

VENTURA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

BOARD OF RETIREMENT

DISABILITY MEETING

SEPTEMBER 11, 2017

AGENDA

PLACE: Ventura County Employees' Retirement Association
Second Floor Boardroom
1190 South Victoria Avenue
Ventura, CA 93003

TIME: 9:00 a.m.

Members of the public may comment on any item under the Board's jurisdiction by filling out a speaker form and presenting it to the Clerk. Unless otherwise directed by the Chair, comments related to items on the agenda will be heard when the Board considers that item. Comments related to items not on the agenda will generally be heard at the time designated for Public Comment.

ITEM:

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I. <u>CALL TO ORDER</u>	
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A. Business Meeting of July 24, 2017.	6 – 12
IV. <u>RECEIVE AND FILE PENDING DISABILITY APPLICATION STATUS REPORT</u>	13 – 46
V. <u>APPLICATIONS FOR DISABILITY RETIREMENT</u>	
A. Application for Service-Connected Disability Retirement - Timothy Harward; Case No. 15-029.	47 – 99
1. Application for Service-Connected Disability Retirement, filed December 28, 2015.	
2. Medical Analysis and Recommendation, including Supporting Medical Documentation, submitted by County of Ventura, Risk Management, in support of the Application for Service-Connected Disability Retirement, dated August 22, 2017.	

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V. APPLICATIONS FOR DISABILITY RETIREMENT (continued)

- 3. Hearing Notice, dated August 24, 2017.

- B. Application for Service-Connected Disability Retirement - Scott Meierhoff; Case No. 16-004. 100 – 183
 - 1. Application for Service-Connected Disability Retirement, filed February 3, 2016.
 - 2. Medical Analysis and Recommendation, including Supporting Medical Documentation, submitted by County of Ventura, Risk Management, in support of the Application for Service-Connected Disability Retirement, dated August 3, 2017.
 - 3. Hearing Notice, dated August 15, 2017

- C. Application for Service-Connected Disability Retirement - Judith Gocke; Case No. 15-006. 184 – 226
 - 1. Summary of Evidence, Suggested Findings of Fact and Conclusions of Law, and Recommendation, submitted by Hearing Officer Deborah Z. Wissley, dated July 16, 2017.
 - 2. Applicant’s Objections to the Summary of Evidence, Suggested Findings of Fact and Conclusions of Law, and Recommendation, submitted by Thomas J. Wicke, Attorney for Applicant Judith Gocke, dated July 30, 2017.
 - 3. Legal Memorandum Submitted by Respondent, County of Ventura/Risk Management, In Support of the Summary of Evidence, Suggested Findings of Fact and Conclusions of Law and Recommendation of Hearing Officer Deborah Wissley, ESQ., submitted by Stephen D. Roberson, Attorney for County of Ventura/Risk Management, dated August 14, 2017.
 - 4. Hearing Notice, dated August 16, 2017.

- D. Application for Service-Connected Disability Retirement - Nora Sanchez; Case No. 15-003. 227 – 254
 - 1. Proposed Findings of Fact and Recommended Decision, submitted by Hearing Officer Humberto Flores, dated May 25, 2017.

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2. Hearing Notice, dated August 3, 2017.
- E. Application for Service-Connected Disability Retirement - Robert J. Garcia; Case No. 15-010 255 – 303
1. Petition for Reconsideration, submitted by Edwin K. Stone, Attorney for Applicant, Robert J. Garcia, dated May 22, 2017.
 2. Opposition to Petition for Reconsideration, submitted by Stephen D. Roberson, Attorney for County of Ventura/Risk Management, dated May 24, 2017.
 3. Amended Findings and Decision Regarding Employee Application for Disability Retirement of Robert J. Garcia, submitted by Hearing Officer Robert Klepa, dated March 13, 2017.
 4. Objection to Hearing Officer's Proposed Finding of Fact, Determination and Recommendations, submitted by Edwin K. Stone, Attorney for Applicant, Robert J. Garcia, dated March 22, 2017.
 5. Legal Memorandum in support of the Hearing Officer's Recommended Decision that Applicant, Robert Garcia, be denied a Service-Connected Disability Retirement, received from Stephen Roberson, Attorney for County of Ventura/Risk Management, dated March 28, 2017.
 6. Hearing Notice, dated May 31, 2017.
- F. Request for Board Ordered Medical Examination, filed by County of Ventura/Risk Management in regard to the Application for Service-Connected Disability Retirement of Zenaida C. Surwin; Case No. 16-005. 304 – 309
1. VCERA Staff Letter, submitted by Retirement Administrator Linda Webb, dated September 11, 2017.
 2. Letter submitted by Stephen D. Roberson, Attorney for County of Ventura/Risk Management, dated August 24, 2017, requesting the Board of Retirement to require Applicant Zenaida C. Surwin to attend a Medical Examination.
 3. Hearing Notice dated August 28, 2017.

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VI. OLD BUSINESS

- A. Determine Compliance of County’s Proposed Publicly-Available Pay Schedule for Market-Based Premium Pay (MBPP) and Determine Pensionability of MBPP under PEPRA.

RECOMMENDED ACTION: EXCLUDE MBPP FROM PENSIONABLE COMPENSATION DUE TO DEFICIENCY IN MEETING PEPRA CRITERIA.

Time: 9:30 a.m.

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| 1. Staff Letter dated September 11, 2017. | 310 – 311 |
| 2. Staff Memorandum dated June 19, 2017, with Attachments.
<i>Previously Provided.</i> | 312 – 388 |
| 3. County Response to Staff Memorandum, dated September 7, 2017. | 389 – 394 |

- B. Determine Pensionability of HCA Fiscal Premium Pay.

RECOMMENDED ACTION: EXCLUDE HCA FISCAL PREMIUM PAY FROM PENSIONABLE COMPENSATION DUE TO DEFICIENCY IN MEETING PEPRA CRITERIA.

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| 1. Staff Letter dated June 19, 2017, with Attachments.
<i>Previously Provided.</i> | 395 – 402 |
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VII. NEW BUSINESS

- A. Recommendation to Approve Extension to VSG Hosting Agreement and Request for Direction on Governing Law Provision for Subsequent Contract Term.

RECOMMENDED ACTION: APPROVE EXTENSION AND DIRECT STAFF ON GOVERNING LAW PROVISION FOR SUBSEQUENT CONTRACT TERM.

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| 1. Staff Letter. | 403 |
| 2. Proposed Amendment. | 404 – 405 |

- B. Proposed Legislative Items for Submission to the SACRS Legislative Committee, Trustee Goulet.

- | | |
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| 1. Staff Letter. | 406 |
| 2. Proposed Provision to Define “Surviving Spouse”. | 407 – 410 |
| 3. Proposed Amendment Regarding Time Limits for Filing Application for Disability Retirement. | 411 – 413 |

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VII. NEW BUSINESS (continued)

- C. Recommendation to Approve Trustee Sedell and C.I.O., Dan Gallagher Attendance at 2017 Annual Private Equity Conference, New York, NY, September 28, 2017.
1. Staff Letter. 414
 2. 2017 Conference Agenda. 415
- D. Recommendation to Approve Staff's Attendance at NPEA 2017 Annual Conference, Nashville, TN, October 14 – 18, 2017.
1. Staff Letter. 416
 2. NPEA 2017 Annual Conference Agenda. 417
- E. Recommendation to Approve Retirement Administrator's Attendance at CALAPRS Administrators' Institute, Carmel, CA, September 13 – 15, 2017.
1. Staff Letter. 418
 2. CALAPRS Administrators' Institute Agenda. 419 – 420

VIII. INFORMATIONAL

- A. *Irvin v. Contra Costa Employees' Retirement Association*, Case No. S243694, Letter in Support of Petition for Review. 421 – 427
- B. *Segal Consulting Survey Shows Majority of Multiemployer Pension Plans in Green Zone; But Challenges Remain for Those in Red Zone.* 428 – 429

IX. PUBLIC COMMENT

X. STAFF COMMENT

XI. BOARD MEMBER COMMENT

XII. ADJOURNMENT

VENTURA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

BOARD OF RETIREMENT

BUSINESS MEETING

JULY 24, 2017

MINUTES

DIRECTORS Tracy Towner, Chair, Alternate Safety Employee Member
PRESENT: William W. Wilson, Vice Chair, Public Member
Steven Hintz, Treasurer-Tax Collector
Peter Foy, Public Member¹
Mike Sedell, Public Member
Robert Bianchi, Public Member
Maeve Fox, General Employee Member
Craig Winter, General Employee Member
Will Hoag, Alternate Retiree Member
Chris Johnston, Safety Employee Member
Ed McCombs, Alternate Public Member

DIRECTORS Arthur E. Goulet, Retiree Member
ABSENT:

STAFF Linda Webb, Retirement Administrator
PRESENT: Lori Nemiroff, County Counsel
Henry Solis, Chief Financial Officer
Dan Gallagher, Chief Investment Officer
Stephanie Berkley, Retirement Benefits Specialist
Chris Ayala, Program Assistant

PLACE: Ventura County Employees' Retirement Association
Second Floor Boardroom
1190 South Victoria Avenue
Ventura, CA 93003

TIME: 9:00 a.m.

¹ Trustee Foy arrived at 9:06 a.m.

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ITEM:

I. CALL TO ORDER

Chair Towner called the Business Meeting of July 24, 2017, to order at 9:00 a.m.

II. APPROVAL OF AGENDA

MOTION: Approve.

Moved by Wilson, seconded by Bianchi.

Vote: Motion carried

Yes: Bianchi, Fox, Hintz, Johnston, McCombs, Sedell, Wilson, Winter

No: -

Absent: Goulet, Foy

III. APPROVAL OF MINUTES

A. Business Minutes of July 24, 2017.

After discussion by the Board, the following motion was made:

MOTION: Approve.

Moved by Sedell, seconded by Bianchi.

Vote: Motion carried

Yes: Bianchi, Fox, Hintz, Johnston, McCombs, Sedell, Wilson, Winter

No: -

Absent: Goulet, Foy

IV. CONSENT AGENDA

A. Approve Regular and Deferred Retirements and Survivors Continuances for the Month of June 2017.

B. Receive and File Report of Checks Disbursed in June 2017.

C. Receive and File Budget Summary for FY 2016-17 Month Ending June 30, 2017 (Preliminary).

D. Receive and File Statement of Fiduciary Net Position, Statement of Changes in Fiduciary Net Position, Schedule of Investments and Cash Equivalents, and Schedule of Investment Management Fees for the Period Ending May 31, 2017.

After discussion by the Board, the following motion was made:

MOTION: Receive and File.

Moved by Wilson, seconded by Bianchi.

Vote: Motion carried

Yes: Bianchi, Fox, Hintz, Johnston, McCombs, Sedell, Wilson, Winter

No: -

Absent: Goulet, Foy

V. INVESTMENT MANAGER PRESENTATIONS

- A. Receive Annual Investment Presentation from Hexavest, Marc Christopher Lavoie.

Marc Christopher Lavoie was present on behalf of Hexavest to provide an organizational and investment performance update.

- B. Receive Annual Investment Presentation from Walter Scott, Margaret Foley.

Margaret Foley was present on behalf of Walter Scott to provide an organizational and investment performance update.

VI. INVESTMENT INFORMATION

- A. NEPC – Allan Martin and Anthony Ferrera.
VCERA – Dan Gallagher, Chief Investment Officer.

1. Preliminary Performance Report Month Ending June 30, 2017.
RECOMMENDED ACTION: Receive and file.

After discussion by the Board, staff, and consultant, the following motion was made:

MOTION: Receive and file.

Moved by Wilson, seconded by Winter.

Vote: Motion carried

Yes: Bianchi, Fox, Foy, Hintz, Johnston, Sedell, Wilson, Winter

No: -

Absent: Goulet

VII. OLD BUSINESS

- A. Staff Response to Trustee Questions Regarding Proposed Fiscal Year 2017-18 Budget.
1. Staff Letter.

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Mr. Solis explained that this item was staff's response to Trustee Goulet's questions regarding the legal authority to depreciate assets and to follow published accounting standards. Mr. Solis stated California Government Code section 30200 tasks the State Controller as the entity that provides uniform accounting procedures conforming to Generally Accepted Accounting Principles (GAAP) and requires that VCERA follow GAAP and pronouncements issued by Governmental Accounting Standards Board (GASB). Mr. Solis also stated that Trustee Goulet had reviewed the letter and was satisfied with the explanation provided.

After discussion by the Board, the following motion was made:

MOTION: Receive and file.

Moved by Winter, seconded by Johnston.

Vote: Motion carried

Yes: Bianchi, Fox, Foy, Hintz, Johnston, Sedell, Wilson, Winter

No: -

Absent: Goulet

VIII. NEW BUSINESS

A. Fiscal Capitalization Policy.

RECOMMENDED ACTION: Approve.

1. Staff Letter
2. Fiscal Capitalization Policy Proposed (Redline).

Mr. Solis explained the recommendation to adopt a capitalization policy. Mr. Solis explained that historically, VCERA has expensed items due to past practice, individual dollar amount spent being less than \$25,000 and the absence of a capitalization policy. Also, VCERA has never made any major purchases, such as a new building. However, given the total cost of the new pension administration system and the fact that GASB standards require that intangible assets be accumulated and capitalized and, when placed in service, amortized over the estimated useful life, he believed it prudent to adopt a formal capitalization policy. Mr. Solis stated that the draft policy would have an individual asset purchase threshold of \$25,000.

Mr. Solis replied to several questions by trustees and stated that Trustee Goulet had reviewed the policy and requested a change to substitute "an individual" for the word "single" in the 3rd paragraph.

After discussion by the Board, the following motion was made:

MOTION: Approve with Corrections.

Moved by Hintz, seconded by Winter.

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Vote: Motion carried

Yes: Bianchi, Fox, Foy, Hintz, Johnston, Sedell, Wilson, Winter

No: -

Absent: Goulet

B. Recommendation to Approve Payment for Waiver of Recourse, Fiduciary Liability Insurance, FY 2017/18.

RECOMMENDED ACTION: Approve.

1. Staff Letter.

2. Binder of Insurance.

Ms. Webb said that this item was presented to Board on an annual basis for consideration. Ms. Webb said that the fiduciary liability insurance premium did not increase for 2017-18 fiscal year. The traditional \$100 waiver of recourse was added, which maximizes the effectiveness of the policy. Ms. Webb then reminded the Board that the \$100 payment could not be paid from the fund assets, so the cost necessarily would be divided equally among the trustees.

After discussion by the Board, the following motion was made:

MOTION: Approve.

Moved by Bianchi, seconded by Johnston.

Vote: Motion carried

Yes: Bianchi, Fox, Foy, Hintz, Johnston, Sedell, Wilson, Winter

No: -

Absent: Goulet

C. Quarterly Retirement Administrator's Report for April – June, 2017.

RECOMMENDED ACTION: Receive and file.

After discussion by the Board, the following motion was made:

MOTION: Receive and file.

Moved by Wilson, seconded by Bianchi.

Vote: Motion carried

Yes: Bianchi, Fox, Foy, Hintz, Johnston, Sedell, Wilson, Winter

No: -

Absent: Goulet

IX. CLOSED SESSION

**BOARD OF RETIREMENT
BUSINESS MEETING**

JULY 24, 2017

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- A. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION. INITIATION OF LITIGATION PURSUANT TO PARAGRAPH (4) OF SUBDIVISION (d) OF SECTION 54956.9. NUMBER OF CASES: ONE.

Chair Towner stated that the Board had two options at that point in the meeting, which were to enter into closed session then or to hear agenda items X through XIII, and then adjourn into closed session.

After discussion, the Board decided to continue to items “X. Informational”, “XI. Public Comment”, “XII. Staff Comment,”, and “XIII. Board Member Comment”, before adjourning into Closed Session.

X. INFORMATIONAL

None.

XI. PUBLIC COMMENT

None.

XII. STAFF COMMENT

Mr. Gallagher informed the Board that he had one speaker confirmed for the off-site Board Retreat and business meeting on September 25. He said that he and NEPC were working on securing a second speaker.

Mr. Gallagher also updated the Board about two upcoming investment manager due diligence visits. One was to Drive Capital in Columbus, and the other at Western Asset Management in Pasadena. He said these visits were tentatively scheduled for the last week of September and the first week of October, but scheduling was dependent upon the availability of senior personnel, particularly at Drive Capital. Mr. Gallagher then asked Board members to please let him know if any of them were interested in attending one or both visits.

Ms. Webb reminded the Board the SACRS 2017 Fall Conference scheduled for Nov. 14th through 17th in San Francisco, and that staff was able to secure rooms at the designated hotel. Ms. Webb informed the Board that typically July was the time when staff would present a New Business plan; however, a few items on the business plan she believed would be resolved or would notably be different in August when the Board had no scheduled meetings, so staff would be presenting it in September.

Trustee Wilson asked if staff had said at the previous board meeting that there was some kind of continuing education available.

Ms. Webb replied that staff does have a sexual harassment prevention course video provided by SACRS and that staff would be reviewing the trustee education report and contacting trustees who still needed to take the course.

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XIII. BOARD MEMBER COMMENT

None.

The Board Adjourned to Closed Session at 10:30 a.m.

XIV. ADJOURNMENT

The Chairman adjourned the meeting from closed session at 10:42 a.m.

Respectfully submitted,



LINDA WEBB, Retirement Administrator

Approved,

TRACY TOWNER, Chairman



September 11, 2017

Board of Retirement
Ventura County Employees' Retirement Association
1190 South Victoria Avenue, Suite 200
Ventura, CA 93003

SUBJECT: COUNTY REQUEST TO RELEASE CONFIDENTIAL ATTORNEY-CLIENT PRIVILEGED MEMORANDUM ON PENSIONABILITY OF MBPP AND TO POSTPONE ACTION ON MBPP UNTIL SEPTEMBER 25, 2017

Dear Board Members:

Background

On June 19, 2017, staff provided to the Board of Retirement a comprehensive staff memorandum outlining the history and details of MBPP and its pensionability under PEPR and the Board of Retirement's Resolution. The memorandum recommended exclusion of MBPP in pensionable compensation, due to deficiency in meeting PEPR criteria. At that time, the Board also received a confidential memorandum from outside Counsel. After discussion, the Board postponed action on MBPP until September 11, 2017 at the request of the County of Ventura to allow time for review and response to staff's memorandum.

On September 7, 2017, the County's Director of Human Resources responded to staff's memorandum, requesting the Board of Retirement reject staff's recommendation to exclude of MBPP from pensionable compensation. That response is provided. In addition, the County Human Resources Director Shawn Atin has indicated that at the September 11, 2017 meeting, he will be requesting that outside Counsel's confidential memorandum be released and made public and that the Board postpone action until September 25, 2017 to allow the County time to review it and respond.

Staff supports both of these requests. Counsel's memorandum responds to five (5) specific questions, one of which was **to identify specific changes that could be made to allow for future inclusion of MBPP and pay items like it.** Counsel responded, providing what staff considers a roadmap to successful inclusion.

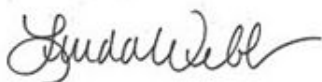
Nearly 45% of those currently receiving MBPP are PEPR members (up from 33% in September 2015). For some of these members, MBPP is a significant portion of compensation. If the

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County continues to resist making adjustments to MBPP to ensure compliance with PEPRRA and the Board's Resolution, these members are at risk for a notable disadvantage. Staff hopes that the release of Counsel's memorandum will clear the path for successful inclusion at some point in the future.

Staff will be pleased to answer any questions at the September 11, 2017 disability meeting.

Sincerely,

A handwritten signature in cursive script, appearing to read "Linda Webb".

Linda Webb
Retirement Administrator



June 19, 2017

Board of Retirement
Ventura County Employees' Retirement Association
1190 South Victoria Avenue, Suite 200
Ventura, CA 93003

SUBJECT: EVALUATION OF COUNTY OF VENTURA'S PROPOSAL OF A PUBLICLY AVAILABLE PAY SCHEDULE FOR MARKET BASED PREMIUM PAY (MBPP) AND REVIEW OF NEW INFORMATION ON MBPP SINCE BOARD ACTION OF OCTOBER 15, 2015

Dear Board Members:

On March 13, 2017, the Board authorized staff to conduct, in consultation with outside counsel, a further review of the County's most recent submission of a proposed publicly-available pay schedule of market-based premium pay ("MBPP") items and to examine new or additional information on MBPP obtained subsequent to the Board action of October 15, 2015 to settle the matter of its pensionability. Further, the Board requested further guidelines for inclusion/exclusion of discretionary pay items in pensionable compensation under PEPR.

Specifically, staff has considered the following questions/issues in regard to MBPP¹:

- 1) Has the County of Ventura complied with the VCERA Board of Retirement's request for a publicly-available pay schedule for MBPP?
- 2) Given the developments and additional information gathered or received since October 2015, are MBPP and other discretionary pay items within the Board's discretion to include in pensionable compensation under PEPR and the Board's Resolution? If yes, see Question #3 below. If no, see Question #4 below.
- 3) If it is permissible for discretionary pay items within a group or class, such as MBPP, to be included in pensionable compensation, what guidelines/parameters may be applied by the VCERA Board and staff to evaluate such pay items in the future?
- 4) If it is not permissible for discretionary pay items, such as MBPP, to be included in pensionable compensation, what specific changes could be made to allow for future inclusion?

Background/History

At its October 19, 2015 business meeting, the Board of Retirement of the Ventura County Employees' Retirement Association ("Board") took action on individual pay codes pursuant to its November 2014

¹ Staff's answers to questions begin on page 12 after analysis.

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resolution interpreting “pensionable compensation” under Government Code section 7522.34. That action identified pay codes to be included in, and excluded from, “pensionable compensation” applicable to VCERA members who first join the retirement system (without reciprocal eligibility) on or after January 1, 2013 (PEPRA members). The resulting addenda to the Board’s original Pensionable Compensation Resolution was provided to the County of Ventura after that meeting.

Prior to the Board’s adoption of both the original Resolution in 2014 and its addenda in October 2015, the County of Ventura advocated for market-based premium pay items (“MBPP”) to be included in pensionable compensation under PEPRA. While Counsel’s October 15, 2015 memorandum to the Board recommended exclusion of MBPP from pensionable compensation, it opined that exclusion was not expressly mandated by PEPRA. The Board ultimately included MBPP items, but as part of the action, the Board requested that the Ventura County Board of Supervisors create a publicly available schedule of MBPP pay codes, as required by PEPRA, by July 1, 2016.

Producing a publicly available pay schedule in response to the Board’s request proved problematic. The County submitted documents on three different occasions (4th time pending); for the first 2 submissions, the objective criteria originally presented to VCERA – date of hire - was missing. Date of hire was also dismissed in correspondence from the County as simply one of several things considered in granting MBPP. Later with the 3rd submission, County HR Director Shawn Atin stated that VCERA was placing too much emphasis on date of hire; this was confusing given the County’s prior characterization of date of hire as the primary objective criteria for MBPP the previous October.

The following reflects the 3 attempts by the County to publish a publicly-available pay schedule for MBPP:

- May 9, 2016: a list of the ten (10) MBPP pay codes and a matrix of non-MBPP earnings codes and the different categories of members, showing which categories have those codes included in pensionable compensation. (Attachment A)
- June 6, 2016: an update to the County Job Code & Salary Listing by Job Title showing a page insertion listing the job title/classifications eligible receive MBPP with the job codes, union, and MBPP range. (Attachment B)
- June 30, 2016: additional update to the Job Code & Salary Listing by Job Title to include a link to an alphabetical list of 161 employees, along with their dates of hire which range from 1979 to 2016. (Attachment C)

Staff was unable to report to the Board that any of the above listed submissions fulfilled the Board’s request. Specifically, the submissions lacked the requirements of the Board of Retirement’s Resolution to identify the conditions for payment and the means of identifying a similarly-situated group or class of employment.

Staff responded to the County that identifying individuals who receive MBPP does not adequately identify why their group was selected to receive it. Staff requested that if date of hire was not the criteria and basis by which those receiving MBPP were deemed to be “similarly situated members of the same group or class of employment”, an alternate objective criteria be provided.

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The County disagreed, responding after the June 6th posting that it believed its submission represented a good faith effort at full compliance. Then, on June 30th, the County added a list of the 161 employees in the job classifications eligible for MBPP with their hire dates – regardless of whether or not they actually received MBPP.

In September 2016, with a pending staff recommendation to the Board to reconsider MBPP as pensionable under its Resolution in absence of the required publicly available pay schedule, staff agreed to meet with County Human Resources to discuss the requirements of a publicly available pay schedule, and subsequently met twice for these discussions. During those meetings, Mr. Atin suggested that a potential solution would be for base pay ranges to be increased in the pay schedule with such increase bearing g an asterisk/footnote which explained that MBPP was paid in accordance with the MOA. Staff did not believe this would meet the requirement; however, the most recent submission uses this approach.

Recent Submission (Attachment D)

Human Resources recently proposed a different approach for providing a publicly available pay schedule for MBPP. They have provided materials to staff to illustrate the approach, which consist of the following:

- Expand the table on page 3 of the County of Ventura's Classification and Salary Listing document, to include 9 classifications whose employees are not receiving MBPP but eligible for it according to the MOA. (Previously, the table only included the 17 classifications where some or all employees received MBPP.)
- Insert the following notation/paragraph above the table:
**The classifications listed below have been designated eligible to receive Market Based Premium Pay (MBPP) per Section 622 of the Service Employees International Union (SEIU) Memorandum of Agreement (MOA). The top of each salary range has been increased by the hourly amount indicated below in the form of MBPP and will be paid in accordance to the provisions of the MOA.*
- For the positions for which the County has discretion to pay MBPP, the individual job descriptions documents would have nearly identical text added (only with specific maximum MBPP hourly amount indicated). The maximum amounts of the base pay ranges listed on the documents would be adjusted to accommodate the maximum possible amount of MBPP the County may choose to grant under the separate MOA agreement.

VCERA staff has reviewed this proposed approach, specifically in the context of the criteria for a publicly available pay schedule under Government Code 7522.34 and Resolution of the Board of Retirement of Ventura County Employees' Retirement Association (VCERA) Regarding Pensionable Compensation Determination.

Our difficulty in assessing the latest approach is that modifying a base pay range to include compensation not available to all who are similarly situated within the job classification seems to

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undermine the entire purpose of a pay schedule. From staff's perspective, such an approach implies that the additional compensation provided to particular individuals is available to other similarly situated employees, which is not the case. Put simply, staff cannot reconcile how discretionary pay components can be listed in a schedule or document designed for describing objective criteria when the pay items themselves are not, by nature, objective.

Further, extending the base pay range for only some within a classification seems in conflict with the MOA's Sections 516 – 519, which describe the conditions for salary increases under specific conditions based on performance, and consisting of approximately 5% within the range. (See Attachment M.) Because the Board requested that staff work with the County on reaching a resolution, VCERA looked at the data closely to try to detect patterns; in reviewing that data, the original concerns and arguments against inclusion of MBPP intensified as the data showed multiple applications of MBPP that were contrary to the information submitted by the interested parties to the Board in 2015.

The Board's MBPP Decision: Then and Now

During the 2015 review, Counsel agreed with VCERA staff that inclusion of MBPP and discretionary pay items in general was problematic under both PEPRRA and the Board's Resolution, and thus, recommended exclusion. However, Counsel's memorandum opined that because exclusion was not absolutely mandated by PEPRRA, the Board of Retirement had discretion to include as pensionable. This conclusion was based largely on information provided by stakeholders, which asserted:

County of Ventura

- The date of hire determined receipt of MBPP, and commonality in hire date ranges constituted "similarly situated".

SEIU

- The conditions for payment of MBPP are clearly defined, and not flexible;
- MBPP items are established and/or modified based on a mathematical calculation triggered by the market average pay rate for comparable classifications issued through a periodic labor market survey report from the Hospital Association of Southern California ("HASC study");
- MBPP is issued to all employees in a County classification, including both existing employees and new hires. Further, the HASC study is an external factor, thus removing any risk of arbitrary payment;
- Reduction or discontinuation of MBPP may only occur if the total hourly rate (base plus MBPP) paid to an employee exceeds the market average pay rate by more than 5%.

In the course of reviewing the County of Ventura's pay schedule submissions, VCERA conducted a more thorough analysis of payroll data and made additional inquiries of HR to determine how MBPP was being administered. As a result, staff cannot ignore apparent conflicts between the actual administration of MBPP and the information provided and available to the Board in October 2015. Taken with the compelling data indicating the application/payment of MBPP currently and over time, the conflicts become even more problematic. Much of this information – particularly the data of how MBPP is paid in actuality - was certainly not available to SEIU when its feedback was submitted. In

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short, SEIU's understanding of how MBPP is paid and administered by the County of Ventura appears inconsistent with the manner in which the County is actually administering the benefit.

Inconsistency #1: Date of Hire

It is now clear that the date of hire criteria does not directly correlate with receipt of MBPP. In fact, subsequent to the Board's action in October 2015, the County has retreated from its initial position that date of hire was the primary objective criteria for determining eligibility for MBPP. This may be in part from personnel changes; staff initially worked with Assistant County Executive Officer Paul Derse, who retired in January of 2016. He served as the County's point of contact, and met with VCERA staff and spoke to the Board on MBPP in open session on separate occasions. After the Board's October 2015 action, incoming Human Resources Director Shawn Atin became the primary point of contact for submission of the requested pay schedule.

In 2015, Assistant CEO Derse related that payment of MBPP was based on date of hire of a particular individual, which served to establish a similarly-situated sub group or class eligible to receive MBPP payment within a given job title. (See Attachment H) A comprehensive review of payroll data of how MBPP is actually paid to employees across job classifications, however, provides no clear connection between receipt of MBPP and hire dates. (See Attachment L.)

Mr. Atin's statements and explanations about MBPP in Board meetings and in his written correspondence do not conflict with staff's findings, but they present a noted departure from the statements and explanations made by his predecessor Mr. Derse in 2015. Mr. Atin asserts that MBPP is indeed discretionary, but that this does not preclude it from being pensionable under PEPR. He has reasoned that base pay itself is discretionary, as the employer has discretion to place an employee anywhere within the posted range; and because the County sees MBPP to be "akin" to base pay, its discretionary nature is not a hindrance to pensionability.

