



AGENDA

RETIREMENT BOARD MEETING

REGULAR MEETING
May 4, 2016
9:00 a.m.

Retirement Board Conference Room
The Willows Office Park
1355 Willow Way, Suite 221
Concord, California

THE RETIREMENT BOARD MAY DISCUSS AND TAKE ACTION ON THE FOLLOWING:

1. Pledge of Allegiance.
2. Accept comments from the public.
3. Routine items for May 4, 2016.
 - a. Approve certifications of membership.
 - b. Approve service and disability allowances.
 - c. Accept disability applications and authorize subpoenas as required.
 - d. Approve death benefits.
 - e. Accept Asset Allocation Report

CLOSED SESSION

4. The Board will go into closed session to consider the Hearing Officer's recommendation regarding the disability application for Rhonda Williams.
5. The Board will continue in closed session under Gov. Code Section 54957 to evaluate the performance of the following public employee:

Title: Chief Executive Officer
6. The Board will continue in closed session pursuant to Govt. Code Section 54956.9(d)(2) to confer with legal counsel regarding anticipated litigation (two cases).

OPEN SESSION

The Retirement Board will provide reasonable accommodations for persons with disabilities planning to attend Board meetings who contact the Retirement Office at least 24 hours before a meeting.

7. Consider and take possible action to adjust the retirement allowance of CCCERA retired Hazardous Materials Specialists IIs pursuant to Government Code Section 31539 to exclude compensation improperly increased by the members:
 - a. Presentation of report and recommendations; Board questions
 - b. Opportunity for the retired members to present to the Board their positions and any information or records relevant to the issue; Board questions
 - c. Opportunity for the retired members' former employer, Contra Costa County, to present to the Board its position and any information or records relevant to the issue; Board questions
 - d. Public comment
 - e. Board deliberations and appropriate action
8. Consider and take possible action to direct the CCCERA Board voting delegate to vote in support of the 2016 SACRS legislative proposal at the May 2016 SACRS Conference.
9. Miscellaneous
 - a. Staff Report
 - b. Outside Professionals' Report
 - c. Trustees' comments

The Retirement Board will provide reasonable accommodations for persons with disabilities planning to attend Board meetings who contact the Retirement Office at least 24 hours before a meeting.

CONTRA COSTA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION
BOARD OF RETIREMENT

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Items requiring Board Action

A. Certifications of Membership – see list and classification forms.

B. Service and Disability Retirement Allowances:

<u>Name</u>	<u>Number</u>	<u>Effective Date</u>	<u>Option Type</u>	<u>Group</u>	<u>Selected</u>
Borenstadt, Christina	40214	1/1/16	SR	Tier II & III	Unmod
Cole, Jacqueline	D9500	1/12/16	SR	Tier II & III	Unmod
Conarro, Mildred	53300	1/19/16	SR	Tier III	Unmod
Farley, Colleen	63008	12/31/15	SR	Tier II & III	Unmod
Funakoshi, Keats	55993	1/30/16	SR	Tier III	Unmod
Guelden, Ronald	66536	7/11/14	SR	Tier I	Option 2
Hoffe, Erika	50616	2/1/16	SR	Tier III	Unmod
Johnson, Faris	65744	11/18/15	SR	Tier III	Unmod
Lewis, Patricia	46119	1/1/16	SR	Tier II & III	Unmod
Loretz, Linda	55831	1/5/16	SR	Tier III	Unmod
Mendoza, Nannette	D4980	3/31/16	SR	Tier I & II	Unmod
Oien, Kerry	69434	1/16/16	SR	Tier III	Unmod
Pineda Romero de Ungo, Gladys	49380	1/30/16	SR	Tier II & III	Unmod
Tylenda, David	62405	1/9/16	SR	Tier III	Unmod
Weeks, Janet	D3406	2/18/16	SR	Tier I	Unmod

C. Disability Retirement Applications: The Board's Hearing Officer is hereby authorized to issue subpoenas in the following cases involving disability applications:

<u>Name</u>	<u>Number</u>	<u>Filed</u>	<u>Type</u>
Birden, LeRhonda	71699	4/11/16	SCD
Chun, Spencer	D3406	4/5/16	SCD/NSCD
Perez, Graciela	62449	4/15/16	SCD

D. Deaths:

<u>Name</u>	<u>Date of Death</u>	<u>Employer as of Date of Death</u>
Behrens, Robert	3/19/2016	Contra Costa County
Blythe, Lawrence	2/16/2016	Contra Costa County
Bruzdowski, Janet	2/4/2016	Contra Costa County
Chamberlin, Jeanne	4/17/2016	Contra Costa County
Clary, Virginia	3/14/2016	Beneficiary
Davi, Delores	2/23/2016	Beneficiary
Gonzales, Mary	4/1/2016	Contra Costa County

KEY:

Group
I = Tier I
II = Tier II
III = Tier III
S/A = Safety Tier A
S/C = Safety Tier C

Option
* = County Advance
Selected w/option

Type
NSP = Non-Specified
SCD = Service Disability
SR = Service Retirement
NSD = Non-Service Disability

CONTRA COSTA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

BOARD OF RETIREMENT

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Halasz, Joseph	4/2/2016	Contra Costa County
Hall, Allen	3/25/2016	Contra Costa County
Jimenez, Samuel	04/03/16	Contra Costa County
Jimison, Thomas	4/3/2016	Contra Costa County
Jonas, Arnold	4/5/2016	Contra Costa County
Joseph, Rose	2/29/2016	Contra Costa County
Lee, James	4/10/2016	Contra Costa County
Pierson, Doris	3/17/2016	Contra Costa County
Pugh, William	4/8/2016	Beneficiary
Redel, Ray	12/11/2015	Beneficiary
Rezendes, Cecilia	1/5/2016	Beneficiary
Stewart, Robert	4/3/2016	Beneficiary
Stine, Lois	4/3/2016	Superior Court of California County of Contra Costa
Swartout, Sherry	3/4/2016	Contra Costa County
Watkins, Erika	4/2/2016	Contra Costa County
Williams Jr, Andrew	4/14/2016	Byron, Brentwood, Knightsen Union Cemetery Dist

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Type
 NSP = Non-Specified
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CERTIFICATION OF MEMBERSHIPS

<i>Name</i>	<i>Employee Number</i>	<i>Tier</i>	<i>Membership Date</i>	<i>Employer</i>
Avelar, Jose	82410	S/E	03/01/16	Contra Costa County
Banales, Sandra	72629	III	03/01/16	Contra Costa County
Beard, Gabriela	D9500	P5.3	03/01/16	Superior Court
Benson, Christina	83013	P5.2	03/01/16	Contra Costa County
Beyene, Sara	83033	P5.2	03/01/16	Contra Costa County
Blanson, Onedia	D9500	P5.3	03/01/16	Superior Court
Brandt, Chelsea	82957	P5.2	03/01/16	Contra Costa County
Bryson, Patricia	82988	P5.2	03/01/16	Contra Costa County
Burgess, Shamina	D9500	P5.3	03/01/16	Superior Court
Burgess, Suzanne	D9500	P5.3	03/01/16	Superior Court
Burton, Margaret	82996	P5.2	03/01/16	Contra Costa County
Carvajal Jr., Christopher	82480	S/E	03/01/16	Contra Costa County
Chatham, William	80848	P5.2	03/01/16	Contra Costa County
Cornett, Matthew	82976	P5.2	03/01/16	Contra Costa County
Datangel, Jessica	71482	P5.2	03/01/16	Contra Costa County
Digiovanni, Deborah	82953	P5.2	03/01/16	Contra Costa County
Dobbins, Allison	77941	P5.2	03/01/16	Contra Costa County
Dulay, Glenda	77298	P5.2	03/01/16	Contra Costa County
Ebreo, Roland	82981	P5.2	03/01/16	Contra Costa County
Eggen, Alicia	82973	P5.2	03/01/16	Contra Costa County
Ekpemi, Ezihe	81573	P5.2	03/01/16	Contra Costa County
Farid, Banafshe	82982	P5.2	03/01/16	Contra Costa County
Franklin, Jenna	82984	P5.2	03/01/16	Contra Costa County
Gomez, Eliuth	70590	P5.2	03/01/16	Contra Costa County
Grand, Jennifer	82975	P5.2	03/01/16	Contra Costa County
Helton, Chad	82954	P5.2	03/01/16	Contra Costa County
Hernandez, Francisca	80529	P4.3	03/01/16	Children & Families Commission
Hess, Macayla	79828	P5.2	03/01/16	Contra Costa County
Horan, Jeremy	82467	P5.2	03/01/16	Contra Costa County
Hsiao, Connie	80915	P5.2	03/01/16	Contra Costa County
Lancaster Jr., James	82974	P5.2	03/01/16	Contra Costa County
Libut, Jennifer	82979	P5.2	03/01/16	Contra Costa County
Manci, Justin	82409	S/E	03/01/16	Contra Costa County
Montoya, Ronaldo	82944	P5.2	03/01/16	Contra Costa County
Mora, Lindesy	83007	P5.2	03/01/16	Contra Costa County
Moyer, Kaili	82892	P5.2	03/01/16	Contra Costa County
Palsa, Christine	D9500	P5.3	03/01/16	Superior Court
Patwardhan, Kalpana	D9500	P5.3	03/01/16	Superior Court
Pentes, Christopher	D3406	P4.3	03/01/16	Central Contra Costa Sanitary District
Perez, Tanya	80772	P5.2	03/01/16	Contra Costa County
Phimmasone, Chedy	78902	P5.2	12/01/15	Contra Costa County
Ranger, Yasuyo	82732	P5.2	03/01/16	Contra Costa County
Rhodes, Elizabeth	D9500	P5.3	03/01/16	Superior Court

Key:

I = Tier I	P4.2 = PEPR Tier 4 (2% COLA)	S/A = Safety Tier A
II = Tier II	P4.3 = PEPR Tier 4 (3% COLA)	S/C = Safety Tier C
III = Tier III	P5.2 = PEPR Tier 5 (2% COLA)	S/D = Safety Tier D
	P5.3 = PEPR Tier 5 (3% COLA)	S/E = Safety Tier E

CERTIFICATION OF MEMBERSHIPS

<i>Name</i>	<i>Employee Number</i>	<i>Tier</i>	<i>Membership Date</i>	<i>Employer</i>
Ricks, Patricia	D9500	P5.3	03/01/16	Superior Court
Ringold Graham, Cassandra	82943	P5.2	03/01/16	Contra Costa County
Rizo, Miguel	82911	P5.2	03/01/16	Contra Costa County
Rosales, Thaddeus	82978	P5.2	03/01/16	Contra Costa County
Rubalcava, Lucila	82939	P5.2	03/01/16	Contra Costa County
Salone, Felisa	82945	P5.2	03/01/16	Contra Costa County
Scheider, Holly	49520	III	03/01/16	Contra Costa County
Serourian, Sylva	D9500	P5.3	03/01/16	Superior Court
Simmons, Kimberly	82577	P5.2	03/01/16	Contra Costa County
Sivila, Jenneth	82980	P5.2	03/01/16	Contra Costa County
Taylor, Susana	82940	P5.2	03/01/16	Contra Costa County
Terry, Marion	79427	P5.2	03/01/16	Contra Costa County
Thaxton, Tasha	82987	P5.2	03/01/16	Contra Costa County
Tumaneng, Angelo	82941	P5.2	03/01/16	Contra Costa County
Volante, Laura	82970	P5.2	03/01/16	Contra Costa County
Voos, Michelle	82942	P5.2	03/01/16	Contra Costa County
Whittington, Rebecca	D9500	P5.3	03/01/16	Superior Court
Wick, Daniel	83014	P5.2	03/01/16	Contra Costa County
Young, Monique	80726	P5.2	03/01/16	Contra Costa County

Key:

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II = Tier II	P4.3 = PEPR A Tier 4 (3% COLA)	S/C = Safety Tier C
III = Tier III	P5.2 = PEPR A Tier 5 (2% COLA)	S/D = Safety Tier D
	P5.3 = PEPR A Tier 5 (3% COLA)	S/E = Safety Tier E

TIER CHANGES

<i>Name</i>	<i>Employee Number</i>	<i>Old Tier</i>	<i>New Tier</i>	<i>Effective Date</i>	<i>Employer</i>	<i>Reason for Change</i>
Cabrera, Carlos	82849	P5.2	III	3/1/2016	Contra Costa County	Reciprocity
Gonzalez, Teresa	81918	P5.2	III	3/1/2016	Contra Costa County	Reciprocity
Ledbetter, Jerry	D3406	P4.3	I	3/1/2016	Central Contra Costa Sanitary District	Reciprocity
Li, Fae	D9500	P5.3	III	2/1/2016	Superior Courts	Reciprocity
Murphy, Melissa	82073	P5.2	III	3/1/2016	Contra Costa County	Reciprocity
Robles, Nadia	82180	P5.2	III	3/1/2016	Contra Costa County	Reciprocity
Wade, Chantia	79876	P5.3	III	3/1/2016	Contra Costa County	Reciprocity

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II = Tier II	P4.3 = PEPR Tier 4 (3% COLA)	S/C = Safety Tier C
III = Tier III	P5.2 = PEPR Tier 5 (2% COLA)	S/D = Safety Tier D
	P5.3 = PEPR Tier 5 (3% COLA)	S/E = Safety Tier E

ASSET ALLOCATION

Current Assets (Market Value)

\$7,203,170,000

Reporting Month End: March 31, 2016

Prepared By: Chih-Chi Chu

Robeco

Jackson Square Partners (fka Delaware)

Emerald Advisors

Intech (Core)

PIMCO Stocks+ Absolute Return

Ceredex

Total Domestic Equity

Pyrford (BMO)

William Blair

Total International Equity

JPMorgan Global Opportunities

First Eagle

Artisan Global Opportunities

Intech (Global Low Volatility)

Total Global Equity

Total Equity

AFL-CIO Housing Investment Trust

PIMCO Total Return

GSAM "Park" Portfolio

Goldman Sachs Asset Management

Lord Abbett

Torchlight Debt Opportunity Funds

Total Domestic Fixed Income

Lazard Asset Management

Total Global Fixed Income

Allianz Global Investors (fka Nicholas Applegate)

Total High Yield Fixed Income

Wellington Real Total Return

PIMCO All Asset

Private Real Asset

Total Real Asset

Total Real Estate

Total Alternative Investments

County Treasurer

State Street Bank

Total Cash & Equivalents

Total Market Opportunities

TOTAL ASSETS

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#3e.

A	B	C	D	C-B	D-A	Range
% of Target	Target Assets	Market Value	Actual Assets	Over (Under)	Over (Under)	
4.1%	295,329,970	318,957,000	4.43%	23,627,030	0.33%	
4.1%	295,329,970	295,831,000	4.11%	501,030	0.01%	
2.9%	208,891,930	215,420,000	2.99%	6,528,070	0.09%	
3.8%	273,720,460	299,556,000	4.16%	25,835,540	0.36%	
3.8%	273,720,460	246,789,000	3.43%	(26,931,460)	(0.37%)	
2.9%	208,891,930	238,601,000	3.31%	29,709,070	0.41%	
21.6%	1,555,884,720	1,615,154,000	22.42%	59,269,280	0.82%	
5.3%	381,768,010	400,612,000	5.56%	18,843,990	0.26%	
5.3%	381,768,010	397,634,000	5.52%	15,865,990	0.22%	
10.6%	763,536,020	798,246,000	11.08%	34,709,980	0.48%	
4.0%	288,126,800	262,566,000	3.65%	(25,560,800)	(0.35%)	
4.0%	288,126,800	304,826,000	4.23%	16,699,200	0.23%	
4.0%	288,126,800	304,255,000	4.22%	16,128,200	0.22%	
0.3%	21,609,510	23,576,000	0.33%	1,966,490	0.03%	
12.3%	885,989,910	895,223,000	12.43%	9,233,090	0.13%	
44.5%	3,205,410,650	3,308,623,000	45.93%	103,212,350	1.43%	40% TO 55%
3.3%	237,704,610	231,209,000	3.21%	(6,495,610)	(0.09%)	
5.6%	403,377,520	347,577,000	4.83%	(55,800,520)	(0.77%)	
0.0%	0	4,000	0.00%	4,000	0.00%	
4.6%	331,345,820	323,526,000	4.49%	(7,819,820)	(0.11%)	
4.6%	331,345,820	324,509,000	4.51%	(6,836,820)	(0.09%)	
1.9%	136,860,230	131,828,000	1.83%	(5,032,230)	(0.07%)	
20.0%	1,440,634,000	1,358,653,000	18.86%	(81,981,000)	(1.14%)	
4.0%	288,126,800	241,125,000	3.35%	(47,001,800)	(0.65%)	
24.0%	1,728,760,800	1,599,778,000	22.21%	(128,982,800)	(1.79%)	20% TO 30%
5.0%	360,158,500	320,086,000	4.44%	(40,072,500)	(0.56%)	
5.0%	360,158,500	320,086,000	4.44%	(40,072,500)	(0.56%)	2% TO 9%
0.8%	54,023,775	176,091,000	2.44%	122,067,225	1.69%	
1.8%	126,055,475	120,308,000	1.67%	(5,747,475)	(0.08%)	
2.5%	180,079,250	59,771,000	0.83%	(120,308,250)	(1.67%)	
5.0%	360,158,500	356,170,000	4.94%	(3,988,500)	(0.06%)	0% TO 10%
12.5%	900,396,250	887,974,000	12.33%	(12,422,250)	(0.17%)	10% TO 16%
8.0%	576,253,600	617,707,000	8.58%	41,453,400	0.58%	5% TO 12%
		-	0.00%			
		74,836,000	1.04%			
0.5%	36,015,850	74,836,000	1.04%	38,820,150	0.54%	0% TO 1%
0.5%	36,015,850	37,996,000	0.53%	1,980,150	0.03%	0% TO 5%
100.0%	7,203,170,000	7,203,170,000	100%	0	0%	

