Received compensation equivalent to a full-time salary while receiving CalPERS retirement benefits, and the payrate exceeded the maximum paid by the Employer to other employees performing comparable duties.
- Reinstatement from retirement resulted in an increase to their CalPERS retirement benefits.
- Received lump-sum payments in addition to the hourly payrate.
- Payrate, compensation, and hours worked were incorrectly reported to CalPERS.

The retired annuitant's employment was not temporary, interim, or for a limited duration. The retired annuitant worked for the Employer for approximately 14 years from May 1, 2006 to July 20, 2020. During this period, the retired annuitant worked as a Reserve Peace Officer, Lieutenant, Commander, Chief of Police, and Inspector. Additionally, from December 1, 2012 to December 28, 2013, the retired annuitant was reinstated from retirement to work as the Chief of Police for approximately one year. The Employer could not demonstrate the retired annuitant's employments met the following temporary employment types:

- A position found by the governing body, by resolution, to be available because of a leave of absence granted to an employee for a period not to exceed one year.

- Interim appointment to a vacant position during recruitment for a permanent appointment.
- Appointed during an emergency to prevent stoppage of public business or because the retired person has specialized skills needed in performing work of limited duration.

The retired annuitant received compensation equivalent to a full-time salary, and the payrate exceeded the maximum paid by the Employer to other employees performing comparable duties while employed in the Commander and Chief of Police positions from July 1, 2007 to March 27, 2015.

- The retired annuitant was employed in the Commander position from July 1, 2007 to November 30, 2012. The Employer's payroll records showed the retired annuitant was paid approximately \$5,200 based on an hourly payrate of \$144.44 for 36 hours in the pay period ended March 5, 2011. The payrate exceeded the maximum paid by the Employer to a comparable full-time Commander position in which the payrate was \$60.
- The retired annuitant was employed in the Chief of Police position from December 1, 2012 to March 27, 2015. During this period, the retired annuitant was reinstated from retirement from December 1, 2012 to December 28, 2013. During the reinstatement period, the Employer's payroll records showed the retired annuitant was paid \$6,250 based on a \$78.13 hourly payrate for 80 hours in the pay period ended December 22, 2012. After the reinstatement period, the Employer's payroll records showed the retired annuitant was paid approximately \$6,250 based on a \$173.61 hourly payrate for 36 hours worked in the pay period ended March 1, 2014. The compensation paid during reinstatement from retirement for working a full-time 40-hours workweek was equivalent to the compensation received after reinstatement.

According to the Employer, the past practice implemented by former Chiefs of Police was to ensure retired annuitants continue to work a full-time 40-hour workweek and receive a full-time salary, while reporting 36 hours worked per pay period. Therefore, the Employer adjusted the payrate based on 36 hours worked per pay period, totaling 936 hours in a fiscal year, to ensure the retired annuitant's reported hours would remain under 960 hours per fiscal year. The Employer did not have timesheets to demonstrate actual hours worked by the retired annuitant during a pay period. However, based on our review of Employer personnel files and payroll records obtained from San Mateo County, the retired annuitant received compensation equivalent to a full-time salary while receiving CalPERS retirement benefits.

The Employer reinstated the retired annuitant into CalPERS membership, and as a result, the retired annuitant's CalPERS retirement benefits increased once the employee retired again. As noted above, the retired annuitant was reinstated into CalPERS membership for approximately one year from December 1, 2012 to

December 28, 2013. Prior to reinstatement, the retired annuitant received monthly CalPERS retirement benefits of approximately \$7,778, equivalent to \$93,336 per year. After the retired annuitant retired in December 2013, CalPERS resumed the monthly payments, and the retired annuitant was paid approximately \$12,691, equivalent to \$152,292 per year. The new CalPERS retirement benefit was based on the \$78.13 hourly payrate reported to CalPERS during the one-year period when the retired annuitant was reinstated from retirement and worked full-time as the Chief of Police. Although the retired annuitant was properly reinstated when eligibility requirements were met, the Employer could not explain why the retired annuitant retired after one year of reinstatement, which resulted in an increase to the retired annuitant's CalPERS retirement benefits.

The retired annuitant received lump-sum payments in addition to the hourly payrate. Specifically, the retired annuitant received a total of \$103,215 in additional compensation and a \$108,500 worker's compensation settlement payment. Specifically, the Employer paid the following unreported payments:

- \$12,813 paid in the pay period ended January 3, 2015.
- \$29,514 and \$12,813 paid in the pay period ended March 14, 2015.
- \$48,075 paid in the pay period ended June 29, 2019.
- \$108,500 awarded on August 4, 2017 for a non-industrial worker's compensation settlement.

The Employer's payroll records categorized the first two payments as regular hours worked and miscellaneous special compensation; however, supporting documentation could not be provided to demonstrate what the payments were for, how it was calculated, and if the payments were properly approved. For the third payment, the Employer's payroll records categorized the payment as miscellaneous special compensation, and the Employer explained that it was additional compensation paid when the retired annuitant was employed as Acting Chief of Police during the period December 28, 2018 to June 23, 2019. However, the Employer was not able to provide supporting documentation to demonstrate how the compensation was calculated. According to the Employer, the retired annuitant took the records after being terminated by the Employer. Regarding the fourth payment, the retired annuitant continued to work in the same position and same capacity after receiving the worker's compensation settlement.