Inconsistency #2: Lack of Defined Process

The results of the independent HASC study (to which the County subscribes) were credited by SEIU as the trigger for MBPP adjustments; however, the data does not support this in either timing or substance. Rather, while application/payment is typically applied to all in a classification at establishment of a pay item (though not always), modifications to an existing MBPP do not appear to trend towards the post-HASC study period. In fact, the data shows no common time for MBPPs to increase for existing employees, and our feedback from HCA staff indicates that MBPPs may be added or modified at an individual level at any time or as needed, without a tie to the study.

In its stakeholder feedback (Attachments I and J), SEIU referenced Section 622 of the SEIU Local 721/County Memorandum of Understanding, which describes the terms for MBPP. Section 622, which refers to the premium pay as a "recruitment and retention bonus," references a market study. However, the study in no way binds the County in regard to the payment of MBPP. So while the statement that MBPPs are reviewed in light of the study's results is likely correct, the results do not trigger any automatic increases or decreases in MBPP. Market studies may be used or disregarded at the County's discretion. HCA also indicated that in practice, the study is just one of many factors

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considered, and that conditions such as a budget shortfall or surplus, or a potential resignation or retirement of a valuable employee (retention) can trigger action on MBPP.

This information seems to undermine SEIU's view of MBPP's "automatic" adjustment as a result of the HASC study. It should be noted that neither the HASC market study itself nor a report/summary of the results with the corresponding impact on MBPP payment are publicly available.

While the MOA used softer "may" language instead of stronger "shall" language, the consistency of MBPP's application (as submitted by SEIU) served to "shore up" the weaker language originally. Now, however, with the County's labeling of MBPP as discretionary and its clear exercising of that discretion on an employee-by-employee basis, it is clear that the softer "may" language prevails.

Inconsistency #3: Not Applied Universally

Further, the data does not support SEIU's description of how it understands MBPPs are to be paid and managed. Rather, the data undercuts the case that: 1) MBPP is paid to all in a job classification; 2) Adjustments in the amount of MBPP will apply to all receiving it; and 3) Eliminations or suspensions do not occur without a subsequent market study.

For more than half of the job classifications for which MBPP could apply, staff found no discernible pattern in the application of MBPP. That is, not all within a classification receive the pay, and among those who do, the amount or percentage of the payment is inconsistent. Staff examined not only date of hire, but also work location, longevity, and job assignments. Commonality in these other categories did not determine receipt of MBPP in the job classifications where only a portion of the population were paid MBPP. This is illustrated in Attachment L.

One example of this is the Therapist MBPP (THRST) which may be paid to any of the following 3 classifications: Senior Physical Therapist, Supervising Therapist II and Senior Occupational Therapist. These classifications became eligible for MBPP in 2008 when the code was established. Here is what the data showed in the most recent analysis (which is slightly more recent than the data shown in Attachment L):

Senior Physical Therapist

This classification has 21 employees with hire dates ranging from August 1990 to 2016. Of these, 3 are receiving MBPP in 3 different amounts, and their hire dates are 4/2001, 5/2011 and 2/2012. The first employee's MBPP has diminished over time, with 3 separate decreases; however, the decreases occur in 4 different months of the year, which would make the HASC study results an unlikely trigger. Also, employees hired within months of these 3 employees were not receiving MBPP.

Supervising Therapist II

This classification became eligible for MBPP in 2008. At that time, 3 of the 4 incumbent employees began receiving it, in 3 different dollar amounts. Over time, the rates for each have decreased on the dates indicated below, with the exception of Employee 1 who received a significant increase in MBPP

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January 2010 when the others did not.

	Hire date	Class. Hire	Sept 2008	Nov 2008	Aug 2009	Jan 2010
Emp 1	1/26/1981	Before 2008	\$3.91	↓ to \$3.67	↓ to \$2.97	↑ to \$5.50
Emp 2	2/12/1992	Before 2008	\$2.31	↓ to \$2.08	↓ to \$1.37	No change
Emp 3	10/4/1999	Before 2008	N/A	N/A	N/A	N/A
Emp 4*	10/31/1999	12/21/2014	\$2.48	↓ to \$2.25	↓ to \$1.56	No change

Note that Employee 4 began receiving MBPP as a Supervising Therapist I prior to promotion to Supervising Therapist II; at that time, no others in the “I” designation were receiving MBPP. In fact, an employee who was hired as a “I” the same day Employee 4 was promoted (12/21/14) has never received MBPP.

Senior Occupational Therapist

There are 13 in this classification and only 1 receives an MBPP of \$5.61 which began when the employee was hired in January 2017. None of the other existing employees began receiving MBPP at that time.

Inconsistency #4: Suspension of MBPPs – History and Practice

Historically, some MBPPs have been suspended once payment began. Some of these instances are evident in the information presented under the previous 3 inconsistencies and Attachment L. Employees in various job classifications have MBPPs stop, start, increase and/or decrease with no tangible trigger.

In its Position Statement dated October 2, 2015 and supporting Declaration, SEIU states:

“The payment of the MBPP to a particular classification is dependent upon an external factor —the going market rate paid to employees in comparable positions in local hospitals and private pharmacies. That external factor is documented in the HASC survey, which means that the payment cannot be and is not made to employees for arbitrary reasons such as nepotism, favoritism or to enhance their retirement benefit.” [Emphasis added]

In fact, when MBPPs were established in 2003 through the Ventura County Board of Supervisors, it was specified that premium pay “... can be reduced or eliminated if market conditions change.”

However, despite this description and SEIU’s understanding that the HASC study is the exclusive determining factor, the seemingly random application from a payment perspective does not support this characterization of the role the study plays.

SEIU refers to the Declaration from Angela Portillo as its basis for describing the conditions under which MBPPs may be discontinued:

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“Once paid, the MBPP may only be reduced or discontinued in a classification if a certain external and verifiable condition is met —that the total hourly rate (base pay plus any MBPP) paid to the employee exceeds the market average pay rate by more than 5% plus the percentage value increase of the salary offsets set forth in Article 5, Section 502C of the MOU. (See Exhibit A to Portillo Declaration, Section 622, page. 27.) In such an event, the amount of the reduction shall only be that by which the total hourly rate exceeds the threshold value. (Id.)”

While the MBPP payment amounts may fluctuate in all of the eligible classifications, three (3) MBPPs that were suspended since they were originally established and paid:

- RADSPE – Radiologic Specialists
- RADTEC – Radiologic Technicians
- HISTO – Histologist

For the 2 radiology-related MBPPs, the MBPP suspensions appear to occur for everyone in a job classification at the same time. Radiologic Technicians’ MBPP stopped in June of 2007 and Radiologic Specialists’ stopped on May 18, 2008 – a date which also serves as the hire date into the position for around half of the current employees. The job family was apparently completely reworked during that time. If triggered by market factors, this would support the MBPPs being suspended in this way.

Conversely, for the Histologist MBPP, there were 2 employees whose MBPP was suspended – but those occurred nearly 2 years apart. One employee’s ended in October 2005 while the other’s ended in July 2007.

VCERA’s conclusion: if the suspension of MBPP was based on market conditions, the payment presumably would have stopped for all employees within a classification at the same time. Therefore, the facts set forth in the Portillo declaration do not comport with the payroll data.

Inconsistency #5: Market-Based Adjustments

One of the arguments presented by SEIU in 2015 was that MBPP is comparable to a Market-Based Adjustment (MBA), and because MBAs are pensionable, MBPPs should be as well. They point out that the MOA’s description of MBPP in Section 622 addresses the issue of market-based adjustments to base pay.

“Employees receiving a MBPP shall be excluded from the MBA studies set forth in Sec. 502B and shall not be eligible to receive any MBA.”

SEIU in 2015 quoted this language, and said the following:

“In the most recent cycle of bargaining (2013), SEIU Loca1721 and the County negotiated wage increases for current and future employees in two different ways: (a) general across-the-board salary increases, and (b) market based adjustments. (Portillo Declaration, ¶19.) To implement Section 502B of the MOU, which provides for the Market Based Adjustments, the County conducted a total compensation market based average study and thereafter gave Market Based Adjustments to certain classifications based on the parameters established in 502B (i.e.,

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whether a certain classification is paid 3% or less than the market average). (Id.) Employees receiving a MBPP were excluded from receiving the Market Based Adjustment raises, as it was understood by both parties that those receiving MBPPs were being brought to market rates via the MBPP. (See Id., Exhibit A, Section 622, page 27.)

It would be illogical to consider the negotiated general across-the board salary increases and the Market Based Adjustments pensionable, but to consider the MBPPs non-pensionable. (Portillo Declaration, ¶19.) Had the MBPP not been in effect already in a certain classification at the time that the 2013 Market Based Adjustments went into effect, the employees in the certain classification would have received the 2013 Market Based Adjustments. (Id.) Both the MBPPs and the Market Based Adjustments must be treated the same — as pensionable income.”

However, in contradiction to this, the last round of MBAs given in January 2017 were granted to all employees across entire classifications, including those already receiving MBPP. When VCERA pointed this out, the response from County HR indicated that payment of the MBA to those receiving MBPP was not accidental, but the result of a negotiation and that HR had failed to delete the “outlier sentence” in Section 622 prohibiting employees from receiving both. An email from County HR describes the payment of the MBA in this way:

“It is recognized that the single sentence that was carried over from the prior MOA in the fourth paragraph of Section 622 of the MOA would seemingly preclude those who are receiving the MBPP from receiving an MBA. However, that would not result in the employees receiving what was intended by the parties at the table. As is well established in Labor Relations, a contract is to be read not line by single line, but rather in total, so as to implement the true understanding of the parties at the table. In this instance, and in sharp contrast to the language found in 502-B of the prior MOA, the language I wrote (as approved by County Counsel) to create 502-B in the current MOA specifically provides that the MBAs be given not only to the subject classifications, but to all individuals employed therein...of great note is that there is no stated exclusion of those receiving the benefit of Section 622. Further, the MOA was costed and presented to the BoS as if all individuals within the classification were to receive the benefit, again, irrespective as to whether or not the individual also received MBPP.”

The restriction of receiving MBAs and MBPPs simultaneously was a primary SEIU argument for inclusion of MBPP as pensionable, but now this restriction has been lifted. –The lifting of the restriction without a corresponding update to the governing MOA – (to which VCERA has been referred repeatedly as the governing document for MBPP) is perhaps a further indication of the inconsistent treatment of MBPP.

Analysis

The Board’s Resolution provides with respect to the “publicly available pay schedule” requirement of section 7522.34, that the County’s adopted schedule must “Indicate[] the conditions for payment of

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the item of Pensionable Compensation, including, but not limited to, eligibility for, and the amount of each component of pay." (Resolution, p. 4, item 4(d), emphasis added.)

As described above, VCERA has repeatedly attempted to obtain a pay schedule from the County that complies with the Resolution's requirements. In response, the County has provided a list of County job titles that are eligible for the MBPP, as well as the names of those individuals (which is unwarranted) and dates of hire of those individuals, which the County now disclaims as of "limited value" with respect to the conditions for payment of the MBPP. The County has not, however, identified on any of its submissions to VCERA the objectively verifiable "conditions for payment" of the specified amounts to its employees in the listed job positions.

Further, staff has determined through analyses of the available data that not all County employees in particular job positions receive the same, or any, MBPP, and staff has been unable independently to discern a pattern that would support a conclusion that there is a particular "condition for payment" that results in similarly situated members being provided the same MBPP. As noted above, Attachment L to this memo shows that twenty (20) out of twenty-one (21) County employees in the Pharmacist II position receive a MBPP, and that such 20 employees, even with the same stated job assignments, receive different amounts from one another. Accordingly, objectively similarly situated members do not receive the same MBPP. That Attachment also shows that thirty-one (31) out of thirty-three (33) County employees in the Principal Respiratory Therapist position receive a MBPP, and that most of such 31 employees —with the same stated job assignments and no discernable differences in their job duties, work locations, collective bargaining units or other logical work-related grouping — receive different MBPP amounts from one another. This pattern of similarly situated members being paid different MBPPs, or no MBPP at all in some instances, exists as to many of the positions that staff has analyzed since the Board initially considered the information presented to VCERA prior to its adoption of the Resolution. In light of this data showing how the MBPP is in fact paid to VCERA members, and that no "conditions for payment" are uniform as to payment of the MBPP, the MBPP appears now not to be pensionable compensation under section 7522.34, as implemented by the Resolution.

In addition, the County has provided an MBPP "range" from \$0 to \$10, \$15, or \$25 in the proposed "pay schedule" it has provided to VCERA. Such a "range" is, by definition, not permitted to be pensionable compensation under the Resolution because (i) when the low end of a "range" is zero, then there is in fact no right to such a payment on a consistent, normal, basis by similarly situated members of the same grade or class; and (ii) there is no statement on the schedule as to the conditions that would warrant one amount within such range to be paid rather than another amount.

A key to inclusion in pensionable compensation, in addition to the County Board of Supervisors' adoption of a compliant "publicly available pay schedule," is that "similarly situated members" receive the payment. The statutory requirement is stated in paragraph 3(h) of the Resolution, which tracks section 7522.34, subdiv. (a) and subdiv. (c), paragraphs (10), (11) and (12), so as to exclude from pensionable compensation:

Bonuses that are not part of normal monthly rate of pay of the member and similarly situated members for full-time service during normal working hours pursuant to publicly available pay schedules (including, but not limited to, special non-essential skills bonus; temporary promotion bonus; productivity bonuses; discretionary or temporary special assignment bonuses).

As discussed above and shown in Attachment L, members in seven (7) of the job positions the County identified as receiving MBPP receive differing dollar amounts of MBPP without any identified objective condition for payment warranting those differences other than that the County chose to pay the members different amounts, which qualifies those items as discretionary bonuses, not pensionable compensation. Of note, the California Public Employees' Retirement System has proposed a regulation that defines "group or class of employment" for purposes of interpreting the "similarly situated members" rule as "a number of employees considered together because they share similarities in job duties, work location, collective bargaining unit, or other logical work-related grouping."² Further, it states that "[o]ne employee may not be considered a group or class." Also, a very recently published court of appeal decision interpreting the "similarly situated member of a group of class of employment" requirement for pensionability as applied to CalPERS before PEPRAs contrasted that statutory requirement with a longevity performance stipend that "required individualized, discretionary determinations and therefore was not available to all similarly situated members of the class." *DiCarlo v. County of Monterey*, Sixth District Court of Appeal Case No. H041400 (cert. for publication June 5, 2017) (p. 7).³ The same variability of a performance-based stipend applies to the MBPP in its current form.

Summary

Since the Board took its October 2015 action, a good deal of new or additional information on the nature of MBPP has been developed. This information came to light primarily as VCERA followed the Board of Retirement's direction to assist the County fulfill the request for a publicly-available pay schedule. Subsequent discussions, memorandums, emails, and data queries suggest that information available to the Board in 2015 was incomplete – and in some cases, incorrect. Nearly all of the supporting arguments presented by SEIU and the County in 2015 have been unsupported by either the payroll data or subsequent communication and information.

-
- ² CalPERS' regulatory process regarding its implementation of PEPRAs in or about 2013, and the proposed regulation regarding pensionable compensation was considered most recently by its Pension and Health Benefits Committee on March 14, 2017. A copy of that proposed regulation is attached hereto as Exhibit 1, and is available at <https://www.calpers.ca.gov/docs/board-agendas/201703/pension/item5-01.pdf>. Once adopted, it would add Article 4, Section 571.1 of Chapter 2 of Division 1 of Title 2 of the California Code of Regulations.
- ³ Government Code section 20636, subdivision (c)(2) that was considered in *DiCarlo* provides in pertinent part: "Special compensation shall be limited to that which is received by a member pursuant to a labor policy or agreement or as otherwise required by state or federal law, to similarly situated members of a group or class of employment that is in addition to payrate."

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In hindsight, had all of this information been available in October 2015, we believe that MBPP would have been more aptly placed in the "situational" category, rather than "recommend exclusion". The situational category (Exhibit 5 from October 2015) contained codes the Board excluded in absence of pay code distinctions because the codes were being used for both situations that were deemed pensionable, and for situations that were not. An example is bilingual pay which would be pensionable under PEPRA if required for the position, but not pensionable if not a requirement.

Conclusion

Given these facts and the comprehensive information now available regarding the nature and payment of MBPP, staff has reached the following conclusions on the above-referenced questions:

1) *Has the County of Ventura complied with the VCERA Board of Retirement's request for a publicly-available pay schedule for MBPP?*

ANSWER: No, the County has not complied with the Board request for a publicly available pay schedule, as that term is defined by applicable law and the Resolution, for MBPP.

2) *Given the developments and additional information gathered or received since October 2015, are MBPP and other discretionary pay items within the Board's discretion to include in pensionable compensation under PEPRA and the Board's Resolution? If yes, see Question #3 below. If no, see Question #4 below.*

ANSWER: No, the Board does not have the discretion to include MBPP in pensionable compensation because MBPP is not provided to similarly situated members of the same group or class of employment. Rather, MBPP items are discretionary bonuses not provided to similarly situated members of the same group or class, and a publicly available pay schedule has not been provided that complies with applicable law as implemented by the Resolution.

3) *If it is permissible for discretionary pay items within a group or class, such as MBPP, to be included in pensionable compensation, what guidelines/parameters may be applied by the VCERA Board and staff to evaluate such pay items in the future?*

ANSWER: Not applicable

4) *If it is not permissible for discretionary pay items, such as MBPP, to be included in pensionable compensation, what specific changes could be made to allow for future inclusion?*

ANSWER: MBPP would be within the Board's discretion to include in pensionable compensation under PEPRA and the Board's Resolution only if it were in fact part of the normal monthly rate of pay for a member and provided on the same terms to all other similarly situated members, e.g., those with similar job duties, work locations, collective bargaining units or other logical work-related grouping, and provided that the County adopted a publicly available pay schedule indicating the conditions for payment of the MBPP, including, but not limited to, eligibility for, and amount of each component of pay, and such conditions are able to be verified objectively by VCERA, rather than varying on a discretionary basis between otherwise similarly situated members. That publicly available pay schedule would of course also need to be consistent with labor policies or agreements applicable to the impacted members.

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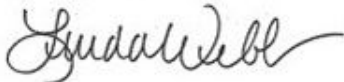
Final Comments and Recommendation

As VCERA has communicated to both the County and SEIU, we recognize the need to recruit and retain employees to perform vital services – and MBPP serves as an effective tool in that regard. ***In no way does VCERA oppose the payment of MBPP to eligible employees; we simply are seeking to apply both the law and the Board of Retirement's Resolution to determine pensionability under PEPRRA.***

RECOMMENDED ACTION: EXCLUDE MBPP FROM PENSIONABLE COMPENSATION DUE TO DEFICIENCY IN MEETING PEPRRA CRITERIA.

Staff will be happy to answer any questions on this item at the June 19, 2017 business meeting.

Sincerely,



Linda Webb
Retirement Administrator

Attachments:

- Attachment A: COV P.A.P.S. Submission of May 9, 2016
- Attachment B: COV P.A.P.S. Submission of June 6, 2016
- Attachment C: COV P.A.P.S. Submission of June 30, 2016 w/Cover Letter
- Attachment D: COV Pending Proposed P.A.P.S. Submission
- Attachment E: Memorandum from Webb to Atin July 14 2016
- Attachment F: Memorandum from Atin to Webb Aug 2016
- Attachment G: COV Pensionable Comp Feedback Memo Oct 2015
- Attachment H: Summary of Sept 23 2015 Meeting with COV
- Attachment I: SEIU Position Statement from Kerianne Steele
- Attachment J: Declaration of Angela Portillo, SEIU Worksite Organizer
- Attachment K: VCERA to COV on P.A.P.S. Jan 2016
- Attachment L: MBPP Payment Application Data
- Attachment M: MOA Sections 516-519
- Attachment N: HR Email of May 3 2017
- Attachment O: MBPP Summary Table

MARKET-BASED PREMIUM PAY ITEMS (COUNTY OF VENTURA)

EARNINGS CODE	EARNINGS CODE DESCRIPTION
CLS123	Clinical Laboratory Scientist I/II/III Premium Pay
HISTOL	Histologist Premium Pay
LPTAST	Licensed Physical Therapy Assistant
PHARM	Pharmacy Premium Pay
PRNRES	Principal Respiratory Therapist Premium Pay
PSYCH	Psychologist Premium Pay
RADSPE	Radiologic Specialist Premium Pay
RADTEC	Radiologic Technologist Premium Pay
SPEECH	Speech Pathologist Premium Pay
THRPST	Therapist Premium Pay

county of ventura

COUNTY EXECUTIVE OFFICE
SHAWN ATIN
Assistant County Executive Officer
Human Resources Director

June 06, 2016

Ventura County Employees' Retirement Association
Linda Webb
1190 S Victoria Avenue, Suite 200
Ventura, CA 93003

Re: Publicly Available Posting of the Schedule of Market Based Premium Payments

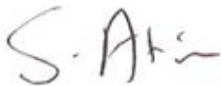
Linda,

Thank you for your correspondence to Mr. Powers dated January 29, 2016 regarding the Ventura County Employees' Retirement Association (VCERA) Board of Retirement Request for Publicly Available Schedule of Market-Based Premium Pay (MBPP) items wherein you requested that the County create a publicly available schedule of MBPP items, as required by PEPR, by July 1, 2016.

Please see the attached County of Ventura Job Code and Salary Listing by Job Title, which has been amended to include MBPP information for the pertinent job classifications. The listing is posted on the County's Internet site at <http://vcportal.ventura.org/CEO/HR/docs/classsalary.pdf>. We believe that this publicly available posting of the schedule of Market Based Premium Payments complies with the 2014 Resolution of the Board of Retirement of Ventura County Employees' Retirement Association Regarding Pensionable Compensation Determinations.

Should you have any questions or concerns, please do not hesitate to contact me at (805)654-2561 or by email at Shawn.atin@ventura.org.

Sincerely,



Shawn Atin
Assistant County Executive Officer
Human Resources Director

CC: Mike Powers
Leroy Smith
Board of Retirement, VCERA
Board of Supervisor, County of Ventura

attachment

Pensionable Compensation Included as Base Pay

For the following classification, salaries may be increased by the ranges shown below in the form of Market Based Premium Pay (MBPP) which shall be considered an element of Base Pay, and are reflected as such in the employees' hourly/biweekly rate:

Job Code	Job Title	Union	MBPP range
00164	Clinical Lab Scientist I	SEIU	\$0 - \$15
00165	Clinical Lab Scientist II	SEIU	\$0 - \$15
00166	Clinical Lab Scientist III	SEIU	\$0 - \$15
00825	Licensed Physical Therapy Asst	SEIU	\$0 - \$10
01451	Pharmacist I	SEIU	\$0 - \$25
01452	Pharmacist II	SEIU	\$0 - \$25
00755	Pharmacy Technician I	SEIU	\$0 - \$25
00756	Pharmacy Technician II	SEIU	\$0 - \$25
01882	Principal Respiratory Therapst	SEIU	\$0 - \$15
00088	Senior Physical Therapist	SEIU	\$0 - \$10
01692	Senior Psychologist	SEIU	\$0 - \$15
05233	Senior Psychologist-NE	SEIU	\$0 - \$15
00149	Senior Speech Pathologist	SEIU	\$0 - \$10
00136	Speech Pathologist	SEIU	\$0 - \$10
01802	Staff Psychologist	SEIU	\$0 - \$15
01249	Supervising Therapist I	SEIU	\$0 - \$10
01251	Supervising Therapist II	SEIU	\$0 - \$10



COUNTY EXECUTIVE OFFICE
SHAWN ATIN
Assistant County Executive Officer
Human Resources Director

June 30, 2016

Ms. Linda Webb
Ventura County Employees' Retirement Association
1190 S Victoria Avenue, Suite 200
Ventura, CA 93003

**RE: COUNTY OF VENTURA PUBLICLY AVAILABLE PAY SCHEDULE FOR
PENSIONABILITY OF MARKET BASED PREMIUM PAYMENTS**

Linda,

Pursuant to your letter to the VCERA Board of Retirement dated June 20, 2016, and the Board of Retirement's discussion of that same date, please find attached the County of Ventura's publicly available amended schedule of Market-Based Premium Payments (MBPP). The Schedule is incorporated into the County of Ventura Job Code and Salary Listing by Job Title which now includes, per your request, a link to the date of hire for all employees eligible to receive an MBPP. The employee dates of hire will be updated annually. The County's online posting regarding this matter can be found at <http://vcportal.ventura.org/CEO/HR/docs/classsalary.pdf>.

This amendment to include employee date of hire information is responsive to your request. However, we do not believe that the inclusion of the hire dates is necessary for compliance with the Board of Retirement's *"Resolution of the Board of Retirement of Ventura County Employees' Retirement Association (VCERA) Regarding Pensionable Compensation Determination"*. Additionally, we believe that the hire date information will prove to be of limited value to the public and VCERA Administration for the reasons noted below.

The SEIU collective bargaining Memorandum of Agreement, for which a link has been included in the disclosure, explains that the amount of Market Based Premium Payments is contingent upon the changing labor market conditions. While the date on which an employee is hired will be a factor in the determination of the MBPP payment, it is by no means the only factor.

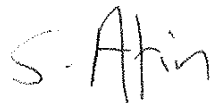
The specific skill set an employee brings to the County relative to the labor market scarcity for those skill sets is a key determinant to the amount of MBPP. Job classifications are general in nature, and employees perform specific duties within a classification. The County has approximately 1,300 job classifications and 9,000 employees; as a result, while all employees in a job classification may be eligible for an MBPP, the amount paid each employee may vary given the market demand for the skill sets they bring to the County at the time of hire.

On October 19, 2015, the Board of Retirement determined, after an in-depth review, that the MBPP is an item includible as pensionable compensation. The only remaining

actionable item was to make the schedule of MBPP publicly available; which we have now done. With that being said, we believe that too much emphasis has been placed by VCERA Administration on date of hire in their review of the MBPP.

Should you have any questions or wish to discuss this matter further, please do not hesitate to contact me at (805) 654-2561 or by email at Shawn.Atin@ventura.org

Sincerely,

A handwritten signature in black ink that reads "S. Atin". The signature is written in a cursive, slightly slanted style.