Private Real Estate Alternative Investments
As of March 31, 2016

REAL ESTATE INVESTMENTS	Inception Date	Target Termination	# of Extension	Discretion by GP/LP	New Target Termination	Funding Commitment	Market Value	% of Total Asset	Outstanding Commitment
DLJ Real Estate Capital Partners, L.P. II	07/31/99	07/31/09	3rd 2 YR	LP	6/30/2015	40,000,000	3,010,000	0.04%	
DLJ Real Estate Capital Partners, L.P. III	06/30/05	06/30/14	1st 2 YR	GP	6/30/2016	75,000,000	45,351,000	0.63%	18,958,000
DLJ Real Estate Capital Partners, L.P. IV	12/31/07	09/30/16				100,000,000	80,933,000	1.12%	19,476,000
DLJ Real Estate Capital Partners, L.P. V	07/31/13	12/31/22				75,000,000	41,561,000	0.58%	39,072,000
Hearstone Partners II	06/17/98	12/31/09				6,250,000	(38,000)	0.00%	
Invesco IREF I	10/22/03	04/30/11	3rd 1 YR	GP	4/30/2014	50,000,000	6,187,000	0.09%	
Invesco IREF II	05/30/07	12/31/15				85,000,000	17,913,000	0.25%	
Invesco IREF III	08/01/13	08/01/20				35,000,000	22,953,000	0.32%	20,305,000
Invesco IREF IV	12/01/14	12/01/21				35,000,000	19,352,000	0.27%	19,223,000
Long Wharf FREG II	07/18/03	02/28/12	NOT DEF	LP	12/31/2014	50,000,000	794,000	0.01%	
Long Wharf FREG III	03/30/07	12/30/15				75,000,000	12,887,000	0.18%	0
Long Wharf FREG IV	08/14/13	09/30/21				25,000,000	24,459,000	0.34%	
Oaktree Real Estate Opportunities Fund V	12/15/11	12/31/16				50,000,000	48,332,000	0.67%	5,682,000
Oaktree Real Estate Opportunities Fund VI	09/30/13	09/30/20				80,000,000	99,415,000	1.38%	65,000,000
Oaktree Real Estate Opportunities Fund VII	02/28/15	02/28/23				65,000,000	0	0.00%	
Signer Guff Distressed Real Estate Opp. Fund	12/31/11	12/31/16				75,000,000	73,667,000	1.02%	13,243,000
Signer Guff Distressed Real Estate Opp. Fund II	08/31/13	08/31/20				70,000,000	42,329,000	0.59%	48,015,000
Signer Guff Distressed Real Estate Opp. II Co-Inv	01/31/16	01/31/23				25,000,000	10,000,000	0.14%	15,000,000
Paulson Real Estate Fund II	11/10/13	11/10/20				20,000,000	20,213,000	0.28%	3,574,000
Angelo Gordon Realty Fund VIII	12/31/11	12/31/18				80,000,000	66,724,000	0.93%	18,145,000
Angelo Gordon Realty Fund IX	10/10/14	10/10/22				65,000,000	91,111,000	1.13%	559,002,000
LaSalle Income & Growth Fund VI	01/31/12	01/31/19				75,000,000	94,985,000	1.26%	3,946,000
Adelante Capital Management (REIT)						0		1.32%	
INVESCO International REIT						0	56,736,000	0.79%	
Outstanding Commitments						1,361,250,000	887,974,000	12.33%	848,641,000
Total							848,641,000		
							1,736,615,000		

PRIVATE DEBT INVESTMENTS	Inception Date	Target Termination	# of Extension	Discretion by GP/LP	New Target Termination	Funding Commitment	Market Value	% of Total Asset	Outstanding Commitment
Torchlight Debt Opportunity Fund II	09/28/06	09/30/16				128,000,000	54,780,000	0.76%	
Torchlight Debt Opportunity Fund III	09/30/08	09/30/16				75,000,000	10,309,000	0.14%	
Torchlight Debt Opportunity Fund IV	08/01/12	08/30/20				60,000,000	63,004,000	0.87%	0
Torchlight Debt Opportunity Fund V	12/31/14	09/17/22				75,000,000	3,785,000	0.05%	71,250,000
Outstanding Commitments						338,000,000	131,828,000	1.83%	71,250,000
Total							71,250,000		
							203,078,000		

Private Real Estate Alternative Investments
As of March 31, 2016

ALTERNATIVE INVESTMENTS

Inception Date	Target Termination	# of Extension	Discretion by GP/LP	New Target Termination	Funding Commitment	Market Value	% of Total Asset	Outstanding Commitment
12/22/95	INDEFINITE				180,000,000	132,958,000	1.85%	93,781,000
12/31/08	12/31/20				30,000,000	23,037,000	0.32%	12,637,000
10/31/12	10/31/22				40,000,000	18,365,000	0.25%	21,884,000
11/09/98	05/31/21				125,000,000	59,259,000	0.82%	18,249,000
12/26/08	12/26/23				30,000,000	23,402,000	0.32%	7,911,000
05/24/11	05/24/26				40,000,000	27,391,000	0.38%	16,130,000
02/07/13	02/07/23				70,000,000	28,808,000	0.40%	40,846,000
11/23/15	11/23/25				50,000,000	4,075,000	0.06%	45,925,000
06/03/14	05/31/25				200,000,000	55,468,000	0.77%	147,508,000
11/08/02	11/08/12	3rd YR	LP	11/08/15	30,000,000	815,000	0.01%	0
06/15/05	06/15/15				50,000,000	39,090,000	0.54%	0
02/28/07	02/28/17				65,000,000	61,758,000	0.86%	0
06/28/10	06/28/20				50,000,000	49,715,000	0.69%	2,519,000
02/15/04	02/15/14				15,000,000	-	0.00%	0
06/14/04	01/15/13	1st 2 YR	LP	1/15/2015	10,000,000	5,750,000	0.08%	0
2/29/09	12/31/17				10,000,000	10,732,000	0.15%	767,000
11/30/07	12/31/17				25,000,000	21,002,000	0.29%	0
01/31/08	01/31/16				30,000,000	41,618,000	0.58%	1,479,000
06/11/14	05/31/24				30,000,000	14,464,000	0.20%	14,884,000
Outstanding Commitments					1,080,000,000	617,707,000	8.58%	424,520,000
Total					1,042,227,000			

Outstanding Commitments

Total

MARKET OPPORTUNITIES

Inception Date	Target Termination	# of Extension	Discretion by GP/LP	New Target Termination	Funding Commitment	Market Value	% of Total Asset	Outstanding Commitment
02/28/10	01/31/17				40,000,000	22,996,000	0.32%	5,163,000
09/10/15	09/10/20				75,000,000	15,000,000	0.21%	60,000,000
Outstanding Commitments					115,000,000	37,996,000	0.53%	65,163,000
Total					103,159,000			

Outstanding Commitments

Total

REAL ASSET INVESTMENTS

Inception Date	Target Termination	# of Extension	Discretion by GP/LP	New Target Termination	Funding Commitment	Market Value	% of Total Asset	Outstanding Commitment
06/30/13	06/30/20				50,000,000	21,789,000	0.30%	28,000,000
12/31/15	11/30/22				25,000,000	1,165,000	0.02%	23,835,000
11/30/13	11/30/20				75,000,000	36,317,000	0.50%	40,074,000
01/01/16	01/01/28				50,000,000	500,000	0.01%	49,500,000
Outstanding Commitments					200,000,000	59,771,000	0.83%	141,409,000
Total					141,409,000	201,180,000		

Outstanding Commitments

Total

Market value column is the latest ending quarter plus any additional capital calls after the ending quarter.
The Target Termination column is the beginning of liquidation of the fund, however, some funds may be extended for an additional two or three years.



<p><u>Meeting Date</u> 05/04/16 <u>Agenda Item</u> #7</p>

MEMORANDUM

Date: May 4, 2016

To: CCCERA Board of Retirement

From: Wrally Dutkiewicz, Compliance Officer

Subject: Consider and Take Possible Action to Exclude Excess On-Call Pay (D33) Paid to Ten Retired Hazardous Materials Specialist II (V4VC) From Pension Calculations Pursuant To Government Code Section 31539

I. Background

In 2014 the CCCERA Board of Retirement requested the review of past incidents of unusual compensation increases at the end of employment. The Board directed as follows:

1. The Board's intent is to scrutinize apparently intentional acts of pension spiking, through members' receipt of pay items that were not earned as part of their regularly recurring employment compensation during the careers.
2. The review will concentrate on specific, unique items of pay and not on regularly recurring vacation, sick or compensatory leave time.

The Board further announced: "Any proposed adjustments to retirement benefits will occur only after the Board has conducted a thorough examination of all applicable facts and applicable law, and only after affording any affected members the opportunity to appear before, and present their positions to, the Board before any action is taken."

As a result, CCCERA began the *CCCERA Retiree Lookback Project – Compensation Enhancement Study* (the "Study") which focused on retirement calculations performed by CCCERA during the period 2004 through 2014. The focus of the study was to examine unusual changes in final average salary (FAS) by comparing the FAS period with pre-FAS compensation levels and its individual earn code components.

On December 10, 2014, the Board considered the matter of HazMat "On-Call" scenarios outlined by CCCERA staff, and directed staff to continue the review of "On-Call" as part of the Study.

On May 6, 2015 the Board of Retirement considered and took action regarding the treatment of on-call pay for pensionable purposes for a retired Hazardous Materials Specialist II, Mr. Paul Andrews. Having afforded Mr. Andrews notice and an opportunity to appear and present arguments and evidence to the Board, the Board determined that:

- 1) the on-call pay excluded from the member's benefit calculation was not required and worked by all in the grade or class during the same time period and is excludable as non-pensionable overtime pay; and
- 2) the on-call pay be excluded from the member's pension because the member caused his final compensation to be "improperly increased" by voluntarily signing-up for on-call work at the end of his career beyond what was required of all during the same time period.

The motion was amended to include using the average of the minimum number of on-call hours that were required in the member's benefit calculation.

County Employees Retirement Law ("CERL"), Government Code Section 31539 provides the Board with the authority to adjust and correct errors made in the calculation of a member's retirement allowance or other benefits. Under section 31539(a), a board may correct calculation errors that are caused either by fraud or by a member causing his or her benefits to be improperly increased or overstated at the time of retirement.

II. Findings of Study – HazMat “On-Call”

A. On-Call Pay Practices at the County Hazardous Materials Division

The compensation in question is on-call pay, which was paid under County Pay Code D33. The circumstances under which this member earns on-call pay are outlined in Section 9 of the Memorandum of Understanding between Contra Costa County and Public Employees Union, Local One, July 1, 2013 – June 30, 2016. Under the MOU it is the department head or his designee who assigns on-call duty.

The Department Head designates and approves those permanent full-time or part-time employees who will be assigned to on-call duty.

In practice, we are told, it is the Assistant Director of the Hazardous Materials Division who maintains the on-call schedule for the Incident Response Team (IRT) which is comprised of Hazardous Materials Specialist II employees. Once the on-call schedule is issued, those assigned to on-call duty are not necessarily required to serve that duty. IRT members are allowed to trade shifts, give up shifts, or volunteer for shifts that others wish to give up.

As a result, the on-call duty is not spread equally among the Hazardous Materials Specialist II IRT members, and team members tend to work more on-call duty when the on-call pay has a greater value, that is, during the final compensation period. All assigned and voluntary on-call

duty is paid using the same pay code D33 even though the MOU only describes pay when the employee is assigned to on-call duty.

One interpretation is that the on-call duty originally assigned to the member is the on-call duty that is eligible for on-call pay under the MOU, and it is only that on-call pay that the Board determined was included for retirement purposes in its pre-AB 197 compensation policy. The Board never considered (or was even aware of) voluntary on-call duty. The voluntary on-call duty is a form of overtime, which has always been excluded from compensation earnable under CERL. Under the Board's pre-AB 197 Policy, overtime compensation is not included in compensation earnable if it was in excess of what is considered to have been paid for services during normal working hours. Whether compensation is "overtime" has never depended on its formal characterization as overtime.

Under this interpretation, the voluntary on-call duty was improperly reported as on-call duty under the terms of Section 9 of the MOU (assigned on-call duty) rather than being reported as voluntary on-call duty, which would properly be reported under an overtime (excluded for retirement purposes) pay code.

It was observed during the study that earn code D33 – On-Call, presented itself with unusual increases in the FAS of members of the Hazardous Materials Incident Response Team (IRT) whose members of which were classified as Hazardous Materials Specialists II (V4VC). There were twelve (12) retirees that were identified in the *Study* that were members of the Hazardous Materials IRT.

B. Compensation Enhancement Review of Eleven (11) Retired Members of the HazMat IRT.

Pursuant to the Board's May 6, 2015 motion, the review of D33 on-call payments for eleven (11) retired members of the IRT identified in the *CCCERA 2014 Look-Back Project – Compensation Enhancement Study* in which it was observed that the retirees had "unusual" increases when their final average salary (FAS) was compared to the twelve month period immediately preceding it, staff performed the following:

- Requested the following documents from the Hazardous Materials Department office:
 - All timesheets for each IRT retiree's FAS period.
 - All IRT schedules for the period 2001 – 2014. Due to document retention limitations, the IRT schedules provided by the Hazardous Materials department office were for the period 2006 through 2014.
- Retrieved, compiled and reviewed salary data:
 - Member Salary by Job Code – V4VC Hazardous Materials Specialists II
- Reviewed schedules, timesheets, and payroll data.

C. Exclusion Determination of On-Call Pay On the Basis that It Was Not All Required Duty Performed By Individual IRT Members.

The IRT is mandated to provide 24/7 response services when notified of an incident and the Director of Hazardous Materials Programs issues an on-call schedule for the IRT every six (6) months. The IRT is staffed with six (6) Hazardous Materials Specialist II members (5 member IRT were scheduled pre-January 2010). The schedule consisted of six (6) four hour shifts Monday through Friday and four (4) six hour shifts on both Saturday and Sunday.

The following is the baseline average number of potential on-call hours during each year:

Table 1:

	Work days	Workday On-Call hours	Weekend Days	Weekend On-Call Hours	Total Potential Annual Hours per Haz. Spec. II (V4VC) IRT Member
2014	251	6,024	104	2,496	2,912
2013	251	6,024	104	2,496	2,912
2012	251	6,024	105	2,520	2,940
2011	251	6,024	105	2,520	2,940
2010	251	6,024	104	2,496	2,912
2009	251	6,024	104	2,496	2,995
2008	252	6,048	104	2,496	2,995
2007	251	6,024	104	2,496	2,995
2006	250	6,000	105	2,520	3,024

For the first test of determining the amount of on-call pay paid for work not required, and worked by a member in the same grade or class during the same time period, a review of the IRT schedules revealed a trend in the variance between the “scheduled” shift times and “actual” shift times that the member actually worked.¹

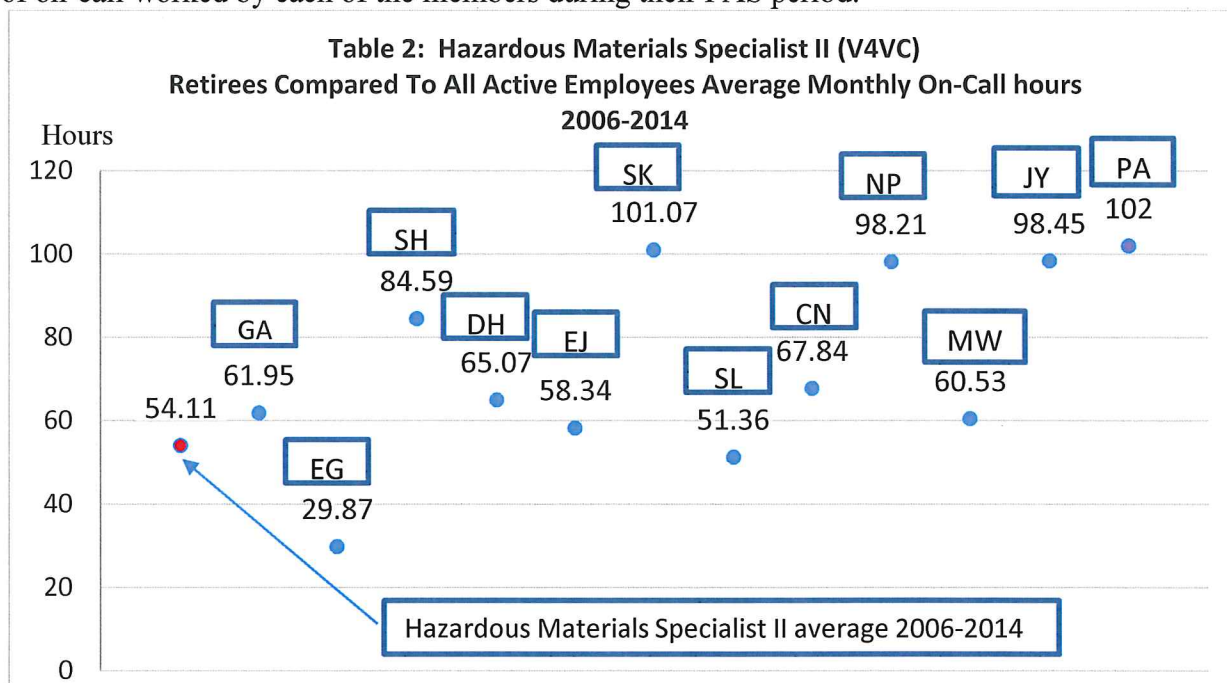
It was observed during the review of the member’s schedules and payroll data that as the members approached the beginning of their FAS periods the number of shifts that they actually worked versus that which they were scheduled for began to increase. This was facilitated by the practice within the department that allowed members of the IRT to voluntarily swap and accept shifts from each other. The voluntary aspect of how shifts could be exchanged was evident in the review of the schedules provided by the department. Staff reviewed all schedules for each member for the five years preceding their retirement date and reconciled the schedules against each member’s timesheets for their FAS period. Staff observed that all excess on-call hours

¹ See Chart B “Scheduled On-Call Shifts vs. Actual Shifts Worked Pre-FAS and FAS years” in each of the member’s attachments numbered 9 through 19 for individual member observations.

were the result of members making adjustments on their own to the department schedule. These adjustments were made in various ways, for example:

- (1) by crossing off other employee names or initials from the department schedule and adding the retiring member's name or initials to note swapping of shifts, or,
- (2) by the retiring member making notations in order to sign up for additional on-call hours.

The increase in the number of actual shifts worked translated into an increase in the number of on-call hours worked for eight of the members throughout their FAS period and in the last three months of their FAS period for two of the other members. One member had a decrease in the number of shifts pre-FAS period versus FAS period. The chart below shows the aggregate hours of on-call worked by each of the members during their FAS period.



Legend:

GA – G. Adebisi	DH – D. Hutchin	SL – S. Loyd	MW – M. Wedl
EG – E. Glimme	EJ – E. Jonsson	CN – C. Nicholson	JY – J. Yoshioka
SH – S. Hanson	SK – S. Khnoo	NP – N. Price	PA – P. Andrews

The voluntary aspect that led to the variance between “scheduled” and “actual” shifts, and the observed increase in shifts for each of the members either for part of or through their whole FAS period as compared to their pre-FAS periods, supports the conclusion that some of the on-call shifts worked by the IRT members was on a voluntary basis above and beyond that which had been scheduled by the Director, and therefore was not required work and should be excluded from pensionable compensation on this basis.

D. Exclusion Determination of On-Call Pay for Pension Calculation Purposes Based on Average IRT Experience Compared to Member's Individual Experience

For the second test, each of the member's individual on-call compensation experience during their FAS period was placed within the context of the on-call compensation experience of all rostered Hazardous Materials Specialist II that were active during each month during their FAS period. During the review, it was taken into account that the number of active members varied month to month due to vacations, leaves, and sick days when identified. Using the monthly number of active rostered Hazardous Materials Specialist II members set against the number of weekday and weekend shifts that were both available and then subsequently worked by the IRT members, an average of on-call hours worked by the IRT team as a whole could be determined for each month during the member's FAS period. It is against this average that each of the Hazardous Materials Specialist II's individual experience was calculated and where identified, the excess of on-call hours worked by each member in their FAS period was noted.