The Employer incorrectly reported the retired annuitant's payrate, compensation, and hours worked to CalPERS. Of the ten pay periods selected for review, all ten pay periods' payrates, earnings and hours were incorrectly reported. For example, the Employer reported \$2,160 in earnings based on a \$60 hourly payrate for 36 hours worked in the pay period ended March 1, 2014. However, the retired annuitant was actually paid \$6,250 based on a \$173.61 hourly payrate during the pay period. According to the Employer, the retired annuitant instructed the Administrative Assistant to report compensation based on the \$60 payrate and 36 working hours per pay period.

B. Retired Annuitant 2

Based on our review of payroll and personnel records, we identified the following issues for the retired annuitant:

- Employment was not temporary, interim, or for a limited duration.
- Received compensation equivalent to a full-time salary while receiving CalPERS retirement benefits, and the payrate exceeded the maximum paid by the Employer to other employees performing comparable duties.
- Employed in the same position approved for an Industrial Disability Retirement (IDR).
- Appointment was not reported to CalPERS; therefore, payrate, compensation, and hours worked were not reported.

The retired annuitant's employment was not temporary, interim, or for a limited duration. The employee retired as Chief of Police and returned as a retired annuitant, continuing to work in the Chief of Police position for approximately three years, from May 17, 2009 to December 1, 2012. The Employer could not demonstrate the retired annuitant's employment was a temporary employment that met eligible temporary employment types as noted on pages 4 and 5.

The retired annuitant received compensation equivalent to a full-time salary while employed as Chief of Police and the payrate exceeded the maximum paid by the Employer to other employees performing comparable duties. According to personnel records, the retired annuitant worked as the Chief of Police prior to retirement and was paid approximately \$6,255 based on a \$78.19 hourly payrate for 80 hours worked per pay period. After retirement, the retired annuitant continued to work as the Chief of Police and was paid approximately \$6,231 based on a \$173.08 hourly payrate and 36 hours worked in the pay period ended November 24, 2012. The compensation paid prior to retirement was equivalent to the compensation received after retirement. According to the Employer, the past practice implemented by former Chiefs of Police was to ensure retired annuitants continue to work a full-time 40-hour workweek and receive a full-time salary while reporting 36 hours worked per pay period. Therefore, the Employer adjusted the payrate based on 36 hours worked per pay period, totaling 936 hours in a fiscal year, to ensure the retired annuitant's reported hours would remain under 960 hours per fiscal year. The Employer did not have timesheets to demonstrate actual hours worked by the retired annuitant during a pay period. However, based on review of Employer personnel files and payroll records obtained from San Mateo County, the retired annuitant received compensation equivalent to a full-time salary while receiving CalPERS retirement benefits.

The retired annuitant was employed in the same position approved for an IDR. The Employer submitted to CalPERS Resolution No. 2009/2010-05, dated October 13, 2009, that authorized the IDR and stated the retired annuitant was incapacitated within the meaning of the PERL to perform duties of the Chief of Police and the last

day on pay status was May 15, 2009. However, the employee retired on May 16, 2009 and continued to work as a retired annuitant in the Chief of Police position after receiving the IDR approval from CalPERS. The retired annuitant worked as Chief of Police from May 17, 2009 to December 1, 2012. The retired annuitant worked in the same position that was approved for an IDR and was not reinstated from retirement.

The Employer did not report the retired annuitant's appointment to CalPERS and as a result, did not report the retired annuitants payrate, hours worked, and compensation for the period May 17, 2009 to December 1, 2012.

C. Retired Annuitant 3

Based on our review of payroll and personnel records, we identified the following issues for the retired annuitant:

- Employment was not temporary, interim, or for a limited duration.
- Received compensation equivalent to a full-time salary while receiving CalPERS retirement benefits, and the payrate exceeded the maximum paid by the Employer to other employees performing comparable duties.
- Appointment was not reported to CalPERS; therefore, payrate, compensation, and hours worked were not reported.

The retired annuitant's employment was not temporary, interim, or for a limited duration. The retired annuitant worked as a Commander for the Employer for approximately 1.4 years, from December 1, 2012 to January 24, 2014. The Employer could not demonstrate the retired annuitant's employment was temporary employment that met eligible temporary employment types as noted on pages 4 and 5.

The retired annuitant received compensation equivalent to a full-time salary while employed in the Commander position, and the payrate exceeded the maximum paid by the Employer to other employees performing comparable duties. For example, the retired annuitant was paid approximately \$3,847 biweekly based on a \$106.86 hourly payrate and 36 hours worked in the pay period ended June 22, 2013. The payrate exceeded the maximum paid by the Employer to a comparable full-time Commander position in which the payrate was \$60. According to the Employer, the past practice implemented by former Chiefs of Police was to ensure retired annuitants continue to work a full-time 40-hour workweek and receive a full-time salary while reporting 36 hours worked per pay period. Therefore, the Employer adjusted the payrate based on 36 hours worked per pay period, totaling 936 hours in a fiscal year, to ensure the retired annuitant's reported hours would remain under 960 hours per fiscal year. The Employer did not have timesheets to demonstrate actual hours worked by the retired annuitant during a pay period. However, based on our review of Employer personnel files and payroll records obtained from San Mateo County, the retired annuitant received a compensation equivalent to a full-time salary while receiving CalPERS retirement benefits.

The Employer did not report the retired annuitant's appointment to CalPERS and, as a result, did not report the retired annuitant's payrate, hours worked, and compensation.

D. Retired Annuitant 4

Based on our review of payroll and personnel records, we identified the following issues for the retired annuitant:

- Received a lump-sum payment in addition to the hourly payrate.
- Payrate and compensation was incorrectly reported to CalPERS.