Shawn Atin
Assistant County Executive Officer
Human Resources Director

CC: Michael Powers, County Executive Officer
Board of Retirement, VCERA

Enclosure

Employees Eligible to receive a Market Based Premium Pay (MBPP)

Name	Hire Date
Adelman,Thomas	3/31/2002
Alvarez,Marbeli	5/8/2016
Alvarez-Rittmaste,Monica	5/13/2002
Amburgey,Jamie Alexis Freeman	4/27/2014
Amini,Sheida	3/15/2015
Anspaugh,Rodger	7/2/2006
Anunwah,Jessica Flumunanya	9/27/2015
Archibald,Jeffrey Lee	1/6/2013
Ash,Morgan Lenzi	12/7/2014
Barcena,Kathrina Abdon	8/14/2005
Barrientos,Sandra I	10/3/2010
Bishop,Jenelle H	4/24/2016
Bloom,Guiana May Astadan	12/6/2015
Boghossian,Torri Jean	5/29/2002
Burciaga,Armando	3/17/2013
Burkhart,Caitlin Jeanne	12/14/2015
Cachu Andrade,Beatriz Elena	11/9/2014
Candara,Leon Claud	7/14/2013
Cash,Daniel Joseph	5/30/2010
Chan,Sharon Lee	4/10/2016
Comstock,Tonya Louise	6/8/2014
Conboy,Linda Elizabeth	5/7/2006
Contreras,Julia Christine	7/30/2009
Cox,Elizabeth Arlene	1/17/1989
Crenshaw-Upah,Katrina Yolanda	6/5/2016
Crismond,Lance	4/1/2015
Crouse,Philip A	5/18/2011
Cruz,Pitchie	6/15/2014
Curran,Christopher	12/2/2007
Dao,Tony	10/7/2013
Dinwiddie,Lori Amber	11/8/2015
Estrada,Jaime	11/24/2003
Evangelista Jr.,Francisco B.	1/11/2009
Fennell,Faith P	12/20/2015
Frias,Catherine Elydia	9/28/2014
Gallardo,Karen G	4/5/2015
Garcia,Alexandra Elizabeth Irene	7/25/2010
Gobran,Fadi Adel	10/12/2014
Godfrey,Ethel Jacosalem	5/26/2015
Gotwals,Kirk R.	4/5/2009
Gray,Scott Peter	1/27/2008
Greene,Susan	2/17/2015
Griffin,Natasha Marie	8/3/2014
Guthrie,Frances A	12/8/2013

Employees Eligible to receive a Market Based Premium Pay (MBPP)

Hackett, Vanessa Renee	3/12/2014
Hanin, Genine Ivy	11/7/1993
Hannah, Carol	10/5/1981
Hartson, Holly Frances	2/5/2001
Hickey, Cynthia Marie	2/19/2013
Hofius, James Gordon	2/5/2012
Hoppe, Ioulia A	11/30/2008
Hosford, Marion	1/2/1985
Jacobson, Brian E	3/3/2013
Janda, Richard C.	1/15/2012
Javaheri, Pejman	7/24/2011
Joaquin, Janene Renee	7/5/2015
Jung, Sul Ran	10/13/2009
Kadin, Jennifer Anne	5/29/2011
Kim, Lance Steven	6/23/2013
King, Shannon Patrice	10/15/2015
Klock, Suzann E	3/31/2013
Koester, David R	4/26/2015
Kuiken, Crystal Anna	5/15/2016
LaCroix, Jacob Stephen	5/1/2016
Landen, David Wayne	4/8/2007
Lata, Melissa Simonette Reyes	7/26/2015
Lau, Joanne S	1/4/2015
Lauron, Lori Go	3/29/2015
Leanos, Hector	4/22/2007
Lee, Corey B	11/3/2010
Livingston, Ronya Rafeedie	6/14/2015
LoneElk, Jessica Renee	1/4/2015
Lopez, Sandra	6/17/2013
Lougee, Bonni J	10/2/2011
Lyons, Wendy	9/25/2005
Madden, Amber Brook	4/19/2009
Mahmoudi, Rouhanguiz	2/22/2015
Mares, Ramiro	6/8/2014
Martinez, David E	11/9/2014
Mata, John	7/25/2010
McFarlane, Gilbert John	2/12/1995
Medina, Myra	7/31/2005
Mendoza, Oscar	5/30/2010
Mercy, Helena Elaine	5/31/2009
Meshreky, Samah S	4/5/2015
Mikhail, Amira A	4/18/2010
Miller, Jason B	2/5/2001
Milligan, Denise K	1/5/2014
Miyasaki, Debra Lynn	4/29/2001

Employees Eligible to receive a Market Based Premium Pay (MBPP)

Mongiello,Simone Alexandra	10/4/1999
Moody,Holly Ann	2/3/2013
Morrow,Michael Lee	10/5/2008
Moura,Janeane	4/7/2013
Munesato,Jeanne	9/18/1989
Myers,Christian D	9/19/2010
Nantes,Bella Balinos	6/4/2006
Newman,Audrey Juliana	3/31/2015
Nguyen,Aaron Quang	4/15/2015
Nicolas,Ricsan Sombilon	12/2/2015
Ninomiya,Kathleen	11/9/2003
Norman,Linda	11/28/2010
Obina,Niko Clemente	6/22/2014
O'Hea,Joseph Patrick	11/11/2012
Oliver,Jaime M.	1/22/2013
Omega,Crisane P.	10/2/2011
Oneill,Janette Reid	12/2/2002
Ontiveros,Joann	2/12/1992
Ota,Marjorie	9/17/2000
Palma,Maria Theresa	7/12/1998
Patel,Rajesh Tushar	1/22/2001
Patterson,Annette Jocelyne	11/11/2012
Pendleton,Sara Therese	8/18/2015
Perez,Concepcion	8/10/2008
Pimentel,Yvonne Roberta	11/18/2007
Preston,Wendy Lynn	7/16/2006
Raabe,Kevin Roy	6/9/2013
Ramirez,Alma Yanira	3/1/2015
Rentschler,Kevin S	11/24/2013
Riazzo,Rick	4/17/2011
Richmond,Johnny Mark	5/7/2006
Ritter,Carla Jean	10/31/1999
Robledo,Patricia	5/30/2010
Rodriguez,Marcos G	1/19/2014
Rodriguez,Pablo	9/17/2001
Russell,Keith Mathew	10/5/2011
Saekoh,Sandy	4/6/2013
Salgado,Audrey Marie	2/14/2016
Sampilo,Soledad	6/8/1992
Searles,Kelly R	12/20/2015
Sharma,Susan Davies	11/4/2007
Siegman,Scott Howard	3/17/2013
Sikula,Lacey Noelle	8/3/2014
Smith,Mary	1/26/1981
Smitherman,Elizabeth Esther	9/8/2015

Employees Eligible to receive a Market Based Premium Pay (MBPP)

Sotero,Jocelyn G	5/26/2003
Stark Jr.,Joseph Eric	3/17/2013
Stompe,Lauren Margaret	1/19/2016
Sweitzer,Vickie L.	2/8/2009
Takara,Tamara Pratummas	10/12/2014
Talabucon,Omar David	11/11/2012
Taylor,Georgina	8/30/1993
Tien,Kevin	6/23/2013
Tippett,Jennifer Marie	11/23/2014
Tokar,Cindy	8/13/1990
Tseng,Sheng-Wen	3/18/2012
Verboomen,Amanda Rae	10/19/2008
Vergel,Jennifer	9/15/2002
Villarreal,Jose Mauricio	1/20/2015
Walker Hill,Tricia Alicia	10/3/2010
Wall,Mercedes Manosca	5/24/1999
Weber,Rose Mary	8/22/2010
Weissman,Ellen Khamistos	9/21/2008
Williams,Kenneth Avery	3/19/2000
Winter,Craig J	10/4/2009
Wu,Ya-Whey	12/19/2011
Yoshida,Patti A	9/30/1979
Zaferis,Paul C	6/8/2014
Zanolini,Shanna	1/11/2009
Zarrabian,Simin	7/11/2010
Zavala,Baltazar Alonzo	10/23/2005
Zoll,Kevin Daniel	7/15/2007

**County of Ventura
C.E.O./Human Resources Division**



DRAFT FOR MBPP CHANGE

***PP 2016-22 Job Code & Salary
Listing by Job Title***

<u>Union</u>	<u>Barg Unit / VCHRP Union Cd</u>	<u>Description</u>	<u>Union</u>	<u>Barg Unit / VCHRP Union Cd</u>	<u>Description</u>
CJAAVC	CA / ACA CJ / ACJ	CJAAVC Non-supervisory CJAAVC Supervisory	SPOAVC	IT / SIT IU / SIU IV / SIV IW / SIW	SPOAVC Coronors SPOAVC Welfare Investigators SPOAVC Welfare Investigatrs-TC SPOAVC Welfare Investigatrs-TC
CNA	CN / NCN PD / NCP	California Nurses Assoc-CN California Nurses Assoc-PerDiem			
IUOE	OS / EOS	Intl Union of Op Engineers-OS	VCDSA	SD / DSD SE / DSE SS / DGS SS / DSS	VCDSA DA Inv Non-supervisory VCDSA DA Inv Supervisory VCDSA Sheriff's Non-sprvsry-GR VCDSA Sheriff's Non-sprvsry-SR
MGMT	CC / MCC	MGMT Confidential Clerical	VCPFA	FA / FCW	VCPFA Fire Control Workers (SR)
	MA / MMA	MGMT Agency/Dept Heads-GR		FF / FGF	VCPFA General Retirement
	MA / MSA	MGMT Agency/Dept Heads-SR		FF / FFF	VCPFA Safety Retirement
	MB / MB2	MGMT Asst Agency/Dept Heads			
	MB / MB3	MGMT Asst Agency/Dept Heads	VCPPOA	VP / PVP	VCPPOA / Probation Officers
	MB / MB4	MGMT Asst Agency/Dept Heads		VT / PVT	VCPPOA / Patrol Officers
	MS / MS2	MGMT Sheriff Safety Mgmt	VCSCOA	ST / CST	VC Sher Correct Ofrs Assoc-ST
	MS / MS3	MGMT Sheriff Safety Mgmt			
	MT / MT2	MGMT Fire Safety Mgmt			
	MT / MT3	MGMT Fire Safety Mgmt			
	MT / MT4	MGMT Fire Safety Mgmt	VEA	AA / VAA	VEA Appraisers & Assessors
	ME / MME	MGMT Management Elected-GR		PE / VPE	VEA Professional Engineers
	ME / MES	MGMT Management Elected-SR			
	UO / MU3	MGMT Other Unrepresented			
UO / MU4	MGMT Other Unrepresented	None	QNU	No Union Assigned	
SEIU	PC / UPC	SEIU Administrative Support	<u>FLSA Stat</u>		
	PH / UPH	SEIU Professional	N = Nonexempt (hourly rates)		
	PI / UPI	SEIU Maintenance & Labor-GR	P = Professional/Exempt (biweekly rates)		
	PJ / UPJ	SEIU Supervisory			
	PJ / UPK	SEIU Supervisory-Clin Coord			
	PT / UPT	SEIU Technical			
	WS / UWS	SEIU Non-supervisory Soc Wrkrs			
	/ UST	SEIU Student Workers			

CURRENT

Pensionable Compensation Included as Base Pay

For the following classification, salaries may be increased by the ranges shown below in the form of Market Based Premium Pay (MBPP) which shall be considered an element of Base Pay, and are reflected as such in the employees' hourly/biweekly rate:

Job Code	Job Title	Union	MBPP range
00164	Clinical Lab Scientist I	SEIU	\$0 - \$15
00165	Clinical Lab Scientist II	SEIU	\$0 - \$15
00166	Clinical Lab Scientist III	SEIU	\$0 - \$15
00825	Licensed Physical Therapy Asst	SEIU	\$0 - \$10
01451	Pharmacist I	SEIU	\$0 - \$25
01452	Pharmacist II	SEIU	\$0 - \$25
00755	Pharmacy Technician I	SEIU	\$0 - \$25
00756	Pharmacy Technician II	SEIU	\$0 - \$25
01882	Principal Respiratory Therapst	SEIU	\$0 - \$15
00088	Senior Physical Therapist	SEIU	\$0 - \$10
01692	Senior Psychologist	SEIU	\$0 - \$15
05233	Senior Psychologist-NE	SEIU	\$0 - \$15
00149	Senior Speech Pathologist	SEIU	\$0 - \$10
00136	Speech Pathologist	SEIU	\$0 - \$10
01802	Staff Psychologist	SEIU	\$0 - \$15
01249	Supervising Therapist I	SEIU	\$0 - \$10
01251	Supervising Therapist II	SEIU	\$0 - \$10

Designated classifications are eligible to receive these Market Based Premium Pays per Sect. 622 of the SEIU MOA or Sect 604 of the CNA PD MOA, which can be found at: http://vcportal.ventura.org/CEO/HR/MOA/docs/SEIU721_MOA_2013-2016_FINAL.pdf
http://vcportal.ventura.org/CEO/HR/docs/MBPP_eligible.pdf

PROPOSED

Pensionable Compensation Included as Base Pay

* The classifications listed below have been designated eligible to receive Market Based Premium Pay (MBPP) per Section 622 of the Service Employees International Union (SEIU) Memorandum of Agreement (MOA). The top of each salary range has been increased by the hourly amount indicated below in the form of MBPP and will be paid in accordance to the provisions of the MOA.

Job Code	Job Title	Union	Top of range increased by:
00164	Clinical Lab Scientist I	SEIU	\$15 hourly
00165	Clinical Lab Scientist II	SEIU	\$15 hourly
00166	Clinical Lab Scientist III	SEIU	\$15 hourly
00311	Histologist	SEIU	\$15 hourly
00825	Licensed Physical Therapy Asst	SEIU	\$15 hourly
01245	Occupational Therapist	SEIU	\$25 hourly
01451	Pharmacist I	SEIU	\$25 hourly
01452	Pharmacist II	SEIU	\$25 hourly
00755	Pharmacy Technician I	SEIU	\$15 hourly
00756	Pharmacy Technician II	SEIU	\$15 hourly
01335	Physical Therapist	SEIU	\$25 hourly
01882	Principal Respiratory Therapst	SEIU	\$15 hourly
00331	Radiologic Specialist I	SEIU	\$15 hourly
00332	Radiologic Specialist II	SEIU	\$15 hourly
00333	Radiologic Specialist III	SEIU	\$15 hourly
00334	Radiologic Specialist IV	SEIU	\$15 hourly
01453	Radiologic Technologist	SEIU	\$15 hourly
01671	Senior Occupational Therapist	SEIU	\$25 hourly
00088	Senior Physical Therapist	SEIU	\$25 hourly
01692	Senior Psychologist	SEIU	\$25 hourly
05233	Senior Psychologist-NE	SEIU	\$25 hourly
00149	Senior Speech Pathologist	SEIU	\$25 hourly
00136	Speech Pathologist	SEIU	\$25 hourly
01802	Staff Psychologist	SEIU	\$25 hourly
01249	Supervising Therapist I	SEIU	\$25 hourly
01251	Supervising Therapist II	SEIU	\$25 hourly

Designated classifications eligible to receive MBPPs per Sect. 622 of the SEIU MOA can be found at: http://vcportal.ventura.org/CEO/HR/MOA/docs/SEIU721_MOA_2013-2016_FINAL.pdf
http://vcportal.ventura.org/CEO/HR/docs/MBPP_eligible.pdf

Disability Meeting Agenda - VI.A. OLD BUSSINESS: DETERMINE COMPLIANCE OF COV'S PROPOSED PUBLICLY AVAIL. PAY SCHEDULE FOR MBPP

ZVHR0001.sqr Alpha
Pay Period: 2016-22

COUNTY OF VENTURA
(Pay Period: Beginning Date 09-OCT-2016 Ending Date 22-OCT-2016 Issue Date 28-OCT-2016)
Job Code & Salary Listing by Job Title

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Run Date: 10/19/2016
Run Time: 09:31:19

JOB CODE	DESCRIPTION	AT WILL	UNION CODE	FLSA STAT	BIWKLY OR NAHRRLY		APPROX MONTHLY		APPROX ANNUAL	
					MIN	MAX	MIN	MAX	MIN	MAX
00063	Child Spprt Svcs Specialist III		UPT	N	\$21.411155	\$27.135096	\$3,711.27	\$4,703.42	\$44,535.20	\$56,441.00
00064	Child Spprt Svcs Specialist IV		UPT	N	\$23.056937	\$29.175649	\$3,996.54	\$5,057.11	\$47,958.43	\$60,685.35
00635	Child Support Dist Spec I		UPC	N	\$15.806101	\$22.126100	\$2,739.72	\$3,835.19	\$32,876.69	\$46,022.29
00634	Child Support Dist Spec II		UPC	N	\$17.404693	\$24.372243	\$3,016.81	\$4,224.52	\$36,201.76	\$50,694.27
00633	Child Support Dist Spec III		UPC	N	\$18.701107	\$26.178557	\$3,241.53	\$4,537.62	\$38,898.30	\$54,451.40
00632	Child Support Dist Spec IV		UPC	N	\$21.512909	\$27.539644	\$3,728.90	\$4,773.54	\$44,746.85	\$57,282.46
00308	Circulating Operating Room Nrs		NCN	N	\$43.641100	\$59.616400	\$7,564.46	\$10,333.51	\$90,773.49	\$124,002.11
01771	City Librarian		UPH	N	\$27.194652	\$38.061926	\$4,713.74	\$6,597.40	\$56,564.88	\$79,168.81
00038	Civil Attorney I		MB4	P	\$2,558.782320	\$3,582.295520	\$5,544.03	\$7,761.64	\$66,528.34	\$93,139.68
00039	Civil Attorney II		MB4	P	\$3,265.814080	\$4,572.139600	\$7,075.93	\$9,906.30	\$84,911.17	\$118,875.63
01168	Civil Attorney III		MB3	P	\$4,030.075280	\$5,642.106320	\$8,731.83	\$12,224.56	\$104,781.96	\$146,694.76
00393	Civil Law Clerk		MB4	P	\$2,021.778320	\$2,830.489600	\$4,380.52	\$6,132.73	\$52,566.24	\$73,592.73
00191	Civil Service Commission Asst	Y	MB4	P	\$2,703.568160	\$3,784.995520	\$5,857.73	\$8,200.82	\$70,292.77	\$98,409.88
01272	Clerical Service Manager		MB4	P	\$2,057.561280	\$2,880.868160	\$4,458.05	\$6,241.88	\$53,496.59	\$74,902.57
01269	Clerical Supervisor I		UPJ	N	\$18.147331	\$25.391624	\$3,145.54	\$4,401.21	\$37,746.45	\$52,814.58
01270	Clerical Supervisor II		UPJ	N	\$19.951785	\$27.936135	\$3,458.31	\$4,842.26	\$41,499.71	\$58,107.16
01271	Clerical Supervisor III		UPJ	N	\$21.977409	\$30.784101	\$3,809.42	\$5,335.91	\$45,713.01	\$64,030.93
01273	Clerical Trainee		UPC	N	\$13.423095	\$16.059660	\$2,326.67	\$2,783.67	\$27,920.04	\$33,404.09
00395	Clerk Recorder	Y	MME	P	\$6,602.633760	\$6,602.633760	\$14,305.71	\$14,305.71	\$171,668.48	\$171,668.48
00201	Clerk/Recorder Prgrm Sprvsr I		UPJ	N	\$20.498908	\$26.166531	\$3,553.14	\$4,535.53	\$42,637.73	\$54,426.38
00202	Clerk/Recorder Prgrm Sprvsr II		UPJ	N	\$21.489249	\$29.725137	\$3,724.80	\$5,152.36	\$44,697.64	\$61,828.28
01440	Clinical Assistant I		UPT	N	\$12.682582	\$17.711467	\$2,198.31	\$3,069.99	\$26,379.77	\$36,839.85
01441	Clinical Assistant II		UPT	N	\$13.935953	\$19.512243	\$2,415.57	\$3,382.12	\$28,986.78	\$40,585.47
01748	Clinical Coord-Surgical Svcs		UPK	P	\$2,929.163600	\$3,844.477040	\$6,346.52	\$8,329.70	\$76,158.25	\$99,956.40
00164	Clinical Lab Scientist I *		UPH	N	\$22.242256	\$46.109568	\$3,855.32	\$7,992.33	\$46,263.89	\$95,907.90
00165	Clinical Lab Scientist II *		UPH	N	\$26.241656	\$51.840132	\$4,548.55	\$8,985.62	\$54,582.64	\$107,827.47
00166	Clinical Lab Scientist III *		UPH	N	\$27.863785	\$54.076375	\$4,829.72	\$9,373.24	\$57,956.67	\$112,478.86
02044	Clinical Lab Scientist-PDP I		UPH	N	\$30.010901	\$30.010901	\$5,201.89	\$5,201.89	\$62,422.67	\$62,422.67
02045	Clinical Lab Scientist-PDP II		UPH	N	\$34.627962	\$34.627962	\$6,002.18	\$6,002.18	\$72,026.16	\$72,026.16
02046	Clinical Lab Scientist-PDP III		UPH	N	\$37.816812	\$37.816812	\$6,554.91	\$6,554.91	\$78,658.97	\$78,658.97
02047	Clinical Lab Scientist-PDP IV		UPH	N	\$41.598552	\$41.598552	\$7,210.42	\$7,210.42	\$86,524.99	\$86,524.99
01371	Clinical Nurse Manager		MB4	P	\$3,058.205280	\$4,495.850320	\$6,626.11	\$9,741.01	\$79,513.34	\$116,892.11
00280	Code Compliance Officer I		UPT	N	\$24.270798	\$34.034786	\$4,206.94	\$5,899.36	\$50,483.26	\$70,792.35
00281	Code Compliance Officer II		UPT	N	\$26.682288	\$37.420066	\$4,624.93	\$6,486.14	\$55,499.16	\$77,833.74
00282	Code Compliance Officer III		UPT	N	\$29.350513	\$41.158040	\$5,087.42	\$7,134.06	\$61,049.07	\$85,608.72
00103	Coder-Certified		UPC	N	\$28.821347	\$43.994555	\$4,995.70	\$7,625.72	\$59,948.40	\$91,508.67
01274	Collections Officer I		UPC	N	\$13.743489	\$19.204190	\$2,382.20	\$3,328.73	\$28,586.46	\$39,944.72
01275	Collections Officer II		UPC	N	\$15.430192	\$21.592300	\$2,674.57	\$3,742.67	\$32,094.80	\$44,911.98
01276	Collections Officer III		UPC	N	\$16.198081	\$22.664246	\$2,807.67	\$3,928.47	\$33,692.01	\$47,141.63
00043	Commander		MS3	P	\$5,084.549920	\$7,119.067760	\$11,016.52	\$15,424.65	\$132,198.30	\$185,095.76
09999	Commission/Board Members		QNU	N	\$1.000000	\$1.000000	\$173.33	\$173.33	\$2,080.00	\$2,080.00
01277	Communications Operator I		UPT	N	\$12.356324	\$17.277768	\$2,141.76	\$2,994.81	\$25,701.15	\$35,937.76
01278	Communications Operator II		UPT	N	\$13.937962	\$19.490769	\$2,415.91	\$3,378.40	\$28,990.96	\$40,540.80



CLINICAL LABORATORY SCIENTIST I

Class Code:
00164

Bargaining Unit: Service Employees
International Union

VENTURA COUNTY
Established Date: Aug 20, 2000
Revision Date: Aug 2, 2002

SALARY RANGE

\$22.80 - ~~\$31.89~~ **\$46.11** Hourly
\$1,824.13 - ~~\$2,551.36~~ **\$3,688.76** Biweekly
\$3,952.29 - ~~\$5,527.94~~ **\$7,992.33** Monthly
\$47,427.43 - ~~\$66,335.31~~ **\$95,907.90** Annually

DEFINITION:

Note: This classification is designated eligible for MBPP per Section 622 of the Services Employees International Union (SEIU) Memorandum of Agreement (MOA). The top of the salary range has been increased by \square 15/hour in the form of the MBPP and will be paid in accordance to the provisions of the MOA.

Agency: Health Care Agency

Under direction of the Pathologist and Laboratory Manager, to perform a variety of standardized chemical, microscopic and bacteriological tests for examination, obtaining data for use in the diagnosis and treatment of diseases; orient new employees; and, perform other related duties as required.

Distinguishing Characteristics:

Clinical Laboratory Scientist II differs from Clinical Laboratory Scientist I in that the latter is considered entry level to the Clinical Laboratory Scientist series, while the II is experienced and can work with less-direct supervision. These classes differ from Clinical Laboratory Scientist III/IV in that the latter provide supervision to a specialized area in the laboratory. Employees at the IV level with specialized certificates may be hired for special projects requiring specialized skills, knowledge and abilities.

EXAMPLES OF DUTIES:

Duties may include, but are not limited to the following:

- Performs a variety of tests in any or all of the fields of medical technology.
- Completion of technical testing/reporting in serology, blood bank, microbiology, hematology, chemistry, special chemistry and urinalysis.
- Performs venipuncture as required.
- Assists in maintaining the laboratory and equipment in a clean and orderly condition.
- Maintains basic records and operates the numerous pieces of electronic equipment.

QUALIFICATION GUIDELINES:

Knowledge, Skills, and Abilities:

Thorough knowledge of: the standardized tests performed in Hematology, Serology, Chemistry, Blood bank, Microbiology, Urinalysis.

Working ability to: perform all the above standardized tests; work cautiously and accurately; establish and maintain effective working relationships with others; work with and understand operation of technical equipment.

RECRUITING STANDARDS:

Education/Experience:

Clinical Laboratory Scientist I: No experience required

OTHER REQUIREMENTS:

Special Requirements:

Possession of a valid Clinical Laboratory Scientist, Clinical Chemistry Scientist, Clinical Microbiologist, Clinical Immunohematologist Scientist, or Clinical Hematologist Scientist license issued by the State of California Department of Health Services.

CLASS SPEC TITLE 7:

Reviewed: 1/23/13

VENTURA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

1190 South Victoria Avenue, Suite 200
Ventura, CA 93003-6572

(805) 339-4250 • Fax: (805) 339-4269
<http://www.ventura.org/vcera>

July 14, 2016

Shawn Atin, Human Resources Director
Hall of Administration L1970
800 South Victoria Avenue
Ventura, CA 93009

**SUBJECT: COUNTY OF VENTURA PUBLIC POSTING OF INFORMATION RELATED TO
MARKET-BASED PREMIUM PAYMENTS IN RESPONSE TO REQUEST FROM
BOARD OF RETIREMENT**

Dear Mr. Atin:

Thank you for your letter dated June 30, 2016 and the accompanying documents and public posting in response to the Board of Retirement's request.

In your letter, you indicated that you believe that too much emphasis has been placed by VCERA Administration on date of hire in our review of the Market-Based Premium Pay (MBPP). I would like to respond and also provide some background information that I believe will help explain why date of hire has been a focus for MBPP. Put simply, date of hire was the **only objective criteria** offered to VCERA by the County of Ventura for eligibility for MBPP during the 2015 discussions and feedback period.

Background

In your remarks to the Board of Retirement on June 20, 2016 you indicated that you did not participate during the analysis and discussions leading up to the October 2015 Board action on inclusion or exclusion of specific pay codes as pensionable compensation under PEPRA (Government Code section 7522.34 subdivision (a) ☐ pensionable compensation ☐). I hope the following background information will be of help.

Before the Board of Retirement took action in October of 2015 on pay code categories, the review and preparation process performed by staff and outside Counsel involved feedback from the County of Ventura and other stakeholders. At that time, VCERA staff and Counsel were in agreement with the County on the majority of pay codes in terms of pensionability under PEPRA. So, the discussions were focused on the remaining categories of disagreement. On September 23, 2015, a formal discussion took place, and MBPP was discussed at length.

VCERA explained that there were three (3) main "sticking points" preventing a recommendation to the Board of Retirement that MBPP be included in pensionable compensation.

- 1) Both the definition and the application of the codes appeared contrary to "not only to the member but also to similarly situated members of the same group or class of employment," and "for services rendered on a full-time basis," and "for services rendered during normal working hours" in the BOR Resolution because no objective basis was identified by which similarly situated members of the same group or class would receive it.
- 2) The MBPP items have a discretionary component and may be withheld at a later date without a change in duties.

- 3) VCERA could not discount instances where the practical application of codes appeared contrary to the purpose/definition provided. (Example: of the 21 Senior Physical Therapists, only 2 were receiving MBPP. Conversely, of the 34 Principal Respiratory Therapists, all but 2 were receiving MBPP.)

We asked for some sort of **objective** criteria as a basis by which those receiving MBPP could be considered "similarly situated members in the same group or class of employment." The only one given was date of hire; or more specifically, that the market forces in effect on the date of hire determined who was eligible to receive MBPP. VCERA and Counsel's perspective was that such a basis did not meet the test; the County believed it DID meet the test. (That meeting summary is attached, supporting this basic area of disagreement.¹)

So, at the October 19, 2015 meeting, VCERA recommended exclusion for MBPP. County CEO Michael Powers submitted a formal letter for that meeting. In it, in regard to this disagreement on MBPP he said:

"VCERA's explanation is that these payments are based solely on an employee's date of hire, and date of hire is not a similarity that can be considered in determining whether an employee is part of a group of 'similarly situated employees.' The County disagrees with this analysis."

When the Board of Retirement took action on MBPP, it accepted COV's argument that date of hire could be enough of a basis to pass the "similarly-situated group or class" test. However, the MBPP language in the MOAs (which the Board had previously deemed acceptable as a publicly-available pay schedule) did not have information on date of hire that would objectively identify the similarly situated group that would all be eligible to receive it. After a lengthy open-session discussion about the unavailability of the payment criteria in the MOU and the requirements of both PEPRA and the Board's Resolution, the Board of Retirement's took action to include MBPP while also requesting that the Board of Supervisors create a public available pay schedule for MBPP.

Summary of Events since the Board of Retirement Action

- **May 9, 2016:** I received an email from the Auditor-Controller's office that said the response to the Board of Retirement's request could be found at <http://www.ventura.org/auditor-controller/payroll-information> where we saw:
 - 1) a list of the ten (10) MBPP pay codes;
 - 2) a matrix of earnings codes and the different categories of members, showing which categories have those codes included in pensionable compensation (matrix did not include the 10 MBPP items.)
- **May 13, 2016:** I emailed Auditor-Controller Jeff Burgh that I planned to update the Board on May 16th, but that I did not believe the posting was what they were expecting to see. I suggested a schedule with either dollar amounts or percentages, position titles, effective dates, etc. and asked if he would like to update the posting. He indicated he would look into expanding the information.
- **May 20, 2016:** I met with Jeff to discuss this topic among others. I gave him a list of publicly-available pay schedule elements. He offered to pass that information on to your office.
- **May 31, 2016:** At your request, VCERA's Board Counsel Lori Nemiroff met with you and County Counsel so that you could better understand VCERA's posting expectations.

¹ Meeting summary was distributed to all attendees to allow for corrections; COV submitted no corrections.

- June 1, 2016: I emailed you, Ms. Nemiroff, County Counsel and Jeff Burgh to further clarify our understanding of the posting requirements, and suggested the CEO's office send VCERA a written request to ask what additional information VCERA believed was required for compliance.
- June 6, 2016: VCERA received your letter that County had responded to the Board of Retirement's request for a publicly available schedule of MBPP items, referencing an update to the County Job Code □ Salary Listing by Job Title at <http://vcportal.ventura.org/CEO/HR/docs/classsalary.pdf>.
- June 20, 2016: At VCERA's business meeting, I provided the Board with the County's June 6th response and communicated that staff believed the missing piece was still missing; to illustrate this, my letter listed elements of a publicly available pay schedule, showing each item as met except one:

d) Indicates the conditions for payment of the item of Pensionable Compensation, including, but not limited to, eligibility for, and amount of each component of pay;	Does Not Meet Criteria
Staff comment: The conditions for payment, which have previously been identified as the date of hire, is not provided in either the MOAs or the Job Listing table. The date of hire is what has been presented as the distinction/establishment of the sub group or class who are eligible to receive the payment within a given job title. Receipt of a pay item cannot in itself be the only criteria for establishing a similarly situated group or class.	

VCERA Counsel supported this analysis in a letter to the Board, saying, *□The value of this information in order for VCERA to be able to monitor, and correct, improper inclusions of discretionary ad hoc pay items in pensionable compensation should not be understated.□*

When addressing the Board on June 20th, you indicated your office believed the posting represented a good faith effort at full compliance. After discussion, you said you would take the most recent information to your Counsel and respond via a communication.

- June 30, 2016: I received your communication that, responsive to my request, the Job Code and Salary Listing by Job Title now includes a link to the date of hire for all employees eligible to receive an MBPP (<http://vcportal.ventura.org/CEO/HR/docs/MBPP□eligible.pdf>). The 2-column table provides an alphabetical list of 161 employees, along with their dates of hire which range from 1979 to 2016.

Your letter said you believed this addition to be of little value and VCERA Administration had placed too much emphasis on date of hire. You further stated, *□While the date on which an employee is hired will be a factor in the determination of the MBPP payment, it is by no means the only factor.□*

Current Challenge

We do not believe the COV's June 30th posting of the MBPP-eligible individuals and their dates of hire answers the *□conditions for payment□* question. In your letter, you discount the original 2015 date of hire criteria and further suggest that changing labor market conditions and employee skill sets weigh more heavily in MBPP eligibility.

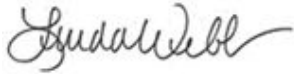
Request for Clarification and Additional Information

Identifying the individuals who are receiving the benefit does not adequately identify why their group was selected to receive it. It appears that the County of Ventura is now agreeing with SEIU (letter attached) in which they state, *□[The employees'] date of hire does not determine the MBPP□* If this is the case, and date of hire is not the criteria and basis by which those receiving Market-Based Premium

Pay (MBPP) are deemed to be "similarly situated members of the same group or class of employment," then we ask for an alternate objective criteria to be provided. If you disagree with SEIU on this point, then please indicate the date ranges on which market conditions warranted eligibility for MBPP for employees entering employment in those particular classifications. As we have stated, **receipt** of MBPP cannot in itself be the criteria.

Staff will be updating the Board of Retirement about this issue at the July 18, 2016 Business meeting.