Table 3:

Retiree	FAS Monthly Average On-Call Hours	HazMat Spec. II Monthly On-Call Average in Retiree FAS Period	Difference Between Retiree Monthly Average & HazMat Spec. II Monthly On-Call Average
Adebiyi, Gabriel	61.95	42.53	19.42
Glimme, Elaine	29.87	42.47	(12.60)
Hanson, Scott	84.59	52.59	32.00
Hutchin, Dena	65.07	48.74	16.33
Jonsson, Eric	58.34	45.08	13.26
Khoo, Sonny	101.07	54.05	47.01
Loyd, Sue	51.36	53.01	(1.65)
Nicholson, Charles	67.84	49.84	18.00
Price, Neal	98.21	54.19	44.02
Wedl, Michael	60.53	65.10	(4.57)
Yoshioka, Jerry	98.45	63.69	34.76
Andrews, Paul ²	102.00	59.15	42.85

It was observed that for eight of the IRT members, the number of on-call hours worked by each of them was in excess of the average for the IRT members that were rostered and active during their FAS period. Two of the members had less than the average of the IRT team during their entire FAS period, but had a significant increase above the IRT team's average in the last three months of their FAS period. The table below indicates the monthly average of on-call worked for each member compared to the monthly IRT average during their FAS period with the excess hours (if any) noted.

² BOR action of May 6, 2015, the excess on-call above the average was excluded from Mr. Andrews final average salary.

Based on the excess on-call hours worked by each member above and the respective average of the IRT during each member's FAS period, the following table indicates the number of hours and recommended exclusion dollar amount of compensation based on each member's final hourly pay rate on the date of their retirement:

Table 4:

Member Name	Excess Hours	Excess Dollar Amount of Compensation
Adebiyi, Gabriel	233.04	\$ 9,702.43
Glimme, Elaine	0	\$ -
Hanson, Scott	384.0332	\$ 17,135.07
Hutchin, Dena	195.9866	\$ 8,744.67
Jonsson, Eric	159.1755	\$ 7,102.21
Khoo, Sonny	564.1689	\$ 24,480.26
Loyd, Sue	119	\$ 5,309.63
Nicholson, Charles	216.018	\$ 9,638.45
Price, Neal	528.2488	\$ 21,830.12
Wedl, Michael	94	\$ 4,078.82
Yoshioka, Jerry	417.1372	\$ 18,100.30

The following table displays the prospective adjusted monthly pensions for each of the affected members reflecting the exclusion of the excess on call compensation in each of the pension calculations at the date of their retirement and then brought forward including COLA if earned:

Table 5:

Member Name	Retirement Date	Current Monthly Pension a/o 5/1/2016	Adjusted Prospective Monthly Pension a/o 6/1/2016	Difference Between Current & Adjusted Prospective Month Pension	Cumulative Pension Overpayment Since Retirement Date (Without Interest)
Adebiyi, Gabriel	7/19/2007	\$6,946.51	\$6,518.03	\$ 428.48	\$36,163.68
Hanson, Scott	2/29/2012	\$5,694.05	\$5,107.01	\$ 587.04	\$27,506.87
Hutchin, Dena	10/1/2009	\$7,405.93	\$7,063.09	\$ 342.84	\$24,686.40
Jonsson, Eric	3/31/2011	\$9,779.95	\$9,345.56	\$ 434.39	\$24,557.03
Khoo, Sonny	11/1/2012	\$11,009.58	\$9,452.71	\$1,556.87	\$61,707.42
Loyd, Sue	3/31/2012	\$8,529.76	\$8,224.60	\$ 305.16	\$14,299.19
Nicholson, Charles	12/1/2011	\$9,996.27	\$9,400.62	\$ 595.65	\$29,482.29
Price, Neal	2/23/2013	\$7,969.71	\$7,312.73	\$ 656.98	\$24,381.54
Wedl, Michael	7/1/2014	\$5,328.22	\$5,180.72	\$ 147.50	\$ 3,123.29
Yoshioka, Jerry	3/28/2014	\$7,916.23	\$7,085.89	\$ 830.34	\$20,808.20

III. Recommendation:

- 1) Consider and take possible action to determine that the excess on-call compensation paid to the eight Hazardous Materials Specialists IIs listed below was:
 - a. For voluntary non-required work that was beyond the average on-call hours performed by other Hazardous Materials Specialists IIs during the same pay period;
 - b. An improper increase of the members' final compensation *caused by the members*;
 - c. Obtained by signing up or trading for additional on-call hours in the last year or months prior to retirement, in order to boost up the members' final compensation.

And therefore should be excluded from their respective final average salary for pension compensation purposes pursuant to Government Code Section 31539.

The eight members are:

- | | |
|-------------------|---------------------|
| ▪ Gabriel Adebisi | ▪ Sonny Khoo |
| ▪ Scott Hanson | ▪ Charles Nicholson |
| ▪ Dena Hutchin | ▪ Neal Price |
| ▪ Eric Jonsson | ▪ Jerry Yoshioka |

- 2) Consider and take possible action to determine that the excess hours of on-call compensation paid to the two Hazardous Materials Specialists IIs listed below during the last three months of their final average salary period was:
 - a. For voluntary non-required work that was beyond the average on-call hours performed by other Hazardous Materials Specialists IIs during the same pay period;
 - b. An improper increase of the members' final compensation *caused by the members*;
 - c. Obtained by signing up or trading for additional on-call hours in the last months prior to retirement, in order to boost up the members' final compensation.

And therefore should be excluded from their respective final average salary for pension compensation purposes pursuant to Government Code Section 31539.

The two members are: Sue Ann Loyd and Michael Wedl

- 3) If the Board determines under Number 1) and 2) above that the excess On-Call Pay was an improper increase caused by the members, the Board should consider and take possible action to:
 - a. Recover all past overpayments, with interest, in a manner consistent with the Board's overpayment of benefits policy; and
 - b. Adjust future benefit payments accordingly, effective June 1, 2016.

HazMat IRT Compensation Enhancement Review Attachment List

Attachment #	Description
1.	<ul style="list-style-type: none"> • Board of Retirement Letter of Intent To Review Past Incidents Of Unusual Compensation Increases At End Of Employment Dated 5/8/2014 • Board of Retirement Supplemental Direction Regarding Review Of Past Incidents Of Unusual Compensation Increases At End Of Employment Dated 7/31/2014
2.	May 6, 2015 BOR Meeting Agenda #9 – Consider and Take Possible Action Regarding Whether On-Call Pay Should Be Treated As Pensionable For Retired Hazardous Materials Specialist Paul Andrews
3.	Minutes – Item #9 BOR Meeting Agenda – Motion – Board Action
4.	BOR Policy Governing The Overpayment Or Under Payment of Member Contributions [Adopted 12/10/2014]
5.	Hazardous Materials Specialist II (V4VC) Job Description
6.	MOU Between Contra Costa County and PEU Local One October 1, 2008 – June 30, 2011 <i>Page 37 Section 9 – On-Call Duty, Page 205-206 On Call and Duty Pay</i>
7.	MOU Between Contra Costa County and PEU Local One July 1, 2011 – June 30,2013 <i>Page 39 Section 9 – On-Call Duty, Pages 205-206 On Call Duty and Pay</i>
8.	MOU Between Contra Costa County and PEU Local One July 1, 2013 – June 30, 2016 <i>Page 24 Section 9 – On-Call Duty, Page 136 On Call Duty and Pay</i>
9.	G. Adebisi – Compensation & On-Call Charts
10.	S. Hanson – Compensation & On-Call Charts
11.	D. Hutchin - – Compensation & On-Call Charts
12.	E. Jonsson – Compensation & On-Call Charts
13.	S. Khoo - – Compensation & On-Call Charts
14.	C. Nicholson – Compensation & On-Call Charts
15.	N. Price – Compensation & On-Call Charts
16.	J. Yoshioka – Compensation & On-Call Charts
17.	S. Loyd – Compensation & On-Call Charts
18.	M. Wedl – Compensation & On-Call Charts
19.	E. Glimme – Compensation & On-Call Charts

Attachment #1

May 8, 2014

To: CCCERA Employers
Employee Groups
Retiree Groups

This is to inform you that the Retirement Board for the Contra Costa County Employees' Retirement Association (CCCERA) voted on May 7, 2014 to adopt the following public statement to be disseminated to all interested parties:

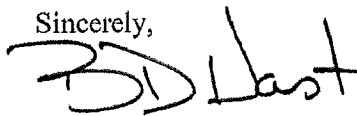
**STATEMENT OF BOARD INTENT TO REVIEW PAST INCIDENTS OF
UNUSUAL COMPENSATION INCREASES AT END OF EMPLOYMENT**

The CCCERA Board of Retirement has a fiduciary obligation to pay only the legally correct benefits earned by its members. Having recently been granted additional auditing authority and responsibility by the State Legislature, the Board announces its intention to review past retirement calculations to determine whether any retired CCCERA members may be receiving benefits that were calculated on amounts that should not have been included in their pensionable compensation. As a first step, the Board will conduct an analysis of data pertaining to all unusual increases in the final average salary year for all CCCERA members who retired during the past several years.

The Board assures all CCCERA members that any proposed adjustments to retirement benefits will occur only after the Board has conducted a thorough examination of all applicable facts and applicable law, and only after affording any affected members the opportunity to appear before, and present their positions to, the Board before any action is taken.

Thank you for your attention to this matter.

Sincerely,



Brian Hast
Retirement Board Chair

CONTRA
COSTA
COUNTY **CCCERA**
Employees' Retirement Association

July 31, 2014

To: CCCERA Employers
Employee Groups
Retiree Groups

This is to inform you that the Retirement Board for the Contra Costa County Employees' Retirement Association (CCCERA) has provided supplemental direction regarding the review of past incidents of unusual compensation increases at the end of employment. The Board initially voted on May 7, 2014 to begin the review. On July 23, 2014, the Board directed as follows:

1. The Board's intent is to scrutinize apparently intentional acts of pension spiking, through members' receipt of pay items that were not earned as part of their regularly recurring employment compensation during their careers.
2. The review will concentrate on specific, unique items of pay and not on regularly recurring vacation, sick or compensatory leave time.

As previously stated, any proposed adjustments to retirement benefits will occur only after the Board has conducted a thorough examination of all applicable facts and applicable law, and only after affording any affected members the opportunity to appear before, and present their positions to, the Board before any action is taken.

Thank you for your attention to this matter.

Sincerely,



Brian Hast
Retirement Board Chair

Attachment #2

MEMORANDUM

Date: May 6, 2015
To: CCCERA Board of Retirement
From: Kurt Schneider, Deputy Retirement Chief Executive Officer
Subject: Consider and Take Possible Action Regarding Whether On-Call Pay Should Be Treated As Pensionable For Retired Hazardous Materials Specialist Paul Andrews

Executive Summary

Paul Andrews retired from county service as a Hazardous Materials Specialist II on March 27, 2014. At the time of his retirement, significant amounts of on-call pay in the final average salary period were noted. Mr. Andrews' retirement allowance calculation was made including only the amount of on-call pay that appeared to be the average on-call pay for the Incident Response Team for that period of time, and excluding amounts in excess of that amount. The exclusion was made pending the Board's final determination of whether and to what extent any on-call pay should be included in Mr. Andrews's pension calculation. CCCERA proceeded to gather information and records regarding on-call pay in general and, in particular, how on-call pay was assigned, scheduled and handled by the department and the extent to which it was required, scheduled and spread among the grade or class of Hazardous Materials Specialists. This memorandum summarizes staff's findings.

After considering all information available to the Board pertaining to Mr. Andrews's on-call pay, including information provided by Mr. Andrews, his employer, and CCCERA, the Board may consider the best approach to addressing this matter. Possible approaches include:

- (a) Final determination by the Board based on the information before the Board regarding whether and to what extent the on call pay should be excluded from Mr. Andrews's benefit calculation. The information shows as follows:
 - (i) The on-call pay excluded from Mr. Andrews' benefit calculation was for work not required and worked by *all* in the grade or class (i.e., all Hazardous Materials Specialists) during the same time period. Therefore, it is non-pensionable overtime pay. On that basis, the Board may determine that the on-call pay at issue should be excluded from Mr. Andrews's benefit calculation. Pensionable on-call pay would be limited to pay for on-call work that was required and worked by all Hazardous Materials Specialist IIs during the same time period, regardless of whether or not they were part of the Incident Response Team.

(ii) This particular County department did not require on call work equally of all hazardous materials specialists. Individuals were allowed to sign up or swap voluntarily for additional on call hours. Mr. Andrews volunteered for substantially more hours than was average. The variable nature of on call scheduling and sign up practices in this particular department led to significant on call pay to the retiring member in the final average salary year. Therefore, on a separate and independent basis, the Board may determine that the on call pay at issue should be excluded from the member's pension because the member caused his final compensation to be "improperly increased" (the language in the CERL statute) by voluntarily signing up for on call work at the end of his career beyond what was required of all during the same time period;

(b) further hearings to develop any additional facts the Board may determine are needed;
or

(c) further hearings before a hearing officer, as authorized under Government Code Section 31533.

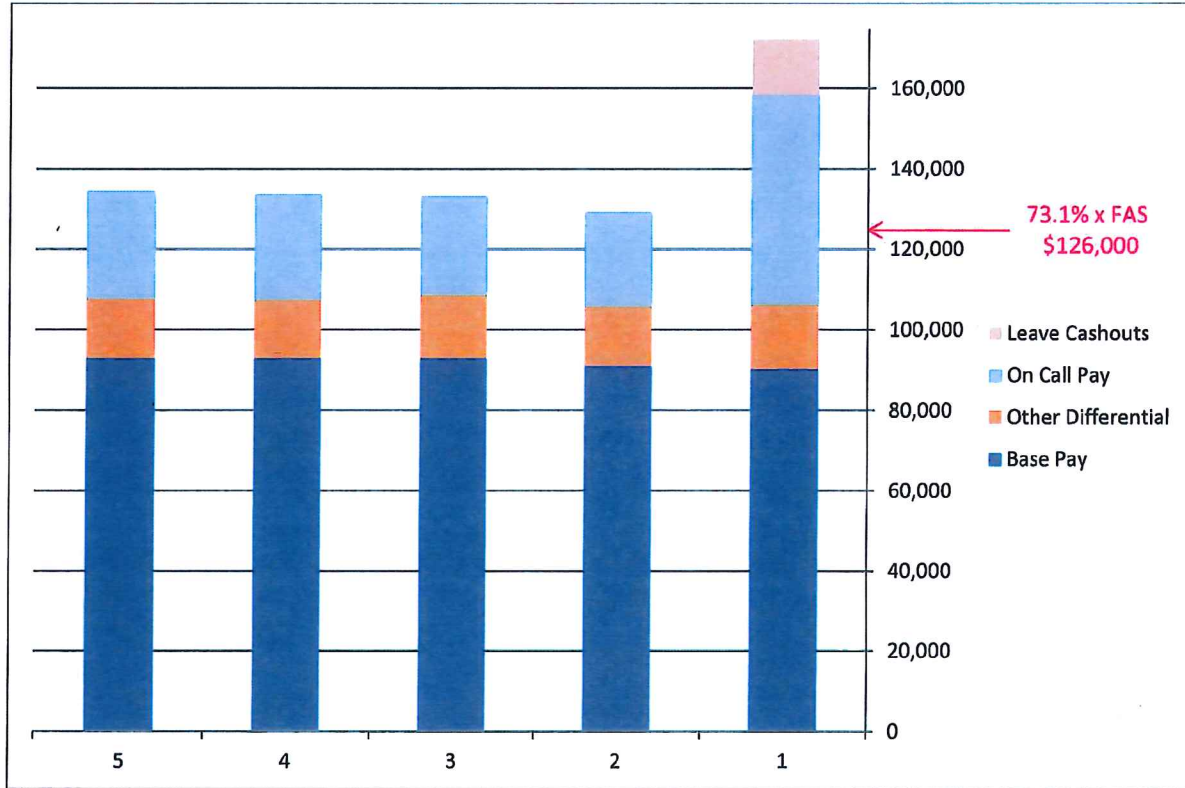
Background

On March 27, 2014, Paul Andrews retired from Contra Costa County Health Services. The Member was hired by Contra Costa County Health Services on March 19, 1990, as a Hazardous Materials Specialist and became a CCCERA member on April 1, 1990. The Member was promoted to Hazardous Materials Specialist II (County Job Code V4VC), effective May 1, 1992, a position that was held until retirement. The Member retired with over 24 years of Safety service, which means the initial unmodified retirement allowance is 73.1% of Final Average Salary or about \$126,000 per year.

In July of 2002 the Member began receiving pay under Pay Code B95, which is a bonus for assignment to the Hazardous Materials Incident Response Team (IRT), as well as pay under Pay Code D33 – On Call Pay, which is pay that IRT members receive for serving on call duty. Between July 2002 and March 2013 the Member received the IRT bonus every month and earned an average of 48 hours of On Call Pay per month. Between April 2013 and March 2014, the Member's final 12 months of employment, the average On Call Pay increased to 102 hours per month.

The following chart shows the Member's compensation for each of the five 12-month periods preceding retirement broken out by four pay categories. The initial retirement allowance is shown in red as a point of reference.