The employee retired as Chief of Police and was employed as a retired annuitant in the Reserve Peace Officer position from December 28, 2018 to February 23, 2019. The Employer paid the retired annuitant a lump sum of \$32,000 in the pay period ended January 26, 2019, in addition to the retired annuitant's hourly payrate. The Employers payroll records categorized the payment as miscellaneous compensation. According to the Employer, the payment may have been for a vacation cash-out when the retired annuitant was employed as Chief of Police prior to retirement. However, the Employer did not have supporting documentation to demonstrate what the payment was for, how it was calculated, or whether it was properly approved.

The Employer incorrectly reported the payrate and compensation for the retired annuitant. Of the four pay periods selected for review, one pay period's payrate and earnings were incorrectly reported. Specifically, the Employer reported a \$60 hourly payrate and \$240 in compensation for four hours worked in the pay period ended January 12, 2019. However, the Employer should have reported a \$80 hourly payrate and \$320 in compensation. The Employer did not have established procedures to ensure the retired annuitants payrate and compensation were correctly reported to CalPERS as required.

GC section 21220, subdivision (a), specifies a person who has retired for service or for disability, may not be employed in any capacity unless he or she has first been reinstated from retirement or unless the employment, without reinstatement, is authorized under the PERL. GC section 21221, subdivisions (g) and (h), section 21224, subdivision (a), and section 7522.56, subdivision (c), specifies the conditions and requirements a retired person may serve without reinstatement from retirement or loss or interruption of benefits, which includes:

- Temporary employment to a position found by the governing body, by resolution, to be available because of a leave of absence granted to an employee for a period not to exceed one year and found by the governing body to require specialized skills. The temporary employment shall be terminated at the end of

the leave of absence. Appointments shall be reported to CalPERS and shall be accompanied by the resolution adopted by the governing body.

- Interim appointment to a vacant position during recruitment for a permanent appointment and deemed by the governing body to require specialized skills or during an emergency to prevent stoppage of public business.
- Appointment by the appointing power of a public employer either during an emergency to prevent stoppage of public business or because the retired person has specialized skills needed in performing work of limited duration.

GC sections 21221, subdivision (h), 21224, subdivision (a), and 7522.56, subdivision (d) further stipulate that these appointments shall not exceed a combined total of 960 hours for all employers each fiscal year; the compensation for the appointment shall not be less than the minimum nor exceed the maximum monthly base salary paid to other employees performing comparable duties as listed on a publicly available pay schedule divided by 173.333 to equal an hourly rate; and a retired person shall not receive any benefit, incentive, compensation in lieu of benefits, or other form of compensation in addition to the hourly payrate.

GC section 21233, subdivision (a) states a person who has retired for disability shall not be employed by any employer without reinstatement from retirement if the position is the same position from which the person retired from or for a position that includes duties or activities that the person was previously restricted from performing at the time of their retirement.

GC section 21220, subdivisions (b) and (c) specifies the consequences for retired members and employers who employed retired annuitants in violation of the PERL, which includes:

- Reimburse any retirement allowances received during the period or periods of unlawful employment.
- Pay the employee and employer contributions that would otherwise have been paid during the period or periods of unlawful employment, plus interest thereon.
- Reimburse CalPERS for the administrative expenses incurred in responding to the situation, to the extent the retired member or employer is determined to be at fault.

GC section 21220, subdivisions (d) and (e) specifies if an employer fails to enroll, report the payrate, and number of hours worked of a retired member employed in any capacity, without reinstatement, within 30 days of the effective date of hire, the board may assess the employer a fee of two hundred dollars (\$200) per retired member per month until the retired member is enrolled or the information is reported.

The Employer could not demonstrate the retired annuitants were employed in accordance with the conditions and requirements specified under GC sections 21220, 21221, 21224, 21233, and 7522.56. Unlawful employment of retired annuitants may

result in mandatory reinstatement from retirement. In the event of reinstatement, both the retired annuitants and Employer may incur costs associated with the payment of contributions, repayment of retirement allowances, and reimbursement of administrative expenses to CalPERS.

Recommendation:

The Employer should ensure retired annuitants:

- Employment is temporary, interim, or for a limited duration pursuant to conditions and requirements specified under GC sections 21220, subdivision (a), 21221, subdivision (g) and (h), 21224, subdivision (a), and 7522.56, subdivision (c).
- Work no more than 960 hours in a fiscal year pursuant to GC sections 21221, 21224, and 7522.56.
- Compensation and payrates do not exceed the amount paid to other employees performing comparable duties and do not receive compensation that is in addition to the retired annuitants' hourly payrate pursuant to GC sections 21221, 21224, and 7522.56, subdivision (d).
- Are not employed in the same position approved for disability retirement pursuant to GC section 21223.
- Appointments are reported to CalPERS and payrates, hours worked, and compensation paid is accurately reported to CalPERS.

The Employer should work with CalPERS Employer Account Management Division (EAMD) to identify and make adjustments, as necessary, to any impacted retired member accounts.