Sincerely,



Linda Webb
Retirement Administrator

CC: Michael Powers, County Executive Officer
Board of Retirement, VCERA

Enclosures:

- (1) Summary of September 23, 2015 meeting of representatives of VCERA, Nossaman, LLC (VCERA Outside Counsel) and the County of Ventura
- (2) October 2, 2015 Letter from Kerianne R. Steele, attorney for SEIU, Local 721, with accompanying Declaration from Angela Portillo, SEIU worksite organizer



COUNTY EXECUTIVE OFFICE
SHAWN ATIN
Assistant County Executive Officer
Human Resources Director

August 22, 2016

Ms. Linda Webb
Ventura County Employees' Retirement Association
1190 S Victoria Avenue, Suite 200
Ventura, CA 93003

RE: Market Based Premium Payments

Linda,

In your letter dated July 14, 2016, you requested clarification and additional information regarding the County of Ventura's (County's) position that market based premium pay ("MBPP") is included as pensionable compensation under the Public Employees' Pension Reform Act of 2013 ("PEPRA"). It is apparent that much confusion exists.

Your letter states that "[i]t appears that the County of Ventura is now agreeing with SEIU" that "date of hire does not determine MBPP." This statement implies that in the past the County took the position that the date of hire does determine MBPP. That is not correct¹.

The confusion may arise from a misreading of the County's October 13, 2015, letter to the Board of Retirement ("BOR"). The letter states that the County disagrees with "VCERA's explanation . . . that these payments are based solely on an employee's date of hire, and date of hire is not a similarity that can be considered in determining whether an employee is part of a group of 'similarly situated employees.'" It appears that VCERA has interpreted the County's letter as disagreeing with only the last clause of the quoted sentence. To clarify, the County disagrees with the first clause of the sentence. The County's position has never been that MBPP is based solely on date of hire.

As set forth in my letter of June 30, 2016, the County believes that date of hire is relevant, although not determinative, because MBPP is driven, in part, by labor market conditions at the date of hire. This, of course, is true for the determination of starting base salary for every employee. Indeed, this fact underlies our very assertion that MBPP should be considered a part of base salary for purposes of pensionable compensation under PEPRA.

You also ask for "an alternate objective criteria" if date of hire is not the basis for considering recipients of MBPP to be similarly situated members of the same group or class. There should be no dispute that employee job classification is another objective criteria. Thus, the only possible issue for VCERA is whether "similarly situated" employees receive MBPP. The County's view is that MBPP is simply an extension of base pay that is permissible under union contract(s) when the County determines the relevant

Linda Webb
August 22, 2016
Page 2

labor market dictates that the County increase base pay to recruit or retain qualified individuals in identified job classifications. This is essentially the argument the County made to the Board of Retirement in October 2015, and with which the BOR agreed.

Since that time, we have tried to meet your demands for evidence that MBPP is part of the County's publicly available pay schedule. I think it is fair to say that the MBPP is the most prominently publicized of all County payments. It appears to us that VCERA staff has now shifted gears and no longer focuses on the "publicly available" part of the test, but now challenges whether MBPP can qualify under any "pay schedule" at all.

We continue to believe that the pay range published for MBPP qualifies as a pay schedule for the same reasons the publication of the County's base salary ranges qualify. Just like placement on a salary range depends on the unique qualifications of the individual employee and market competition, so does the award of MBPP to a member of an eligible class. There is no requirement that employee' salaries, including increases due to market conditions, be determined by completely objective standards in order for them to be pensionable.

Sincerely,



Shawn Atin
Assistant County Executive Officer
Human Resources Director

CC: Michael Powers, County Executive Officer
Board of Retirement, VCERA

¹The County offers no opinion on the correctness or incorrectness of SEIU's positions in this matter, and none should be inferred.



COUNTY EXECUTIVE OFFICE
MICHAEL POWERS
County Executive Officer

October 13, 2015

Board of Retirement
Ventura County Employees' Retirement Association
1190 South Victoria Avenue, Suite 200
Ventura, CA 93003

J. Matthew Carroll
Assistant County Executive Officer

Paul Derse
Assistant County Executive Officer/
Chief Financial Officer

Catherine Rodriguez
Assistant County Executive Officer/
Labor Relations & Strategic Development

Shawn Atin
Human Resources Director

Dear Board:

At your Board's July 20, 2015 meeting, a preliminary report analyzing PEPRA pensionable compensation was submitted by your Retirement Administrator recommending feedback from stakeholders. Your report identified that of almost 500 pay codes analyzed by your staff, there is agreement between our offices on over three quarters of the items analyzed, and discussions since that time have increased the number in agreement to over eighty percent. We sincerely appreciate the opportunity to work with Ms. Webb and her team to address these remaining differences, as well as your Board's willingness to consider the County of Ventura's (County) views on what types of pay constitute pensionable compensation.

As you know, the Board of Supervisors considers pensionable compensation to be base pay only, including items that are in the nature of base pay such as market based premium pay, Y-rate pay, and longevity-based range extensions that are routinely treated as base pay by the County. The Board of Supervisors has requested that your Board adopt this definition.

We understand that your Board intends to take a different approach in determining pensionable compensation, and has identified a set of criteria that it believes must be met for a category of pay to be included as pensionable. Specifically we understand VCERA intends to include all additional pay items that it deems to have been:

- a. Paid in cash;
- b. Paid to "similarly situated employees," further defined by VCERA as those employees who perform the same regularly assigned "normal" or "essential" job functions within a group or class of employment;
- c. Paid for services rendered on a full-time basis;
- d. Paid for services rendered during normal working hours;
- e. Paid pursuant to publicly available pay schedules;
- f. Not paid to enhance retirement benefits; and
- g. Not otherwise excluded by law.

Board, Ventura County Employees' Retirement Association
October 13, 2015
Page 2

VCERA has presented the County with its evaluation of each County pay code and its conclusion, based on the referenced criteria, as to whether the category of pay is included or excluded in pensionable compensation.

The County has analyzed VCERA's approach to pensionable compensation, including meeting with VCERA staff and VCERA attorneys in an effort to understand the proposed analysis and to communicate to staff additional information regarding various types of pay and the County's use of pay codes. Notwithstanding the different approaches taken by VCERA and the County in analyzing pensionable compensation, the County and VCERA agree in the majority of cases regarding which pay codes are included and excluded in pensionable compensation. In addition, the meetings disclosed certain areas that we are in agreement when originally it appeared we disagreed, including nurses' longevity pay which we agree should be included. However, we remain in disagreement regarding VCERA's decision to expand the scope of pensionable compensation, including the criteria used by VCERA to accomplish that purpose, and this disagreement has prevented us from agreeing with VCERA as to the proper treatment of a limited number of pay codes. Below is a summary of the outstanding areas of disagreement.

I. Items that VCERA Intends to Include in Pensionable Compensation

Assignment-Based Bonuses or Incentives: VCERA intends to include assignment-based bonuses as pensionable compensation, concluding that such compensation is pensionable because it is paid to all employees in a particular assignment for "normal" or "essential" job duties. In the County's view, the proposed inclusion of assignment-based pay is based on a misapplication of VCERA's own criteria. Duties performed during an assignment are not "normal" or "essential" because assignments are generally temporary in nature. The normal and essential skills for any particular job are set forth in the job classification; pay that compensates skills utilized for particular, temporary assignments is skill-based pay which is a form of special compensation. The County's position is that all forms of special compensation must be excluded from pensionable compensation. This is because pensionable compensation cannot exceed items in an employee's normal monthly pay or base pay, and special compensation is specifically defined as compensation in excess of an employee's normal monthly rate of pay or base pay. (Gov. Code, § 20636, subds. (b)(1) & (c)(1).) The County urges VCERA to reconsider the inclusion of assignment-based pay in pensionable compensation, and cautions that the

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Page 3

temporary and non-routine nature of assignment-based pay renders it especially susceptible to pension-spiking.¹

Education-Based Bonuses or Incentives: We agree that education-based incentives for degrees and certifications should be excluded from pensionable compensation. However, we disagree with VCERA's intention to include other education-based bonuses as pensionable compensation where it finds that such compensation is paid to employees for certifications and/or licenses that VCERA deems necessary for an employee's normal or essential job functions. Like assignment-based pay, education-based pay is a form of special compensation in excess of normal monthly rate of pay and base pay, and it should be excluded on that basis. (Gov. Code, § 20636, subds. (b)(1) & (c)(1).) Additionally, some of the proposed education-based pay VCERA has identified as pensionable does not meet VCERA's proposed criteria. For example, VCERA staff proposes that various certifications earned by nurses be included in pensionable compensation. However, these nursing certifications are compensated regardless of whether a nurse routinely uses or requires that certification for his or her job. As a result, these certifications should not be considered a normal or essential part of the employee's job functions. The County urges VCERA to reconsider the inclusion of education-based pay in pensionable compensation.

We also wish to inform VCERA that our office intends to begin working with our labor partners to further evaluate job classifications with regard to nursing certifications. As we hope you will agree, it is the Board of Supervisors' responsibility to change classifications if they determine that certain education-based incentives should be included in base pay.

II. Items that VCERA Intends to Exclude from Pensionable Compensation

Market-Based Salary Adjustments. VCERA staff has indicated that VCERA intends to exclude all market-based salary adjustments from pensionable compensation. Market – based salary adjustments are a significant component of an employee's base pay and

¹ The County believes that supervisory differential pay is not base pay but is instead assignment-based pay, and on that basis, the County agrees with VCERA's conclusion that supervisory differential pay should be excluded from pensionable compensation. The County is unable to reconcile VCERA's conclusion that assignment-based pay is includable in pensionable compensation but that supervisor differential pay (which is simply pay for certain temporary supervisory assignments) is not.

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are a practical and effective tool to ensure competitive compensation. VCERA's explanation is that these payments are based solely on an employee's date of hire, and date of hire is not a similarity that can be considered in determining whether an employee is part of a group of "similarly situated employees." The County disagrees with this analysis. Market-based salary adjustments are part of an employee's base pay and are routinely treated by the County as base pay in all payroll functions. As an item of base pay, market-based adjustments should be pensionable. Moreover, even using VCERA's test, the County believes that individuals who receive market-based adjustments and who share the additional commonality of being hired during the same time period can certainly qualify as a class of "similarly situated employees" such that their market-based pay should be included in pensionable compensation.

Y-rated Salary Adjustments. VCERA staff has indicated that VCERA intends to exclude Y-rated salary adjustments from pensionable compensation. On occasions when a job classification is reclassified to a lower level, an incumbent employee's salary is simply frozen at the original classification. The employee's base pay is not increased, but a potentially unexpected and/or unfair reduction to salary is avoided. As an administrative payroll convenience, a Y-rate salary code is used to track the difference between the frozen salary and the downward reclassified salary. Once the reclassified salary meets or exceeds the employee's frozen salary, the Y-rate code is eliminated. Y-rated codes are not susceptible to pension spiking as they do not represent any increase to pay and the circumstances surrounding this form of pay are rare.

VCERA intends to exclude Y-rated salary adjustments because the adjustment is not typically given to "similarly situated" groups of employees within a classification. The County does not agree that this is an appropriate basis upon which to exclude this form of base pay from pensionable compensation. Under VCERA's analysis, this would base the decision to include Y-rated salary adjustments on the number of employees, rather than base pay, such that whenever two or more employees in a job classification were Y-rated the pay would be pensionable, but otherwise it would not. The County, respectfully, does not support this position.

III. Items Requiring Further Analysis

Representatives from VCERA and the County have discussed a number of other pay codes over which they disagree, but for which further clarification from the County may resolve or at least narrow the disagreement. For example, there are numerous codes for bilingual pay in various positions. VCERA has indicated that where individuals are

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Page 5

required to be bilingual for their jobs or use their bilingualism as a normal part of their job functions, the bilingual pay should be pensionable. Currently, it is not clear from the pay codes whether bilingual skills are required or a normal part of an employee's job function. VCERA and the County also discussed holiday, night shift and call back pay. Like the bilingual pay codes, these pay codes do not indicate whether the pay is for required work or whether it is for time worked on a discretionary or ad hoc basis. The County will investigate revising the pay codes and/or job classifications to give more clarity on this issue.

Thank you for your continuing consideration on these important issues. If you have any questions please contact me at 654-2681 or Paul Derse at 662-6792.



Michael Powers
County Executive Officer

C: Board of Supervisors
Linda Webb, Retirement Administrator
Leroy Smith, County Counsel
Matt Carroll, Assistant County Executive Officer
Paul Derse, Assistant County Executive Officer/ Chief Financial Officer
Catherine Rodriguez, Assistant County Executive Officer/ Labor Relations &
Strategic Development

**SUMMARY OF MEETING OF SEPT 23 ON
PENSIONABLE COMPENSATION FOR PEPRA MEMBERS**

County of Ventura and VCERA are in agreement in the analysis of the pay codes in the majority of cases. For the codes on which there is disagreement, the County of Ventura (COV) and VCERA have a different approach to the concept of what is the "normal" monthly rate of pay or base pay of "similarly situated" employees of the "same group or class of employment," regarding the categorization of such sub groups. This plays out specifically in the following areas:

Attendees:

COV: Paul Derse, Garrick Leedy, Sharlene Matney & Ronda McKaig
VCERA: Linda Webb, Julie Stallings, & Shalini Nunna
NOSSAMAN: Ashley Dunning & Michael Toumanoff

Market-based premium pay codes

VCERA = exclude; COV = include

COV feels that this is essentially base pay of people who are paid this premium, and is applied as such on a practical basis. Specifically, COV noted that incentives that are percentage-based are calculated on the combination of salary and this premium pay, and they believe those who receive it should be deemed to meet the definition of "similarly situated" to one another. VCERA's administrative recommendation of exclude is based on the understanding that there is not a subgroup of "similarly situated" employees in the same grade or class who receive this premium pay; rather, the premium is based on date of hire of a particular individual, may be taken away without change of duties of that individual at any time, and may not be paid to the next person hired at a later date into the same job. VCERA does not believe that PEPRA's requirement that in order to be pensionable a pay item must be paid to "similarly situated individuals" should be interpreted to include premiums paid in addition to normal salary that are tied only to date of hire and are not necessarily paid to others hired into the position later.

Y-Rating

VCERA = exclude; COV = include

COV feels Y-rates should be included as part of the "base pay" of those who receive it. Generally, it is applied when a reclassification takes place and an entire group continues to be paid the same total compensation although the salary of their reclassified position has decreased resulting in different pay for those subsequently hired into the same position. VCERA's administrative recommendation to exclude is based on the understanding that there is not a subgroup of "similarly situated" employees in the same grade or class who receive the premium pay; VCERA staff brought up examples of when Y-rating is used where only one individual is impacted in a demotion situation.

Holiday

VCERA = exclude; COV = included

This was not discussed at length, but generally COV feels all holiday pay should be included as normal rate of pay, and VCERA considers this pensionable only if it's straight-time payment of holiday within an employee's schedule that is not FLSA pay, otherwise it is excluded by PEPRA as either compensation for overtime work other than FLSA, or as payments for additional services rendered outside of normal working hours, or as payments for compensatory time off, or as variable non-periodic payments that should not be pensionable compensation because they are subject to manipulation to enhance pensions. On the other hand, if it's a guaranteed payment for a certain number of holidays required to be worked per year in a particular unit, then it may be considered payments within normal working hours for individuals in the same group or class and on that basis could be pensionable. However, VCERA does not currently have information to support the conclusion that holiday pay as currently provided qualifies as pensionable compensation because it appears not to be paid on the same

normal and consistent terms to all similarly situated people in the same classes or grade. If it is provided in that manner and is non-discretionary, and also is not able to be accrued and cashed out, then the determination may be different.

Bilingual

VCERA = situational; COV = exclude

COV considers bilingual pay codes to be special compensation that in no event become part of the normal monthly rate of pay of its employees, and asserts they all should be excluded from pensionable compensation. VCERA considers these situational, based on whether or not this skill is a requirement or normal duty for all in the position or assignment such that the payment is made to all such similarly situated individuals in the same class or grade.

Assignment Pay & Assignment Bonuses

VCERA = include; COV = exclude

COV considers assignment pay codes (ex: motorcycle officers, bomb squad assignments, etc.) to be excludable based on it being an assignment from within a broader group of employees, and according to COV the assignment does not constitute a sub group. COV also said such assignments are potentially temporary, and view these as "extra" compensation. VCERA considers those who are similarly assigned who are receiving this pay to be "similarly situated" when there is an identifiable subgroup regularly assigned to a position (generally at least 1 year) with additional job-related responsibilities.

Supervisory Differential

VCERA = exclude; COV = include

VCERA believes it is conditional, in that it is lost when the subordinate's position is vacated or a subordinate receives lower pay than the supervisor's pay without this differential. Thus, it is temporary and not paid to an identifiable subgroup of similarly situated individuals within a class or grade. Initially, COV indicated they feel this to be part of the normal rate of pay; however, upon further discussion, they tentatively accepted VCERA's point regarding it being conditional.

Nurses' Certification Bonuses

VCERA = include; COV = exclude

VCERA believed these payments to be includable, as they appeared to be related to the duties being performed (ex: mental health certification while working in mental health unit, neo-natal certification when in that unit). The MOU language supports this conclusion. However, COV said that this certification is not applied this way, and that nurses who have various certifications receive this pay, regardless of where they are assigned. VCERA indicated they would follow up and research these types of codes further before finalizing a recommendation for the VCERA Board.

Items of Agreement Needing Adjustment

In some instances, COV agrees with VCERA on the analysis of codes, but the current practice does not reflect this. COV indicated they would follow up internally for these adjustments.

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DAVID A. ROSENFELD
WILLIAM A. SOKOL
BLYTHE MICKELSON
BARRY E. HINKLE
JAMES J. WESSER
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TRACY L. MAINGUY, Of Counsel
ANA GALLEGOS, Of Counsel
CHRISTIAN L. RAISNER, Of Counsel
SANDRA RAE BENSON, Of Counsel
THEODORE FRANKLIN, Of Counsel

- Admitted in Hawaii
- Also admitted in Nevada
- Also admitted in Illinois
- Also admitted in New York and Alaska
- Also admitted in New York and Michigan

October 2, 2015

VIA OVERNIGHT MAIL

Mr. Tracy Towner, Chairman of VCERA Board
and VCERA Board Members
c/o Ms. Linda Webb, Retirement Administrator
Ventura County Employees' Retirement Association
1190 South Victoria Avenue, Suite 200
Ventura, CA 93003

**Re: Service Employees International Union, Local 721's Position Statement
re Preliminary Report on PEPRRA Pensionable Compensation Analysis**

Dear Chairman Towner, Members of the Board, and Ms. Webb:

We are attorneys for the Service Employees International Union, Local 721 ("SEIU Local 721"). We submit this position statement on behalf of our client.

We respectfully request that the Ventura County Employees' Retirement Association ("VCERA") Board consider Market Based Premium Pay, Bilingual Pay, and Shift Differential Pay to be "pensionable compensation." Those pay codes meet the definition of "pensionable compensation" set forth in Government Code section 7522.34(a) and your November 17, 2014 Resolution implementing that Government Code section.

This position statement draws largely from the enclosed sworn written testimony of SEIU Local 721 Worksite Organizer Angela Portillo, who is familiar with the Memorandum of Understanding ("MOU") between SEIU Local 721 and the County of Ventura ("County") and has personal knowledge of the County's pay and scheduling practices.

I. MARKET BASED PREMIUM PAY

Contrary to the VCERA Staff's preliminary analysis, the Market Based Premium Pay ("MBPP") is *not* an "ad hoc payment" or "bonus." Also, the MBPP is to be paid at an equal rate to *all* employees in a specified classification regardless of an employee's date of hire.

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VCERA Board
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A. THE MARKET BASED PREMIUM PAY IS NOT AN AD HOC PAYMENT

Government Code section 7522.34 excludes from the definition of “pensionable compensation” “[a]ny one-time or ad hoc payments made to a member.” (Government Code section 7522.24(c)(3).)

“Ad hoc” means “for this” in Latin. Black’s Law Dictionary defines “ad hoc” as “for this; for this special purpose.” The term “ad hoc” is often used colloquially in connection with committees that form for a special purpose, and then disband after the purpose of the committee is fulfilled. The term “ad hoc” often refers to things more generally that are flexible or determined on a case-by-case basis.

There is nothing “ad hoc” about the MBPP. The conditions that must be met for a County classification to receive MBPP are clearly defined in advanced, and set forth in writing in the SEIU Local 721/County MOU. As Section 622 of the SEIU Local 721/County MOU provides, the Ventura County Health Care Agency (“VC HCA”) obtains a report from the Hospital Association of Southern California (“HASC”). (See Declaration of Angela Portillo (“Portillo Declaration”), ¶5, Exhibit A, Section 622, pages 26-27.) That report is a labor market survey of comparable positions in local hospitals and private pharmacies, which reflects whether a number of SEIU Local 721-represented classifications are underpaid compared to counterpart classifications elsewhere. (Id.) The MBPPs are reviewed in light of the results of that report. (Id.) VC HCA determines from the report if a MBPP is necessary to: (a) recruit new employees, and (b) retain existing employees by providing competitive wages. (Id.) If VC HCA determines that a MBPP is appropriate for a particular County classification – because the market average pay rate paid to the comparable classification in local hospitals or private pharmacies exceeds that which is paid to the County classification – then MBPP will be issued to *all* employees (that includes existing employees and any new hires) in the County classification. (Id.) For example, if the top of the County pay scale for a Speech Pathologist is \$35 an hour, but the HASC study determines that the 50th percentile of pay for speech pathologists across southern California is \$45, *all* County Speech Pathologists will receive a \$10 an hour MBPP in order to raise the total hourly wage to \$45. (Id.)

The payment of the MBPP to a particular classification is dependent upon an external factor – the going market rate paid to employees in comparable positions in local hospitals and private pharmacies. That external factor is documented in the HASC survey, which means that the payment cannot be and is not made to employees for arbitrary reasons such as nepotism, favoritism or to enhance their retirement benefit.

Once paid, the MBPP may only be reduced or discontinued in a classification if a certain external and verifiable condition is met – that the total hourly rate (base pay plus any MBPP) paid to the employee exceeds the market average pay rate by more than 5% plus the percentage value increase of the salary offsets set forth in Article 5, Section 502C of the MOU. (See Exhibit A to Portillo Declaration, Section 622, page. 27.) In such an event, the amount of the reduction shall only be that by which the total hourly rate exceeds the threshold value. (Id.)

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B. THE MARKET BASED PREMIUM PAY IS NOT A “BONUS”

Government Code section 7522.3(c)(10) excludes from the definition of “pensionable compensation” “[a]ny bonus paid in addition to the compensation described in subdivision (a).” (Government Code section 7522.34(c)(10).) MBPP is not a “bonus.”

Although the SEIU Local 721/County MOU inaptly refers to the MBPP in one sentence as a “recruitment and retention bonus,” it is not a “bonus” in the typical sense. (See Portillo Declaration, ¶8, Exhibit A, Section 622, page 26.) The same section of the MOU also refers to the payment as a “premium pay adjustment.” (Id.) That is the accurate way of describing the payment. (Portillo Declaration, ¶8.) The language of Section 622 of the SEIU Local 721/County MOU defines an employee’s total hourly rate to be the base pay plus any MBPP. (Id.) Therefore, the total hourly rate (base pay + MBPP) functions as the employee’s normal hourly rate of pay. (Portillo Declaration, ¶8, Exhibit B, redacted paycheck of a County employee who receives MBPP.)

The MBPP is treated by the County to be comparable to the Market Based Adjustment, which is indisputably pensionable income. (Portillo Declaration, ¶9.) The parties negotiated the Market Based Adjustment in 2013 to help bring the hourly wages of all SEIU Local 721 classifications to market levels. (Id.) Per Section 622 of the MOU: “Employees receiving a MBPP shall be excluded from the MBA [Market Based Adjustment] studies set forth in Section 502B [of the MOU] and shall not be eligible to receive any MBA.” (Id., Exhibit A, page 5.) In the most recent cycle of bargaining (2013), SEIU Local 721 and the County negotiated wage increases for current and future employees in two different ways: (a) general across-the-board salary increases, and (b) market based adjustments. (Portillo Declaration, ¶9.) To implement Section 502B of the MOU, which provides for the Market Based Adjustments, the County conducted a total compensation market based average study and thereafter gave Market Based Adjustments to certain classifications based on the parameters established in 502B (i.e., whether a certain classification is paid 3% or less than the market average). (Id.) Employees receiving a MBPP were excluded from receiving the Market Based Adjustment raises, as it was understood by both parties that those receiving MBPPs were being brought to market rates via the MBPP. (See Id., Exhibit A, Section 622, page 27.)

It would be illogical to consider the negotiated general across-the board salary increases and the Market Based Adjustments pensionable, but to consider the MBPPs non-pensionable. (Portillo Declaration, ¶9.) Had the MBPP not been in effect already in a certain classification at the time that the 2013 Market Based Adjustments went into effect, the employees in the certain classification would have received the 2013 Market Based Adjustments. (Id.) Both the MBPPs and the Market Based Adjustments must be treated the same – as pensionable income.

C. THE MBPP IS PAID TO SIMILARLY SITUATED MEMBERS OF THE SAME GROUP OR CLASS OF EMPLOYMENT

Government Code section 7522.34(a) requires pensionable pay to be “paid in cash to similarly situated members of the same group or class of employment...” (Government Code section 7522.34(a).) It has been reported to SEIU Local 721 that VCERA staff and advisors may believe that

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employees in the same classification are offered different MBPPs based on their date of hire with the County. (Portillo Declaration, ¶6.) This is incorrect. (Id.)

All current/existing employees and any new hires in the same classification receive the same MBPP. (Id.) Their date of hire does not determine the MBPP. (Id.) Rather, the MBPP is determined by the results of the annual HASC study. (Id.) Some employees may receive a higher MBPP as a result of a skill set and/or assignment. (Id.) For example, all Pharmacists receive a MBPP based on the HASC study results. (Id.) However, Pharmacists assigned to the Oncology unit receive a slightly higher MBPP because it is a hazardous assignment and there is an additional skill set required to work in the unit. (Id.)

There may also be differing rates of MBPP paid to employees within a particular classification because, in the past, when SEIU Local 721 negotiated a general across-the-board wage increase for all of its bargaining unit members, the classifications that were already being paid a MBPP received the general across-the-board wage increase and the County subtracted the amount of that increase from the MBPP. (Id., ¶7.) In the past, that employee's hourly wage did not go up, even though the SEIU Local 721 bargaining unit had just received a general across-the-board increase. (Id.) Some employees in classifications that were being paid MBPP complained that, practically speaking, they did not receive the benefit of SEIU Local 721's negotiated general across-the-board increases because their wages remained the same. (Id.) In 2013, SEIU Local 721 and the County negotiated contract language that expressly requires the County to pay the general across-the-board wage increase to classifications that receive MBPP (and implicitly, to not subtract the amount of the general across-the-board wage increase from the MBPP). (Id.) The contract language says: "If an employee is receiving a MBPP on the effective date of the general salary increases set forth in Article 5, Sec. 502A, his or her MBPP shall not be reduced as a result of the implementation of said salary increase." (See Id., Exhibit A, Section 622, page 27.) The County's historical practice of subtracting the general across-the-board wage increase from the MBPP makes it look on paper as though employees in the same classification are receiving different MBPP rates based on their date of hire, but that is not the case. (Id.) The County has pledged to correct this historical practice of subtracting past general across-the-board salary increases from employees' MBPP, and to instead pay all employees in a classification the same MBPP. (Id.) County Management Representatives have assured SEIU Local 721 that the County is in the process of transitioning all employees in a classification to the same MBPP rate. (Id.) It is possible that it has not yet accomplished this transition process. (Id.) The process is underway. (Id.)

II. BILINGUAL PAY

We agree with Steve Silver's September 10, 2015 letter, which states that page 3, paragraph 2c) of the VCERA Board's Resolution – i.e., the requirement that "[s]pecial assignment payments or differentials, and payments for possessing specified certificates, certifications or licenses will be included only if the assignment, certification or license is part of a member's regularly assigned responsibilities on a matter that is a normal or essential function of the job..." (November 17, 2014 Resolution, page 3, paragraph 2c), emphasis in original) – is overly-restrictive and not supported by statute. We incorporate by reference Mr. Silver's arguments in that respect into this position statement.

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Page 5

We appreciate that the VCERA staff have recommended that the County's practice of categorically declining to report any bilingual pay as pensionable compensation should come to an end.

VCERA staff have, instead, recommended that the pay be "[i]ncludable only if bilingualism [is] a regularly assigned normal or essential job function of an identifiable subgroup of similarly situated members within this group or class of employment." (Chart of recommended changes.) A shorthand way of describing this inquiry is whether the employee's position "requires" the bilingual skill. We believe this approach is too narrow and unmanageable. An employee's bilingualism is useful to the employer at any time, even if the employee is not in a position that technically requires proficiency in a non-English language. The employee can be called upon at a moment's notice to help communicate with a non-English client, patient or member of the public. Additionally, in some circumstances, it may be difficult to measure whether bilingualism is a "regularly assigned normal or essential job function." How often must the employee use the non-English language in the course of their work to satisfy this standard?

Assuming for the sake of argument that it is appropriate for the VCERA Board to determine whether an employee's position "requires" the bilingual skill, we take this opportunity to point out to the VCERA Board that the County is only paying bilingual pay to those SEIU Local 721-represented employees who are in positions that require the bilingual skill. The best evidence of this is the MOU. Section 601 of the MOU states that a bilingual premium is paid to "[e]mployees whose positions require the use of bilingual skills..." (Portillo Declaration, ¶10, Exhibit A, page 16.) Therefore, if the County employee is currently receiving bilingual premium pay, then the County *has already determined* that the employee's position requires bilingual skills. (Portillo Declaration, ¶10.)

We therefore ask VCERA to consider bilingual pay pensionable for *all* employees in the SEIU Local 721 bargaining unit who receive it.

III. SHIFT DIFFERENTIAL

Again, we appreciate that VCERA staff have recommended that the County no longer categorically carve out all differentials from pensionable income.

The VCERA staff recommended a case-by-case approach to determining the pensionability of shift differentials that is similar to its approach to bilingual pay. VCERA staff suggest that the query should be whether the employee is "regularly assigned" to work the off-shift that results in the payment of the shift differential.