Chart 1
Member's Annual Compensation during Final Five Years of Employment

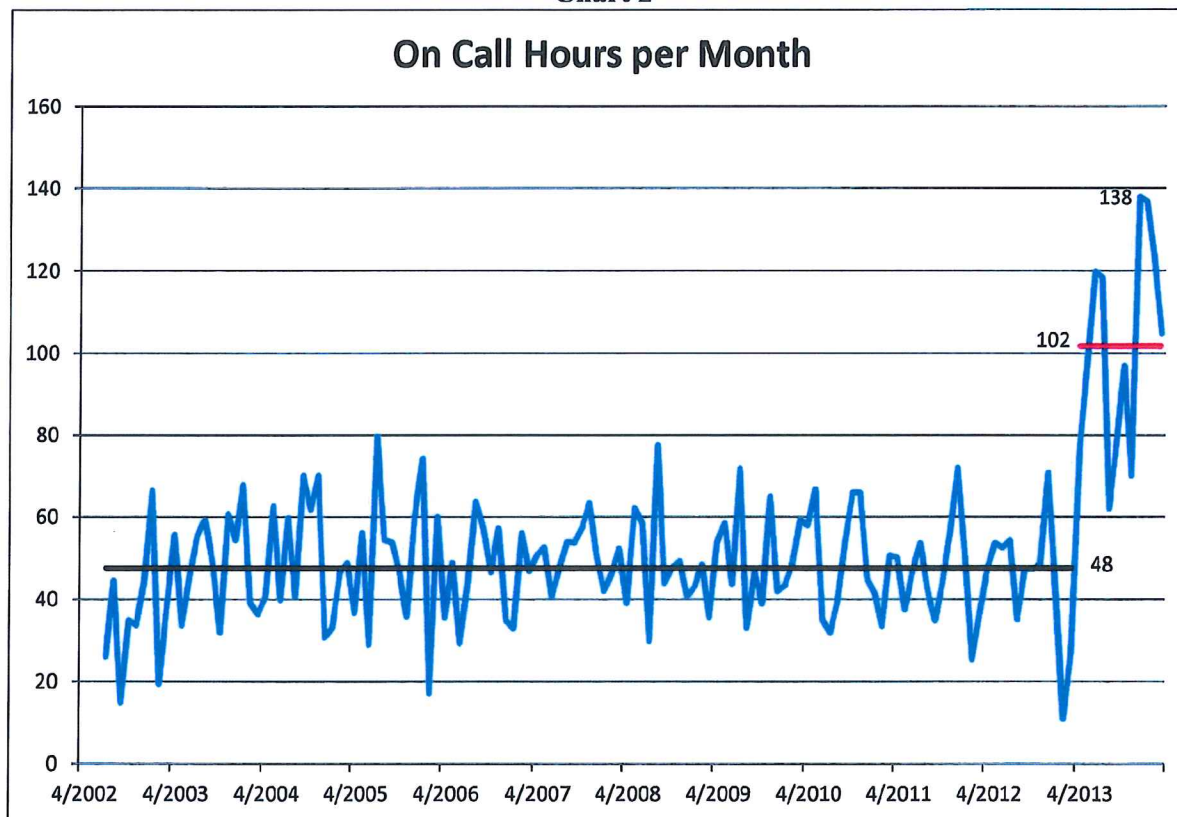


Hazardous Materials Incident Response Team On Call Pay

The following information was provided to CCCERA by the Assistant Director of the County's Health Services Hazardous Materials Division. On any given day, six Hazardous Materials Specialists who are assigned to the IRT are on call. While on call, the team members are subject to being called back to duty should an emergency arise. While team members are on duty, either during their normal shift or while being called back to duty, they receive no on call pay. While team members are on call (and off duty) they receive one hour of pay for each four hours of on call time served. This means that on a weekend or holiday a team member could earn up to six hours of on call pay, assuming they are not called back to duty, and on a workday they could earn up to four hours of on call pay.

The following chart shows the number of hours of on call pay the Member received each month since first being assigned to the IRT in 2002.

Chart 2



The data shows that the average number of on call hours for this retiree more than doubled in the final year of employment from 48 hours to 102 hours. The department has confirmed that during December 2013 and January 2014 the Member was either on duty or on call the entire two-month period except for 48 hours.

This is not the first time CCCERA staff has analyzed the on call pay of a Hazardous Materials IRT member. In February 2013 another IRT member retired with a similar pattern. Staff contacted the employer to learn how the on call duty was assigned. We were told that the Hazardous Materials Specialists have had more on call pay in recent years due to staffing issues which requires each Specialist to work more on call duty than was required in past years. This supposedly explains why recent retirees appear to have a “spike” in their on call pay late in their careers.

This explanation, however, is not supported by the data that was collected. An analysis of all Hazardous Materials Specialist retirements since on call pay began being included in Compensation Earnable showed that for all but two individuals, the amount of on call pay received increased prior to retirement regardless of how recently they retired. Although the average amount of on call pay for Hazardous Materials Specialists has increased in recent years, in any given time period, those with the highest amount of on call pay are those individuals who are within one year of retirement.

The department's explanation is not only at odds with the historical data, it is also not supported by the compensation data of the current retiree being analyzed. If the department's explanation in 2013 was correct, the current retiree should also show an increase in on call pay during the period from March 2012 through February 2013. This was not the case, and in fact, the current retiree had a personal all-time low for on call duty in February 2013 (the same month the previous IRT member retired) and did not show an increase until April 2013, exactly 12 months prior to his retirement in late March of 2014. This particular IRT member was not working additional on call duty, relative to his own work history, prior to April 2013.

The attached charts illustrate the numbers of on call hours served per month for each IRT member during the period from January 1, 2013, through May 31, 2014. The charts include data for 15 individuals of which either 12 or 13 were active each month. In order to analyze the data it has been split into four charts dividing the members into the following categories:

- Legacy Members who actually retired during the period
- Legacy Members eligible to retire (or within one year of eligibility)
- Legacy Members ineligible to retire
- PEPRAs Members

The data shows a correlation between the amount of on call duty a members serves and whether the member is near retirement. Note that this does not prove that members increase their on call duty because they are approaching retirement. Another plausible explanation is that the members near retirement are also the members with the most service and experience, and it may be beneficial to the department (and the public) to have those members on call as much as possible. Regardless of the explanation, the plan is not designed or funded to account for this. The reason for basing a member's retirement allowance on the final compensation is to ensure the retirement allowance reflects all salary increases due to inflation, merit, and promotion that occur throughout the member's career, not to allow members to work additional hours near retirement to increase their retirement allowances.

Impact on CCCERA

When a member's compensation increases (due to an increase in on call duty or for any other reason) the employee and employer contributions to CCCERA also increase. The increase in contributions, however, does not cover the increased cost of the retirement allowance. The increase in contributions, in this case, is only for one year, but the retirement allowance is based on the increased compensation multiplied by more than 24 years of service.

The amount of on call pay the retiree was receiving increased from approximately \$25,000 per year to \$52,000 per year. This results in an increase in the unmodified retirement allowance of over \$19,700 per year ($\$27,000 \times 73.1\%$). The present value of the \$19,700 increase in the annual retirement allowance is approximately \$306,000, while the contribution increase was only about \$23,000, causing an increase the County's Unfunded Actuarial Accrued Liability of \$283,000, to be paid with interest over an 18 year period, primarily by the Sheriff's Department, since the member is a County Safety member.

Exclusions from Compensation for Retirement Purposes

This member retired in March 2014, during the period CCCERA was under a court ordered stay and prevented from implementing Assembly Bill 197 or changing its Compensation Policy. In this unique situation, therefore, due to the date of retirement, CCCERA must apply the rules in effect at the time. These include, but are not limited to, CERL Sections 31461 and 31539. While CCCERA had established and implemented a procedure to identify compensation paid to “enhance” a member’s retirement benefit as required by Section 31542 (added in 2012 as part of AB 340), CCCERA was precluded by the Stay Order from implementing the portion of AB 197 that authorizes the Board to exclude such “enhancements.” Although requested by CCCERA, the Superior Court did not modify the Stay Order to allow such exclusion.

The law applicable to Mr. Andrews’s pension calculation includes CERL Section 31461. It defines “compensation earnable” as “the average compensation as determined by the [retirement] board, for the period under consideration upon the basis of the average number of days ordinarily worked by persons in the same grade or class of positions during the period, and at the same rate of pay.” The Policy in effect then and applicable to Mr. Andrews’s pension calculation designated “standby pay” as pensionable, but excluded overtime pay. While it was understood that on-call pay is similar to standby pay and generally treated as pensionable, it was not known to the Retirement Board until fairly recently that on-call pay resulted in irregular spikes in compensation during the final average salary for some members and was not spread equally among all members in the same grade or class of positions during the period. In light of that, the Board is now called upon to determine whether and to what extent on-call pay qualifies as “compensation earnable.”

Additionally, Government Code Section 31539 is also applicable here. The section was in effect before the enactment of AB 197 and the ensuing litigation and stay. It allows the Board to exclude compensation if: “The member caused his or her final compensation to be improperly increased or otherwise overstated at the time of retirement.” In order to for the Board to make this determination, it will need to review the circumstances under which on-call work was scheduled for this member as well as other Hazardous Materials Specialists during the same period at the County Hazardous Materials Division, a division within the County Department of Health Services.

On-Call Pay Practices at the County Hazardous Materials Division

The compensation in question is on call pay, which was paid under County Pay Code D33. The circumstances under which this member earns on call pay are outlined in Section 9 of the Memorandum of Understanding between Contra Costa County and Public Employees Union, Local One, July 1, 2013 – June 30, 2016. Under the MOU it is the department head or his designee who assigns on-call duty.

The Department Head designates and approves those permanent full-time or part-time employees who will be assigned to on-call duty.

In practice, we are told, it is the Assistant Director of the Hazardous Materials Division who maintains the on-call schedule for the Incident Response Team. Once the on-call schedule is issued, those assigned to on-call duty are not necessarily required to serve that duty. Team members are allowed to trade shifts, give up shifts, or volunteer for shifts that others wish to give up.

As a result, the on-call duty is not spread equally among the team members, and team members tend to work more on-call duty when the on-call pay has a greater value, that is, during the final compensation period. All assigned and voluntary on-call duty is paid using the same pay code even though the MOU only describes pay when the employee is assigned to on-call duty.

One interpretation is that the on call duty originally assigned to the member is the on call duty that is eligible for on call pay under the MOU, and it is only that on call pay that the Board determined was included for retirement purposes in its pre-AB 197 compensation policy. The Board never considered (or was even aware of) voluntary on call duty. The voluntary on call duty is a form of overtime, which has always been excluded from Compensation Earnable under CERL. Under the Board's pre-AB 197 Policy, overtime compensation is not included in compensation earnable if it was in excess of what is considered to have been paid for services during normal working hours. Whether compensation is "overtime" has never depended on its formal characterization as overtime.

Under this interpretation, the voluntary on call duty was improperly reported as on call duty under the terms of Section 9 of the MOU (assigned on call duty) rather than being reported as voluntary on call duty, which would properly be reported under an overtime (excluded for retirement purposes) pay code.

Differentiating Assigned On Call Duty from Voluntary On Call Duty

It may not be possible to determine precisely how much on call duty was assigned to the member and how much the member volunteered for in order to provide coverage. Once created, the on call schedule is continually updated to ensure there is sufficient coverage. Since both forms of on call duty were being reported under the same pay code and both forms were believed to be pensionable, there was no reason to differentiate them on the timesheets, department schedules or anywhere else. We do know, however, that a portion of the on call duty was assigned and a portion of it was voluntary.

A good example of this is summarized in Attachment 2, which shows Mr. Andrews was initially assigned on call duty for 11 days during the month of June 2013. His June timesheet shows that he was on call and paid for 25 days. The IRT on call schedule shows that in some cases shifts are swapped. The on call duty Mr. Andrews served on June 14-16 was in exchange for giving up shifts February 15-17 to member that retired February 23. Also, the timesheet makes no distinction between duty that was assigned versus that which was voluntary. This practice is different from other CCCERA employers who do make the distinction between required on-call duty and voluntary on-call duty. The Central Sanitary District, for example, assigns its Maintenance Crew Members to two separate weeks of on-call duty per year. Only pay for those

two weeks can be counted towards retirement. Pay for any voluntary on-call duty beyond the two assigned weeks does not count toward retirement.

At its December 10, 2014 meeting, the Board received information about the assignment of on call duty from the Director of the Hazardous Materials Division, Randall Sawyer. According to the Director, the assignment of on call duty is initially uniform among everyone on the Incident Response Team. Based on this practice, we can calculate the approximate amount of on call duty that was assigned to each employee. This is the total amount of on call duty worked by everyone on the Incident Response Team divided by the number of individuals on the Team. We have performed this calculation for this member during his final compensation period.

During the member's final compensation period there were either 12 or 13 Hazardous Materials Specialists on the Incident Response Team eligible for on call duty at any given time. They were paid on average for approximately 64 hours per month under pay code D33, which represents 256 hours of on-call duty. The average then for the entire 12-month final compensation period is 768.92 hours under pay code D33. At this member's compensation rate of \$43.391712 per hour this would be a total of \$33,364.76 of on call pay during the final year of employment. While this still represents a 41% increase over the prior year for this retiree, this can be explained by the fact that there were fewer available department members over which to distribute the on-call duty during the member's final compensation period compared to previous periods.

Recommendation

After considering all information available to the Board pertaining to Mr. Andrews's on-call pay, including information provided by Mr. Andrews, his employer, and CCCERA, the Board can proceed to determine whether some or all of the on call pay excluded from Mr. Andrews's pension calculation is pensionable. ***First***, since the on-call pay at issue here was for work not required and worked by ***all*** in the same grade or class during the same time period, the Board may determine that it is non-pensionable overtime pay. ***Second***, if the Board determines that the on-call pay was an ***improper increase*** caused by the member's behavior, it is non-pensionable pay and it is within the Board's discretion to exclude it from the pension calculation. Alternatively, should the Board determine that additional facts are necessary, the Board may set a future hearing regarding this matter. Lastly, the Board may also determine that a further hearing before a hearing officer is warranted, as authorized under Government Code Section 31533.

Attachment #3

It was M/S/C to approve the routine items of the May 6, 2015 meeting. (Yes: Andersen, Gordon, Hast, Holcombe, Phillips, Pigeon, Smithey, Telles and Watts)

It was the consensus of the Board to move into Closed Session, Item 6.

CLOSED SESSION

The Board moved into closed session pursuant to Govt. Code Section 54957.6.

The Board moved into open session.

6. There was no reportable action related to Govt. Code Section 54957.6.

It was the consensus of the Board to move to Item 9.

9. Consider and take possible action regarding whether on-call pay should be treated as pensionable for retired hazardous materials specialist Paul Andrews

Schneider reviewed his memo on staff's findings regarding on-call pay in the final average salary period for retired hazardous materials specialist Paul Andrews. He stated the amount of on-call pay was steady throughout his career and doubled in his final year. He noted the employer stated it was due to less people on staff.

Paul Andrews, retired hazardous materials specialist, presented a slide show and reviewed his background as a County employee noting he is also a state certified hazardous materials instructor. He reported hazardous material operates 24/7. He reviewed typical incidents including drug labs, fixed facilities, railroads, spills, and abandonments. He also reviewed how on-call works in the hazardous material department. He discussed the reason for the increase in his on-call time during the last year of his employment. He stated he never volunteered to be on-call and that it was required.

Louis Pascalli, former hazardous materials director from 1993-2004, stated there were a number of incidents during the time he was director that needed to be worked, which were mostly at refineries. He noted the union and management have been working together to ensure staffing levels are met.

Randy Sawyer, Chief Environmental Health and Hazardous Materials Officer for Contra Costa County, reviewed the staffing levels on the hazardous materials team, how on-call work is assigned, and how the positions are filled. He reported that currently someone is on-call an average of every other day. He noted they still are not fully staffed. He stated on-call is not voluntary and they are required to have some of the team members on the team with a higher level of experience. There were a lot of retirements which caused them to have less team members that had the higher level of experience to staff teams.

Gordon complimented Schneider and staff on their report and analysis.

It was M/S that 1) the on-call pay excluded from the member's benefit calculation was not required and worked by all in the grade or class during the same time period and is excludable as non-pensionable overtime pay and 2) the on-call pay be excluded from the member's pension because the member caused his final compensation to be "improperly increased" by voluntarily signing up for on-call work at the end of his career beyond what was required of all during the same time period.

The motion was amended to include using the average of the minimum number of on-call hours that were required and worked in the member's benefit calculation.

In public comment, Eric Jonsson, retired hazardous materials specialist, stated he appreciated the work CCCERA did and he noted he was told that currently the team is working 80 hours of on-call per

month and they do not anticipate any other retirements. He discussed the time to train new hazard material specialists noting that it is important to have experienced staff on each team.

After a lengthy discussion, the motion with the amendment was M/S/C. (Yes: Andersen, Gordon, Hast, Holcombe, Phillips, Smithey, Telles and Watts. No: Pigeon)

It was noted Mr. Andrews can provide any additional information he has to Schneider.

10. Organizational and portfolio update from PIMCO – Stephanie King, Jay Jacobs

King thanked the Board for inviting them to give an update.

Jacobs gave an update on personnel and the performance of PIMCO. He reported they have been adding talent in the past 7 months, including three team members that left and then came back. They had one departure in January where he was taking a year off. He noted they have not had a single person leave to follow Bill Gross.

Jacobs reported the Total Return fund is at \$110 billion and the fund has been a top quartile performer. He noted their overall assets were up in April which speaks to the stability of the company.

King noted not a single client that visited their office to do due diligence has taken their assets out.

Jacobs reported they will be focusing on the stability of staff. He also reported they have an ongoing SEC investigation from 2012 when Gross was still there and that no allegations have been made against PIMCO. He noted no investor lost money in the fund.

11. Introduction to Board interviews and update on consultant transition from Wurts – Edward Hoffman

Hoffman reported they have changed their name from Wurts and Associates to Verus Consulting Group noting Wurts, the founder of the firm, was not involved.

He reported they have been working a lot behind the scenes with CCCERA's custodian bank and on the quarterly report. He stated the report will have a different format. He noted there has been a lot of interaction with investment managers and CCCERA staff. He reported they have started working on the asset liability model. Part of the process is interviews with the Board and staff. They will conduct an Investment Strategy Development workshop (ISD) which is a two-day workshop covering targeted education, asset/liability study and governance best practices. They will also have an asset allocation workshop. He reviewed a preliminary timeline noting the timeline is very aggressive.

12. Consider and take possible action to terminate Milliman contract

Price noted this is a housekeeping item. He reported the data has been transferred from Milliman to Wurts and needs a motion to terminate the contract and staff will issue a letter.

It was M/S/C to terminate the Milliman contract. (Yes: Andersen, Gordon, Hast, Holcombe, Phillips, Pigeon, Smithey, Telles and Watts)

13. Consider and take possible action to grant a 3% increase in base pay and a \$500 lump sum payment for all unrepresented staff, except for the Chief Executive Officer position

Strohl noted there were 4 individuals that were part of Local 21 that would have received a lump-sum of \$750 to be paid on July 10, 2015. In order to retain parity with all employees, she is recommending the Board:

Attachment #4

CONTRA COSTA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION
BOARD OF RETIREMENT

**POLICY GOVERNING THE OVERPAYMENT OR UNDERPAYMENT OF MEMBER
CONTRIBUTIONS**

Adopted: 12/10/2014

I. INTRODUCTION

The Board of Retirement ("Board") has a fiduciary obligation to conserve retirement fund assets and protect the integrity of the fund, for the benefit of the members and beneficiaries of the Contra Costa County Employees' Retirement Association ("CCCERA").

The Board determines the required member contributions in accordance with law and in consultation with its actuary. Subject to all applicable laws, it shall be CCCERA's policy to make every reasonable effort to recover from a member the amount of any underpayment of contributions, and to remit to a member the amount of any overpayment of contributions, consistent with this Policy and the procedures established by the Board.

Accordingly, after discovery of an overpayment or underpayment of member contributions, and within a reasonable period of time after written notification to the affected member, CCCERA will correct any overpayment or underpayment of member contributions.