Observation 2: Pay Schedules Were Not Approved and Not Available

- A. The Employer's pay schedules were not approved by their governing body for two active employees. Specifically, the Employer could not demonstrate Resolution No. 2019-1, dated February 12, 2019, and the Broadmoor Police Officer's Association (BPOA) pay schedules, effective July 1, 2019, were approved by the Police Commission. The Employer provided Resolution No. 2019-1 to support the payrates for the Chief of Police that retired on December 29, 2018, which identified hourly, monthly, and annual payrates for the period January 1, 2015 through December 28, 2018. However, the Employer was unable to demonstrate the resolution was approved by the Police Commission in an open meeting. According to the Employer, documentation of the open meeting was not available due to a malfunction of the audio recorder during the Police Commission meeting. Additionally, the Employer could not demonstrate the BPOA pay schedules provided to support payrates for a Police Officer III was approved by the Police Commission. As a result, the payrates reported to CalPERS do not comply with GC sections 20636, 7522.34, subdivision (a), and Title 2 of the CCR section 570.5.
- B. The Employer's pay schedules were not available for two active employees and four retired annuitants. Specifically, the Employer did not have publicly available pay schedules to identify payrates for employees in the Chief of Police, Commander, Inspector, and Reserved Peace Officer positions. For example, the Employer reported an hourly payrate of \$76.92 for an active employee in the Chief of Police position for the pay period ended March 20, 2021. The Employer provided the BPOA pay schedule and adopted budget for fiscal year 2020-21 to support payrates for employees. However, the BPOA pay schedule only listed payrates for Police Officer and Sergeant positions, and the adopted budget did not properly identify the Chief of Police position and the associated payrate. According to the Employer, compensation for positions not on the BPOA salary schedules, such as the Chief of Police, Commander, Inspector, and Reserve Peace Office positions, were negotiated verbally. As a result, the payrates reported to CalPERS for the Chief of Police, Commander, Inspector, and Reserved Peace Officer positions could not be verified and supported by an existing pay schedule.

GC section 20636, subdivisions (a) and (b)(1), defines compensation earnable as the payrate and special compensation paid to a member. Payrates shall be for services rendered on a full-time basis during normal working hours, pursuant to publicly available pay schedules.

CCR section 570.5, subdivision (a), specifies for purposes of determining the amount of compensation earnable pursuant to GC sections 20630 and 20636, payrate shall be limited to the amount listed on a publicly available pay schedule that meets specific requirements, which includes approval and adoption by the employer's governing body in accordance with requirements of applicable public meeting laws, identification of the position title for every employee position and the payrate for each identified position.

The Employer's staff lacked proper training and knowledge regarding pay schedule requirements and ensuring pay schedules were approved by the Employer's governing body. The Employer's practice was to update the BPOA pay schedules and budgets annually. Reported payrates for positions that are not listed on a publicly available pay schedule and pay schedules that are not approved by the Employer's governing body in accordance with requirements of applicable public meeting laws cannot be used to calculate an employee's retirement benefits. 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 the payrate as detailed in CCR section 570.5, subdivision (b).

Recommendation:

The Employer should ensure pay schedules are publicly available; approved and adopted by the governing body in accordance with requirements of applicable public meeting laws; and identify payrates for all employee positions.

The Employer should work with CalPERS EAMD to identify and make adjustments, as necessary, to any impacted active and retired member accounts to correct pay schedules and/or improperly reported payrate amounts. To the extent that any amounts of pay were improperly included in the retirement allowance of retired members, a correction to the retirement allowance should be made pursuant to GC section 20160.

Observation 3: Reported Payrate Included Special Compensation

Payrate reported by the Employer included special compensation for one sampled employee. Specifically, the Employer included Police Officer Standard Training (POST) Certificate Pay, an item of special compensation, in the reported payrate. The Employer reported an hourly payrate of \$48.59 for an employee in the Police Officer III position in the pay period ended March 6, 2021. According to the BPOA salary schedule, effective July 1, 2020, the payrates listed included additional compensation for POST Certificate Pay, ranging from approximately five to seven percent. The payrate reported to CalPERS included five percent Intermediate POST Certificate Pay. The Employer should have reported \$46.26 as the base hourly payrate and the associated POST Certificate Pay amount separately as special compensation for the sampled employee.

GC section 20636, subdivisions (a) and (c)(3)(C) defines compensation earnable as payrate and special compensation paid to a member and states special compensation must be reported separately from payrate. CCR section 571 defines POST Certificate Pay as special compensation paid to police officers who obtain a POST certificate.

According to the Employer, their staff lacked proper training and knowledge regarding payrate and special compensation requirements. The Employer's BPOA labor agreement contained the requirements and conditions for payment of POST Certificate Pay, and the employer should have reported the POST Certificate Pay separately from payrates. Incorrect reporting of payrates may result in incorrect payments of CalPERS retirement benefits.

Recommendation:

The Employer should report base payrates separately from special compensation items, such as POST Certificate Pay.

The Employer should work with CalPERS EAMD to identify and make adjustments, as necessary, to any impacted active and retired member accounts to correct improperly reported payrate amounts. To the extent that any amounts of pay were improperly included in the retirement allowance of retired members, a correction to the retirement allowance should be made pursuant to GC section 20160.

Observation 4: Incorrect Reporting of Payrate and Earnings

The Employer incorrectly reported payrate and earnings for one sampled employee. The Employer reported an hourly payrate of \$51.40 and earnings of \$1,233.60 for the period March 1, 2021 to March 6, 2021; however, the Employer should have reported a hourly payrate of \$46.26 and earnings of \$1,665.36 because the Employer did not pay the employee using the \$51.40 payrate until the pay period beginning on March 7, 2021. In addition, the reported \$1,233.60 in earnings was not based on all hours worked during the period. The employee worked a total of 36 hours from March 1, 2021 to March 6, 2021, and the Employer incorrectly reported the earnings based 24 hours worked. As a result of the incorrect reporting, the payrate was overreported, and the earnings was underreported.