Our comments regarding the overly-restrictive nature of Paragraph 2c) of the VCERA Board's November 17, 2014 Resolution, and regarding the difficulty of interpreting and applying that standard, apply equally to shift differentials.

VCERA's recommended approach would be particularly hard to manage in workplaces that operate 24-hours a day, 7 days a week. As Angela Portillo explains in her declaration, there is no such thing as a "regular schedule" in the VC HCA setting. (Portillo Declaration, ¶11.) VC HCA is a 24-hour a

VCERA Board
October 2, 2015
Page 6

day, 7 days a week operation. (Id.) Management representatives always tell the employees and SEIU Local 721 that they can change employees' schedules at any time. (Id.) Also, it is not uncommon for an employee to regularly work a day shift at some point during the week, and then a swing or graveyard (non-overtime, straight-time pay) shift at some other point during the week, as their so-called regular schedule. (Id.) How often must the employee work the off-shift before that off-shift is considered their "regular schedule"?

We respectfully suggest that a better approach, which is consistent with Government Code section 7522.34(a), is to deem all shift differentials to be pensionable if the differential is based on *straight-time hours* the employee worked.

IV. CONCLUSION

We urge the VCERA Board to consider MBPP, bilingual pay, and shift differentials to be "pensionable compensation" for "new members." If this position statement raises any questions or points of discussion, SEIU Local 721 would be happy to address them at the October 19, 2015 business meeting. If the VCERA Board believes that further evidence of pay practices or contractual intent is necessary for it to make a decision, we request additional time for SEIU Local 721 to gather such evidence.

Sincerely,



Kerianne R. Steele

KRS:not

Enclosure – Declaration of SEIU Local 721 Worksite Organizer Angela Portillo

cc: Joe Kahraman, Director of SEIU Local 721 (email only)

Angela Portillo, Worksite Organizer of SEIU Local 721 (email only)

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**PROOF OF SERVICE
(CCP §1013)**

I am a citizen of the United States and resident of the State of California. I am employed in the County of Alameda, State of California, in the office of a member of the bar of this Court, at whose direction the service was made. I am over the age of eighteen years and not a party to the within action.

On October 2, 2015, I served the following documents in the manner described below:

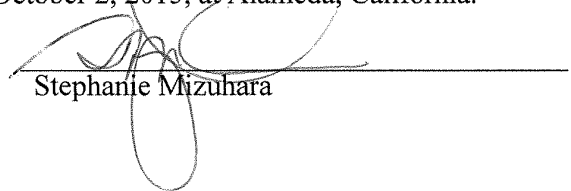
POSITION STATEMENT OF SEIU LOCAL 721

- (BY U.S. MAIL) I am personally and readily familiar with the business practice of Weinberg, Roger & Rosenfeld for collection and processing of correspondence for mailing with the United States Parcel Service, and I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States Postal Service at Alameda, California.
- (BY FACSIMILE) I am personally and readily familiar with the business practice of Weinberg, Roger & Rosenfeld for collection and processing of document(s) to be transmitted by facsimile and I caused such document(s) on this date to be transmitted by facsimile to the offices of addressee(s) at the numbers listed below.
- (BY OVERNIGHT MAIL) I am personally and readily familiar with the business practice of Weinberg, Roger & Rosenfeld for collection and processing of correspondence for overnight delivery, and I caused such document(s) described herein to be deposited for delivery to a facility regularly maintained by United Parcel Service for overnight delivery.
- (BY ELECTRONIC SERVICE) By electronically mailing a true and correct copy through Weinberg, Roger & Rosenfeld's electronic mail system from smizuhara@unioncounsel.net to the email addresses set forth below.

On the following part(ies) in this action:

Ms. Linda Webb
Ventura County Employees' Retirement Association
1190 South Victoria Avenue, Suite 200
Ventura, CA 93003

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on October 2, 2015, at Alameda, California.


Stephanie Mizuhara

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**BEFORE THE BOARD OF THE
VENTURA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION
DECLARATION**

I, Angela Portillo, do hereby declare as follows:

1. I have personal knowledge of the following facts and am competent to and would testify as to the truth of these facts if called as a witness.

2. I am a resident of Ventura County ("County"), California.

3. I am a Worksite Organizer for SEIU Local 721. I have worked for SEIU Local 721 since 2014. Prior to working for SEIU Local 721, I was a County employee. I worked for 5 years as a County employee in the Child Support Services Specialist classification, in the Child Support department.

4. I have been assigned to the Ventura County Health Care Agency ("VC HCA") worksite since 2014. My duties as a Worksite Organizer include being knowledgeable regarding the provisions of the Memorandum of Understanding ("MOU") between SEIU Local 721 and the County, and regarding existing payment and scheduling practices in the VC HCA workplace.

5. Over the course of the last year, in connection with my duties as a Worksite Organizer, I have had multiple conversations with VC HCA Management Representatives, including representatives in Human Resources, about the Market Based Premium Payment ("MBPP") that is set forth in Section 622 of the SEIU Local 721/County MOU. Attached and marked as **Exhibit A** to this declaration is a true and correct copy of excerpts of the SEIU Local 721/County MOU, having the term of September 10, 2013 through August 9, 2016. In conversations with Management Representatives, we have discussed how the amount of MBPP is determined and how it is implemented. From those conversations I have learned that every year VC HCA obtains a report from the Hospital Association of Southern California ("HASC"). That report is a labor market survey of comparable positions in local hospitals and pharmacies, which reflects whether a number of SEIU Local 721-represented classifications (Pharmacist, Speech Pathologist, Senior Speech Pathologist, Physical Therapist, Senior Physical Therapist, Occupational Therapist, Senior Occupational Therapist, Supervising Physical Therapist I and II,

1 Staff Psychologist, Senior Psychologist, Pharmacy Technician, Clinical Laboratory Scientist I, II,
2 and II, Histologist, Radiologic Specialist, Radiologic Technologist, Licensed Physical Therapy
3 Assistant, Principal Respiratory Therapist, and Certified Occupational Therapy Assistant) are
4 underpaid compared to counterpart classifications elsewhere. (See Exhibit A, Section 622, pages
5 26-27.) The MBPPs are reviewed in light of the results of that report. VC HCA determines from
6 the report if a MBPP is necessary to: (a) recruit new employees, and (b) retain existing employees
7 by providing competitive wages. If VC HCA determines that a MBPP is appropriate for a
8 particular County classification – because the market average pay rate paid to the comparable
9 classification in local hospitals or private pharmacies exceeds that which is paid to the County
10 classification – then MBPP will be issued to *all* employees (that includes existing employees and
11 any new hires) in the County classification. For example, if the top of the County pay scale for a
12 Speech Pathologist is \$35 an hour, but the HASC study determines that the 50th percentile of pay
13 for speech pathologists across southern California is \$45, *all* County Speech Pathologists will
14 receive a \$10 an hour MBPP in order to raise the total hourly wage to \$45.

15 6. It has been reported to me that VCERA staff and advisors may believe that
16 employees in the same classification are offered different MBPPs based on their date of hire with
17 the County. This is incorrect. *All* current/existing employees and any new hires in the same
18 classification receive the same MBPP. Their date of hire does not determine the MBPP. Rather,
19 the MBPP is determined by the results of the annual HASC study. Some employees may receive a
20 higher MBPP as a result of a skill set and/or assignment. For example, all Pharmacists receive a
21 MBPP based on the HASC study results. However, Pharmacists assigned to the Oncology unit
22 receive a slightly higher MBPP because it is a hazardous assignment and there is an additional skill
23 set required to work in the unit.

24 7. There may also be differing rates of MBPP paid to employees within a particular
25 classification because, in the past, when SEIU Local 721 negotiated a general across-the-board
26 wage increase for all of its bargaining unit members, the classifications that were already being
27 paid a MBPP received the general across-the-board wage increase and the County subtracted the
28 amount of that increase from the MBPP. In the past, that employee's hourly wage did not go up,

1 even though the SEIU Local 721 bargaining unit had just received a general across-the-board
2 increase. Some employees in classifications that were being paid MBPP complained that,
3 practically speaking, they did not receive the benefit of SEIU Local 721's negotiated general
4 across-the-board increases because their wages remained the same. In 2013, SEIU Local 721 and
5 the County negotiated contract language that expressly requires the County to pay the general
6 across-the-board wage increase to classifications that receive MBPP (and implicitly, to not subtract
7 the amount of the general across-the-board wage increase from the MBPP). The contract language
8 says: "If an employee is receiving a MBPP on the effective date of the general salary increases set
9 forth in Article 5, Sec. 502A, his or her MBPP shall not be reduced as a result of the
10 implementation of said salary increase." (See Exhibit A, Section 622, page 27.) The County's
11 historical practice of subtracting the general across-the-board wage increase from the MBPP makes
12 it look as though employees in the same classification are receiving different MBPP rates based on
13 their date of hire, but that is not the case. The County has pledged to correct this historical practice
14 of subtracting past general across-the-board salary increases from employees' MBPP, and to
15 instead pay all employees in a classification the same MBPP. County Management
16 Representatives have assured me that the County is in the process of transitioning all employees in
17 a classification to the same MBPP rate. It is possible that it has not yet accomplished this
18 transition process. The process is underway.

19 8. Although Section 622 of the MOU describes the payment as a "recruitment and
20 retention bonus," it is not a "bonus" in the typical sense. The same section of the MOU also refers
21 to the payment as a "premium pay adjustment." That is a more accurate way of describing the
22 payment. The language of Section 622 of the SEIU Local 721/County MOU defines an
23 employee's total hourly rate to be the base pay plus any MBPP. Therefore, the total hourly rate
24 (base pay + MBPP) functions as the employee's normal hourly rate of pay. Attached and marked
25 as **Exhibit B** to this declaration is a true and correct pay stub belonging to a current Ventura
26 County employee in the Pharmacy Technician II classification. The base hourly wage (NAHRLY)
27 and the MBPP (PHARM) are added to create the total hourly wage (Total). All other hours and
28 earnings are itemized in a separate section of the pay stub. Percentage based premiums, such as

1 bilingual pay, are paid on the total hourly wage, not on the base hourly wage. This reaffirms that
2 the total hourly rate (base pay + MBPP) functions as the employee's normal hourly rate of pay.

3 9. The MBPP functions to effectively bring wages of the classifications outlined in
4 section 622 of the MOU to market levels. Per Section 622 of the MOU: "Employees receiving a
5 MBPP shall be excluded from the MBA [Market Based Adjustment] studies set forth in Section
6 502B [of the MOU] and shall not be eligible to receive any MBA." In the most recent cycle of
7 bargaining (2013), SEIU Local 721 and the County negotiated wage increases for current and
8 future employees in two different ways: (a) general across-the-board salary increases, and (b)
9 market based adjustments (MBAs). To implement Section 502B of the MOU, which provides for
10 the MBAs, the County conducted a total compensation market based average study and thereafter
11 gave MBAs to certain classifications based on the parameters established in 502B (i.e., whether a
12 certain classification is paid 3% or less than the market average). Employees receiving a MBPP
13 were excluded from receiving the MBA raises, as it was understood by both parties that those
14 receiving MBPPs were being brought to market rates via the MBPP. (See Exhibit A, Section 622,
15 page 27.) Both the general across-the-board salary increases and the MBAs outlined in Sec 502A
16 and Sec 502B are pensionable under PEPRA. It would be illogical to consider the negotiated
17 general across-the board salary increases and the MBAs as pensionable, but to consider the MBPPs
18 non-pensionable. Had the MBPP not been in effect already in a certain classification at the time
19 that the 2013 MBAs went into effect, the employees in the certain classification would have
20 received the 2013 MBAs. Also, the County clearly regards the MBPPs as a payment for regularly
21 assigned normal or essential job functions of an identifiable group or subgroup within similarly
22 situated members within this group or class of employment.

23 10. I am personally familiar with SEIU Local 721/County contract language regarding
24 bilingual pay. Section 601 of the MOU states that a bilingual premium is paid to "[e]mployees
25 whose positions require the use of bilingual skills..." (Exhibit A, page 16.) Therefore, if the
26 County employee is currently receiving bilingual premium pay, then the County *has already*
27 *determined* that the employee's position requires bilingual skills.

28 11. I have reviewed the VCERA analysis regarding who should be eligible for shift

1 differentials, i.e., "employees regularly assigned to work" on the shift. I am personally aware,
2 from talking to VC HCA employees and management representatives and viewing schedules, that
3 there is no such thing as a "regular schedule" in the VC HCA setting. VC HCA is a 24-hour a day,
4 7 days a week operation. Management representatives always tell the employees and SEIU Local
5 721 that they can change employees' schedules at any time. Also, it is not uncommon for an
6 employee to regularly work a day shift at some point during the week, and then a swing or
7 graveyard (non-overtime, straight-time pay) shift at some other point during the week, as their so-
8 called regular schedule.

9 I declare under penalty of perjury that the foregoing is true and correct, and that this declaration
10 was executed in Ventura, California on October 2, 2015.

11 Signed:  _____

12 Angela Portillo

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**SEIU LOCAL 721 / COUNTY OF VENTURA
VENTURA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION
Preliminary Report on PEPRRA Pensionable Compensation Analysis**

EXHIBIT A

SEIU Local 721
County of Ventura
Memorandum of Understanding

September 10, 2013
through
August 9, 2016



of seven hundred fifty dollars (\$750). Employees employed less than full-time (regularly scheduled to work less than 64 hours biweekly) shall receive a one-time payment of six hundred (\$600) dollars.

Sec. 502 PAY/SALARY INCREASES:

A. General Salary Increases

Effective August 17, 2014, employees covered by this agreement shall be eligible for a general salary increase of one percent (1%).

Effective August 16, 2015, employees covered by this agreement shall be eligible for a general salary increase of two percent (2%).

B. Market Based Adjustments

The County shall conduct a single total compensation market-based average study (based on the survey structure that was provided to SEIU on 7/22/13) by April 30, 2014. The results of that survey shall be used to determine market-based salary adjustments as follows:

- a. If the total compensation study results reveal that a benchmark classification is three percent (3%) or less than the market average, then that classification benchmark and all other classifications benchmarked to it shall not be eligible for any MBA.
- b. Effective August 17, 2014, if the total compensation study results reveal that a benchmark classification is more than three percent (3%) below the market average, then that classification benchmark and all other classifications benchmarked to it shall be eligible to receive a MBA of one percent (1%).
- c. Effective August 16, 2015, if the total compensation study results reveal that a benchmark classification is more than six percent (6%) below the market average, then that classification benchmark and all other classifications benchmarked to it shall be eligible to receive a MBA of one percent (1%).

C. Salary Offsets for Increased Employee-Paid Retirement Contributions

Effective July 6, 2014, salary of represented employees affected by the changes to Sec. 401 and 402 shall be increased as follows:

- a. The percentage amount equal to the percentage value of eliminating the retirement pick-up; and

5. Temporary assignments will not exceed twenty three (23) working days.

Sec. 525 BASE HOURLY RATE OF PAY/SALARY – VCMC TWELVE (12) HOUR SHIFT - METHOD OF COMPUTATION: Employees in Nursing Care Coordinator classifications who are assigned to the Ventura County Medical Center and who are regularly assigned to twelve (12) hour shifts shall have their base hourly rate of pay/salary rate computed as follows:

12 Hour Rate = 8 hour base hourly rate of pay/salary Rate times 41 divided by 36.

In order to be eligible for the twelve (12) hour rate, an employee must work a minimum of four (4), twelve (12) hour shifts in a biweekly pay period.

Sec. 526 ADVANCED HOURLY RATE OF PAY/SALARY PLACEMENT (NEW HIRES): Upon recommendation of the appointing authority and the Director-Human Resources, the County Executive Officer may approve hiring a new employee beyond the midpoint of the pay/salary range provided that:

- A. Reasonable proof has been presented that no qualified person can be recruited to fill a position below the midpoint of the pay/salary range; or,
- B. Reasonable proof has been presented that an applicant has qualifications deserving a starting hourly rate of pay/salary higher than the midpoint of the pay/salary range.

Appointments made above the midpoint of the pay/salary range and in accordance with the above-listed criteria for APCD employees may be approved by the APCD Executive Officer.

Local 721 shall be notified in writing of appointments made above the midpoint of the pay/salary range.

ARTICLE 6
OTHER BENEFITS AND PREMIUM PAY

Sec. 601 BILINGUAL PREMIUM PAY:

- A. Employees whose positions require the use of bilingual skills shall be allocated for bilingual premium pay at the I, II, or III level. The allocation of positions among the respective levels shall be made by the Agency/Department Head, based upon the criteria established by, and subject to approval by, the Director-Human Resources. An employee's bilingual proficiency at Levels I and II shall be determined by an examination administered and certification issued by the Director-Human Resources or other approved county or city employer or educational facility at the employee's expense. Level III proficiency examinations shall be developed and administered solely by the Director-Human Resources. The level of an employee's bilingual proficiency shall be determined by an examination administered by the Director – Human Resources. Employees assigned to such positions shall be eligible for bilingual premium pay at the level of their position or level of their proficiency, whichever is less, subject to the conditions set forth herein.

The rates for the respective levels are:

<u>Bilingual Level</u>	<u>Premium Pay</u>
I	\$.65/hour
II	\$.80/hour
III	\$.90/hour

Employees in positions eligible to receive this premium pay shall receive the appropriate rate per hour compensated per biweekly pay period, not to exceed eighty (80) compensated hours per pay period.

Such premium pay shall be in addition to their base pay. To be eligible to receive this premium pay, upon the recommendation of the Agency/Department Head and the Director-Human Resources, the County Executive Officer must designate that such payment will be made.

The provisions of this Section shall not apply to the classification of Interpreter-Translator.

- B. Employees in the Non-Supervisory Social Services Unit who currently receive bilingual premium pay shall continue to receive said payment throughout the life of this contract except in cases where an employee accepts a voluntary transfer or is promoted to a position which does not qualify for such premium. Nothing in this

Section precludes management from transferring employees to other worksites in order to provide adequate caseload coverage.

Sec. 602 STANDBY PREMIUM PAY:

- A. Should an FLSA non-exempt employee be placed on formal standby duty (as is meant under the FLSA), said employee shall be compensated for actual time on call at one-quarter (1/4) of his/her regular rate of pay/salary or at the State minimum wage, whichever is greater, and for time worked as a result of a callback to duty at his/her hourly wage when funds for such purposes have been specifically appropriated by the Board after specific inclusion in the department/agency budget. In no instance shall a callback to duty be considered as less than two (2) hours for pay purposes. No employee shall be paid for call back time and standby simultaneously. All employees excluded from the overtime provisions of these Articles are also excluded from the provisions of this Section.
- B. No more than three (3) HS Child Welfare Social Workers (at the discretion of the Director-Human Services Agency) and two HS Adult Protective Services Social Workers assigned to emergency response duty is authorized to be paid the standby premium in accordance with provided by 602-A. Should that CSSW or APSSW be called back while on formal standby duty, he/she shall be eligible to receive the callback premium pay in accordance with Section 602(A).

All other employees excluded from the overtime provisions of these Articles are also excluded from the provisions of this Section.

Sec. 603 NIGHT SHIFT DIFFERENTIAL PREMIUM PAY:

- A. Except as otherwise provided herein, the night shift differential for regular employees who are required to work half of a shift plus one (1) hour between the hours of 3:00 p.m. and 7:00 a.m. shall be calculated at the rate of five percent (5%) of the base pay of said employee.
- B. Any person employed as a Jail Cook who is assigned to a shift between the hours of 3:00 a.m. to 11:00 a.m. or 11:00 a.m. to 7:00 p.m. shall be eligible to receive a five percent (5%) premium (based on his/her hourly base rate of pay).

- D. Benefits potentially due under this Section shall not apply to Public Safety Dispatchers who are in training prior to successful graduation from the Academy.

The policies that direct the Emergency Medical Dispatch program are those of the County of Ventura, Health Care Agency, Emergency Medical Services Policies and Procedures, including Policy #910.

Sec 620 ENVIRONMENTAL HEALTH RESPONSE TEAM PREMIUM:
Environmental Health Employees who are assigned by the Director-RMA or his/her designee to the Environmental Health Response Team shall receive a biweekly premium of \$192.00. Employees receiving compensation pursuant to this provision are not eligible to receive overtime, standby, or callback pay.

Sec. 621 VCMC PSYCHIATRIC INPATIENT UNIT ASSIGNMENT DIFFERENTIAL:
Any regular, non-physician, non-psychiatric technician, and/or non-nursing employee specifically assigned to work in the Ventura County Medical Center's Unit and specifically designated by the HCA Director to provide acute inpatient mental health care shall receive a five percent (5%) differential for work performed. Depending on the overtime status of the employee, said differential shall be based on, and paid in addition to, either the base hourly wage or base biweekly hourly rate of pay/salary of the employee. Eligibility for this differential is at the sole discretion of the HCA Director.

Sec. 622 MARKET BASED PREMIUM PAY : Upon recommendation of the Director - Health Care Agency, the Director-Human Resources may approve a premium pay for Pharmacists, Speech Pathologist, Senior Speech Pathologist, Physical Therapist, Senior Physical Therapist, Occupational Therapist, Senior Occupational Therapist, Supervising Physical Therapist I and II, Staff Psychologist and Senior Psychologist, Pharmacy Technicians, Clinical Laboratory Scientist I, II, III, Histologist, Radiologic Specialist, Radiologic Technologist, Licensed Physical Therapy Assistant, Principal Respiratory Therapist, and Certified Occupational Therapy Assistant (as a recruitment and retention bonus). The amount of the premium pay adjustment will be calculated as needed according to the changing labor market survey of comparable positions in local hospitals and private pharmacies and will be up to \$25.00 per hour for Pharmacists, Speech Pathologist, Senior Speech Pathologist, Physical Therapist, Senior Physical Therapist, Occupational Therapist, Senior Occupational Therapist, Supervising Physical Therapist I and II, Staff Psychologist and Senior Psychologist and up to \$15.00 per hour for Pharmacy Technicians,

Clinical Laboratory Scientist I, II, III, Histologist, Radiologic Specialist, Radiologic Technologist, Licensed Physical Therapy Assistant, Principal Respiratory Therapist, and Certified Occupational Therapy Assistant. The premium pay may be reduced or eliminated should a survey as described above show that reduction/elimination is warranted.

A reduction to the MBPP may occur if the total hourly rate (base pay plus any MBPP) paid to the employee exceeds the market average pay rate by more than 5% plus the percentage value increase of the salary offsets set forth in Article, 5, Sec. 502C (threshold value). In such a case, the amount of the reduction shall be the amount by which the total hourly rate that exceeds the threshold value.

If an employee is receiving a MBPP on the effective date of the general salary increases set forth in Article 5, Sec. 502A, his or her MBPP shall not be reduced as a result of the implementation of said salary increase. Employees receiving a MBPP shall be excluded from the MBA studies set forth in Sec. 502B and shall not be eligible to receive any MBA.

The County agrees to meet and consult with the Union on the implementation procedures of the Market Based Premium program to determine the original intent of Section 622 and to modify as necessary for implementation by January 1, 2006. Thereafter the County will meet and consult on any changes in application of Section 622 prior to implementation. The County will conduct an internal review of the use of MBPP and discuss the results with SEIU.

Sec. 623 LICENSE ENDORSEMENT REIMBURSEMENT: An employee in any of the classifications listed below who, in order to meet the minimum requirements for his/her position, renews his /her Class "1" or Class "A" California Drivers license within ninety (90) days of the expiration date and is directed by the County to obtain a Tank and/or Hazmat License Endorsement shall be reimbursed for the cost of the initial endorsements only as follows:

1. \$25.00 when the endorsement(s) is obtained concurrent with the renewal of his/her Commercial Drivers License; or,
2. \$25.00 plus \$10.00 per endorsement when, through no fault of the employee, he/she renewed his/her Commercial Drivers License and was subsequently advised by the County that the endorsement is required.
3. \$25.00 if, on the effective date of this MOA he/she already holds a Class "A" license and the endorsement(s) if he/she is subsequently

**SEIU LOCAL 721 / COUNTY OF VENTURA
VENTURA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION
Preliminary Report on PEPRAs Pensionable Compensation Analysis**

EXHIBIT B

9.28.15

JEFFERY S. BURGH
AUDITOR-CONTROLLER
COUNTY OF VENTURA

Pay Group: SH1-Sun-Sat Holiday
Pay Begin Date: 08/30/2015
Pay End Date: 09/12/2015

Business Unit: HCAVC
Check #: 000003000977549
Check Date: 09/18/2015

4	Employee ID: [REDACTED] Department: 3328-Pharmacy Location: Ventura County Medical Center Job Title: Pharmacy Technician II	NAHRLY PHARM	\$18,496,074 \$2,761,387 Total: \$21,257,461	TAX DATA: Federal: Single State: Single, or Married with Allowances: 1 Addl. Pct: 1 Addl. Amt:
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HOURS AND EARNINGS						TAXES		
Description	Rate	Current		YTD		Description	Current	YTD
		Hours	Earnings	Hours	Earnings			
Associate's Degree			42.52		788.86	Fed Withholding	168.72	3,109.43
Bilingual Level 2			64.00		1,215.00	Fed MED/EE	25.06	466.26
FLex Credit			297.00		5,643.00	Fed OASDI/EE	107.17	1,993.67
Regular	21.257461	64.75	1,376.42	1,158.92	24,080.71	CA Withholding	39.97	717.14
Vacation Hourly NonFLSA	21.257461	7.25	154.12	220.58	4,582.68	CA OASDI/EE	15.55	289.40
Holiday - Hourly Non FLSA	21.257461	8.00	170.06	56.00	1,164.56			
Sick - Personal Hourly NonFLSA			0.00	67.25	1,393.34			
Sick Leave Adjustment			0.00	-19.50	0.00			
Straight Time Overtime			0.00	2.50	51.80			
Leave Without Pay Hourly			0.00	1.75	0.00			
Family Sick - Hourly Non FLSA			0.00	8.00	165.75			
Floating Holiday Non FLSA			0.00	8.00	165.75			
TOTAL:		80.00	2,104.12	1,503.50	39,251.45	TOTAL:	356.47	6,575.90

BEFORE-TAX DEDUCTIONS			AFTER-TAX DEDUCTIONS			EMPLOYER PAID BENEFITS		
Description	Current	YTD	Description	Current	YTD	Description	Current	YTD
VC Health Care Plan	333.97	6,345.43	401k Loan 1	91.73	1,284.22	401k Deduction	29.76	552.22
401k Deduction	29.76	577.04	SEIU FT Reg with PoliticalCont	16.75	326.75	Retirement Cnty COL Fund	55.34	637.90
Fidelity 457 Plan	10.00	190.00	401k Loan 2	0.00	1,947.69	Retirement Earnings Final	2,104.12	39,199.65
Health Care Flex	41.67	750.06				Retirement Cnty Reg Fund	353.49	6,569.45
Spending Acct								
Ret EE COL Before	55.34	1,031.01						
Tax								
Ret EE Reg Before Tax	148.03	2,777.40						
TOTAL:	618.77	11,670.94	TOTAL:	108.48	3,558.66	*TAXABLE		

TOTAL GROSS		FED TAXABLE GROSS		TOTAL TAXES		TOTAL DEDUCTIONS		NET PAY	
Current	2,104.12	1,485.35	356.47	727.25	1,020.40				
YTD	39,251.45	27,580.51	6,575.90	15,229.60	17,445.95				
Sick Hours	YTD	Vacation Hours	YTD	Floating Holiday	YTD	Comp Time	YTD	Holiday PTO	YTD
Start Balance	18.99	Start Balance	125.43	Start Balance	0.00	Start Balance	0.00	Start Balance	0.00
+ Earned	3.08	+ Earned	5.85	+ Earned	0.00	+ Earned	0.00	+ Banked	0.00
+ Bought	0.00	+ Bought	0.00						
- Taken	0.00	- Taken	7.25	- Taken	0.00	- Taken	0.00	- Taken	0.00
- Sold	0.00	- Sold	0.00					- Expired	0.00
+ Adjustments	0.00	+ Adjustments	0.00					+ Adjustments	0.00
End Balance:	22.07	End Balance:	124.03	End Balance:	0.00	End Balance:	0.00	End Balance:	0.00

MESSAGE:
Dept Message:

NET PAY DISTRIBUTION	
Check #000003000977549	1,020.40
Total:	1,020.40

JEFFERY S. BURGH
AUDITOR-CONTROLLER
COUNTY OF VENTURA
VENTURA, CA 93009-1540

Date
09/18/2015

Check No.
3000977549

Check Amount: \$1,020.40 *****

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**PROOF OF SERVICE
(CCP §1013)**

I am a citizen of the United States and resident of the State of California. I am employed in the County of Alameda, State of California, in the office of a member of the bar of this Court, at whose direction the service was made. I am over the age of eighteen years and not a party to the within action.

On October 2, 2015, I served the following documents in the manner described below:

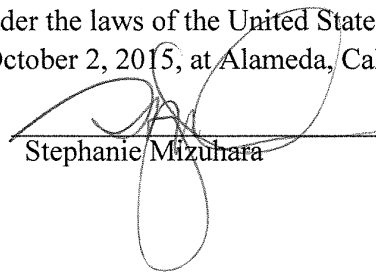
DECLARATION OF ANGELA PORTILLO

- (BY U.S. MAIL) I am personally and readily familiar with the business practice of Weinberg, Roger & Rosenfeld for collection and processing of correspondence for mailing with the United States Parcel Service, and I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States Postal Service at Alameda, California.
- (BY FACSIMILE) I am personally and readily familiar with the business practice of Weinberg, Roger & Rosenfeld for collection and processing of document(s) to be transmitted by facsimile and I caused such document(s) on this date to be transmitted by facsimile to the offices of addressee(s) at the numbers listed below.
- (BY OVERNIGHT MAIL) I am personally and readily familiar with the business practice of Weinberg, Roger & Rosenfeld for collection and processing of correspondence for overnight delivery, and I caused such document(s) described herein to be deposited for delivery to a facility regularly maintained by United Parcel Service for overnight delivery.
- (BY ELECTRONIC SERVICE) By electronically mailing a true and correct copy through Weinberg, Roger & Rosenfeld's electronic mail system from smizuhara@unioncounsel.net to the email addresses set forth below.

On the following part(ies) in this action:

Ms. Linda Webb
Ventura County Employees' Retirement Association
1190 South Victoria Avenue, Suite 200
Ventura, CA 93003

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on October 2, 2015, at Alameda, California.