This Policy is designed for use when errors affect an *individual* member's contributions. In the event of a system-wide error that affects *multiple* members' contributions, the Board may implement a system-wide correction process that it determines is appropriate under all the circumstances.

In the event of any inconsistency between applicable law and this Policy, the law shall take precedence.

Notwithstanding this Policy, if an overpayment results from provisions of federal tax law, any correction procedures specified by the IRS will be followed to the extent feasible.

II. PURPOSE

The purpose of this Policy is to set forth procedures for handling the overpayment and underpayment of retirement contributions.

III. POLICY

A. Overpayments of Contributions By Members

1. When a Member has overpaid contributions, the Member shall be entitled to a prospective adjustment to his or her contributions necessary to correct the overpayment, as well as a lump sum payment for all past overpayments, with appropriate interest. Appropriate interest shall be the rate set forth in the Board's Interest Crediting Policy (currently the actuarially assumed rate of return) for each applicable pay period. The adjustment shall be made in the Member's pay from their CCCERA participating employer as soon as is reasonably practicable following CCCERA's discovery of the overpayment.

2. If a Member who overpaid contributions has died prior to payment of the lump sum amount due, the following procedures will be followed:

A. Member With Designated Beneficiary

- If the Member has named a designated beneficiary, the payment will be made directly to the designated beneficiary. *See* County Employees Retirement Law of 1937 ("CERL"), Government Code Section 31452.7.

B. Member Without Designated Beneficiary

- If there is an open estate (*i.e.*, no order for final distribution yet), payment will be made to the estate (through the personal representative).
- If final distribution of the estate has already been made, CCCERA staff will review the order for final distribution to determine how assets that were unknown at the time of final distribution are to be distributed under the order. Payment will then be made in compliance with the order for final distribution, if possible.
- If an estate was not established, distribution will be made in accordance with any applicable and valid Affidavit for Payment of Personal Property on file with CCCERA. *See* Prob. Code Section 13101.
- CCCERA staff shall make reasonable efforts to locate the person(s) entitled to payment by sending a letter by certified mail, return receipt requested, to the last known address of each such person, or by other means of similar intended effect. The letter shall request written confirmation that the person entitled to payment still lives at that address and will accept payment. Upon receipt of such written confirmation, the payment will be mailed to that person at that address. *See* CERL Section 31783.5(b).
- If, after taking the above steps, CCCERA staff has not been able locate a person entitled to payment, CCCERA shall hold the funds on behalf of that person for five years. If the funds are not claimed within five years, the funds

may be transferred into the system's pension reserve fund. If someone later claims the funds, the Board will consider such claims on a case-by-case basis. See CERL Section 31783.5(c).

- CCCERA will maintain a permanent record of all amounts of outstanding refunds of overpayments and any amounts that have been transferred into the pension reserve fund.
 - In cases where there is no designated beneficiary and the total amount of overpayment is less than \$50, CCCERA staff need not take proactive measures to locate the person(s) entitled to such funds. All claims presented to CCCERA, however, will be considered regardless of size.
3. Overpayments of \$5 or less will only be refunded at the request of the Member.

B. Underpayment of Retirement Contributions By Members

1. Whenever an underpayment of contributions is discovered, CCCERA shall make a prospective adjustment to the member's contributions and take all reasonable steps to recover the full amount of all past underpayments, with "appropriate interest," subject to the provisions of this Policy and applicable law. If the underpayment was due to fraud, dishonest or improper conduct by the member, or by the member providing inaccurate information to CCCERA or the member's employer, appropriate interest shall be CCCERA's actuarially assumed rate of return that was applicable for the period in which the underpayments were made, applied to the outstanding amount due until such amount is fully repaid. If the underpayment was the result of an error by CCCERA or the member's employer, appropriate interest shall be 3% per annum for the period in which the underpayments were made, applied to the outstanding amount due until such amount is fully repaid.
2. CCCERA will recover underpayments by (a) a lump sum payment from the member, (b) installment payments from the member, (c) additional amounts added to the member's future contributions, over a period of time as determined by the Board, (d) offsets to future benefit payments to the member, over a period of time as determined by the Board or (e) a combination of the foregoing, unless the Board, in its discretion and because of legal or practical considerations, determines that another process is warranted.
3. The Board believes that considerations of cost effectiveness make it prudent and reasonable to pursue recovery of underpayments only where the cumulative total amount underpaid by the member is \$50 or more. Accordingly, the Retirement CEO is authorized to not seek recovery of any underpayments where the total amount underpaid by the member is less than \$50.
4. The Retirement CEO shall have authority, on the advice of legal counsel, to compromise recovery of underpayments when the total amount of underpayment, not including interest, is less than \$5,000. Only the Board may compromise claims in which the total amount of underpayment, not including interest, is \$5,000 or more. Among other things, the likelihood of collection, the cost of collection, the amount of possible recovery and

extreme hardship to the member will be considered by the Retirement CEO and/or the Board when determining whether to compromise a claim. Compromising claims may include a different method of repayment than is otherwise provided by this Policy and/or a partial forgiveness of the amounts underpaid.

5. The Board adopts the following procedures for accomplishing the recovery of underpaid contributions:

A. Upon discovery of an underpayment, CCCERA shall send a letter by certified mail, return receipt requested, or by express delivery service, to the member advising the member of the underpayment and proposing a repayment schedule, as follows:

i. The letter will identify the circumstances of the underpayment and the fact that adjustments will be made to all future contribution amounts.

ii. The letter will request payment to CCCERA of the past amount underpaid, subject to the provisions of this Policy.

iii. The letter will include an agreement to pay the amounts underpaid and a consent form for the spouse or beneficiaries, if applicable.

iv. The agreement to pay the amounts underpaid will provide two options, one of which may be selected by the Member:

(1) Option 1 — equal installments deducted from the Member's pay (in addition to the contributions otherwise required of the member), or benefit payments (if the Member is retired), over the same length of time that the underpayments occurred, with appropriate interest (as that phrase is defined in No. 1 above) applied for the underpayment period and the payment period. If the Member's employment terminates during the payment period, the Member shall be liable for all remaining unpaid amounts, which may be deducted from any amounts CCCERA owes the Member (in retirement benefits or otherwise), if the member does not make a lump sum payment.

(2) Option 2 — lump sum payment to CCCERA for the full amount underpaid, with appropriate interest (as that phrase is defined in No. 1 above) applied during the underpayment period.

(3) Option 3 — installment payments to CCCERA for the full amount underpaid, with appropriate interest (as that phrase is defined in No. 1 above) applied during the underpayment period.

v. The letter and agreement to pay underpaid amounts will provide that Option 1 will go into effect by default if a written response from the member is not received within 30 days following the date the letter was delivered.

B. If the amount of the underpayment, not including interest, is \$5,000 or more, CCCERA staff will attempt to contact, the Member by phone to discuss the contents of the letter before the letter is sent out for delivery.

C. CCCERA may pursue, all legal remedies to collect underpayments, including making a claim on an estate or trust, if appropriate.

D. Upon the death of the Member before full repayment has been made, CCCERA shall pursue a claim or claims against the Member's estate, survivors, heirs and/or beneficiaries to recover the unpaid amounts.

CCCERA will maintain a permanent record of all amounts of underpayments and the payment to CCCERA of those underpayments.

Attachment #5



HAZARDOUS MATERIALS SPECIALIST II

Class Code:
V4VC

Bargaining Unit: Local 1 - Health Services
Unit

COUNTY OF CONTRA COSTA
Established Date: Mar 1, 1981
Revision Date: Feb 1, 2008

SALARY RANGE

\$36.77 - \$44.69 Hourly
\$2,941.56 - \$3,575.48 Biweekly
\$6,373.37 - \$7,746.87 Monthly
\$76,480.44 - \$92,962.44 Annually

DEFINITION:

Bargaining Unit: Local 1 - Health Services Unit

Class specifications are intended to present a descriptive list of the range of duties performed by employees in the class. Class specifications are not intended to reflect all duties performed within the job.

Under direction, performs a variety of difficult, complex and responsible hazardous materials/hazardous waste inspection and regulatory enforcement activities; may serve as a member of the Incident Response (IR) Team responding to emergency hazardous materials/hazardous waste releases; and performs related work as required.

DISTINGUISHING CHARACTERISTICS:

The Hazardous Materials Specialist II class performs a number of duties associated with the enforcement of laws and regulations which regulate the production, storage, handling, treatment and disposal of hazardous materials/hazardous wastes.

This class is distinguished from Hazardous Materials Specialist I in that incumbents of the latter class perform a more limited range of hazardous materials investigation, compliance and regulatory enforcement duties under close management supervision and/or the work direction of Hazardous Materials Specialists II. Hazardous Materials Specialists II may be assigned to coordinate specific hazardous materials/hazardous waste projects and may provide direction and guidance to other incumbents of the Hazardous Materials Specialist series.

MINIMUM QUALIFICATIONS:

License Required: Valid California Motor Vehicle Operator's License.

Education: Possession of a baccalaureate degree from an accredited college or university with a major in public health, chemistry, industrial engineering, industrial

hygiene, toxicology, physical sciences, biological sciences, or a closely related field.

Experience: Two years of full-time or its equivalent experience either: 1) performing hazardous materials/hazardous waste inspections; 2) developing environmental regulatory programs; 3) directing the technical operations of a facility which generates, stores, handles, treats, or disposes of hazardous materials; or 4) performing industrial hygiene or occupational health duties.

Substitution: Possession of a master's degree from an accredited college or university in public health, chemistry, industrial engineering, industrial hygiene, toxicology, physical sciences, biological sciences or a closely related field may be substituted for one year of the required experience.

Certification Requirement: Within 6 months of employment, must obtain and hold a certificate of completion of coursework that meets the requirements of the California Occupational Health and Safety Administration's (OSHA) Hazardous Waste Operation and Emergency Response standard (CCR Title 5192) et seq). Also within 6 months of employment or other timeframe set forth by regulation, must possess all certifications required to perform Unified Program inspections as defined by CCR.

Special Requirements: Incident Response (IR) Team will be required to take and pass an annual physical which includes respirator authorization.

KNOWLEDGES, SKILLS, AND ABILITIES:

Knowledge of:

- State and federal laws, rules and regulations pertaining to hazardous waste management and environmental and occupational health
- Public health and industrial hygiene, environmental sanitation and engineering principles and practices
- Methods, techniques and practices used in the determination and elimination of environmental health hazards in industry and in the community
- Principles of evaluation and control of air, water and noise quality
- Industrial hygiene instruments and test equipment
- Practices followed in generating, transporting and disposing of hazardous materials/waste and toxic substances
- Statistical methods and their applications

Ability to:

- Conduct investigations, evaluate findings and prepare recommendations for the elimination and control of hazardous materials/wastes and occupational health conditions
- Provide work direction, education and instruction to other staff
- Write clear and concise reports
- Troubleshoot and field calibrate equipment
- Analyze and interpret statistical data relating to hazardous materials/wastes and occupational health issues

- Provide direction to and deal effectively with other employees, members of the business community, other public agencies and the general public

TYPICAL TASKS:

- Conducts surveys and inspections of facilities which generate, store, handle, treat, or dispose of hazardous materials/hazardous wastes
- Reviews and approves hazardous materials business plans and inventories
- Reviews and approves hazardous materials risk management and prevention plans
- Collects material samples and takes photographs
- Conducts inspections of and issues and approves permits for the installation and removal of underground storage tanks
- Monitors underground storage tank tests and the collection of soil and groundwater samples
- Reviews and approves work plans for sites contaminated with hazardous materials/hazardous wastes and oversees ongoing mitigation efforts
- Issues notices of violation and/or initiates regulatory enforcement actions against individuals, agencies and businesses violating hazardous materials, laws, regulations
- Assists in the preparation of court cases and testifies in court proceedings
- Conducts industrial hygiene surveys and environmental monitoring to identify, evaluate and control exposures to chemical and physical hazards in industry and the community
- Participates as an emergency response team member during chemical spills and other hazardous materials/hazardous wastes incidents
- Makes immediate assessments of the environmental and public health impacts posed by the release of hazardous materials/hazardous wastes
- Conducts specialized tests to identify and categorize suspected hazardous materials/hazardous waste releases
- May implement containment procedures for gas, liquid and solid hazardous materials/hazardous waste releases
- Participates in and/or provides technical oversight for hazardous material/hazardous waste clean-up operations
- Obtains and analyzes air, water and soil samples to determine levels of contamination
- Operates, maintains and field calibrates a variety of monitoring equipment
- Implements community notification procedures
- Acts as a liaison for the Department with other agencies including law enforcement, fire, ambulance services, public works and medical personnel
- Coordinates household hazardous waste collection events
- Assists in the education and instruction of staff members
- Reviews and makes recommendations concerning the impacts of hazardous materials and wastes such as in Environmental Impact Reports
- May provide work direction, education and instruction to other staff, the business community, other public agencies and the general public
- May coordinate or lead a specific hazardous material or hazardous waste, project, or program as assigned
- Makes presentations to community groups, businesses and public agencies

- Responds to questions from the public and to citizen complaints involving hazardous materials/hazardous waste issues
- Attends training sessions in order to maintain competency in assigned areas
- Prepares written reports and correspondence

SPEC HISTORY:

Formerly: Occupational Health Specialist

Established: March 1981

Revised and Retitled: December 1996

Revised: May 2007 (TKO)

Revised: July 2007 (TKO)

Revised: February 2008 (VRH)

Attachment #6

MEMORANDUM OF UNDERSTANDING
BETWEEN
CONTRA COSTA COUNTY
AND
PUBLIC EMPLOYEES UNION, LOCAL ONE

OCTOBER 1, 2008 – JUNE 30, 2011

SECTION 8 - CALL BACK TIME

SECTION 8 - CALL BACK TIME

Any employee who is called back to duty shall be paid at the appropriate rate for the actual time worked plus one (1) hour. Such employee called back shall be paid a minimum of two (2) hours at the appropriate rate for each call back.

SECTION 9 - ON-CALL DUTY



On-call duty is any time other than time when the employee is actually on duty during which an employee is not required to be on County premises, but stand ready to immediately report for duty and must arrange so that his/her supervisor can reach him/her on ten (10) minutes notice or less. An employee assigned to on-call time shall be paid one (1) hour of straight time credit for each four (4) hours of such on-call time unless otherwise provided in the supplemental sections of this Agreement. Where on-call arrangements exist, the Department Head shall designate which employees are on-call unless otherwise provided in the supplemental sections of this Agreement.

SECTION 10 - SHIFT DIFFERENTIAL

In the hours which qualify for shift differential, employees shall receive five percent (5%) above their base salary rate.

To qualify for shift differential, an employee must have a regularly assigned daily work schedule which requires:

- A. Completion of more than one and one-half (1-1/2) hours over the normal actual working time; or
- B. At least four (4) hours of actual working time from 5:00 p.m. through 9:00 a.m. inclusive. However, employees who have been regularly working a shift qualifying for shift differential immediately preceding the commencement of a vacation, paid sick leave period, paid disability or other paid leave, will have shift differential included in computing

Attachment #7

MEMORANDUM OF UNDERSTANDING
BETWEEN
CONTRA COSTA COUNTY
AND
PUBLIC EMPLOYEES UNION, LOCAL ONE



JULY 1, 2011 – JUNE 30, 2013

SECTION 10 - SHIFT DIFFERENTIAL

SECTION 9 - ON-CALL DUTY



On-call duty is any time other than time when the employee is actually on duty during which an employee is not required to be on County premises, but stand ready to immediately report for duty and must arrange so that his/her supervisor can reach him/her on ten (10) minutes notice or less. An employee assigned to on-call time shall be paid one (1) hour of straight time credit for each four (4)

hours of such on-call time unless otherwise provided in the supplemental sections of this Agreement. Where on-call arrangements exist, the Department

Head shall designate which employees are on-call unless otherwise provided in the supplemental sections of this Agreement.

SECTION 10 - SHIFT DIFFERENTIAL

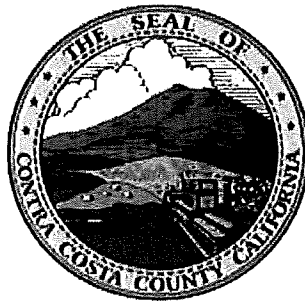
In the hours which qualify for shift differential, employees shall receive five percent (5%) above their base salary rate.

To qualify for shift differential, an employee must have a regularly assigned daily work schedule which requires:

- A. Completion of more than one and one-half (1-1/2) hours over the normal actual working time; or
- B. At least four (4) hours of actual working time from 5:00 p.m. through 9:00 a.m. inclusive. However, employees who have been regularly working a shift qualifying for shift differential immediately preceding the commencement of a vacation, paid sick leave period, paid disability or other paid leave, will have shift differential included in computing the pay for their leave. The paid leave of an employee who is on a rotating shift schedule shall include the shift differential that would have been received had the

Attachment #8

MEMORANDUM OF UNDERSTANDING
BETWEEN
CONTRA COSTA COUNTY
AND
PUBLIC EMPLOYEES UNION, LOCAL ONE



JULY 1, 2013 – JUNE 30, 2016

SECTION 8 - CALL BACK TIME PAY

SECTION 8 - CALL BACK TIME PAY

A permanent full-time and permanent part-time employee who is called back to duty will be paid for Call Back Time. Call Back Time occurs when an employee is not scheduled to work and is not on County premises, but is called back to work on County premises or for a County work assignment. An employee called back to work will be paid Call Back Time Pay at the rate of one and one-half (1.5) times his/her base rate of pay (not including differentials) for the actual Call Back Time hours worked plus one (1) hour. An employee called back to work will be paid a minimum of two (2) hours for each Call Back Time event.

SECTION 9 - ON-CALL DUTY



A permanent full-time or part-time employee assigned to On-Call Duty is paid one (1) hour of straight time pay for each four (4) hours designated as on-call duty. If an employee's on-call duty hours are not in increments of four (4) hours, the on-call duty hours will be pro-rated. For example, if the employee is assigned to on-call duty for six (6) hours, the employee would receive one and one-half (1.5) hours of straight time pay for the six (6) hours of designated on-call duty (6 hours ÷ 4 hours=1.5 hrs.). If an employee is called back to work while assigned to on-call duty, the employee will be paid for the total assigned on-call duty hours regardless of when the employee returns to work. An employee is considered assigned to on-call duty if all of the following criteria are met:

- a. A permanent full-time or part-time employee is not scheduled to work on County premises, but is required to report to work immediately if called. The employee must provide his/her supervisor with current contact information so that the supervisor can reach the employee with ten (10) minutes or less notice.
- b. The Department Head designates and approves those permanent full-time or part-time employees who will be assigned to on-call duty.