GC sections 20630 and 20636 specify payrate and compensation earnable is the remuneration paid by the employer for services rendered on a full-time based during normal working hours. According to the Employer, staff lacked proper training and knowledge regarding reporting payrates and earnings to CalPERS. Incorrect reporting of payrate and earnings may result in incorrect payments of CalPERS retirement benefits.

Recommendation:

The Employer should ensure reporting of payrates and earnings for services performed during normal working hours are correct and is consistent with actual pay rate paid for the pay period.

The Employer should work with CalPERS EAMD to identify and make adjustments, as necessary, to any impacted active and retired member accounts to correct improperly reported payrates and compensation amounts. To the extent that any amounts of pay were improperly included in the retirement allowance of retired members, a correction to the retirement allowance should be made pursuant to GC section 20160.

Observation 5: Special Compensation Not Reported

The Employer did not report Holiday Pay as special compensation for one sampled employee required to work on approved holidays. Specifically, the employee worked on three of seven holidays that occurred between May 1, 2020 through November 30, 2020 and was paid \$2,590.56 for the seven holidays in the pay period ended December 12, 2020. However, the Employer did not report the Holiday Pay as special compensation for the holidays the employee worked. The Employer should have reported a total of \$1,110.24 as Holiday Pay for the three holidays worked during the period May 1, 2020 through October 30, 2020. Holiday Pay is a statutory item that must be reported as special compensation.

GC section 20636, subdivision (c)(1) and (6) specifies special compensation includes payment received for special skills, knowledge, abilities, work assignment, workdays or hours, or other work conditions, and the Board shall promulgate regulations that delineate more specifically and exclusively what constitutes special compensation. CCR sections 571 and 571.1 define Holiday Pay as additional compensation for employees who are normally required to work on an approved holiday because they work in positions that require schedule staffing without regard to holidays, and if paid over and above their normal monthly rate of pay, the additional compensation is reportable to CalPERS.

According to the Employer, staff lacked proper training and knowledge regarding special compensation requirements. Special compensation not reported to CalPERS may result in incorrect payments of CalPERS retirement benefits for employees eligible to receive the associated special compensation item.

Recommendation:

The Employer should ensure all special compensation items, such as Holiday Pay, are reported to CalPERS.

The Employer should work with CalPERS EAMD to identify and make adjustments, as necessary, to any impacted active and retired member accounts to correctly report special compensation amounts. To the extent that any amounts of pay were not included in the retirement allowance of retired members, a correction to the retirement allowance should be made pursuant to GC section 20160.

Other Matter

We identified one other matter that was outside the scope of this review. This matter was discussed with the Employer. We encourage the Employer to work with CalPERS to ensure compliance with the PERL.

No.	Area	Description
1	Membership Eligibility	The Employer did not determine whether employees who retired from another retirement system and were employed by the Employer were eligible for CalPERS membership. Specifically, one sampled employee retired from a non-CalPERS covered employer and was hired by the Employer on November 5, 2018 as a part-time Reserve Peace Officer and later promoted to a full-time Commander on July 1, 2019. However, the Employer did not check if the employee had prior CalPERS membership nor determined if the employee met membership eligibility requirements.

Conclusion

Based on the information reviewed, OFAS noted instances of non-compliance with employment of retired annuitants, publicly available pay schedules, and incorrect reporting or non-reporting of payrates, earnings, and special compensation. The Employer should work with CalPERS EAMD to identify all active and retired members impacted and determine what adjustments, if any, are needed. To the extent that any amounts of pay were improperly included in the retirement allowance of retired members, a correction to the retirement allowance should be made pursuant to GC section 20160.

Sample testing procedures provide reasonable, but not absolute, assurance that the Employer complied with the specific provisions of the PERL and its CalPERS contract. The results 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 results noted within the report. The appropriate CalPERS division will notify the Employer of the final determinations and provide appeal rights, if applicable, at that time.

Respectfully submitted,

Original signed by Beliz Chappuie

BELIZ CHAPPUIE, CPA, MBA, CISA
Chief, Office of Audit Services

Staff: Cindie Lor, Assistant Division Chief
Antonio Madrigal, Senior Program Auditor
Pha Moua, Associate Program Auditor
Aaron Saelee, Program Auditor

Appendix A – Methodology

To accomplish the review objective of determining if the Employer complied with applicable sections of the PERL, PEPRA, Title 2 of the CCR, and its contract with CalPERS, we performed the following procedures:

- Identified relevant statutory and regulatory requirements for employment of retired annuitants, establishing publicly available pay schedules, and reporting payrates, earnings, and special compensation to CalPERS.
- Reviewed the contract between the Employer and CalPERS to identify employee groups eligible or excluded from CalPERS retirement benefits.
- Reviewed correspondence files maintained at CalPERS and Employer information maintained in myCalPERS.
- Reviewed the Employer's website and to obtain an understanding of the Employer's organizational structure, governing body, and background.
- Reviewed myCalPERS Business Intelligence Reports for payroll reported by the Employer for the period January 1, 2011 to April 30, 2021.
- Reviewed the Employee Roster provided by the Employer to identify active employees and retired annuitants' names, position titles, status, and dates of employment for the period January 1, 2011 to April 30, 2021.
- Interviewed key staff to obtain an understanding of the Employer's processes and procedures for employing retired annuitants, establishing publicly available pay schedules, and reporting payrates, earnings, and special compensation to CalPERS.
- Obtained and reviewed San Mateo County payroll data that identify pay periods, payrates, hours worked, and compensation paid for all active and retired annuitant employees for the period January 9, 2010 to December 26, 2020.
- Reviewed the Employer's employment practices for retired annuitants to determine if retired annuitants were lawfully employed in accordance with statutory and regulatory requirements.
 - Sampled four retired annuitants employed during the period January 1, 2011 to April 30, 2021.
 - Obtained and reviewed the Employer's personnel and payroll records to identify employment dates, position titles, payrates, hours worked, compensation paid, and other relevant information.
 - Reviewed Employer reported information in myCalPERS to determine if the Employer enrolled the retired annuitants and correctly reported payrates, hours worked, and compensation.
- Reviewed the Employers practices for establishing publicly available pay schedules to determine whether pay schedules met statutory and regulatory requirements.
 - Sampled five active and four retired annuitant employees employed during the period January 1, 2011 to April 30, 2021.