Stephanie Mizuhara

VENTURA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

1190 South Victoria Avenue, Suite 200
Ventura, CA 93003-6572

(805) 339-4250 • Fax: (805) 339-4269
<http://www.ventura.org/vcera>

January 29, 2016

Michael Powers
County Executive Officer
County of Ventura
800 South Victoria Avenue
Ventura, CA 93009

**SUBJECT: VCERA BOARD OF RETIREMENT REQUEST FOR PUBLICLY AVAILABLE
SCHEDULE OF MARKET-BASED PREMIUM PAY ITEMS**

Dear Mr. Powers,

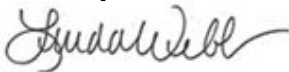
As you are aware, at its October 19, 2015 business meeting, the Board of Retirement of the Ventura County Employees' Retirement Association ("Board") took action on individual pay codes pursuant to its November 2014 resolution interpreting "pensionable compensation" under Government Code section 7522.34. That action identified pay codes to be included in, and excluded from, "pensionable compensation" applicable to VCERA members who first join the retirement system (without reciprocity) on or after January 1, 2013 (PEPRA members). The resulting addenda to the Board's original Pensionable Compensation Resolution was provided to the County of Ventura after that meeting.

Prior to the Board's adoption of both the original Resolution in 2014 and its addenda in October, the County of Ventura advocated for market based pay items be included in pensionable compensation under PEPRA. The Board ultimately included those items.

As part of the action to include market based premium pay in pensionable compensation, the Board requested that the Ventura County Board of Supervisors create a publicly available schedule of these items, as required by PEPRA, by July 1, 2016. Attached is a list of those pay items.

Please contact me with any questions regarding the Board's action and accompanying request.

Sincerely,



Linda Webb
Retirement Administrator

Attachment

CC: Board of Supervisors, County of Ventura
Board of Retirement, VCERA

MARKET-BASED PREMIUM PAY ITEMS (COUNTY OF VENTURA)

EARNINGS CODE	EARNINGS CODE DESCRIPTION
CLS123	Clinical Laboratory Scientist I/II/III Premium Pay
HISTOL	Histologist Premium Pay
LPTAST	Licensed Physical Therapy Assistant
PHARM	Pharmacy Premium Pay
PRNRES	Principal Respiratory Therapist Premium Pay
PSYCH	Psychologist Premium Pay
RADSPE	Radiologic Specialist Premium Pay
RADTEC	Radiologic Technologist Premium Pay
SPEECH	Speech Pathologist Premium Pay
THRPST	Therapist Premium Pay

APPLICATION OF MBPP CODES AS OF 2016

CODE	Position	#	Receiving	Range Variance		COMMENTS
CLS123	Clinical Lab Scientist I	2	ALL	NO		
CLS123	Clinical Lab Scientist III	9	ALL	NO		
PHARM	Pharmacy Tech I	5	ALL	NO		
PSYCH	Senior Psychologist	14	ALL	NO		
SPEECH	Senior Speech Pathologist	1	ALL*	NO		
SPEECH	Speech Pathologist	1	ALL*	NO		
PSYCH	Staff Psychologist	4	ALL	NO		
THRPST	Supervising Therapist I	6	NONE**	NO		

*Senior SP & SP can be deemed similar situated.

**Was previously paid to one employee who has since been promoted to Supervising Therapist II.

CODE	Position	#	Receiving	Range Variance					COMMENTS		
CLS123	Clinical Lab Scientist II	21	ALL	\$6.35/hr (19) \$6.71 (2)	1/85-1/16	\$6.35	B500 (15)	HCA_VCMC (Clinical Lab Svcs)	2 at higher rate only ones hired in FY13-14		
							B500 (1)	HCA_SP_HOS (Clinical Lab Svcs)			
							B510 (3)	HCA_SP_HOS (Clinical Lab Svcs – SP)			
LPTAST	Licensed Physical Therapy Asst.	3	ALL	\$4.20 - \$5.40	12/13-6/14	\$6.71	B500 (2)	HCA_VCMC (Clinical Lab Svcs)			
							9/17/01	4.21	B775	HCA_SP_HOS (Heritage Valley)	
							4/5/09	5.15	B770	HCA_VCMC (Eastman PT)	
							9/28/14	5.40	B770	HCA_VCMC (Eastman PT)	
PHARM	Pharmacist II	21	20/21	\$11 - \$21	9/30/79	\$0	3201 (1)	HCA_QA_MGT (MHL Admin)			
							12/11-8/15	\$11	C390 (7)	HCA_VCMC (Pharmacy IP)	
									C392 (1)	HCA (Pharmacy Infusion)	
							4/10/09	\$13	C390 (1)	HCA_VCMC (Pharmacy IP)	
									C390 (5)	HCA_VCMC (Pharmacy IP)	
							11/08-4/16	\$14	C392 (2)	HCA (Pharmacy Infusion)	
									C395 (1)	HCA_SP_HOS (Pharmacy IP – SPH)	
							4/15/15	\$16.50	C390 (1)	HCA_VCMC (Pharmacy IP)	
5/29/02	\$17	C390 (1)	HCA_VCMC (Pharmacy IP)								
1/27/08	\$21	C392 (1)	HCA_VCMC (Pharmacy Infusion)								
PHARM	Pharmacy Tech II	13	ALL	\$3.24 - \$4.70	5/10-4/15	\$3.24*	C390 (4)	HCA_VCMC (Pharmacy IP)			
							C390 (1)	HCA_SP_HOS (Pharmacy IP)			
							C392 (2)	HCA (Pharmacy Infusion)			
							C395 (1)	HCA_VCMC (Pharmacy IP – SPH)			

Disability Meeting Agenda - VI.A. OLD BUSSINESS: DETERMINE COMPLIANCE OF COV'S PROPOSED PUBLICLY AVAIL. PAY SCHEDULE FOR MBPP

CODE	Position	#	Receiving	Range Variance					COMMENTS
					4/07-3/14	\$4.23	C390 (3)	HCA_VCMC (Pharmacy IP)	
							C395 (1)	HCA_SP_HOS (Pharmacy IP – SPH)	
					6/23/13	\$4.70	C390 (1)	HCA_VCMC (Pharmacy IP)	
PRNRES	Principal Respiratory Therapist	33	31/33	\$0 (2) \$6.31 - \$9.92	3/15-4/15	\$0	C794 (2)	HCA_KNOLLH (Catch Grant)	<ul style="list-style-type: none"> • The 2 not receiving both are at KNOLLH (CATCH GRANT) • 116488 changed from 6.36 to 9.36 on 7/3 w/o chg in job class
					1/15-4/16	\$6.31	B720 (2)	HCA_VCMC (Respiratory Therapy)	
							B720 (1)	HCA_SP_HOS (Respiratory Therapy)	
							B720 (7)	HCA_VCMC (Respiratory Therapy)	
						\$6.36	B725 (2)	HCA_VCMC (Respiratory Therapy SPH)	
							B720 (2)	HCA_SP_HOS (Respiratory Therapy)	
						\$6.71	B720 (2)	HCA_VCMC (Respiratory Therapy)	
						\$7.52	B720 (1)	HCA_SP_HOS (Respiratory Therapy)	
						\$7.70	B720 (1)	HCA_VCMC (Respiratory Therapy)	
						\$7.91	B720 (1)	HCA_SP_HOS (Respiratory Therapy)	
						\$8.36	B720 (1)	HCA_SP_HOS (Respiratory Therapy)	
						\$8.98	B720 (1)	HCA_VCMC (Respiratory Therapy)	
						\$9.36	B720 (6)	HCA_VCMC (Respiratory Therapy)	
							B720 (2)	HCA_SP_HOS (Respiratory Therapy)	
						\$9.71	B720 (1)	HCA_VCMC (Respiratory Therapy)	
						\$9.92	B720 (1)	HCA_VCMC (Respiratory Therapy)	
LPTAST	Senior Physical Therapist	20	2 of 20	\$1 & \$1.39	5/18/11	\$1	B770	HCA_VCMC (Heritage Valley PT)	
					4/29/01	\$1.39	B775	HCA_VCMC (Heritage Valley PT)	
THRPST	Supervising Therapist II	4	3 of 4	\$1.37 - \$5.50	4/10/99	\$0	3141	HCA_GONCMS (CA Children's Services)	
					12/2/92	\$1.37 (1)	B770	HCA_VCMC (Eastman Physical Therapy)	
					10/31/99	\$1.56	B775	HCA_SP_HOS (Heritage Valley PT)	
					1/26/1981	\$5.50	B770	HCA_VCMC (Eastman Physical Therapy)	

Human Resources Division certifies that said employee is qualified for the position to which he/she is demoted. Such employee shall be demoted to the entry level hourly rate of pay/salary in the lower class or, upon request by the Agency/Department head and approval by the Director-Human Resources, retain his/her current hourly rate of pay/salary or receive the top of the range for the lower class, whichever is less. The employee shall also be required to serve a new probationary period.

Sec. 515 HOURLY RATE OF PAY/SALARY ON DEMOTION: Whenever an employee who has completed his/her probationary period in a higher class is then demoted to a position in a lower class for reasons other than unsatisfactory performance, or for functional disability, he/she shall receive the highest hourly rate of pay/salary on the new range that does not exceed his/her hourly rate of pay/salary immediately prior to demotion and shall retain his/her merit qualifying hours needed.

Sec. 516 MERIT INCREASES: Merit increases within a range shall not be automatic. They shall be based on merit and shall require the written approval of the appointing authority, containing the effective date thereof. Except as otherwise provided, a merit increase shall consist of an increase of approximately five percent (5%) within a range for the class unless the employee is less than five percent (5%) from the top of the range and, in such a case, the increase shall be to the top of the pay/salary range. Qualifying service for merit increase consideration shall be by compensable hours, which include all paid hours exclusive of overtime compensation.

Sec. 517 TIME FOR MERIT INCREASES:
A newly appointed, re-employed, or promoted employee may qualify for:

- A. An initial merit increase within the pay/salary range upon completion of at least 1,040 hours of compensable service in that class.
- B. Succeeding merit increases within the pay/salary range upon completion of each additional 2,080 hours of compensable service in that class. The period of service required to qualify for merit increases by regular part-time (less than full-time) employees shall be the same as for a regular full-time employee. All approved merit increases will be effective on the first Sunday of the pay period after completing the required compensable hours of service.

Sec. 518 MERIT REVIEW: At least one (1) pay period prior to an employee qualifying for a merit increase, the appointing authority shall notify the Director-Human Resources and the employee in writing of his/her decisions regarding approval or denial of a merit increase. In all cases, the recommendation of the appointing authority shall be based on the employee's performance.

- Sec. 519 DENIAL OF MERIT INCREASE: If, in the appointing authority's judgment, the employee's performance does not warrant a merit hourly rate of pay/salary increase upon meeting the time requirements, the Department/Agency Head may deny the increase and must complete the County/APCD performance evaluation rating form. Any time prior to the employee qualifying for his/her next merit increase, the employee may request a review of his/her merit increase by the appointing authority or the appointing authority, by his/her own initiative, may review the matter. If the appointing authority concurs with the requested review or if the appointing authority independently initiates his/her own review, then the appointing authority shall reopen the matter by submitting another performance rating and recommendation. If an employee's merit increase is granted prior to completing at least 2,080 hours of compensable service after it was denied, that employee's next merit increase shall not be due until the employee has completed at least an additional 2,080 hours of compensable service from the first day of the pay period on which the increase was actually granted.
- Sec. 520 CORRECTING ERROR IN OVERLOOKING MERIT INCREASE: Upon discovery that an employee who would otherwise have been recommended for a merit increase failed to receive such increase as the result of an oversight in recognition of the employees completion of the merit qualifying hours needed, the Auditor-Controller shall compensate the employee for the additional hourly rate of pay/salary he/she should have received dating from the first day of the pay period after which he/she would have satisfied the merit qualifying hours by adding said additional hourly rate of pay/salary to the employee's next biweekly paycheck. In such cases, there shall be no adjustment of the employee's merit qualifying hours.
- Sec. 521 HOURLY RATE OF PAY/SALARY ON PROMOTION: Except as provided below, a newly appointed employee or a regular employee who is appointed to a position in a classification having a higher hourly rate of pay/salary rate than his/her previous classification shall receive the entry level hourly rate of pay/salary for the higher classification or such higher amount as would constitute a hourly rate of pay/salary increase of approximately five percent (5%) on the range of the new classification over the hourly rate of pay/salary received prior to promotion, whichever is greater.
- A. Notwithstanding the provisions described above, a newly appointed employee or regular employee who is appointed to a position in a class having a higher hourly rate of pay/salary rate may, upon recommendation of his/her appointing authority and subject to the approvals described below, have his/her initial hourly rate of pay/salary established at any point of the pay/salary range of the new classification. Such rate must, however, be at least the entry rate for the higher classification or constitute an increase of five percent (5%)

Webb, Linda

From: Dembowski, Jim
Sent: Wednesday, May 03, 2017 11:25 AM
To: Webb, Linda; Atin, Shawn; Stallings, Julie
Cc: Reynolds, Michelle
Subject: RE: MBPP

Linda:

Shawn asked that I respond as I led the bargaining effort with SEIU that resulted in the current MOA.

It is recognized that the single sentence that was carried over from the prior MOA in the fourth paragraph of Section 622 of the MOA would seemingly preclude those who are receiving the MBPP from receiving an MBA. However, that would not result in the employees receiving what was intended by the parties at the table. As is well established in Labor Relations, a contract is to be read not line by single line, but rather in total, so as to implement the true understanding of the parties at the table. In this instance, and in sharp contrast to the language found in 502-B of the prior MOA, the language I wrote (as approved by County Counsel) to create 502-B in the current MOA specifically provides that the MBAs be given not only to the subject classifications, *but to all individuals employed therein...* of great note is that there is no stated exclusion of those receiving the benefit of Section 622. Further, the MOA was costed and presented to the BoS as if all individuals within the classification were to receive the benefit, again, irrespective as to whether or not the individual also received MBPP.

Obviously, the failure to delete that outlier sentence has resulted in some confusion and need be corrected by a letter to the BoS. That will occur in the near future.

It is thought the above should allay any confusion regarding the application(s) of 502-B and 622.

J. A. Dembowski

Sr. Deputy Executive Officer - Human Resources
County of Ventura □ County Executive Office
800 South Victoria Avenue, L □ 1970
Ventura, CA 93009
(805) 654-2568
jim.dembowski@ventura.org

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From: Webb, Linda
Sent: Wednesday, May 3, 2017 10:05 AM
To: Atin, Shawn <Shawn.Atin@ventura.org>; Stallings, Julie <Julie.Stallings@ventura.org>
Cc: Reynolds, Michelle <Michelle.Reynolds@ventura.org>; Dembowski, Jim <Jim.Dembowski@ventura.org>
Subject: RE: MBPP

Shawn,

The reason we are asking is that you've referred us to the MOA for the provisions which guide MBPP. Regarding MBAs, it says that those receiving MBPPs get the GSIs without an MBPP reduction, but are not be eligible for MBAs.

lw

From: Atin, Shawn
Sent: Wednesday, May 03, 2017 9:21 AM
To: Stallings, Julie
Cc: Webb, Linda; Reynolds, Michelle; Dembowski, Jim
Subject: RE: MBPP

Julie –

We have made the case that the HCA Fiscal Premium Pay is similar to MBPP and as such should be included as pension compensation. Regarding the MBA and MBPP, in this round of negotiations MBAs have been provided to all employees in eligible classifications. I am unclear how this impacts the pension compensation question before you. Please clarify.

Shawn Atin

Human Resources Director
County of Ventura | County Executive Office
800 South Victoria Avenue, L □1970
Ventura, CA 93009
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From: Stallings, Julie
Sent: Wednesday, May 03, 2017 8:43 AM
To: Atin, Shawn <Shawn.Atin@ventura.org>
Cc: Webb, Linda <Linda.Webb@ventura.org>; Reynolds, Michelle <Michelle.Reynolds@ventura.org>; Dembowski, Jim <Jim.Dembowski@ventura.org>
Subject: RE: MBPP

Shawn, I wanted to make sure you saw the separate question in the email string that we had asked Michelle regarding MBAs and MBPP. On the last round of MBAs, it appears to have been applied across entire classifications, including for employees already receiving MBPP.

One additional question – is the HCA Fiscal Premium Pay considered a type of MBPP? If not, can you explain how it differs from them?

Thanks,
Julie

From: Atin, Shawn
Sent: Thursday, April 27, 2017 5:53 PM
To: Stallings, Julie
Cc: Webb, Linda; Reynolds, Michelle; Dembowski, Jim
Subject: RE: MBPP

We will review the individuals in question to determine specific facts and circumstances surrounding each. In general, as you point out, MBPP is related to market conditions. In the event of any unintentional discrepancies, we will of course make corrections as needed.

Let me know if we can be of further assistance

Shawn Atin

Human Resources Director
County of Ventura | County Executive Office
800 South Victoria Avenue, L □1970
Ventura, CA 93009
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Shawn.Atin@ventura.org

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From: Stallings, Julie
Sent: Thursday, April 27, 2017 1:48 PM
To: Atin, Shawn <Shawn.Atin@ventura.org>
Cc: Webb, Linda <Linda.Webb@ventura.org>; Reynolds, Michelle <Michelle.Reynolds@ventura.org>; Dembowski, Jim <Jim.Dembowski@ventura.org>
Subject: RE: MBPP

Shawn,

We were asking Michelle about MBPP pay items via email and phone. Specifically, those that have stopped or been discontinued and we provided specific examples to illustrate. We understand there are 3 MBPPs that have historically stopped or been discontinued for all or some employees: Histologist Premium Pay, Radiologic Specialist Premium Pay and Therapist Premium Pay.

The Radiologic Tech pay item has been inactive for some time, and we wanted to confirm that it was suspended as a result of a drop in the overall market rate. In looking at the histologist and therapist ones, the premium pay ended at different times for different people. For example:
105627 – Histologist premium pay ended 10/9/05
102039 – Histologist premium pay ended 7/15/07
122129 – Therapist premium pay ended 8/19/12
100740 – Therapist premium pay increased on 1/24/10, but no change in MBPP for the other two Supervising Therapist II who were receiving the premium (102789 and 105285).

We asked Michelle about these specific circumstances, as well as the HASC study timing in general. In preparation of her memorandum to our outside counsel, Linda Webb asked us to identify MBPPs that had been reduced or discontinued and the circumstances that triggered it, such as the HASC study or other market data.

Please let me know if you need any other information regarding our questions.

Thank you,

Julie Stallings
Chief Operations Officer

Ventura County Employees' Retirement Association
1190 S. Victoria Ave., Ste. 200
Ventura, CA 93003
(805) 339-4265
FAX: (805) 339-4269

From: Atin, Shawn
Sent: Wednesday, April 26, 2017 5:28 PM
To: Stallings, Julie
Cc: Webb, Linda; Reynolds, Michelle; Dembowski, Jim
Subject: FW: MBPP

Julie,

Please direct all your questions regarding MBPP through my office. We will be happy to provide you the information you request; but we will need time to complete and review your information request. In summary, the SEIU MOA describes the provisions which guide the MBPP.

Since I have just become involved, please enumerate your questions.

Thank you

Shawn Atin
Human Resources Director
County of Ventura | County Executive Office
800 South Victoria Avenue, L 1970
Ventura, CA 93009
☎ (805) 654-2561
Shawn.Atin@ventura.org

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From: Reynolds, Michelle
Sent: Wednesday, April 26, 2017 5:21 PM
To: Atin, Shawn <Shawn.Atin@ventura.org>
Cc: Dembowski, Jim <Jim.Dembowski@ventura.org>; McKinney, Katie <Katie.McKinney@ventura.org>
Subject: FW: MBPP

From: Stallings, Julie
Sent: Tuesday, April 18, 2017 4:55 PM
To: Reynolds, Michelle <Michelle.Reynolds@ventura.org>; Nunna, Shalini <Shalini.Nunna@ventura.org>
Subject: RE: MBPP

We just discussed this with our administrator and she is willing to hold off until you're able to respond, as long as it is soon. Sorry if we weren't clear about the turnaround time frame.

We appreciate your help with this!

Julie

From: Reynolds, Michelle
Sent: Tuesday, April 18, 2017 2:08 PM
To: Stallings, Julie; Nunna, Shalini
Subject: RE: MBPP

Julie, I apologize that I did not understand that you needed the information right away. I need to run what I provide to you by Shawn first so you might not get it today.

Michelle

From: Stallings, Julie
Sent: Tuesday, April 18, 2017 1:57 PM
To: Nunna, Shalini <Shalini.Nunna@ventura.org>; Reynolds, Michelle <Michelle.Reynolds@ventura.org>
Subject: RE: MBPP

Hi Michelle,

I just left you a message regarding the information below that we previously requested, but thought I'd follow-up with an email. VCERA will be sending all relevant information related to MBPP to our outside Counsel for review today, and we were hoping to include this information. We would also like to include the reasoning behind the MBPP recipients receiving Market-Based Adjustments in January 2017.

Please let me know if you have any questions.

Thanks,
Julie

From: Nunna, Shalini
Sent: Monday, April 10, 2017 5:12 PM
To: Reynolds, Michelle
Cc: Stallings, Julie
Subject: MBPP

Hi Michelle,

Thanks again for the information that you provided. Just to summarize, here are the employees we are currently reviewing:

105627 – Histologist premium pay ended 10/9/05
102039 – Histologist premium pay ended 7/15/07
122129 – Therapist premium pay ended 8/19/12
100740 – Therapist premium pay increased on 1/24/10, but no change in MBPP for the other two Supervising Therapist II who were receiving the premium (102789 and 105285).

As you mentioned on the phone, market based premium pay is somewhat discretionary and it's based on more than the annual HASC study. Other factors that could affect MBPP include recruitment and retention challenges, annual budget, etc. If you could identify the criteria that is used to award MBPP, we would greatly appreciate it.

Attached is an excerpt from the County Employees' Retirement Law (CERL) regarding pensionable compensation – CA Government Code Section 7522.34. You can find the complete law book here:

https://www.lacera.com/about_lacera/pdf/retirement_law_book.pdf

Thanks again for your help!

Shalini Nunna | Retirement Benefits Manager
Ventura County Employees' Retirement Association
1190 S. Victoria Avenue, Suite 200 | Ventura, CA 93003
Direct: 805-339-4264 | Department Fax: 805-339-4269
Shalini.Nunna@ventura.org | www.ventura.org/VCERA

Disability Meeting Agenda - VI.A. OLD BUSSINESS: DETERMINE COMPLIANCE OF COV'S PROPOSED PUBLICLY AVAIL. PAY SCHEDULE FOR MBPP

Count of ID Job Title	Rate Code								Grand Total
	CLS123	LPTAST	PHARM	PRNRES	PSYCH	SPEECH	THRPST	N/A	
Clinical Lab Scientist I	1								1
Clinical Lab Scientist II	25								25
Clinical Lab Scientist III	9								9
Histologist								3	3
Licensed Physical Therapy Asst		3							3
Pharmacist II			20					1	21
Pharmacy Technician I			4						4
Pharmacy Technician II			15						15
Physical Therapist								1	1
Principal Respiratory Therapst				33				2	35
Radiologic Specialist I								14	14
Radiologic Specialist II								11	11
Radiologic Specialist III								3	3
Radiologic Technologist								11	11
Senior Psychologist					13				13
Staff Psychologist					2				2
Senior Speech Pathologist							1		1
Speech Pathologist							1		1
Supervising Therapist I								6	6
Supervising Therapist II							3	1	4
Senior Physical Therapist							2	19	21
Occupational Therapist								1	1
Senior Occupational Therapist							1	11	12
Grand Total	35	3	39	33	15	2	6	84	217

Total Number of Employees Receiving MBPP		133	61%
Total Numer of Employees Not Receiving MBPP		84	39%
Total Number of Employees Eligible for MBPP		217	100%



COUNTY EXECUTIVE OFFICE
MICHAEL POWERS
County Executive Officer

September 7, 2017

J. Matthew Carroll
Assistant County Executive Officer

Catherine Rodriguez
County Chief Financial Officer

Board of Retirement
Ventura County Employees' Retirement Association
1190 South Victoria Avenue, Suite 200
Ventura, CA 93003

Shawn Atin
Assistant County Executive Officer/
Human Resources Director
Labor Relations

RE: Market-Based Premium Pay and Its Pensionability Under the California
Public Employees' Pension Reform Act

Dear Board:

The County of Ventura (County) respectfully requests that your Board reaffirm its decision of October 19, 2015, to include Market-Based Premium Pay (MBPP) in pensionable compensation.

I. Retirement Board's Approval and Request for Publicly Available Schedule

Your Board scheduled a meeting for October 19, 2015, to determine which items of compensation should be included in pensionable compensation under the Public Employees Pension Reform Act (PEPRA). At that time, the County reiterated its position that MBPP was essentially part of regular salary, stating that “[m]arket-based salary adjustments are a significant component of an employee’s base pay and are a practical and effective tool to ensure competitive compensation.”¹ The Service Employees International Union, Local 721 (SEIU) was in complete agreement with the County’s position, and also urged your Board to include MBPP in pensionable compensation. SEIU stated that “[t]he MBPP is treated by the County to be comparable to the Market Based Adjustment, which is indisputably pensionable income,” and presented sworn evidence that “[t]he MBPP functions to effectively bring wages of the classifications outlined in section 622 of the MOU to market levels.”² VCERA’s outside counsel also deviated from VCERA staff’s recommendation and advised your Board that PEPRA did not expressly mandate that MBPP be excluded from pensionable compensation.³

¹Letter from Michael Powers to VCERA dated October 13, 2015, pages 3-4; reproduced at Master Pages 141-142 of June 19, 2017, agenda packet.

²Letter from Weinberg, Roger & Rosenfeld dated October 2, 2015, on behalf of SEIU, page 3, and attached declaration of Angela Portillo, p. 9; reproduced at Master Pages 148 & 156 of June 19, 2017, agenda packet.

³October 19, 2015, VCERA staff report, page 4; reproduced at Master Page 79 of October 19, 2015, agenda.

VCERA Board
September 7, 2017
Page 2

On October 19, 2015, your Board fully considered the facts and advice of counsel, and voted 8 to 1 to include MBPP in pensionable compensation for PEPRA-covered members. As part of the motion to include MBPP in pensionable compensation, your board “requested” that the Board of Supervisors “create a publicly available schedule of the items in Table A [i.e., the MBPP classifications] by July 1, 2016.”⁴

What has followed is a nearly two-year effort by the County to comply with your Board’s request, and VCERA staff’s continual resistance. Unfortunately, we have now reached the point that VCERA staff is recommending to your Board that, almost two years after VCERA started including MBPP in pensionable compensation, that your Board now “[e]xclude MBPP from pensionable compensation due to deficiency in meeting PEPRA criteria.”⁵

As will be shown, the County has fully respected and complied with your Board’s request to create a publicly available schedule for MBPPs. As to the other issues raised by VCERA’s staff report, it is clear that there have not been any material changes in facts or law since 2015 to justify a change by your Board. Nonetheless, VCERA’s staff continues to restate old arguments. For example, VCERA staff continues to make arguments, like those related to date of hire. VCERA staff states that the County has reshaped and contradicted its arguments about date of hire. The County has consistently taken the position that date of hire is of marginal relevance, if any, and distracts from the core question of whether MBPP is a component of base pay (as your Board implicitly agreed in 2015), or is a variety of special compensation subject to the complex and nearly indecipherable administrative criteria developed by your staff for analyzing special compensation.

The genesis of VCERA staff’s position can be traced to September 23, 2015 when representatives from the County and VCERA met to discuss areas of agreement and disagreement concerning pensionable compensation under PEPRA in an attempt to resolve as many issues as possible in advance of your October 19, 2015, meeting. Despite best efforts, there was no agreement on MBPP. A memorandum prepared by VCERA staff succinctly stated the positions of the parties:

“COV feels that this is essentially base pay of people who are paid this premium, and is applied as such on a practical basis. . . . VCERA’s administrative recommendation of exclude is based on the understanding that

⁴See minutes of October 19, 2015, meeting, approved at November 16, 2015, meeting; Master Pages 7-8.)

⁵See staff report for VCERA’s June 19, 2017, meeting; reproduced at Master Page 117.

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Page 3

there is not a subgroup of 'similarly situated' employees in the same grade or class who receive premium pay; rather the premium is based on date of hire of a particular individual, may be taken away without change of duties of that individual at any time, and may not be paid to the next person hired at a later date into the same job. VCERA does not believe that PEPRA's requirement that in order to be pensionable a pay item must be paid to 'similarly situated individuals' should be interpreted to include premiums paid in addition to normal salary that are tied only to date of hire and are not necessarily paid to others hired into the position later.⁶

2. The County has Complied with Your Board's Request to Create Publicly Available Schedule

Your Board adopted a resolution in 2014 defining publicly available pay schedule.⁷ The resolution sets forth items of information the pay schedule must possess, but also as a practical matter, that the information may be set forth in a union contract or the Management Resolution.⁸

Although the County could have simply pointed out that all the required items of information are contained in the union contracts or the Management Resolution, the County went further. Because the foundation for the County's position is that MBPP is a component of base pay, the County amended its Job Code and Salary Listing by Job Titles (hereinafter "Salary Listing") to include an express reference to MBPP and the job titles affected. The Salary Listing is the single document publicly available on the County's website that lists all job classification titles and the associated wage/salary ranges. A person employed in one of the job classifications is paid a regular wage/salary somewhere within the stated range, but exact placement within the range will vary employee by employee.

The County provided your staff with its amended Salary Listing by letter dated June 6, 2016. The amendment consisted of a table listing all job codes and titles eligible

⁶Summary of Meeting of Sept. 23 on Pensionable Compensation for PEPRA Members; Master Page 144 of June 19, 2017, agenda packet.

⁷VCERA Resolution dated November 17, 2014.

⁸Paragraph 4(h) of the Resolution provides that a publicly available pay schedule "[d]oes not reference another documents in lieu of disclosing the item of Pensionable Compensation other than those outlined in a 'labor policy or agreement, . . .'" Labor policies and agreements are defined to include a Memorandum of Agreement and a Management, Confidential Clerical and Other Unrepresented Employees Resolution. The Resolution further provides that "[i]dentifying a percentage increase in salary . . . does comply with this interpretation of 'pay schedule'."