SECTION 10 - SHIFT DIFFERENTIAL

- A. Permanent full-time and permanent part-time employees:
 1. Permanent full-time and permanent part-time employees will receive a shift differential of five percent (5%) for the employee's entire scheduled shift when the employee is scheduled to work for four (4) or more hours between 5:00p.m. and 9:00a.m.
 2. In order to receive the shift differential, the employee must start work between the hours of midnight and 5:00 a.m. or 11:00 a.m. and midnight on the day the shift is scheduled to begin. Hours worked in excess of the employee's scheduled workday will count towards qualifying for the shift differential, but the employee will not be paid the shift differential on any excess hours worked.

Attachment #9

Chart A:

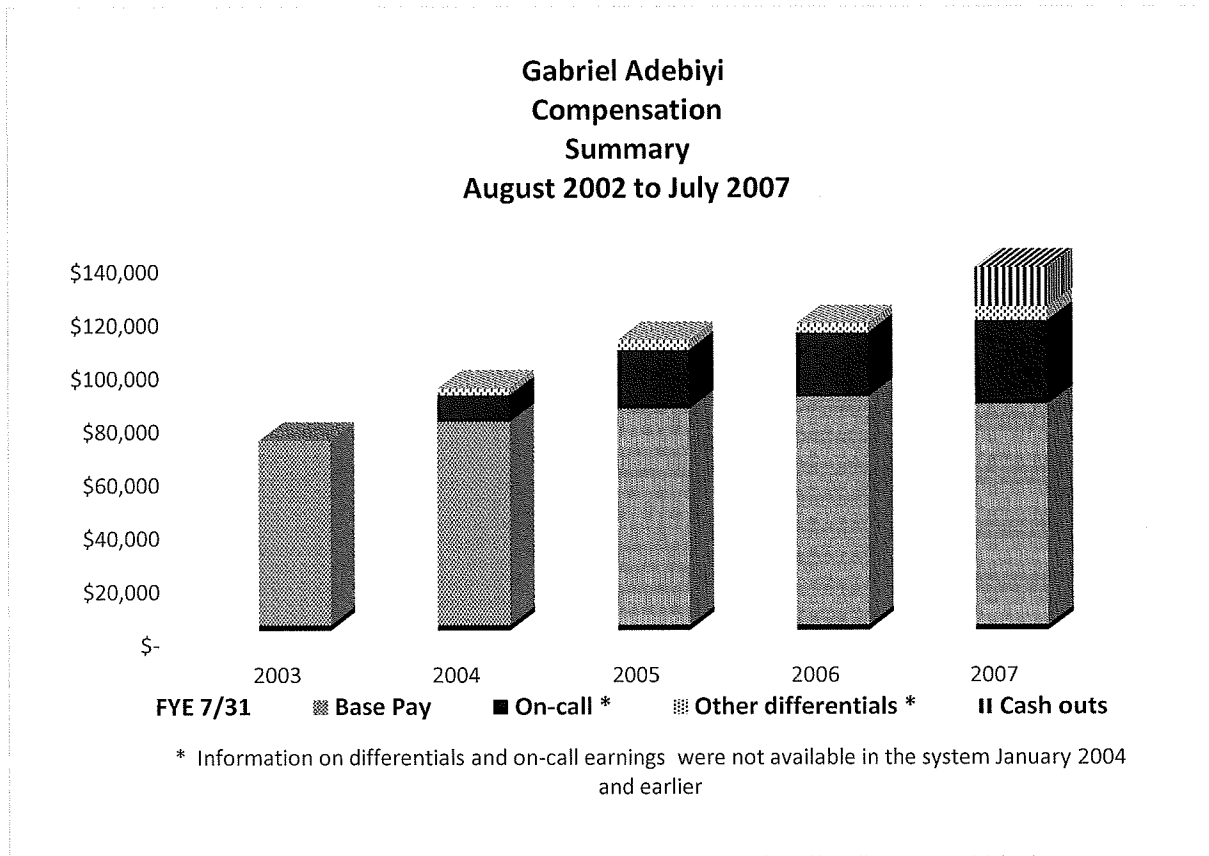


Chart B:

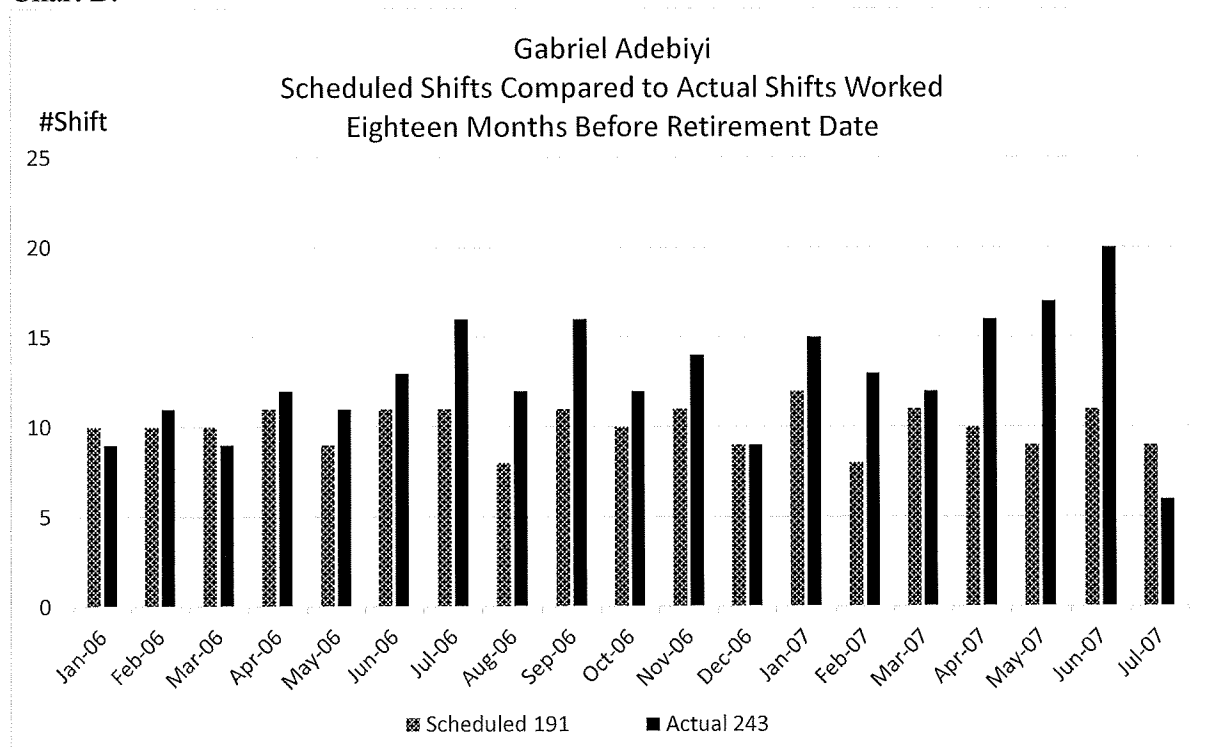
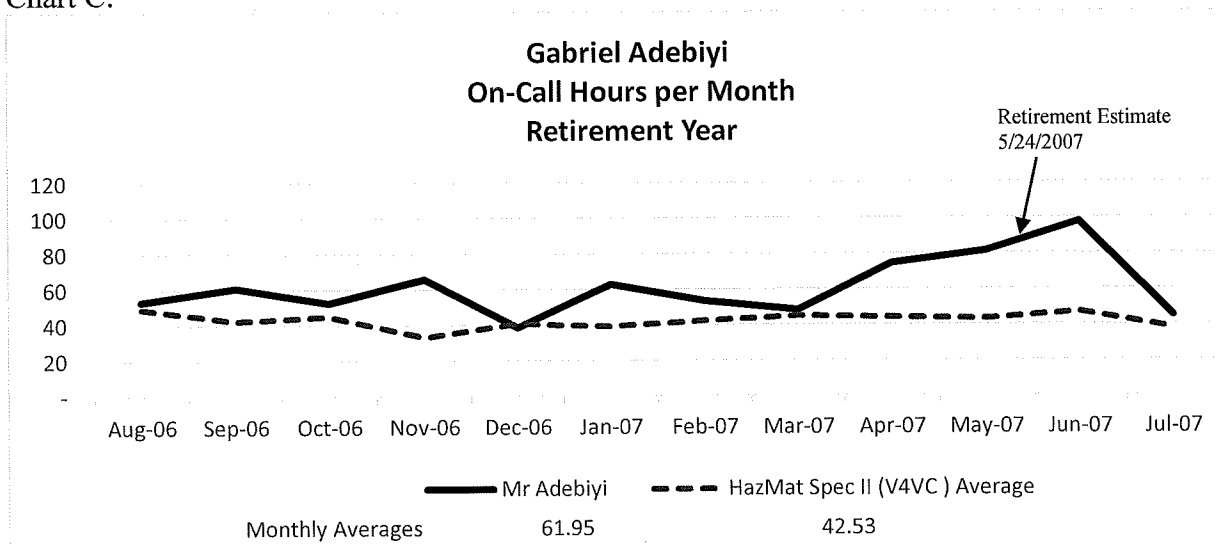


Chart C:



Diff	19.42
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Exclusion Amount	Hours	233.04	\$Amount	\$9402.43
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Ret Date	7/19/2007	On-Call In FAS	\$32,577.24	Adjusted On-Call in FAS	\$22,874.81
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Attachment #10

Chart A:

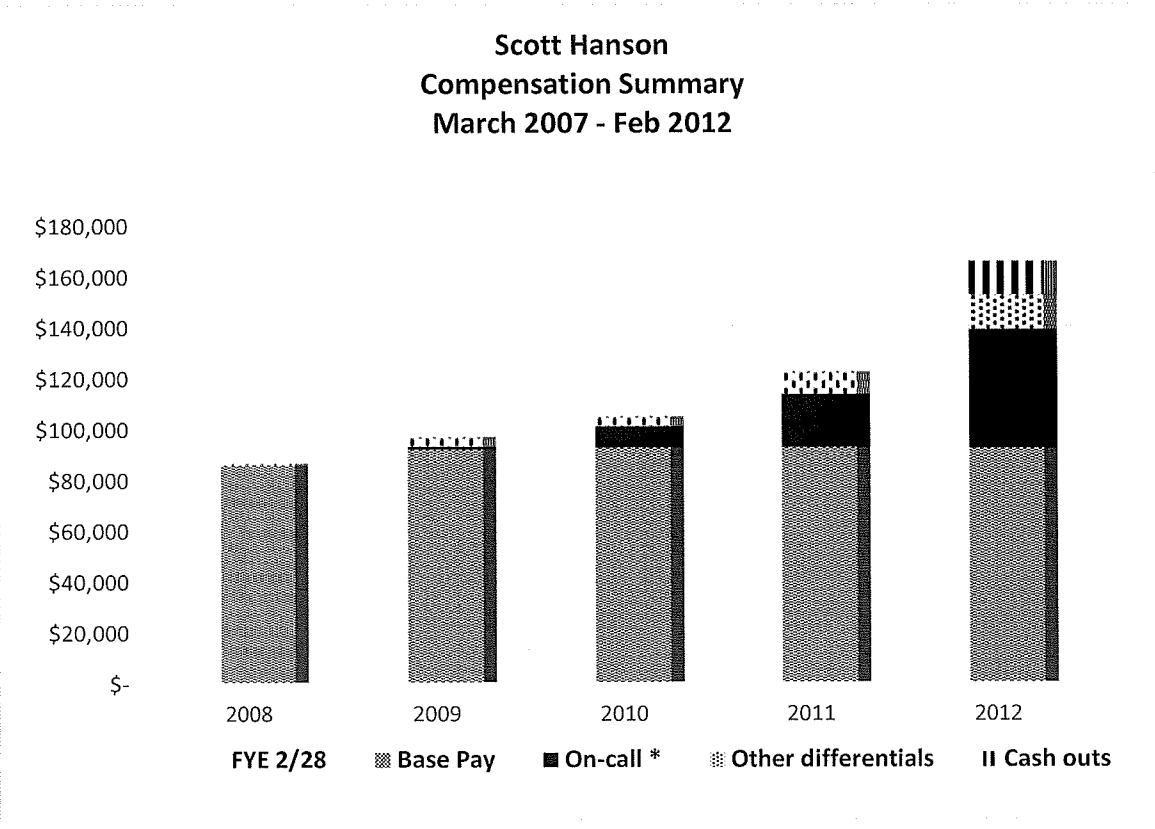


Chart B:

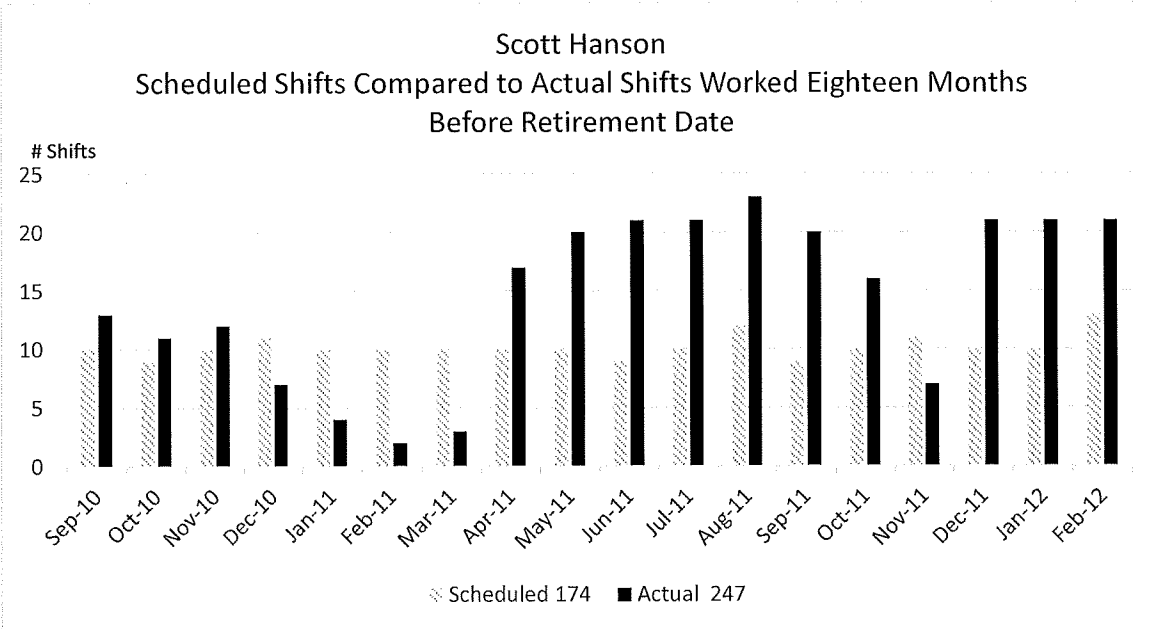
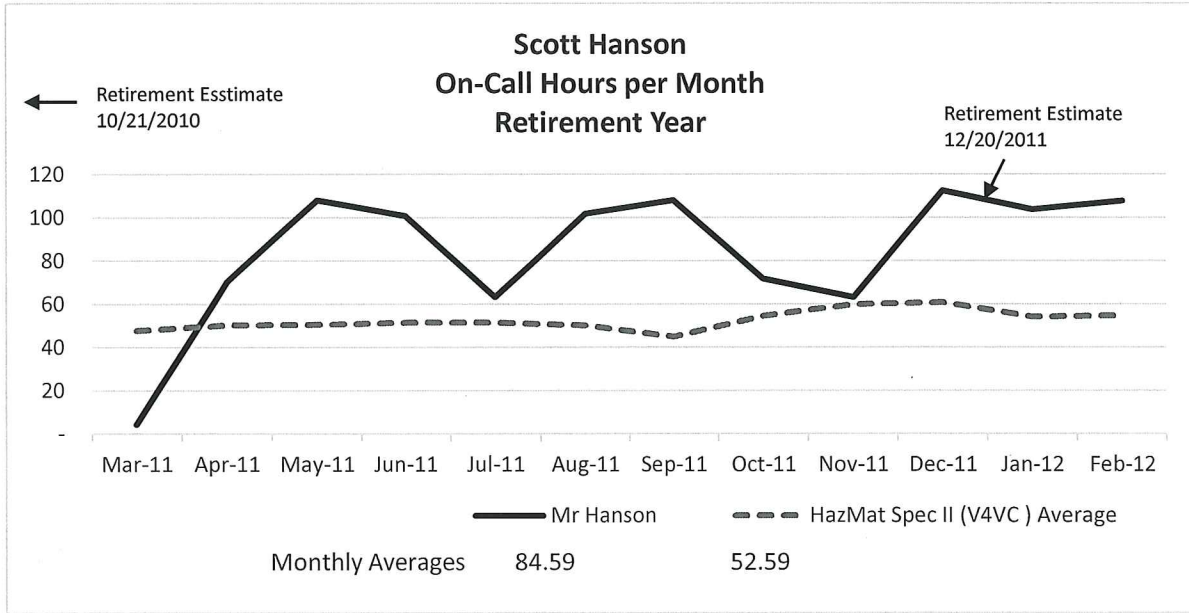


Chart C:



Diff	32.00
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Exclusion Amount	Hours	384.033155	\$Amount	\$17,135.07
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Ret Date	2/29/2012	On-Call In FAS	\$46,597.49	Adjusted On-Call In FAS	\$38,630.26
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Attachment #11

Chart A:

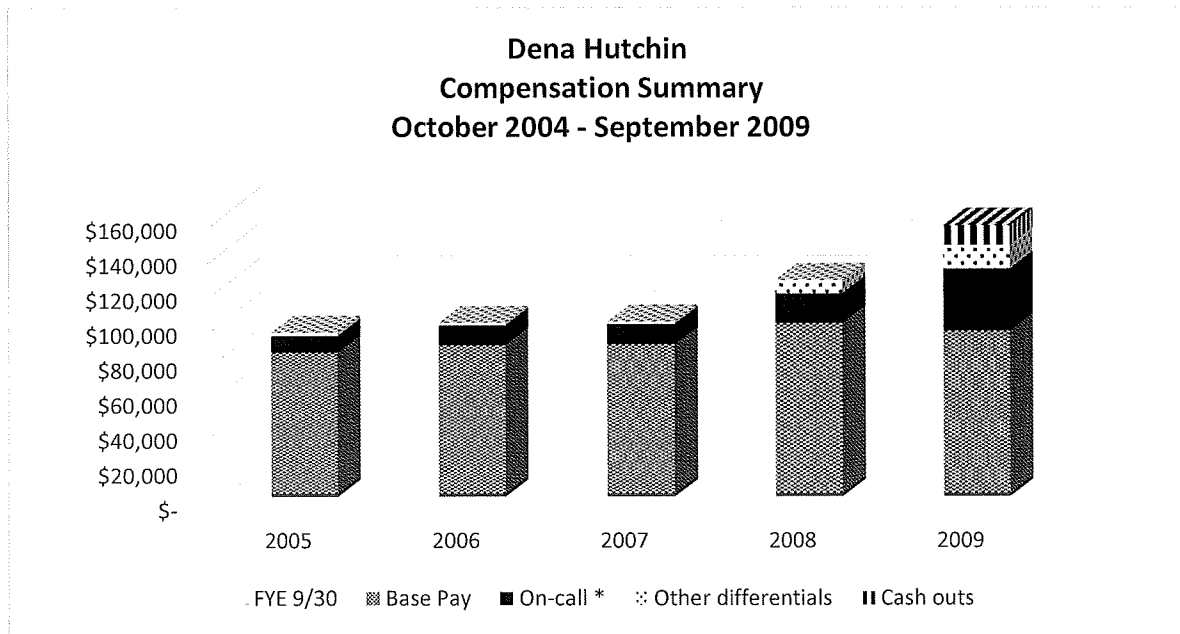


Chart B:

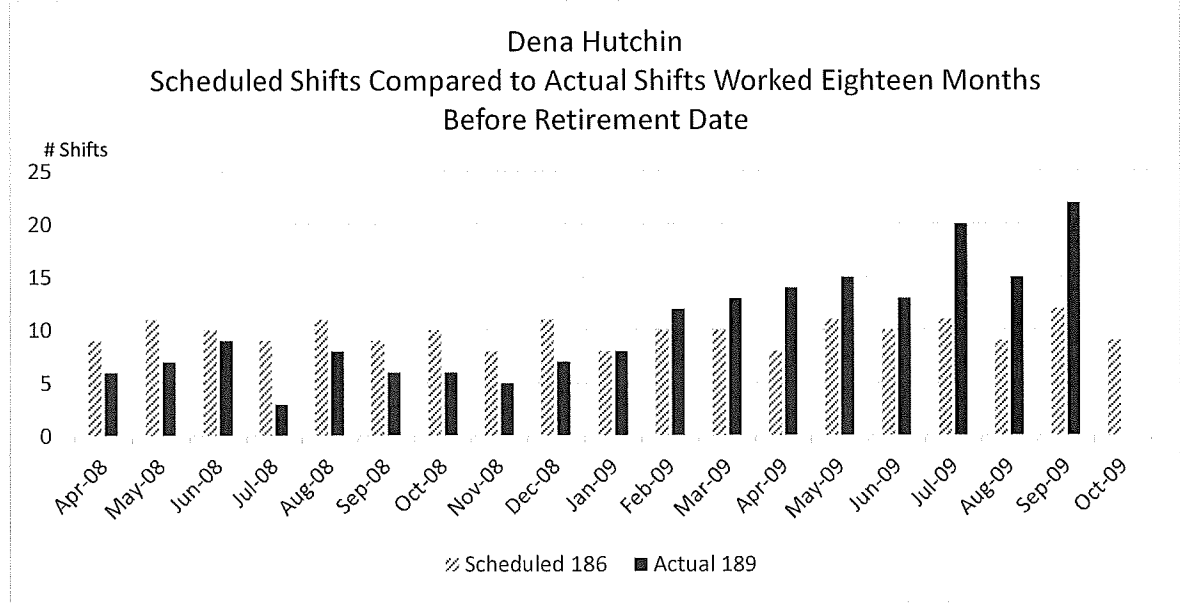
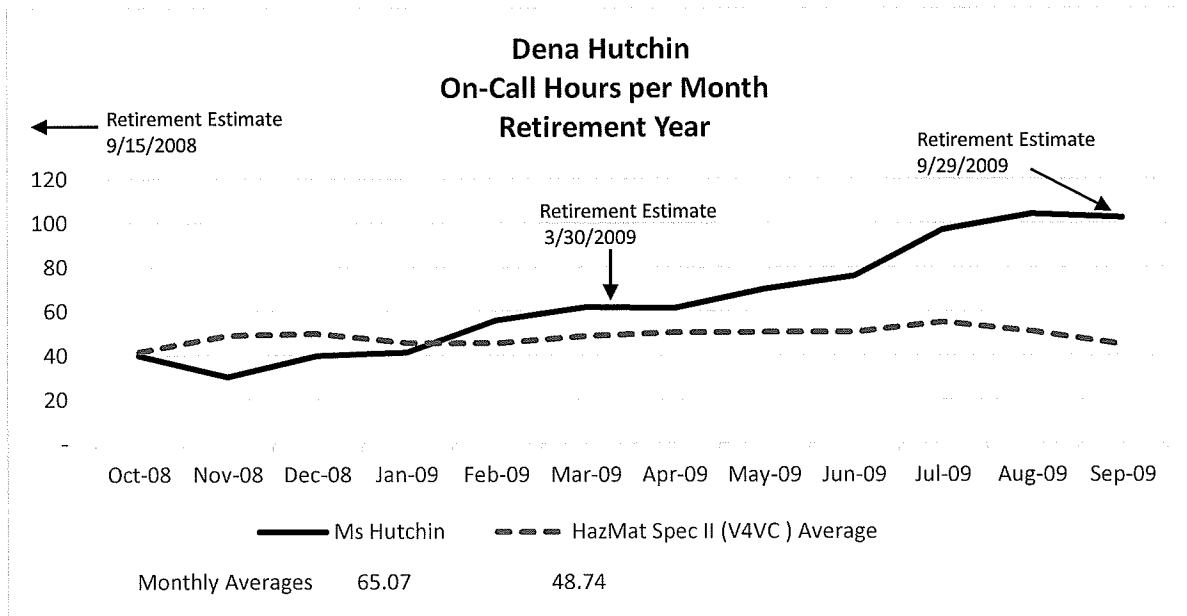


Chart C:



	Diff	16.33		
Exclusion Amount	Hours	195.9866	\$Amount	\$8,744.67

Ret Date	10/1/2009	On-Call In FAS	\$35,298.77	Adjusted On-Call In FAS	\$26,554.10
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Attachment #12

Chart A:

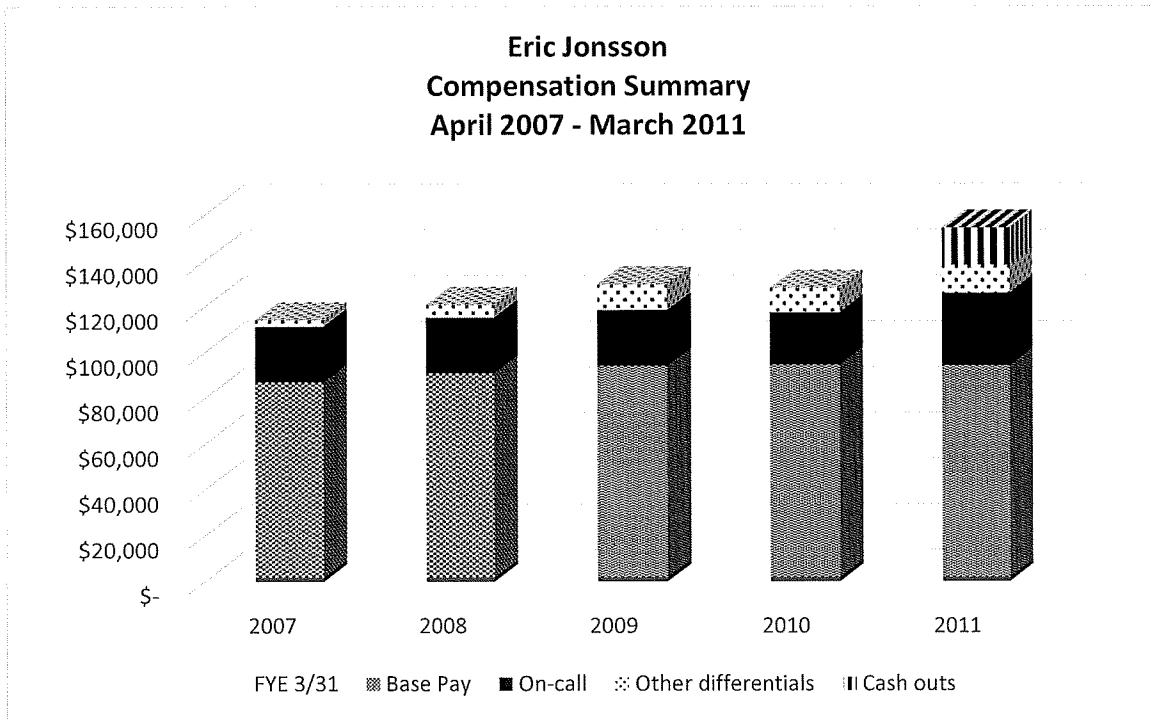


Chart B:

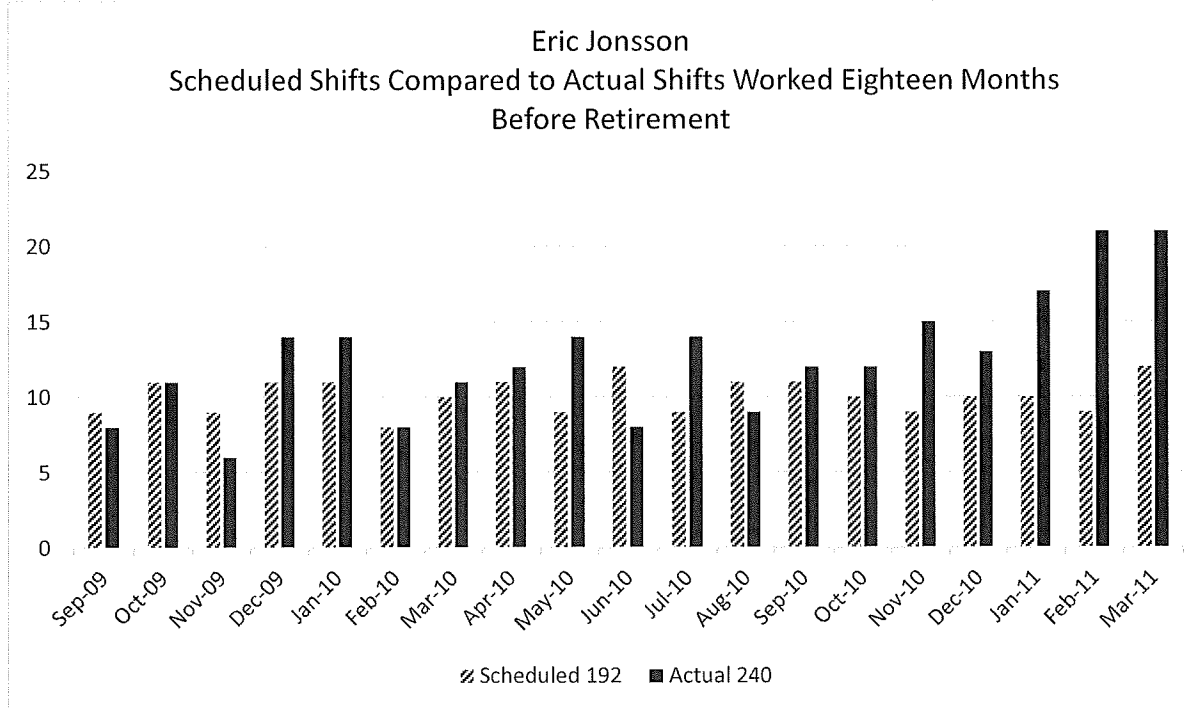
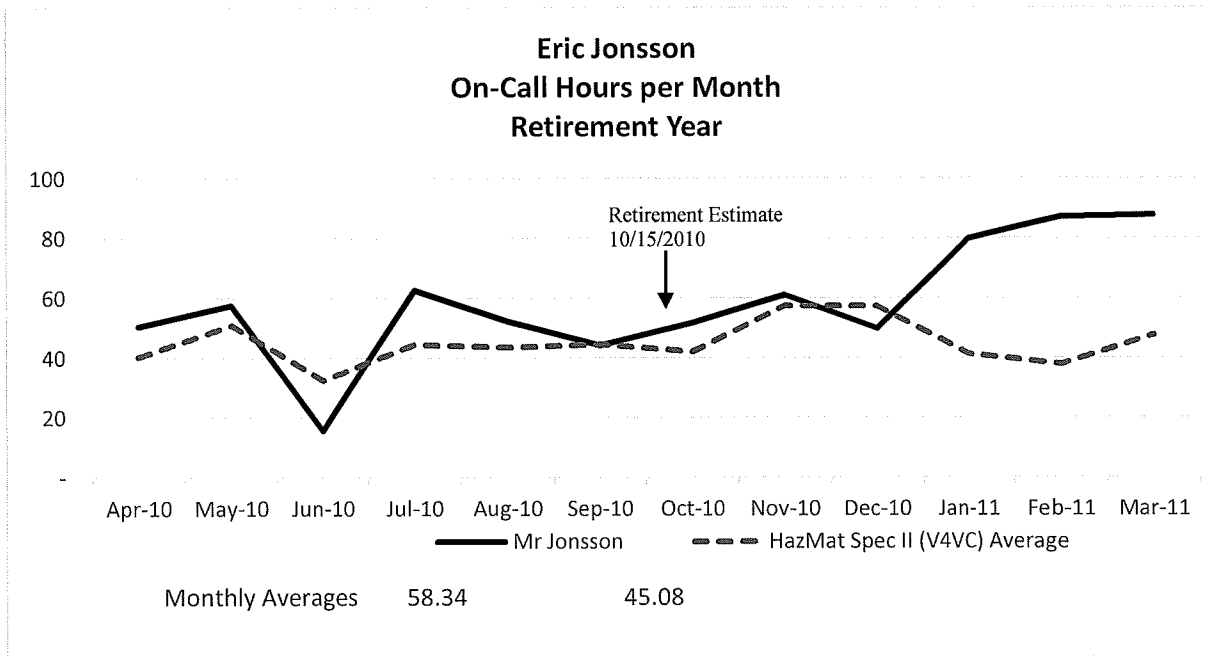


Chart C:



Diff	13.26
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Exclusion Amount	Hours	159.1755	\$Amount	\$7,102.21
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Ret Date	3/31/2011	On-Call In FAS	\$31,509.87	Adjusted On-Call in FAS	\$24,407.66
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Attachment #13

Chart A:

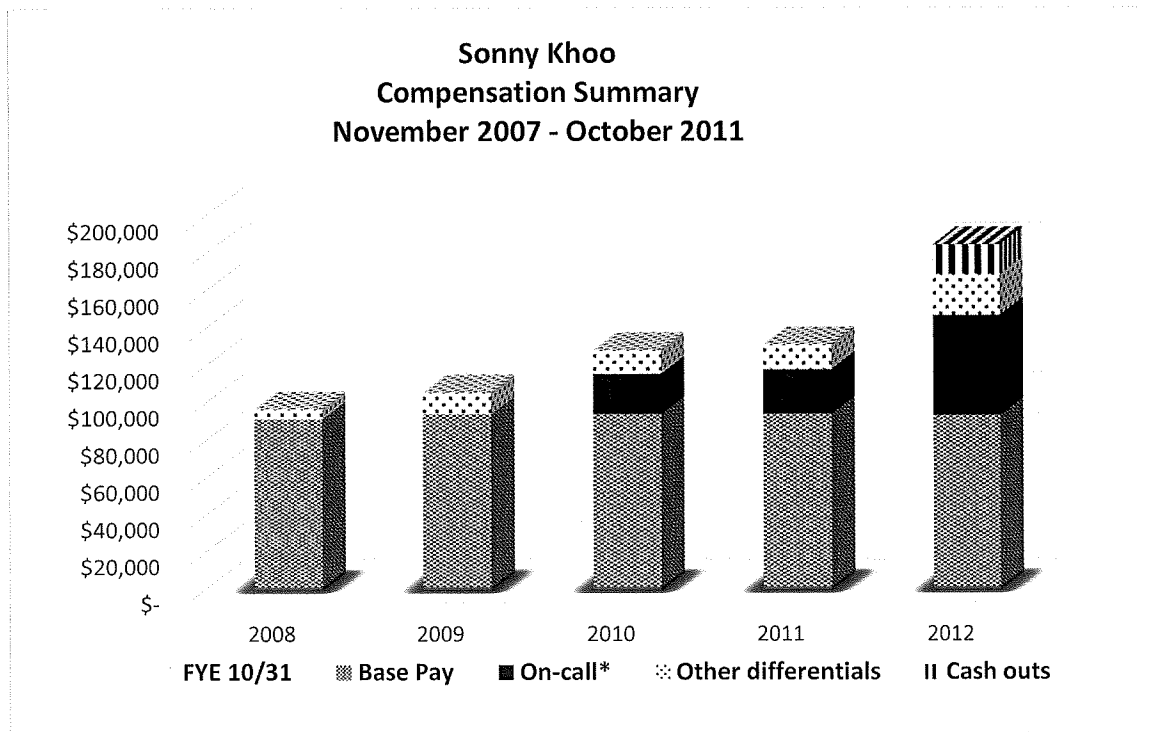


Chart B:

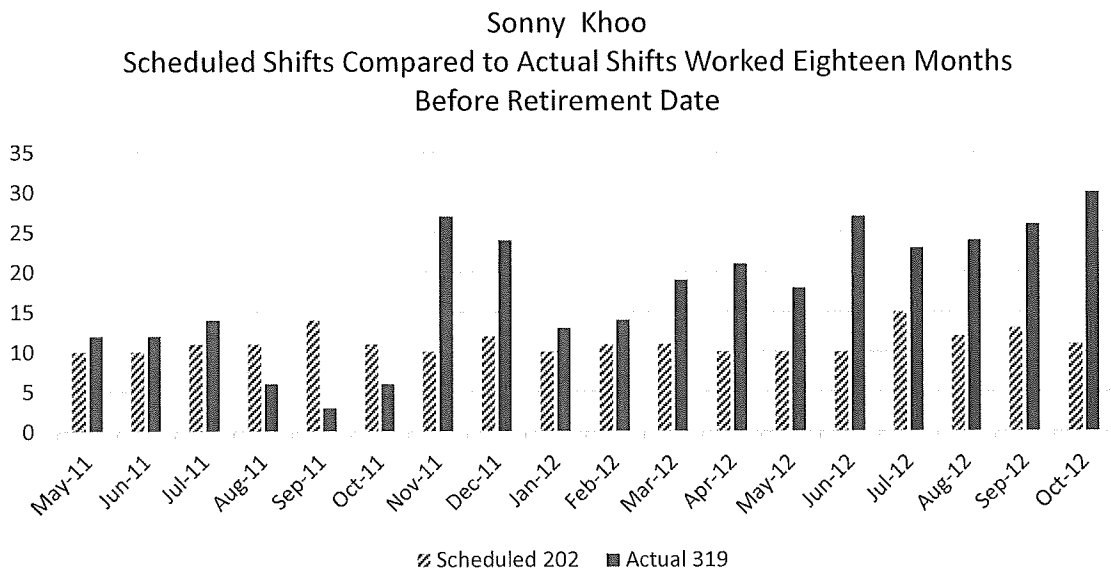
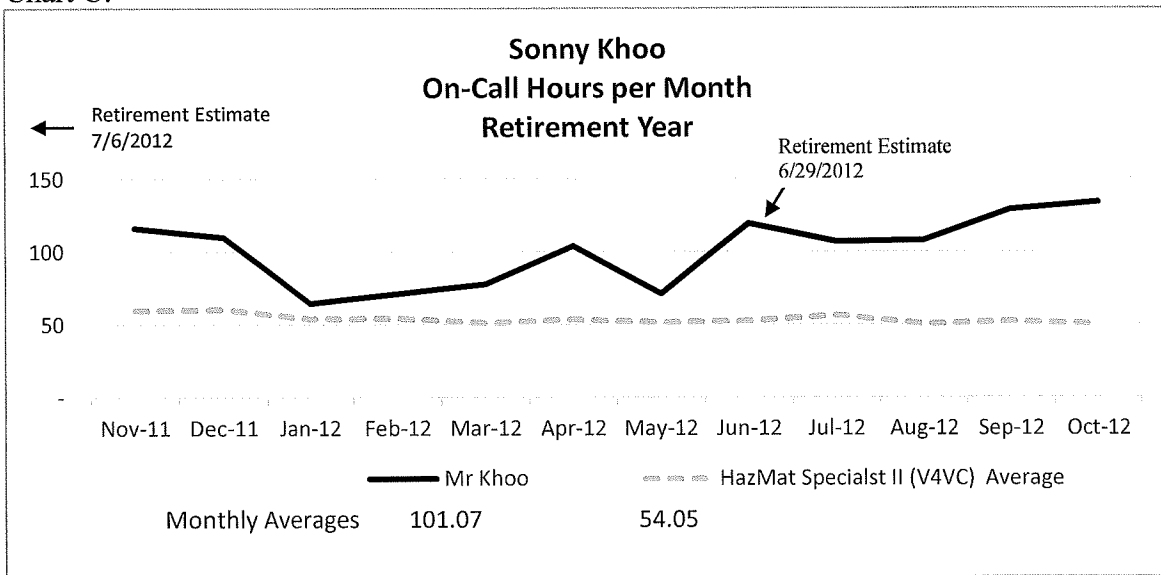