- Obtained and reviewed the Employer's pay schedules, budget documents, and Police Commission meeting minutes to determine if pay schedules were available for the sampled employees and were in compliance with the PERL.
- Reviewed the Employer's practices for reporting payrates, earnings, and special compensation in accordance with statutory and regulatory requirements.
 - Sampled five active employees and four retired annuitants employed during the period January 1, 2011 to April 30, 2021.
 - Reviewed the Employers written labor agreement to identify all items of special compensation reportable to CalPERS.
 - Reviewed the Employers personnel and payroll records to identify payrates, earnings, and special compensation items paid to sampled employees.
 - Reviewed information the Employer reported in myCalPERS to determine if the Employer reported payrates, earnings, and special compensation in accordance with the PERL.

Appendix B – Employer’s Written Response

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November 12, 2021

VIA EMAIL ONLY TO: CALPERS_EMPLOYER_COMPLIANCE_REPORTS@CALPERS.CA.GOV

Beliz Chappuie, Chief
Office of Audit Services
CalPERS
P.O. BOX 942709
Sacramento, CA 94229-2709

Re: Broadmoor Police Protection District Response to October 20, 2021 Draft Audit Report

Dear Ms. Chappuie:

The Broadmoor Police Protection District (CalPERS ID: 1755230450) ("District") is in receipt of the California Public Employees' Retirement System's Office of Audit Services' ("OAS") Draft Audit Report ("Draft Report"), dated October 20, 2021. The District appreciates the opportunity to provide a response to the Draft Report, as well as OAS' continued diligence in ensuring compliance for the betterment of all CalPERS members, its contracting agencies and Californians. The District looks forward to working with your team to resolve the Observations and ensure that the District is in compliance with all laws applicable to CalPERS.

OBSERVATION 1: UNLAWFUL EMPLOYMENT OF RETIRED ANNUITANTS

"The Employer unlawfully employed four retired annuitants. Specifically, three retired annuitants' employments were not temporary, interim, or for a limited duration, they received compensation equivalent to a full-time salary while receiving CalPERS retirement benefits, and their payrate exceeded the maximum paid by the Employer to other employees performing comparable duties; two retired annuitants received lump-sum payments that were in addition to their hourly payrate; one retired annuitant was reinstated from retirement that resulted in an increase to the CalPERS retirement benefits; one retired annuitant was employed in the same position approved for Industrial Disability Retirement; two retired annuitants' appointments were not reported to CalPERS; and two retired annuitants' payrates, compensation, and hours worked were incorrectly reported to CalPERS. Specific

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details and issues noted for the four sampled retired annuitants who were unlawfully employed [are noted in the Draft Report].

District Response to Observation 1A (Retired Annuitant 1):

The District is committed to cooperating with CalPERS' audit and investigation. While, the District has been unable to find adequate documentation as of the date of this response to substantively respond, it largely agrees with this Observation.

However, the District has reason to believe that the sampled employee's retired annuitant appointment to "Reserve Peace Officer" from May 1, 2006 to February 4, 2007 and "Inspector" from June 24, 2019 to July 20, 2020 may be a compliant retired annuitant appointments under Government Code ("Code") § 21224, as these were both "as needed," project-based per diem appointments, with the latter specifically being for 18 hours a week, and both being due to their specialized skill in this area.

To our knowledge, it seems that certain previous employees intentionally obfuscated and abused reporting processes in an attempt to circumvent CalPERS' retired annuitant rules, receive additional compensation, and inflate their own compensation and CalPERS pension allowance. This is unacceptable and we will do everything in our power to cooperate. But, as noted in the Observation, the sampled employee took the records with them after being terminated, and the District no longer has much of the relevant information.

District Response to Observation 1B (Retired Annuitant 2):

The District agrees with Observation 1B. Based on available information, it appears that the sampled employee was a full-time permanent employee appointed to the Chief of Police classification from May 17, 2009 to December 1, 2012. At this time, there is no evidence that there was active recruitment for a permanent Chief of Police. However, the District reserves the right to challenge this observation in the event that it obtains additional information that disputes CalPERS' findings.

District Response to Observation 1C (Retired Annuitant 3):

The District partially agrees with Observation 1C. However, the sampled employee was appointed to a limited duration as-needed appointment paid per diem in a non-budgeted Police Commander retired annuitant position specifically due to a local and county-wide emergency that necessitated an additional Police Commander. Based on information provided by the County of San Mateo that CalPERS reviewed, the sampled employee generally worked 18 hours per pay period and remained under 960 hours per fiscal year in all three relevant fiscal years.