VCERA Board
September 7, 2017
Page 4

for a MBPP and the marginal wage extension.⁹ Because VCERA's staff asked for it, the County also provided it with a list of every County employee eligible for a MBPP and their date of hire. The County noted in its June 30, 2016, cover letter that "we do not believe that inclusion of the hire dates is necessary for compliance" and "we believe too much emphasis has been placed by VCERA Administration on date of hire" ¹⁰

VCERA's staff was not satisfied with the County's approach and much communication followed concerning the significance of an employee's date of hire, and other demands.

Nonetheless, the County has continued to modify and improve its publicly available information to honor your Board's request. The County has recently implemented its proposal to upgrade the Salary Listing to explicitly refer to the MBPPs as increases to the top of the salary ranges, and to revise the salary range listings for each affected classification so that any person who views the County's Salary Listing will immediately see that the MBPPs are included as regular salary.¹¹

We ask that your Board affirm that the County has sufficiently complied with your request to create a publicly available schedule for MBPPs.

3. VCERA Staff's Request that Your Board Reconsider Its 2015 Action Is Unwarranted.

VCERA's staff letter implies there have been developments and additional information received since 2015 that warrant your Board reversing course. As demonstrated above, nothing material has changed. The core contentions between the County and VCERA's staff remain. The County, and presumably SEIU, continue to believe MBPP is a component of base pay and thus pensionable. VCERA staff still believes, as it stated in its summary of the parties September 23, 2015, meeting, that MBPPs are "premiums paid in addition to normal salary that are tied only to date of hire."¹²

⁹See Master Pages 119-120 of VCERA's June 19, 2017, agenda packet.

¹⁰See Master Pages 121-126 of VCERA's June 19, 2017, agenda packet.

¹¹ See Current and proposed versions of Salary Listing format on Master Pages 129-130 of VCERA's June 19, 2017, agenda packet.

¹² Summary of Meeting of Sept. 23 on Pensionable Compensation for PEPRA Members; Master Page 144 of June 19, 2017, agenda packet.

VCERA Board
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Fundamentally, the County believed and still believes that only base pay should count toward pensionable compensation under PEPRA. Your Board decided otherwise, and included specified items of special compensation in pensionable compensation. The County has accepted your Board's decision, those parts it disagreed with as well as those it agreed with. VCERA staff should do likewise. It is unreasonable and unnecessary for your Board to now reconsider and change the settled expectations of the County, unions and employees on the issue of MBPPs.

4. VCERA Staff's Theories About Discretionary Pay Items Are Misplaced.

VCERA staff's letter sets forth straw-man arguments dealing with alleged discretionary nature of MBPPs. The framing of the questions reflects that staff has never let go of its view that MBPPs are special compensation, and not an element of base pay as the County contends.

The County believes VCERA staff's position is misplaced because it considers MBPPs to be special compensation and not a part of base pay. To demonstrate the point, the County invites your Board to apply the tests enunciated by VCERA staff to base pay. If one were to follow staff's application of this test to the County's MBPP he or she would conclude that base pay does not count as compensation earnable. Of course, such a conclusion would be absurd.

The County believes VCERA staff got on the wrong track by applying PERS regulatory test for special compensation, which like your Board's 2014 Resolution requires publicly available information about the conditions for payment of an item. (See 2 Cal.Regs. 571.) In contrast, State regulations for publicly available pay schedules for base pay or regular salary contain no such requirement, but in its place require publication of the "time base" for the pay, e.g., hourly, weekly, etc. Thus, the test to be used depends entirely on whether one is examining base pay or special compensation. By refusing to yield to your Board's 2015 decision in favor of the County and SEIU on this point, your staff has pre-ordained the current deadlock.

A further example with demonstrate that MBPPs are a component of base pay and not special compensation. At least for purposes of pensionable compensation, the MBPPs are absolutely indistinguishable from Market-Based Adjustments that the County and unions routinely use to increase salary ranges. For example, with Market Based Adjustments the County increases the salary ranges for all job titles shown to be under market by a study. Contrary to VCERA's staff's assertions, many times these studies and percentage increases are not determined until well after the union contracts are signed.¹³

¹³See, e.g., 2013-2016 MOU between County and SEIU, section 502; reproduced as Master Pages 159-161 of VCERA's June 19, 2017, agenda packet.

VCERA Board
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Employees may or may not ever receive compensation within the increased salary range. There is no objectively defined criteria for receiving any amount along the salary range. The MBPPs are nearly identical. The only difference is that the contracts authorize the Human Resource Director to approve market based increases capped at fixed dollar amount increase. Like with Market Based Adjustments to the salary range, any particular employee may never receive compensation within the increase to the salary range. The most notable difference from Market Based Adjustments is that MBPPs can easily be rescinded if market conditions or the employee's value to the County changes. The same is true for all employee salaries, of course, but differing procedures make achievement of such changes more deliberate and prolonged. Nonetheless, it remains an incontrovertible fact that no employee has an objectively defined entitlement to placement at any point along a salary range, but no reasonable person would contend employee salaries cannot be included in pensionable compensation.

For all the reasons set forth above, the County urges your Board to not follow staff's recommendation to exclude MBPPs from pensionable compensation for PEPPRA-covered employees.

Sincerely,



Shawn Atin
Assistant County Executive Officer
Director of Human Resources

cc: Michael Powers, County Executive Officer



June 19, 2017

Board of Retirement
Ventura County Employees' Retirement Association
1190 South Victoria Avenue, Suite 200
Ventura, CA 93003

SUBJECT: EVALUATION OF HCA FISCAL PREMIUM PAY PENSIONABILITY UNDER PEPRA

Dear Board Members:

Background

In January of this year, VCERA staff brought 9 new pay codes to the Board of Retirement for inclusion or exclusion in pensionable compensation under PEPRA. These codes were ones not originally included in the 2015 action, as they were established after the initial data was gathered.

One of these pay codes was the Health Care Agency (HCA) Fiscal Premium Pay. It was the only code of the nine on which VCERA and the County did not agree. Section 410 of the County of Ventura Management Resolution provides:

“At the sole discretion of the Director-Health Care Agency and upon his/her recommendation, the Director-Human Resources may approve a premium pay at the rate of seven and one-half percent (7.5%) of the employee’s base bi-weekly pay (exclusive of other additions) for employees in the classifications of Fiscal Manager I-IV and Assistant Chief Financial Officer-HCA who are assigned to positions in the Ventura County Medical Center and/or Santa Paula Hospital. The premium provided by this section is “at will”, meaning it may be discontinued at any time without cause and without any pre-deprivation process at the sole discretion of the Director-Health Care Agency.” (Emphasis added.)

Staff recommended exclusion because HCA Fiscal Premium Pay is a discretionary pay item that may be withheld at a later date without a change in duties. It is comparable to items previously excluded from pensionable compensation by the Board of Retirement in its October 19, 2015 action, such as supplemental pay for attorneys (pay code TSC). The pay description for this attorney premium in the Management Resolution also indicates it is at the sole discretion of the Appointing Authority, and may be discontinued at any time without cause and without any pre-deprivation process; it also expires in one year unless renewed.

HCA Fiscal Premium Pay Letter
June 19, 2017
Page 2

Ultimately, after hearing comments from VCERA staff and County HR, the Board asked for HCA Fiscal Premium Pay to be brought back for consideration at a later date, after the parties were able to discuss. Since then, the County has continued to contend that HCA Fiscal Premium Pay is similar to MBPP and thus should be included as pensionable compensation.

Complicating the situation further is that the underlying authority for paying HCA Fiscal Premium Pay is in question. It was originally implemented in September 2015 and presented as a measure to be taken immediately, but that the long-term plan was to examine the HCA specific positions overall. When that examination occurred, the classification titles changed with corresponding increases, and yet the premium pay remained attached. (See Attachments) The result is that HCA Premium Pay is now paid to job classifications not approved by the Board of Supervisors to receive it. This was brought to HR's attention, but no explanation has been provided to VCERA. While the question of legal authority to make the payment remains with the County and its Board of Supervisors, the question of legal authority to include the payment in pensionable compensation resides with VCERA and this Board.

Because the Director-HCA has reserved complete discretion over the payment, and ability to discontinue the payment of the HCA Fiscal Premium Pay and payment that is not provided to all similarly situated members of the same group or class of employment, staff categorizes it as ad hoc and a discretionary bonus. Such a payment is not within the Board's discretion to include in pensionable compensation.

RECOMMENDED ACTION: EXCLUDE MBPP FROM PENSIONABLE COMPENSATION DUE TO DEFICIENCY IN MEETING PEPRA CRITERIA.

Staff will respond to any questions at the June 19, 2017 business meeting.

Sincerely,



Linda Webb
Retirement Administrator

Attachments:

1. Management Resolution Excerpt – Section 410
2. HCA Fiscal Premium Pay Inception in Board of Supervisors' Letter
3. HCA Fiscal Positions Reworked and Retitled

Sec. 410 **Health Care Agency Fiscal Premium Pay:** At the sole discretion of the Director-Health Care Agency and upon his/her recommendation, the Director-Human Resources may approve a premium pay at the rate of seven and one-half percent (7.5%) of the employee's base bi-weekly pay (exclusive of other additions) for employees in the classifications of Fiscal Manager I-IV and Assistant Chief Financial Officer-HCA who are assigned to positions in the Ventura County Medical Center and/or Santa Paula Hospital. The premium provided by this section is "at will", meaning it may be discontinued at any time without cause and without any pre-deprivation process at the sole discretion of the Director-Health Care Agency.

Board of Supervisors
September 22, 2015
Page 11

restructured into three distinct sections: Recruitment, Labor Relations, and Support Services.

Five additional staff are requested. Support staff: One (1) regular Management Assistant III-C will provide clerical and administrative support, freeing the time of professional staff to focus on the HCA's pressing recruitment and labor relations matters. Thus reducing the time-to-hire and time to resolve sensitive employment matters.

Professional staff: One (1) regular Personnel Management Analyst, two (2) regular Personnel Analyst I's, and one (1) regular Personnel Analyst II are requested to provide more timely recruitments, labor relations, and support services. The Personnel Management Analyst will be responsible for managing the Labor Relations unit, along with responding to and handling the most sensitive Labor Relations issues that arise. The position will also oversee the Return to Work/Leave of Absence subsection. The HCA typically has 140 employees on varying leaves at any one time. The Personnel Analyst I and II will be assigned to the recruitment section; this team accounted for 36% of all County recruitments during FY 14-15. Due to the highly specialized needs of the HCA, the HCA has a number of difficult to recruit classifications which, in addition to traditional recruitment methodologies, require extensive sourcing and outreach of potential qualified candidates. The other Personnel Analyst I will provide direction, guidance and coordination to staff within the Certification Unit, which supports recruitments by facilitating candidate testing and on-boarding.

Recommendation No. 7 – Amend the Management Resolution

Approve an amendment to the Management, Confidential Clerical and Other Unrepresented Employees Resolution to add Section 410, Health Care Agency Hospital Fiscal Premium Pay (page 21 of attached red-line Resolution). This change will have no material impact on the funding status of the retirement system.

Discussion for Recommendation No. 7 – Amend the Management Resolution

Central to the Health Care Agency is the Fiscal Department, and specifically the fiscal managers at the hospital who are responsible for leading and managing staff and whose goal it is to ensure regulatory compliance, accurate accounting, timely invoicing for services rendered, payments, and the compilation of a significant variety of required annual and periodic complex reports.

As previously noted, the significant growth of our healthcare system, combined with changes of the healthcare industry have led to a more complex work environment, with correspondent additional staff responsibility and workload.

CEO-HR reviewed the following California counties that have a healthcare fiscal classification comparable to the Ventura County benchmark classification of Fiscal Manager IV: Los Angeles, Riverside, San Bernardino, San Mateo and Santa Clara. These public entities were selected because they have significant healthcare

Board of Supervisors
September 22, 2015
Page 12

operations, specifically hospital operations, administered by each county and they have specialized healthcare fiscal management job classifications. Our review indicates that for classifications that are comparable to the benchmark Ventura County classification, Fiscal Manager IV, the market median base salary is at \$11,450.80 monthly, which is 13.5% above the Ventura County classification of Fiscal Manager IV (\$10,086.58 monthly). This survey suggests that other public entities recognize the relative additional complexity and responsibility associated with fiscal management in a hospital setting compared to non-hospital settings.

Additionally, our analysis shows that in the critical management positions, which are responsible for oversight of regulatory compliance, the average job tenure is only two years. High turnover in management positions leads to a loss of institutional memory and a greater risk of errors and omissions.

One step to enhance retention within the VCMC Fiscal department is the creation of a pay differential for hospital fiscal managers, which recognizes the increased complexity of fiscal management within hospital accounting. It is recommended that a 7.5% premium pay be established for fiscal management classifications assigned to the hospital in the Fiscal Manager series to include Fiscal Manager I, II, III, IV and Assistant Chief Financial Officer-HCA, excluding the hospital Chief Financial Officer-HCA.

It should be noted that further review of the classification will be undertaken to determine if, in the long-term, HCA specific fiscal job classifications are warranted. Additionally, CEO-HR will review additional fiscal management classifications within the HCA such as the Chief Financial Officer-HCA ("CFO-HCA") classification. A recent Hospital Association of Southern California survey indicates that the compensation for classifications similar to the CFO-HCA may be significantly higher than that currently offered by Ventura County which has remained unfilled for a period of nineteen (19) months. We will return to your Board at a later date to report our findings and recommendations on this matter.

There are six (6) positions, which include the two positions requested in this Board Letter, which are affected by this recommendation. The estimated annual cost impact including benefits as a result of this premium is approximately \$72,000. The appropriation request is included in recommendation #4 above.

Board of Supervisors
September 22, 2015
Page 13

This letter has been reviewed by the County Executive Office, County Counsel, and the Auditor-Controller's Office. If you have any questions regarding this item, please contact me at (805) 654-2561.

Respectfully,



SHAWN ATIN
Human Resources Director



MICHAEL POWERS
County Executive Officer

c: Jeff Burgh, Auditor-Controller
Matt Carroll, Assistant County Executive Officer
Leroy Smith, County Counsel

Attachments

RESOLUTION NO. 16-098

EXHIBIT 1

**RESOLUTION OF THE BOARD OF SUPERVISORS OF
THE COUNTY OF VENTURA
CONCERNING CLASSIFICATION, CLASS CODES, AND
ALLOCATIONS THEREIN PURSUANT TO SECTIONS 903
AND 908 OF THE COUNTY
PERSONNEL RULES AND REGULATIONS**

WHEREAS, Section 903 of the Ventura County Personnel Rules and Regulations requires that the number of positions and classifications of such positions within departments shall be established by resolution of the Board of Supervisors; and

WHEREAS, Section 908 of the Ventura County Personnel Rules and Regulations provides that the Ventura County classification listing all classes of positions in the general County Service designating class title, class code and salary ranges shall be established by resolution of this Board.

NOW, THEREFORE, BE IT RESOLVED, DETERMINED AND ADOPTED AS FOLLOWS:

- 1a. In accordance with Sections 903 and 908 of the Ventura County Personnel Rules and Regulations, the following fifteen (15) classifications and salary ranges are established, effective September 25, 2016:

Job Code	Classification	FLSA Status	Union Code	Compensation Frequency	Hourly (H) / Salary (S) Range
00796	Accounting Technician-CC	N	MCC	Hourly	\$20.892774 - \$29.249880 (H)
00797	Senior Accounting Technician-CC	N	MCC	Hourly	\$22.459731 - \$31.443625 (H)
00910	Accountant I-MB	N	MB4	Hourly	\$24.061048 - \$33.685466 (H)
00911	Accountant II-MB	N	MB4	Hourly	\$26.734495 - \$37.428293 (H)
00912	Senior Accountant-MB	P	MB4	Salaried	\$61,168.53 - \$85,635.94 (S)
00913	Principal Accountant-MB	P	MB4	Salaried	\$70,343.81 - \$98,481.33 (S)
00921	Finance Analyst I	N	MB4	Hourly	\$29.585115 - \$40.457620 (H)
00922	Finance Analyst II	P	MB4	Salaried	\$68,374.49 - \$95,724.28 (S)
00923	Senior Finance Analyst	P	MB4	Salaried	\$75,211.94 - \$105,296.71 (S)
00946	Manager, Accounting I	P	MB3	Salaried	\$78,339.87 - \$109,675.82 (S)
00947	Manager, Accounting II	P	MB3	Salaried	\$87,044.30 - \$121,862.02 (S)
00948	Senior Manager, Accounting	P	MB3	Salaried	\$95,748.73 - \$134,048.23 (S)
00957	Manager, Accounting-Treasurer Tax Collector	P	MB3	Salaried	\$87,044.30 - \$121,862.02 (S)

00959	Manager, Accounting-Auditor Controller	P	MB3	Salaried	\$91,396.52 - \$127,955.13 (S)
00990	Manager, Accounting-Hospital	P	MB3	Salaried	\$98,251.26 - \$137,551.76 (S)

1b. In accordance with Sections 903 and 908 of the Ventura County Personnel Rules and Regulations, the following thirteen (13) classifications and salary ranges are deleted, effective September 25, 2016:

Job Code	Classification	FLSA Status	Union Code	Compensation Frequency	Hourly (H) / Salary (S) Range
01297	Fiscal Assistant I-C	N	MCC	Hourly	\$14.756613 – 20.659260 (H)
01298	Fiscal Assistant II-C	N	MCC	Hourly	\$16.507756 – 23.110857 (H)
01299	Fiscal Assistant III-C	N	MCC	Hourly	\$18.529194 – 25.940875 (H)
01301	Fiscal Assistant IV-C	N	MCC	Hourly	\$19.797935 – 27.717111 (H)
01302	Fiscal Technician I-C	N	MCC	Hourly	\$20.052240 – 28.075889 (H)
01303	Fiscal Technician II-C	N	MCC	Hourly	\$21.502113 – 30.105908 (H)
02092	Accounting Officer IV-MB	P	MB4	Salaried	\$64,713.99 – 85,494.39 (S)
02072	Financial Analyst I	P	MB4	Salaried	\$62,616.94 – 82,714.85 (S)
02071	Financial Analyst II	P	MB4	Salaried	\$68,824.37 – 90,923.51 (S)
02070	Financial Analyst III	P	MB4	Salaried	\$75,648.53 – 99,938.66 (S)
02069	Fiscal Manager I	P	MB3	Salaried	\$75,648.53 – 99,938.66 (S)
02067	Fiscal Manager III	P	MB3	Salaried	\$85,256.53 – 112,632.61 (S)
02066	Fiscal Manager IV	P	MB3	Salaried	\$91,620.06 – 121,038.98 (S)

Upon motion of Supervisor Foy, seconded by Supervisor Long, the foregoing resolution was passed and adopted on this 13 day of September 2016.

By: Linda Parker
 Chair, Board of Supervisors
 County of Ventura

ATTEST: MICHAEL POWERS,
 Clerk of the Board of Supervisors,
 County of Ventura, State of California

By: Michael Powers
 Deputy Clerk of the Board





September 11, 2017

Board of Retirement
Ventura County Employees' Retirement Association
1190 South Victoria Avenue, Suite 200
Ventura, CA 93003

SUBJECT: RECOMMENDATION TO APPROVE EXTENSION OF VSG HOSTING AGREEMENT

Dear Board Members:

VCERA's pension administration system is hosted by VSG Hosting. The previous hosting agreement expired in February 2017; since then, staff and VSG have been working through several issues in the new agreement. These issues are not yet resolved.

In the interim, to allow VSG to invoice VCERA for the period covering February through September 2017, staff recommends an extension of the previous agreement while the remaining items are resolved. That amendment to allow the extension is provided, with the terms of the extension highlighted for convenience.

RECOMMENDATION: APPROVE EXTENSION OF VSG HOSTING AGREEMENT AS PROVIDED.

Staff will be pleased to answer any questions at the September 11, 2017 disability meeting.

Sincerely,

Linda Webb
Retirement Administrator

**THIRD AMENDMENT TO THE V3 SYSTEM HOSTING AGREEMENT
BY AND BETWEEN
VENTURA COUNTY EMPLOYEES’ RETIREMENT ASSOCIATION
AND
VSG HOSTING, INC.**

This Third Amendment to the V3 System Hosting Agreement effective as of February 27, 2012 by and between Ventura County Employees’ Retirement Association (“Client”) and VSG Hosting, Inc. (formerly Vitech Systems Group Hosting Services, Inc.) (“Vitech” or “VSG Hosting”) (the “Agreement”) is effective as of February 27, 2017 (the “Third Amendment Effective Date”). Capitalized terms used herein and not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

WHEREAS, the parties to the Agreement modified the Agreement by amendment, effective June 8, 2016;

WHEREAS, the parties to the Agreement further modified the Agreement by amendment, effective February 8, 2017; and

WHEREAS, the parties to the Agreement desire to further amend the Agreement as provided herein;

NOW, THEREFORE, in consideration of the mutual agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, intending to be legally bound, the parties hereto agree as follows:

- 1. The “Term & Fees” section of the “Order Form” on page 1 of the Agreement is deleted in its entirety and replaced with the following:

Term & Fees	
Initiation Date:	February 27, 2012
Term:	68 months
Setup Fee:	\$25,000
Monthly Hosting Fee:	
for months 1 – 68 from Initiation Date:	\$19,500.00 commencing September 1, 2014

This Third Amendment shall amend and is incorporated into and made part of the Agreement. To the extent that any term or provision of this Third Amendment may be deemed expressly inconsistent with any term or provision in the Agreement, the terms and provisions of this Third Amendment shall control. Except as expressly amended by this Third Amendment, all of the terms,

conditions and provisions of the Agreement are hereby ratified and continue unchanged and shall remain in full force and effect.

IN WITNESS WHEREOF the parties have caused this Third Amendment to be executed in duplicate by their duly authorized officers, who represent that they have the authority sufficient to do so, as of the Third Amendment Effective Date.

VSG Hosting, Inc.

Ventura County Employees' Retirement Association

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____



September 11, 2017

Board of Retirement
Ventura County Employees' Retirement Association
1190 South Victoria Avenue, Suite 200
Ventura, CA 93003

SUBJECT: PROPOSED SACRS' LEGISLATIVE AGENDA ITEMS FROM TRUSTEE GOULET

Dear Board Members:

Each year, the State Association of California Retirement Systems (SACRS) extends an invitation to each member system to submit any proposed legislative items to its legislative committee. The committee then reviews those proposals and determines the final list of SACRS-endorsed legislation for the upcoming session.

Trustee Goulet, in coordination with General Counsel Nemiroff, has provided information on two (2) proposals he would like the Board to review for submission to the SACRS legislative committee. These are provided for the Board, incorporating the SACRS-issued worksheet format.

Trustee Goulet, assisted by General Counsel Nemiroff, will be explaining the proposals and answering questions at the September 11, 2017 disability meeting.

Sincerely,

Linda Webb
Retirement Administrator



EDELSTEIN GILBERT ROBSON & SMITH LLC

Donald B. Gilbert Michael R. Robson Trent E. Smith Alan L. Edelman OF COUNSEL

June 19, 2017

TO: SACRS ADMINISTRATORS AND RETIREMENT BOARD CHAIRS
FROM: Mike Robson and Trent Smith on behalf of SACRS Legislative Committee
SUBJECT: SACRS 2018 LEGISLATIVE TIMELINES

If you intend to propose legislation to be sponsored by SACRS, please return your request, EXPLAINED ON THE ATTACHED WORKSHEET, by September 5 to:

Mike Robson & Trent Smith
Edelstein, Gilbert, Robson & Smith LLC
1127 11th Street, Suite 1030
Sacramento, CA 95814

Email to both:

Mike@EGRSlobby.com

Trent@EGRSlobby.com

The SACRS Legislative Committee has adopted a calendar for soliciting legislative proposals from SACRS retirement associations for consideration in the 2018 Legislative Session:

June 19, 2017

Emailing of Committee request that retirement associations submit proposals for inclusion in the SACRS 2018 Legislative Platform.

September 5, 2017

Deadline for requests to be received by Edelstein, Gilbert, Robson & Smith LLC.

September 8, 2017

Emailed to Legislative Committee

September 15, 2017

Date of Legislative Committee meeting at which association requests will be discussed.

October 6, 2017

Legislative Committee will submit proposals, (both those that the Legislative Committee recommends by inclusion in SACRS Legislative Platform, and other proposals received) to all retirement associations for consideration.

November 2017 (date TBD)

Those legislative proposals recommended by the Legislative Committee, as well as other proposals, will be discussed at the SACRS Fall Conference.

**2018 SACRS LEGISLATIVE PLATFORM WORKSHEET
PLEASE COMPLETE AND RETURN BY SEPTEMBER 5, 2017**

Title of Issue: Providing definition of “Surviving Spouse” for eligibility for survivor continuances.

Association: Ventura County Employees’ Retirement Association

Contact Person: Linda Webb, Retirement Administrator

Phone #: (805) 339-4262

Fax #: (805) 339-2502

Please answer the following questions as fully as possible:

1. Description of issue.

Under the CERL, a member may elect among various payment options at time of retirement. An unmodified allowance pays the highest monthly benefit and a 60% continuance to an eligible surviving spouse or, if none, to a minor child or children. (Govt. Code §§ 31760.1, 31760.2.) Under the unmodified allowance, Government Code section 31760.1 provides for a continuance to a surviving spouse who was married to the member for at least one year prior to retirement, and Government Code section 31760.2, an optional provision made applicable by board resolution, allows for a survivor continuance to be paid to a post-retirement spouse, provided the spouse is at least 55 years of age and was married to the member for at least two years prior to the member’s death.

The term “surviving spouse” is not defined by the CERL. Case law is clear that following a judgment of dissolution of marriage, a former spouse is not a “surviving spouse” under CERL, though the former spouse may be awarded his/her community property share of the member’s benefits and also may continue to receive his/her community property share of any survivor continuance paid to the member’s survivor(s). (See *In Re Marriage of Carnall* (1989) 216 Cal.App.3d 1010; *In Re Marriage of Cramer* (1993) 20 Cal.App.4th 73.) However, published case law did not address the rights of legally-separated spouses prior to the recent issuance of the opinion in *Irvin v. Contra Costa County Employees’ Retirement Association*, First Appellate District, Div. 1, A149642(the "Opinion"). The Opinion concludes that a legally separated spouse qualifies for a survivor continuance as the member’s “surviving spouse”. This Opinion is contrary to the practices of at least eight CERL systems and three prior decisions issued by the superior court in Santa Barbara, Contra Costa and Ventura counties. CCCERA has filed a petition for Supreme Court review, and four systems, so far, have jointly submitted a letter in support of review. (Ventura, Santa Barbara, San Bernardino and Tulare). The Opinion also impacts account divisions under Article 8.4 of the CERL. Prior to the Opinion, none of the systems that operate under Article 8.4 treat a legally separated spouse as the member’s surviving spouse, primarily because a survivor continuance is not among the benefits payable to the nonmember and any benefits not awarded to the spouse are the sole and separate property of the member.

1. Recommended solution.

Add a provision to CERL to define “Surviving Spouse” so as to include only a spouse who is legally married to the member, is neither divorced nor legally separated from the member, has lived with the member continuously from the date of marriage to the date of the member’s death and who meets all other requirements of CERL pertaining to the length of the marriage and the spouse’s age at the time of the member’s death. (A similar provision appears in 38 U.S.C. section 101(3), governing a surviving spouse’s rights to veteran’s benefits.¹)

2. Specific language that you would like changed in, or added to, ’37 Act Law, and suggested code section numbers.

Section 31480.1 is added to the Government Code to read:

31480.1. “Surviving spouse”, as used in this Chapter, means a person who has legally married the member, is neither divorced nor legally separated from the member, is the spouse of the member at the time of the member’s death, has lived with the member from the date of marriage to the date of the member’s death, has not remarried or lived with another person and held himself or herself out publicly as the spouse of that person, and who meets all other requirements of this Chapter pertaining to the length of the marriage, and the person’s age at the time of the member’s death.

2. Why should the proposed legislation be sponsored by SACRS rather than by your individual retirement association?

This issue affects all CERL systems.

3. Do you anticipate that the proposed legislation would create any major problems such as conflicting with Proposition 162 or create a problem with any of the other 19 SACRS retirement associations?

According to informal survey responses, there are currently approximately eight CERL systems whose practices are consistent with the proposed legislation. There are approximately six CERL systems that currently treat legally separated spouses as “surviving spouses” eligible for survivor continuances, and it is unknown whether these systems would oppose the proposed legislation.

4. Who will support or oppose this proposed change in the law?

Counties may support this proposed change, as it would result in cost savings to plan sponsors. Under the CERL’s funding mechanism, the survivor continuance is not included in the normal cost. The normal cost is based on the age of the member alone. The plan sponsors absorb any additional costs of providing a survivor continuance under the unmodified option. In opposition to the proposed change may be the QDRO attorneys.

¹ 38 USC 101(3) provides: “The term ‘surviving spouse’ means (except for purposes of chapter 19 of this title) a person of the opposite sex who was the spouse of a veteran at the time of the veteran’s death, and who lived with the veteran continuously from the date of marriage to the date of the veteran’s death (except where there was a separation which was due to the misconduct of, or procured by, the veteran without the fault of the spouse) and who has not remarried or (in cases not involving remarriage) has not since the death of the veteran, and after September 19, 1962, lived with another person and held himself or herself out openly to the public to be the spouse of such other person.” Note that subsequent to the Defense of Marriage Act, this statute may not be used to deny benefits to same sex spouses who otherwise meet the statutory criteria for “surviving spouse.” See Cooper-Harris v. United States of America (2013) 965 F.Supp.2d 1139.

5. Who will be available from your association to testify before the Legislature?

Linda Webb, Retirement Administrator
Lori Nemiroff, General Counsel

Email or mail your legislative proposals to:

Mike Robson and Trent Smith
Edelstein, Gilbert, Robson, & Smith LLC
1127 11th Street, Suite 1030
Sacramento, CA 95814

Email to both:

Mike@EGRSlobby.com

Trent@EGRSlobby.com



EDELSTEIN GILBERT ROBSON & SMITH LLC

Donald B. Gilbert Michael R. Robson Trent E. Smith Alan L. Edelman OF COUNSEL

June 19, 2017

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September 5, 2017

Deadline for requests to be received by Edelstein, Gilbert, Robson & Smith LLC.