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District Response to Observation 1D (Retired Annuitant 4):

The District disagrees with Observation 1D. The District has no record that the sampled employee worked as a Reserve Peace Officer from December 28, 2018 to February 23, 2019, or in any capacity. While the payroll information from the County of San Mateo identifies that the sampled member worked between 2.5 and 8 hours per pay period, the District has no record of any work or assignment pertaining to the sampled member during this time, and is unaware of the nature of the \$32,000 in miscellaneous compensation.

OBSERVATION 2A: PAY SCHEDULES WERE NOT APPROVED AND NOT AVAILABLE

"A. The Employer's pay schedules were not approved by their governing body for two active employees. Specifically, the Employer could not demonstrate Resolution No. 2019-1, dated February 12, 2019, and the Broadmoor Police Officer's Association (BPOA) pay schedules, effective July 1, 2019, were approved by the Police Commission. The Employer provided Resolution No. 2019-1 to support the payrates for the Chief of Police that retired on December 29, 2018, which identified hourly, monthly, and annual payrates for the period January 1, 2015 through December 28, 2018. However, the Employer was unable to demonstrate the resolution was approved by the Police Commission in an open meeting. According to the Employer, documentation of the open meeting was not available due to a malfunction of the audio recorder during the Police Commission meeting. Additionally, the Employer could not demonstrate the BPOA pay schedules provided to support payrates for a Police Officer III was approved by the Police Commission. As a result, the payrates reported to CalPERS do not comply with GC sections 20636, 7522.34, subdivision (a), and Title 2 of the CCR section 570.5."

District Response to Observation 2A:

The District disagrees that the Broadmoor Police Officer's Association ("BPOA") Publicly Available Pay Schedule ("Pay Schedule") effective July 1, 2019 was not approved by the Police Commission. However, the District does agree that it is currently unable to produce the audio recording of the approval meeting verifying that the Pay Schedule was in fact approved. Further, the District disagrees that it was unable to demonstrate any approval of the Police Officer III Payrate, contending that certain budget documents were approved in accordance with public meeting laws and that the CalPERS Board is able to recognize their legitimacy under 2 CCR 570.5(b)(1).

Ultimately, the District intends to retroactively approve the Pay Schedule again to meet the requirements under 2 California Code of Regulations ("CCR") 570.5(a)(1).



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OBSERVATION 2B: PAY SCHEDULES WERE NOT APPROVED AND NOT AVAILABLE

"B. The Employer's pay schedules were not available for two active employees and four retired annuitants. Specifically, the Employer did not have publicly available pay schedules to identify payrates for employees in the Chief of Police, Commander, Inspector, and Reserved Peace Officer positions. For example, the Employer reported an hourly payrate of \$76.92 for an active employee in the Chief of Police position for the pay period ended March 20, 2021. The Employer provided the BPOA pay schedule and adopted budget for fiscal year 2020-21 to support payrates for employees. However, the BPOA pay schedule only listed payrates for Police Officer and Sergeant positions, and the adopted budget did not properly identify the Chief of Police position and the associated payrate. According to the Employer, compensation for positions not on the BPOA salary schedules, such as the Chief of Police, Commander, Inspector, and Reserve Peace Office positions, were negotiated verbally. As a result, the payrates reported to CalPERS for the Chief of Police, Commander, Inspector, and Reserved Peace Officer positions could not be verified and supported by an existing pay schedule."

District Response to Observation 2B:

The District agrees with Observation 2B and intends to add the Payrates for the Chief of Police, Commander, Inspector, and Reserve Peace Officer positions to all Pay Schedules effective prior to June 8, 2021, back to the earliest date the District's records allow, pursuant to its record retention policy.

Observation 3: Reported payrate Included Special Compensation

"Payrate reported by the Employer included special compensation for one sampled employee. Specifically, the Employer included Police Officer Standard Training (POST) Certificate Pay, an item of special compensation, in the reported payrate. The Employer reported an hourly payrate of \$48.59 for an employee in the Police Officer III position in the pay period ended March 6, 2021. According to the BPOA salary schedule, effective July 1, 2020, the payrates listed included additional compensation for POST Certificate Pay, ranging from approximately five to seven percent. The payrate reported to CalPERS included five percent Intermediate POST Certificate Pay. The Employer should have reported \$46.26 as the base hourly payrate and the associated POST Certificate Pay amount separately as special compensation for the sampled employee."

GC section 20636, subdivisions (a) and (c)(3)(C) defines compensation earnable as payrate and special compensation paid to a member and states special compensation



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must be reported separately from payrate. CCR section 571 defines POST Certificate Pay as special compensation paid to police officers who obtain a POST certificate.

According to the Employer, their staff lacked proper training and knowledge regarding payrate and special compensation requirements. The Employer's BPOA labor agreement contained the requirements and conditions for payment of POST Certificate Pay, and the employer should have reported the POST Certificate Pay separately from payrates. Incorrect reporting of payrates may result in incorrect payments of CalPERS retirement benefits."

District Response to Observation 3:

The District agrees with Observation 3 and has begun reporting POST Certificate Pay separately from payrate beginning this year. However, the District disagrees that retroactive corrections are necessary, given that this is a technical error that would still result in the same *total* compensation used in pension calculations.

The conditions of payment for POST Certificate Pay are included in both the BPOA MOU and on the District's Pay Schedules, making the composition of the total "payrate" reported easy to ascertain. Performing retroactive corrections to move compensation from "payrate" to "special compensation" in the myCalPERS system would have no material impact to employees' retirement benefit calculations, and would only serve to increase administrative costs to the District and delays in resolving other Observations identified in the Draft Audit Report.

Under Code § 20160, CalPERS has the authority to omit certain errors or omissions and under Code § 20161 CalPERS may "dispense with any recalculation of, or other adjustment to, benefit payments." Given that the payroll corrections needed would not have any impact on total compensation, contributions or pension calculations, and that the error has been corrected prospectively, we would greatly appreciate CalPERS' approval to omit the corrections.

OBSERVATION 4: INCORRECT REPORTING OF PAYRATE AND EARNINGS

"The Employer incorrectly reported payrate and earnings for one sampled employee. The Employer reported an hourly payrate of \$51.40 and earnings of \$1,233.60 for the period March 1, 2021 to March 6, 2021; however, the Employer should have reported a hourly payrate of \$46.26 and earnings of \$1,665.36 because the Employer did not pay the employee using the \$51.40 payrate until the pay period beginning on March 7, 2021. In addition, the reported \$1,233.60 in earnings was not based on all hours worked during the period. The employee worked a total of 36 hours from March 1, 2021 to March 6, 2021, and the Employer incorrectly reported the earnings based 24 hours



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worked. As a result of the incorrect reporting, the payrate was overreported, and the earnings was underreported.

GC sections 20630 and 20636 specify payrate and compensation earnable is the remuneration paid by the employer for services rendered on a full-time based during normal working hours. According to the Employer, staff lacked proper training and knowledge regarding reporting payrates and earnings to CalPERS. Incorrect reporting of payrate and earnings may result in incorrect payments of CalPERS retirement benefits."

District Response to Observation 4:

The District agrees with Observation 4, and misreported "payrate" and "earnings" for the sampled employee during the pay period ended March 6, 2021. The District is unaware of persistent or pervasive misreporting in this regard for other employees, but intends to make necessary corrections back to the first time this error can be identified in available documentation.

OBSERVATION 5A: SPECIAL COMPENSATION NOT REPORTED

"The Employer did not report special compensation items, which resulted in incorrect reporting of compensation. Specifically, the following instances were noted:

A. The Employer did not report Holiday Pay as special compensation for one sampled employee required to work on approved holidays. Specifically, the employee worked on three of seven holidays that occurred between May 1, 2020 through November 30, 2020 and was paid \$2,590.56 for the seven holidays in the pay period ended December 12, 2020. However, the Employer did not report the Holiday Pay as special compensation for the holidays the employee worked. The Employer should have reported a total of \$1,110.24 as Holiday Pay for the three holidays worked during the period May 1, 2020 through October 30, 2020. Holiday Pay is a statutory item that must be reported as special compensation."

District Response to Observation 5A:

The District agrees with Observation 5A, and did not report "Holiday Pay" Special Compensation for the relevant sampled member between May 1, 2020 and November 30, 2020. The District intends to rectify this issue by identifying and reporting Holiday Pay compensation that was not reported to CalPERS, back to the earliest date we can identify based on available information.



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OBSERVATION 5B: SPECIAL COMPENSATION NOT REPORTED

"B. The Employer did not report Bilingual Pay as special compensation for one sampled employee. Specifically, the employee was paid \$46.15 for Bilingual Pay in the pay period ended March 6, 2021. However, the Employer did not report the Bilingual Pay as special compensation. The BPOA labor agreement specifies that Police Officers proficient in speaking a second language shall receive a monthly stipend of \$100, equivalent to \$46.15 per pay period. The Employer should have reported \$46.15 Bilingual Pay as special compensation.

District Response to Observation 5B:

The District disagrees with Observation 5B and requests that it is removed from the Final Audit Report. To our knowledge, the intent of the compensation is and has been for compensating employees who have a foreign language certificate in any of the approved languages. None of the District positions are formally identified as positions that require routine and consistent communication skills in languages other than English. Bilingual Premium is identified as a "Special Assignment Pay" under 2 CCR 571(a)(4) and 571.1(b)(3). This compensation is not based on assignment, but attainment of a certificate.

For example, the 2021-2022 BPOA MOU Article 5.2 defines Bilingual Compensation and Article 5.3 defines Field Training Officer compensation. Field Training Officer compensation is based on assignment, and explicitly states that the compensation is received "only while training." If this was the case for Bilingual Compensation, this would have been stated. Furthermore, there is currently no assignment or position at the District that requires "routine and consistent" communication skills in language other than English. While some employees may be called on in this regard from time to time, it is far from routine and consistent. Therefore, the District's Bilingual Compensation does not appear to meet the definition of "Bilingual Premium" and should not be reported.

OTHER MATTER 1: MEMBERSHIP ELIGIBILITY

"The Employer did not determine whether employees who retired from another retirement system and were employed by the Employer were eligible for CalPERS membership. Specifically, one sampled employee retired from a non-CalPERS covered employer and was hired by the Employer on November 5, 2018 as a part-time Reserve Peace Officer and later promoted to a full-time Commander on July 1, 2019. However, the Employer did not check if the employee had prior CalPERS membership nor determined if the employee met membership eligibility requirements."



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District Response to Other Matter 1:

The District is currently checking for prior CalPERS membership and reviewing CalPERS membership eligibility requirements at applicable employment events such as hire date and when reaching 1,000 hours in a part-time position.

CONCLUSION

Thank you again for this opportunity to respond to CalPERS' Draft Report. Should you need further information or in the event that there are additional documents that you deem necessary to review for purposes of your determination, please do not hesitate to contact my office, I can be reached at (951) 826-8309 or isabel.safie@bbklaw.com.

Sincerely,


Isabel C. Safie
of BEST BEST & KRIEGER LLP