September 8, 2017

Emailed to Legislative Committee

September 15, 2017

Date of Legislative Committee meeting at which association requests will be discussed.

October 6, 2017

Legislative Committee will submit proposals, (both those that the Legislative Committee recommends by inclusion in SACRS Legislative Platform, and other proposals received) to all retirement associations for consideration.

November 2017 (date TBD)

Those legislative proposals recommended by the Legislative Committee, as well as other proposals, will be discussed at the SACRS Fall Conference.

**2018 SACRS LEGISLATIVE PLATFORM WORKSHEET
PLEASE COMPLETE AND RETURN BY SEPTEMBER 5, 2017**

Title of Issue: Time Limits for Filing Application for Disability Retirement

Association: VCERA

Contact Person: Linda Webb

Phone #: (805) 339-4262

Fax #: (805) 339-2502

Please answer the following questions as fully as possible:

1. Description of issue.

Under GC 31722, an application for disability retirement must generally be filed within four months after discontinuance of service (unless a presumption applies), but may be filed at *any time* after discontinuance of service provided that from the date of discontinuance of service to the time of the application, the member is continuously incapacitated. As observed in the recent case of *Flethez v. San Bernardino County Retirement System* (2017) 2 Cal.5th 630, a member waited 8 years after discontinuance of service to file his application for disability retirement. A long period of delay between discontinuance of service and date of filing makes it more difficult to investigate the application.

2. Recommended solution.

Amend GC 31722 to require that an application for disability retirement be filed within four months after the applicant knows or should know that his/her illness or injury has become permanent.

3. Specific language that you would like changed in, or added to, '37 Act Law, and suggested code section numbers.

Amend GC 31722 to state: "The application shall be made while the member is in service, within four months after his or her discontinuance of service, within four months after the expiration of any period during which a presumption is extended beyond his or her discontinuance of service, or while, from the date of discontinuance of service to the time of the application, he or she is continuously physically or mentally incapacitated to perform his or her duties **and files the application within four months of when he or she is or should be able to ascertain the permanency of the incapacity.**"

4. Why should the proposed legislation be sponsored by SACRS rather than by your individual retirement association?

This issue affects all CERL systems.

5. Do you anticipate that the proposed legislation would create any major problems such as conflicting with Proposition 162 or create a problem with any of the other 19 SACRS retirement associations?

No

6. Who will support or oppose this proposed change in the law?

Support: Plan sponsors; taxpayers. Oppose: Labor Unions

7. Who will be available from your association to testify before the Legislature?

Linda Webb, Retirement Administrator, VCERA
Lori Nemiroff, General Counsel, VCERA
Back-up: Art Goulet, Trustee

Email or mail your legislative proposals to:

Mike Robson and Trent Smith
Edelstein, Gilbert, Robson, & Smith LLC
1127 11th Street, Suite 1030
Sacramento, CA 95814

Email to both:

Mike@EGRSlobby.com

Trent@EGRSlobby.com



September 11, 2017

Board of Retirement
Ventura County Employees' Retirement Association
1190 South Victoria Avenue, Suite 200
Ventura, CA 93003-6572

SUBJECT: REQUEST FOR BOARD APPROVAL TO ATTEND ABBOTT CAPITAL MANAGEMENT'S 2017 ANNUAL MEETING IN NEW YORK CITY ON SEPTEMBER 28, 2017

Dear Board Members:

Please approve travel and lodging expenses for Trustee Mike Sedell and CIO Dan Gallagher to attend Abbott's 2017 Annual Meeting in New York City on September 28, 2017. Attached is the meeting agenda.

On September 27, 2017 Board members Towner and Sedell, and I will conduct an on-site due diligence meeting with the Board's first direct fund investment manager, Drive Capital, at their office in Columbus, Ohio. Investment manager due diligence travel is authorized by the Board annually, as part of its annual due diligence program.

Abbott's annual meeting is the next day in New York City. Because of its relatively close proximity, staff is requesting that the Board approve travel, meal, and lodging expenses for one night to accommodate Board member Sedell and my attendance at Abbott's annual meeting. The cost is estimated not to exceed \$1,350 per person.

RECOMMENDED: THAT THE BOARD APPROVE ATTENDANCE AT ABBOTT'S 2017 ANNUAL MEETING FOR VCERA TRUSTEE MIKE SEDELL AND CIO DAN GALLAGHER

Sincerely,

Dan Gallagher
Chief Investment Officer



2017 Private Equity Conference

AGENDA

Wednesday, September 27th

<p>The Sea Grill Rockefeller Center 19 W 49th Street New York, NY 10020</p>	<p>Opening Reception Cocktails, passed hors d'oeuvres, and small plates</p>	<p>6:00 p.m. – 9:00 p.m.</p>
------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------	-------------------------------------

Thursday, September 28th

<p>The Harvard Club 35 W 44th Street New York, New York 10036</p>	<p>Buffet Breakfast</p>	<p>7:30 a.m. – 8:30 a.m.</p>
	<p>Private Equity Conference Abbott Capital Update Private Equity Market Highlights: GPs in the Spotlight</p>	<p>8:30 a.m. – 10:30 a.m.</p>
	<p>Break</p>	<p>10:30 a.m. – 10:45 a.m.</p>
	<p>Panel Discussion Perspectives on Small Cap Growth Buyouts ABRY Heritage Cressey & Co JZI</p>	<p>10:45 a.m. – 11:30 a.m.</p>
	<p>Secondaries Overview & Update</p>	<p>11:30 a.m. – 12:00 p.m.</p>
	<p>Closing/Q&A</p>	
	<p>Buffet Lunch</p>	<p>12:00 p.m. – 1:30 p.m.</p>
	<p>Advisory Board Annual Meetings</p>	<p>1:30 p.m. – 3:00 p.m.</p>



September 11, 2017

Board of Retirement
Ventura County Employees' Retirement Association
1190 South Victoria Avenue, Suite 200
Ventura, CA 93003

SUBJECT: REQUEST FOR AUTHORIZATION FOR STAFF TO ATTEND THE 2017 NATIONAL PENSION EDUCATION ASSOCIATION (NPEA) CONFERENCE OCTOBER 14TH – 18TH IN NASHVILLE, TENNESSEE

Dear Board Members:

Staff requests authorization to send one VCERA employee the 2017 National Pension Education Association (NPEA) conference in Nashville, Tennessee, October 14th - 18th, 2017. The estimated cost to attend is approximately \$2300, including registration, airfare, hotel, meals and other related expenses. The conference agenda is provided.

With VCERA currently making member communication a top priority, there is considerable value in both the educational content and networking opportunities provided by the NPEA Annual Conference. If VCERA's communication position vacancy is filled by the dates of the NPEA conference, he or she will be the staff member to attend. Otherwise, the Administrator or a designated Operations staff member will attend.

Thank you for your consideration, and I will be pleased to respond to any questions you may have on this matter at September 11, 2017 disability meeting.

Sincerely,

Linda Webb
Retirement Administrator



Hitting the Right Notes in Retirement

Please join us for the 37th Annual NPEA Conference

October 14–18, 2017, DoubleTree by Hilton Hotel Nashville Downtown, Nashville, Tennessee

Saturday, October 14

- 5–6:30 pm **Systems Roll Call: Latest News from NPEA Member Systems**
- 6:30–8 pm Opening Reception

Sunday, October 15

- 8 am–noon Vendor Exhibits
- 9 am–noon **InFRE Pre-Conference Workshop: Fundamentals of Investing, CRC 2**
Presented by the staff of the Colorado Public Employees Retirement Association: Kirsten Strausbaugh, CRC, Director of Field Education; Dianne Patrick, CRC, Learning Specialist; Aaron Sherman, CRC, Field Education Representative
- Lunch (on your own)
- 6–9 pm Dinner (provided)

Monday, October 16

- 8 am–4 pm Vendor Exhibits
- 7:30–8:30 am Breakfast (provided)
- 8:30–8:45 am **President's Welcome**
Patrick Lane, Director of Member Services, Oklahoma Public Employees Retirement System
- 8:45–10:15 am **Keynote: You Only Live Once: The Roadmap to Financial Wellness and Purposeful Life**
Jason Vitug, Author and Founder of financial education start-up and lifestyle brand Phroogal
- 10:30–11:30 am **Media and Legislative Communications**
Russ Rhea, Vice President of Media Services, Hahn Public
- 11:30–12:30 pm **Technology Trends Changing Organizations and Society**
Jason Hiner, Global Editor in Chief, TechRepublic
- 12:30–1:30 pm Lunch (provided)
- 1:30–5 pm **Concurrent Breakout Sessions with Facilitators**

- **Member Counseling Roundtable**
NPEA Member Systems
- **Media Training**
Russ Rhea, Vice President of Media Services, Hahn Public

- **Using Social Media**
Jeff Pabst, CRC, Senior Communications Specialist, Missouri Local Government Employees Retirement System
 - **Expanding Customer Service through Live Chat**
Lynn Paatalo, Director of Member Services, Minnesota Teachers Retirement Association
- Dinner (on your own)

Tuesday, October 17

- 8 am–4 pm Vendor Exhibits
- 7:30–8:15 am Breakfast (provided)
- 8:30–8:45 am **Annual Business Meeting**
- 8:45–9:45 am **National Pension Case Law Update**
Robert Klausner, Esq., Klausner, Kaufman, Jensen & Levinson, P.A.
- 10–11:15 am **The Storyteller's Secret: How Narrative Intelligence Can Transform Your Organization**
Jason Ashlock, Founding Partner, Frontier Press
- 11:30–12:30 pm **Pensionomics 2017**
Diane Oakley, Executive Director, National Institute on Retirement Security
- 12:30–1:30 pm Lunch (provided)
- 1:30–2:30 pm **Actions Speak Louder than Words: Negotiating Successfully through Understanding Nonverbal Communication**
Jan Hargrave, CEO, Hargrave Associates
- 2:45–3:45 pm **Washington Update**
Thomas Lussier, President, The Lussier Group
- 4–5 pm **NPEA Member Showcase: Customized Generational Communication**
Bobbie O'Neil, Manager of Education, Ohio Public Employees Retirement System
- 7–9 pm Dinner (provided)

Wednesday, October 18

Departure day

Registration available online at npea.com

- **Conference fees**
Attendee regular fee \$725
Guest fee \$295
Vendor \$1,800
Vendor additional staff \$725
- **Hotel reservations**
Room rate \$225
Upon completion of your conference registration at www.npea.com/conference-registration, you will be linked to the hotel registration page. To receive the conference rate of \$225/night, you must make a reservation by September 11, 2017.
- **Transportation**
Fly into Nashville International Airport (BNA). The hotel is a 15-minute drive from the airport. Airport shuttle and taxis are available with an average cost of \$16-\$25; see www.flynashville.com for details.

Who should attend

- Retirement counselors and benefit analysts
- Trainers and program developers
- Member services managers
- Member education staff
- Communications staff
- Contact Center staff
- Retirement counselors requiring CRC continuing education credits
- System directors and executives looking to create, improve or expand member education initiatives



Image courtesy of Nashville Convention & Visitors Corporation



September 11, 2017

Board of Retirement
Ventura County Employees' Retirement Association
1190 South Victoria Avenue, Suite 200
Ventura, CA 93003

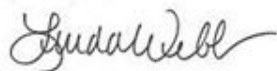
SUBJECT: AUTHORIZATION FOR RETIREMENT ADMINISTRATOR TO ATTEND THE CALAPRS ADMINISTRATORS' INSTITUTE SEPTEMBER 13th – 15th IN CARMEL, CA.

Dear Board Members:

Staff requests authorization for to attend the CALAPRS, September 13th – 15th, 2017. The cost to attend is approximately \$1,650 including registration, mileage, lodging and other related expenses.

VCERA staff will be pleased to respond to any questions you may have on this matter at September 11, 2017 disability meeting.

Sincerely,



Linda Webb
Retirement Administrator



AGENDA

WEDNESDAY, SEPTEMBER 27	
TIME	EVENT or Discussion Topic
3:00 – 5:30 PM	Check in at Quail Lodge
5:30 PM	Reception
6:30 PM	Welcome and Introductions Speaker: Jeff Wickman, <i>Marin County Employees' Retirement Association</i>
7:30 - 8:30 PM	Round Table Discussion of Retirement Administration Issues: What's Happening At Your System?

THURSDAY, SEPTEMBER 28	
TIME	EVENT or Discussion Topic
7:30 – 8:30 AM	Buffet Breakfast
8:30 – 9:45 AM	Leveraging Operational Compliance: Best Practices in Compliance Programs Speaker: Rebecca Walker, <i>Esq., Kaplan & Walker LLP</i>
9:45 – 10:15 AM	Break
10:15 AM – 12:00 PM	Political Success for Administrators Speaker: Brian Beamish, <i>M.S. M.Ed., The Centre for Organization Excellence</i>
12:00 – 1:30 PM	Buffet Lunch & Topics
1:30 – 3:00 PM	CalPERS Roundtable Discussion Speaker: Dan Bienvenue, <i>Managing Investment Director, Global Equity, CalPERS</i>
3:00 – 3:15 PM	Break
3:15 - 4:30 PM	Operational Risk Management Tools Speaker: Marlene Timberlake D'Adamo, <i>Interim Chief Financial Officer, CalPERS</i>
6:00 – 6:45 PM	Reception (including Guests)
6:45 PM	Dinner (including Guests)

FRIDAY, SEPTEMBER 29	
TIME	EVENT or Discussion Topic
7:30 AM	Buffet Breakfast
8:30 – 9:45 AM	What Happens If You Have a Data Breach? <i>Speakers: Ryan Pardee, FBI Supervising Special Agent and James Vohris, Nossaman LLC</i>
9:45 – 10:15 AM	Break
10:15 – 11:15 AM	Public Pension Governance That Works <i>Speaker: Rick Funston, Managing Partner, Funston Advisory Services LLC</i>
11:15 – 11:45 AM	CALAPRS Business Meeting
11:45 AM – 12:30 PM	Boxed Lunches to Go
12:00 PM	Institute Concludes

Institute Committee:

Jeff Wickman (Chair), *Marin County Employees' Retirement Association*
 Donna Lum, *California Public Employees' Retirement System*
 Gregg Rademacher, *Los Angeles County Employees' Retirement Association*
 Julie Wyne, *Sonoma County Employees' Retirement Association*

TO REGISTER:

Visit www.calaprs.org and submit the registration form by **September 8, 2017**

CALAPRS / 575 Market Street, Suite 2125 / San Francisco, CA 94105
 Phone: 415-764-4860 / Fax: 415-764-4915 / Email: info@calaprs.org / Website: www.calaprs.org

Santa Barbara County Employees'
Retirement System
c/o Reicker Pfau Pyle & McRoy LLP
1421 State St., Suite B
Santa Barbara, CA 93101
(805) 966-2440

Ventura County Employees'
Retirement System
1190 Victoria Ave., Suite 200
Ventura, CA 93003
(805) 339-4250

San Bernardino County Employees'
Retirement Association
348 W. Hospitality Lane, 3rd Floor
San Bernardino, CA 92415
(909) 885-7980

Tulare County Employee's
Retirement Association
c/o Office of County Counsel
2900 W. Burrel Ave.
Visalia, CA 93291
(559) 636-4950

August 28, 2017

Hon. Tani G. Cantil-Sakauye, Chief Justice and Associate Justices
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102

Re: *Irvin v. Contra Costa County Employees' Retirement Association*, Case No.
S243694
Letter in Support of Petition for Review filed August 9, 2017

To the Honorable Chief Justice and Associate Justices:

On behalf of the retirement boards for the Santa Barbara County Employees Retirement System and the Ventura County Employees' Retirement Association, *amici curiae*, the undersigned respectfully request that this Court grant review of the Court of Appeal's opinion in the case of *Irvin v. Contra Costa County Employees' Retirement Association*, First Appellate District, Div. 1, A149642(the "Opinion"), concerning the financial interests of a legally-separated spouse in a spousal survivor continuance under the member's county pension plan. This letter is submitted pursuant to Rule 8.500(g) of the California Rules of Court.

Description of *Amici Curiae*

The retirement boards for the Santa Barbara County Employees Retirement System ("SBCERS") and the Ventura County Employees' Retirement Association ("VCERA") (collectively, the "Retirement Boards") are among the twenty (20) county public retirement systems in California that operate under the County Employees Retirement Law of 1937 (Cal. Gov. Code,

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§§ 31450 et seq.¹) (the "CERL"). Respondent and Appellee Contra Costa County Employees' Retirement Association is also among those twenty (20) systems.

The Interest of *Amici Curiae*

The Retirement Boards have plenary authority over administration of the retirement plan, including determination of benefit entitlements under the retirement plan. (Cal. Const., art. XVI, §17.) This action presents the question of whether the Retirement Boards are required to treat a legally-separated spouse as a "surviving spouse" for payment of a survivor continuance of the member's retirement benefits upon the member's death, under the CERL.

Basis for Review

The Retirement Boards urge this Court to grant review in order to provide clarity and certainty on an important issue of law which effects over half a million members and beneficiaries and involves a substantial expenditure of public funds. The Retirement Boards contend that review should be granted for the following reasons: (i) the Opinion represents a departure from traditional community law principles in that it allows an inchoate community property interest to survive a final division and extinguishment of such rights; (ii) the Opinion disregards persuasive analogous authority contained in Probate Code Section 78 and instead relies on other Probate Code provisions that are inapposite; (iii) dictum in the Opinion creates unnecessary confusion in the administration of member accounts divided pursuant to Article 8.4 of the CERL; and (iv) the Opinion ignores strong public policy arguments supporting the conclusion that legally separated spouses should not be treated as "surviving spouses" for the purpose of receiving spousal continuance benefits.

Background

Under the CERL, a member may elect among various payment options at time of retirement. An unmodified allowance pays the highest monthly benefit and a 60% continuance to an eligible surviving spouse or, if none, to a minor child or children. (Govt. Code §§ 31760.1, 31760.2.) Optional allowances enable a member to provide a survivor continuance to any beneficiary with an insurable interest in the member's life, with an actuarial reduction in the member's benefit. (Govt. Code §§ 31762-31764.) Under the unmodified allowance, Government Code section 31760.1 provides for a continuance to a surviving spouse who was married to the member for at least one year prior to retirement, and Government Code section 31760.2, an optional provision made applicable by board resolution, allows for a survivor continuance to be paid to a post-retirement spouse, provided the spouse is at least 55 years of age and was married to the member for at least two years prior to the member's death.

¹ All code references are to the California Government Code unless otherwise specified.

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The term “surviving spouse” is not defined by the CERL. Case law is clear that following a judgment of dissolution of marriage, a former spouse is not a “surviving spouse” under CERL, though the former spouse may be awarded his/her community property share of the member’s benefits and also may continue to receive his/her community property share of any survivor continuance paid to the member’s survivor(s). (See *In Re Marriage of Carnall* (1989) 216 Cal.App.3d 1010; *In Re Marriage of Cramer* (1993) 20 Cal.App.4th 73.) However, published case law has not addressed the rights of legally-separated spouses prior to the issuance of the Opinion.

The issue concerning survivor continuance rights of a legally separated spouse has been reviewed by three superior courts in California, including Santa Barbara (*In re Marriage of Burson v. Burson* (Super. Ct. Santa Barbara County, 2013, No. 1197730)), Contra Costa (*Irvin v. Contra Costa County Employees’ Retirement Association* (Super. Ct. Contra Costa County, 2016, No. CIV MSN15-1024)) and Ventura (*Carpenter v. Carpenter* (Super. Ct. Ventura County, 2016, No. D368941)), where all three courts issued rulings validating the CERL systems’ determinations that the term “surviving spouse” does not include a legally separated spouse who was a party to a legal separation proceeding in which the court issued a judgment dividing the community property assets. The Court of Appeal’s decision in the *Irvin* case is in conflict with those decisions and rejects their sound reasoning.

The Opinion Marks a Departure from Established Community Property Principles

The Retirement Boards rely on traditional rules governing community property rights to determine benefits for divorced and legally separated spouses. The Court of Appeal’s decision in *Irvin* adopts an approach that is contrary to established community property rules, in that it allows a right to receive a continuance upon the death of a spouse to survive a complete division of marital property based on the assumption that it is not a community property right arising from the marriage. (Opinion, page 17.)

Pension benefits are an integral part of an employee’s compensation under a contract of employment. (*Packer v. Board of Retirement of Los Angeles County Peace Officers’ Retirement System* (1950) 35 Cal.2d 212, 215.) In a legal separation proceeding, the court divides the community property equally and future earnings of each party are deemed separate property. (Fam. Code, § 2550.) The community property interest in a pension benefit may include survivor or death benefits. In dividing the community assets, the court shall make whatever orders are necessary or appropriate to ensure that each party receives the party’s full community property share in any retirement plan, including all survivor and death benefits. (Fam. Code, § 2610, subd. (a).) However, a court shall not make any order that requires a retirement plan to make payments in any manner that will result in an increase in the amount of benefits provided by the plan. (Fam. Code, § 2610, subd. (b)(1); see also *In Re Marriage of Carnall* (1989) 216 Cal.App.3d 1010 [to designate former spouse as “surviving spouse” works substantial injustice to retirement plan and would improperly impair pension contract]; *In Re Marriage of Cramer* (1993) 20 Cal.App.4th 73 [allowing former spouse to be designated as

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“surviving spouse” would create potential for liability and would improperly require plan to make payments in manner that would result in increase in amount of benefits provided by plan].)

A judgment of legal separation is a final adjudication of the parties’ property rights. (See *Estate of Lahey* (1999) 76 Cal.App.4th 1056.) Accordingly, a legal separation results in termination of all community property rights acquired from the date of marriage to the date of separation, as well as any interest that a separated spouse may have in the separate property of the member. The Opinion is contrary to established principles of community property law because it essentially allows a separated spouse to maintain a property interest in a spousal continuance when all other property rights arising from the marriage have been separated or been extinguished.

The Opinion Does not Adequately Distinguish Analogous Authority of Probate Code Section 78.

The Opinion found Probate Code section 78, which excludes a legally-separated spouse from inheritance and other benefits available to a “surviving spouse”, to be unpersuasive authority because the Opinion asserts that other provisions of the Probate Code treat a legally-separated spouse, at least as often as not, in the same manner as a “surviving spouse.” However, as noted in the Petition, the other Probate Code sections relied on by the Opinion, for example sections 5040, 6122 and 6227, constitute exceptions to the general rule of Probate Code Section 78. All involve elective transfers of assets which are not dependent on the spouse’s status as a spouse and, therefore, the policy reasons for allowing such transfers to remain intact after legal separation are distinguishable from the policy reasons behind Probate Code section 78, which excludes a legally separated spouse from inheriting the decedent’s estate under intestate succession. There is no justification for assuming that the Legislature intended to allow separated spouses to inherit valuable pension rights while at the same time specifically providing in Probate Code Section 78 that such separated spouses have no rights to inherit when the separated spouse dies intestate.

The Opinion Creates Confusion with Respect to the Interpretation and Application of Article 8.4 of the CERL

The statutory scheme of Article 8.4 of the CERL, Sections 31685 et seq., provides strong analogous authority that the Legislature intended to treat divorced spouses and separated spouses the same under the CERL, since it provides for the division of member accounts of separated spouses in the same manner as divorced spouses. Such a conclusion is consistent with statutory provisions of Article 8.4 which limit the rights of a separated spouse and exclude the provision of a post-death continuance. (See Section 31685.) The Opinion, in rejecting this analogous authority, stands this proposition on its head, finding that because Article 8.4 does not specifically mention continuances, that former spouses with separate accounts may still enjoy them.

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The Opinion raises significant questions regarding the administration of Article 8.4 of the CERL that should be clarified by this Court. CERL systems that operate under Article 8.4 have interpreted its provisions as terminating the survivor rights of a legally separated spouse. Section 31685 enumerates the potential rights of a nonmember, and a survivor continuance of the member's benefit is not among those benefits. Section 31685 further provides that any service credit or accumulated contributions not awarded to the nonmember "shall be deemed the exclusive property of the member." The nonmember's rights are protected in that the nonmember may draw a lifetime monthly benefit based on his/her share of the service credit and contributions in his/her separate account. If the nonmember were permitted to continue to draw the separate account benefit, and also receive a survivor benefit of 60% of the member's benefit, as the Opinion suggests, the nonmember would be receiving more than his/her community property share of the benefit, and the total amount paid by the system could easily exceed the amount that would have been payable by the plan upon the member's death had there been no account division, which is prohibited by Section 31685.95(a).

In short, the Opinion's discussion of Article 8.4, if allowed to stand, is likely to create considerable mischief in the administration of benefits pursuant to its provisions.

Public Policy Would be Undermined Were the Decision to Stand.

The Opinion states, without substantial discussion, that no public policy would be undermined by its conclusion. The Retirement Systems respectfully disagree. From a public policy perspective, it is highly unlikely that legally separated spouses are among the beneficiaries for whom the legislature sought to provide financial protection by way of a spousal survivor continuance. A survivor continuance under the unmodified retirement allowance has historically been payable to a dependent spouse or minor children, where there is presumed to be a loving familial attachment. In a legal separation, the parties have agreed to sever their financial ties and live separate lives, with any financial support being based on agreement or court judgment. There is no strong public policy argument that the scope of such permitted beneficiaries be expanded to include those who are virtually divorced.

If the Opinion stands, it would provide a clear guidepost to couples contemplating divorce who do not have the intention of remarrying, which is often the case in separations occurring late in life. As illustrated by the facts in the *Burson v. Burson* case cited by the Opinion, its precedent would allow couples to be divorced in every other way, living in separate states and in no contact with one another, with no purpose to maintaining the marriage other than the preservation of public pension benefits. As such, the Opinion promotes the perpetuation of sham marriages, which raises serious public policy concerns. (See *Marriage Fraud* (2012) 100 Cal. Law Rev. 1.)

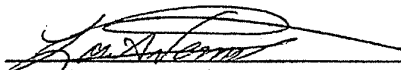
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Conclusion


As the Petition sets forth, there are bona fide differences of opinion between the CERL systems regarding the rights of separated spouses. The Retirement Boards, like the Petitioner, believe that the more persuasive arguments are contrary to the reasoning of the Opinion. However, even were this Court ultimately to find the holding of the Opinion to be correct, there would be considerable value to the administration of public benefits were this Court to consider the matter and finally resolve these issues in a manner that provides important clarity and guidance.

Respectfully Submitted,

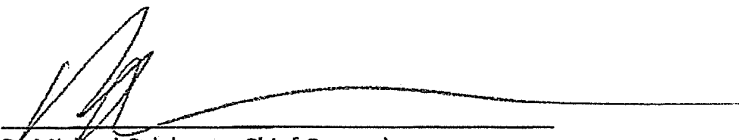
VENTURA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION


By Lori Nemiroff, General Counsel


SANTA BARBARA COUNTY EMPLOYEES' RETIREMENT SYSTEM


By Alan A. Blakeboro, General Counsel

SAN BERNARDINO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION


By Michael Calabrese, Chief Counsel

TULARE COUNTY EMPLOYEES' RETIREMENT ASSOCIATION


By Marit Erickson, Deputy County Counsel

Supreme Court of California
August 28, 2017
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PROOF OF SERVICE MAILING LIST

Hon. Tani G. Cantil-Sakauye, Chief Justice and Associate Justices
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Segal Consulting Survey Shows Majority of Multiemployer Pension Plans in Green Zone; But Challenges Remain for Those in Red Zone

NEW YORK

Segal Consulting's [most recent survey](#) of multiemployer pension plans' zone status shows that among more than 200 multiemployer clients with calendar-year plans, the majority (65 percent) are in the green zone.

This Smart News Release features multimedia. View the full release here:

<http://www.businesswire.com/news/home/20170821005090/en/>

The average funded percentage for all plans in the survey, which have a total of \$100 billion in assets and cover 2.3 million participants, is 87 percent.

"The headlines that focus on financially troubled multiemployer pension plans miss the point that the majority are healthy," commented Diane Gleave, senior vice president and actuary for Segal. "However, this should not obscure the fact that about a quarter of participants in the survey are in critical and declining plans, and nearly one-third are in critical plans. Among the actions trustees of plans are taking to improve their funded status are plan design changes, recommending changes in contribution rates, revising investment policies and in a number of cases seeking relief under the Multiemployer Pension Reform Act."

Under the Multiemployer Pension Reform Act, or MPRA, plans classified as in critical and declining status are generally those where the actuary projects the assets to be depleted within 20 years. A plan is classified under critical status if the actuary determines it has a funding or liquidity problem, or both, generally within four to five years.

Other key findings from the survey include: Critical and declining status plans have a much higher percentage of inactive participants (87 percent) than all other plans (63 percent). Since the financial crisis of 2008-2009, the average funded percentage has been relatively stable, between 85 and 89 percent. A plan's zone status can be fluid. Between 2016 and 2017, 11 calendar-year plans changed zones, with five improving their zone status and six experiencing a decline in zone status.

Industry Matters: More Inactive Participants = More Troubled Plans

There is some correlation between average funded percentage by industry and the inactive-to-active participant ratio. Industries with more active and fewer inactive participants tend to have better funded percentages. For example, plans in the manufacturing industry have an average of 5.8 inactive participants for each active participant, and an average funded percentage of 79 percent, well below the 87 percent overall multiemployer plan average. Conversely, plans in the entertainment industry, which, on average, have fewer than one inactive participant for each active participant, have a much higher average funded percentage of 92percent.

Looking Ahead

"A plan's direction is as important as its current zone status," noted David Brenner, National Director of Multiemployer Consulting. "Trustees need to be proactive, paying careful attention to cash flow and contribution margins or deficits. They should also understand the plan's vulnerability to [all types of risk](#) , including investment and employment risk, so they can take steps to mitigate such risks and are prepared if investment returns or employment levels come in lower than assumed."

Segal Consulting (www.segalco.com), a member of The Segal Group, is a leading, independent firm of benefit, compensation and human resources consultants. Segal has more than 1,000 employees throughout the U.S. and in Canada. Clients include joint boards of trustees administering pension and health and welfare plans under the Taft-Hartley Act and the public sector.

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<http://www.businesswire.com>

August 22, 2017