Chart C:



Diff	47.01
Exclusion Amount	Hours 564.1689 \$Amount \$24,480.26

Ret Date	11/1/2012	On-Call In FAS	\$53,494.70	Adjusted On-Call In FAS	\$29,014.44
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Attachment #14

Chart A:

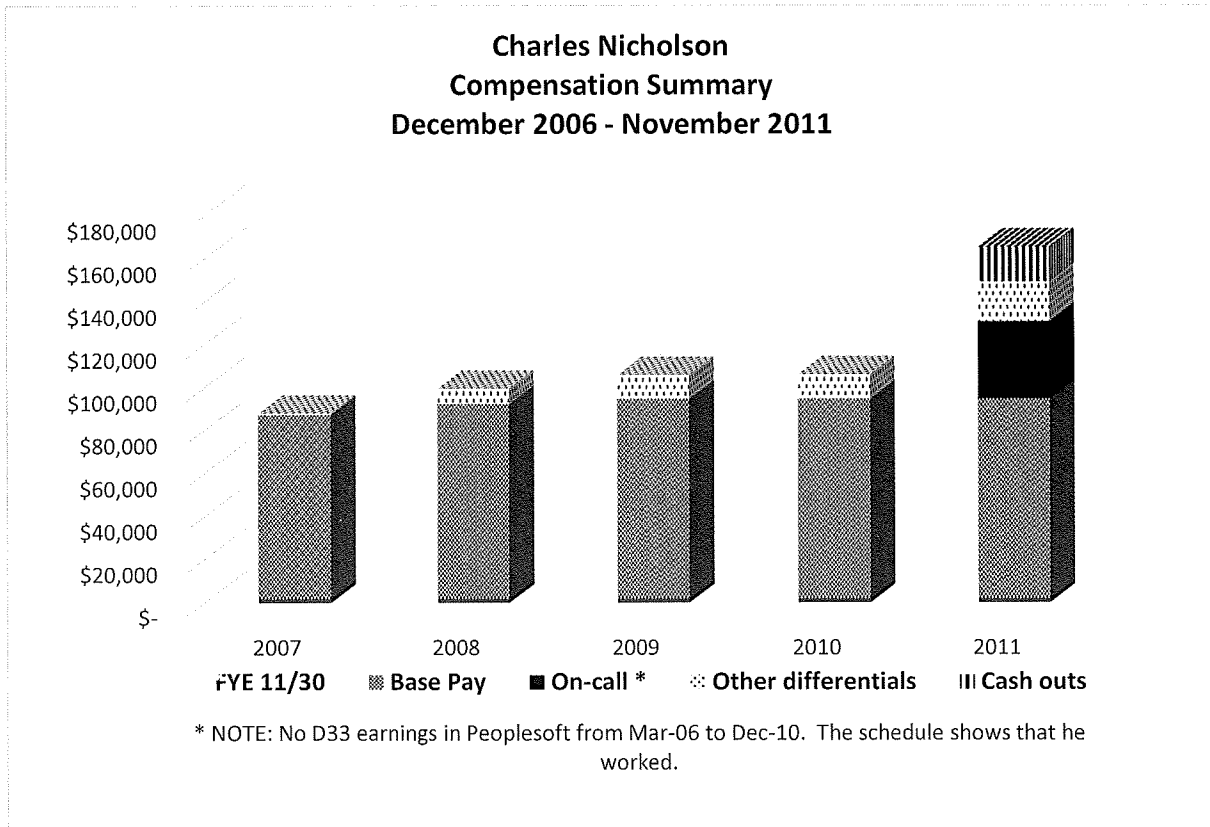


Chart B:

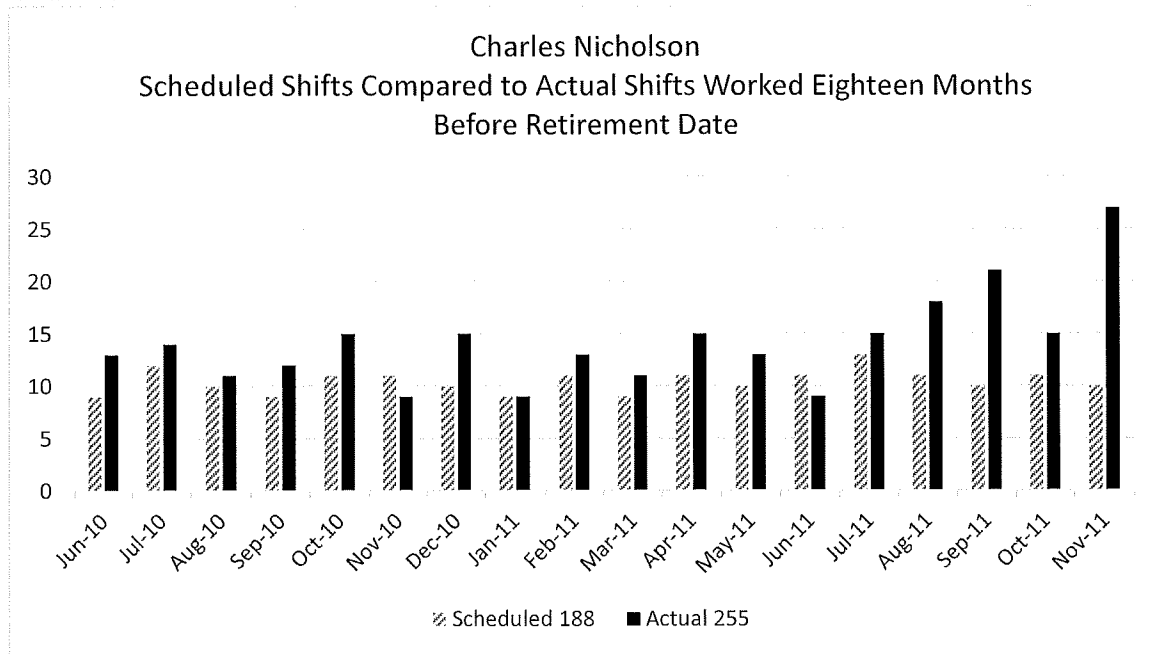
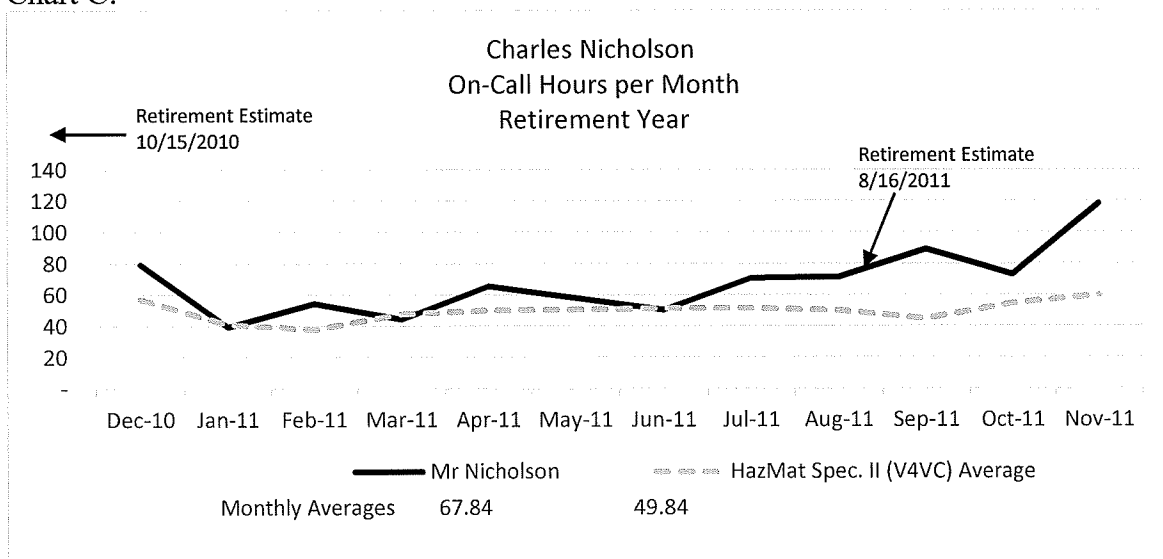


Chart C:



Diff	18.00
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Exclusion Amount	Hours	216.01799	\$Amount	\$9,638.45
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Ret Date	12/1/2011	On-Call In FAS	\$36,042.58	Adjusted On-Call In FAS	\$26,404.13
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Attachment #15

Chart A:

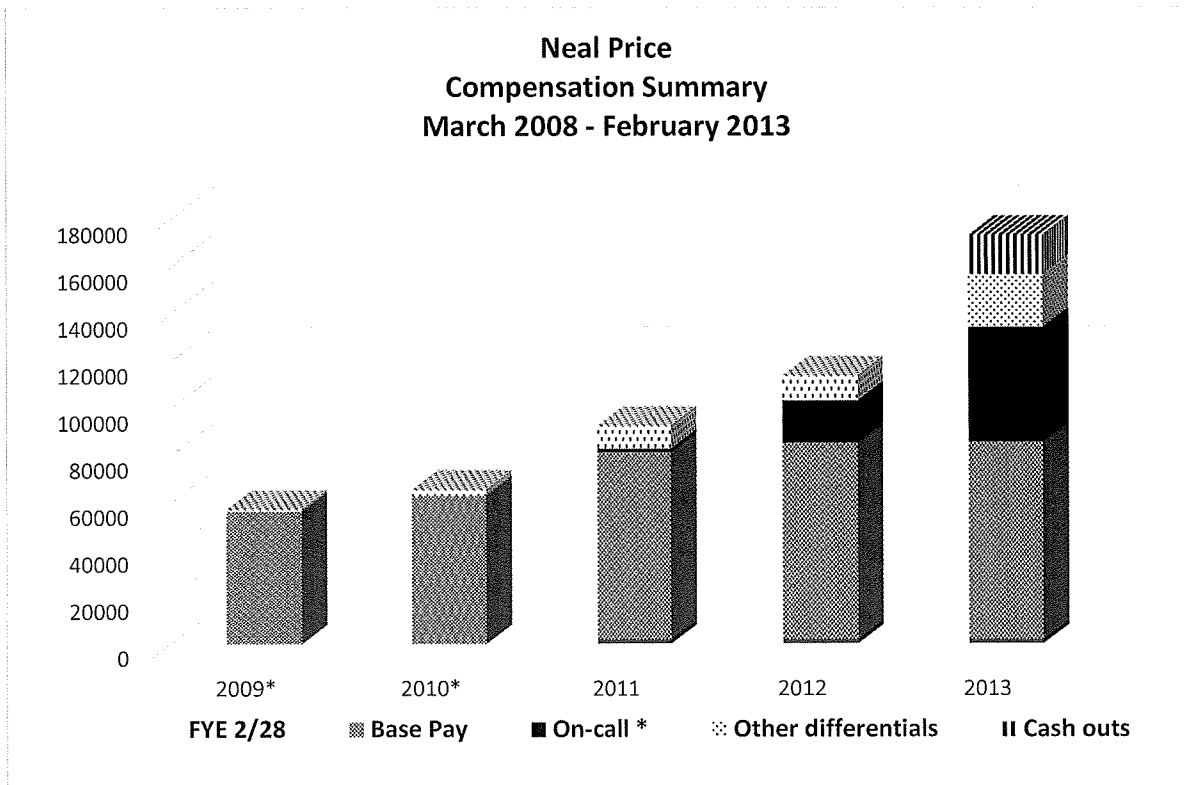


Chart B:

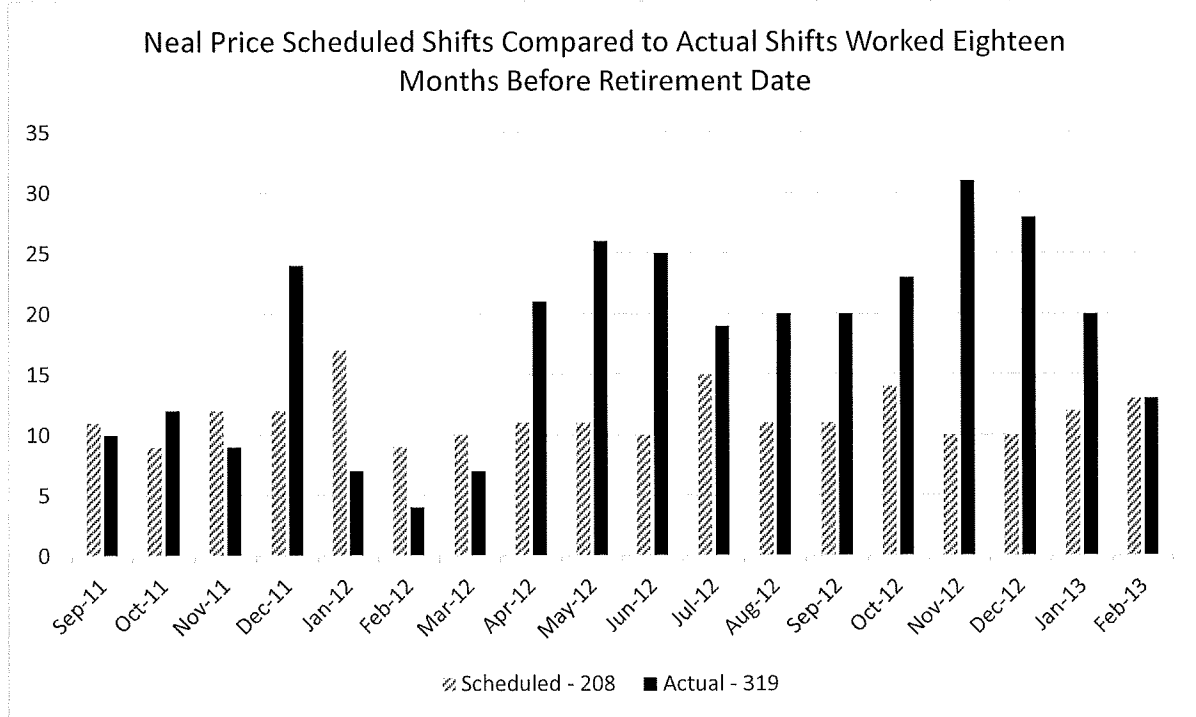
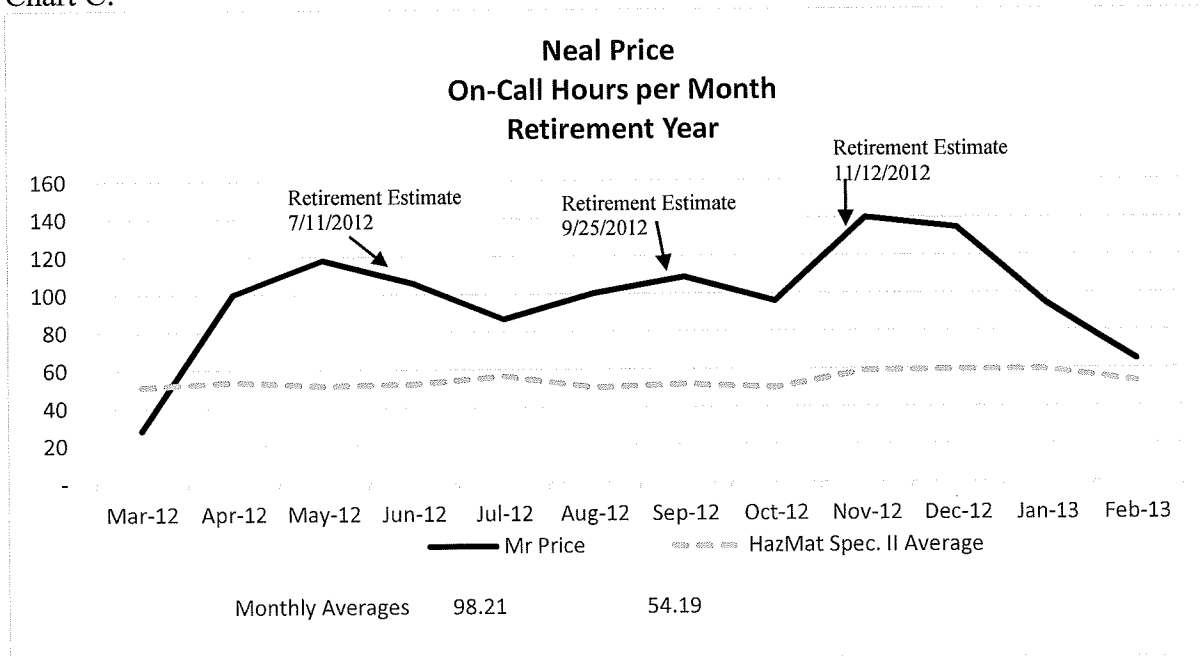


Chart C:



	Diff	44.02			
Exclusion Amount	Hours	528.2488	\$Amount	\$21,830.12	
Ret Date	2/23/2013	On-Call In FAS	\$48,432.92	Adjusted On-Call in FAS	\$26,602.80

Attachment #16

Chart A:

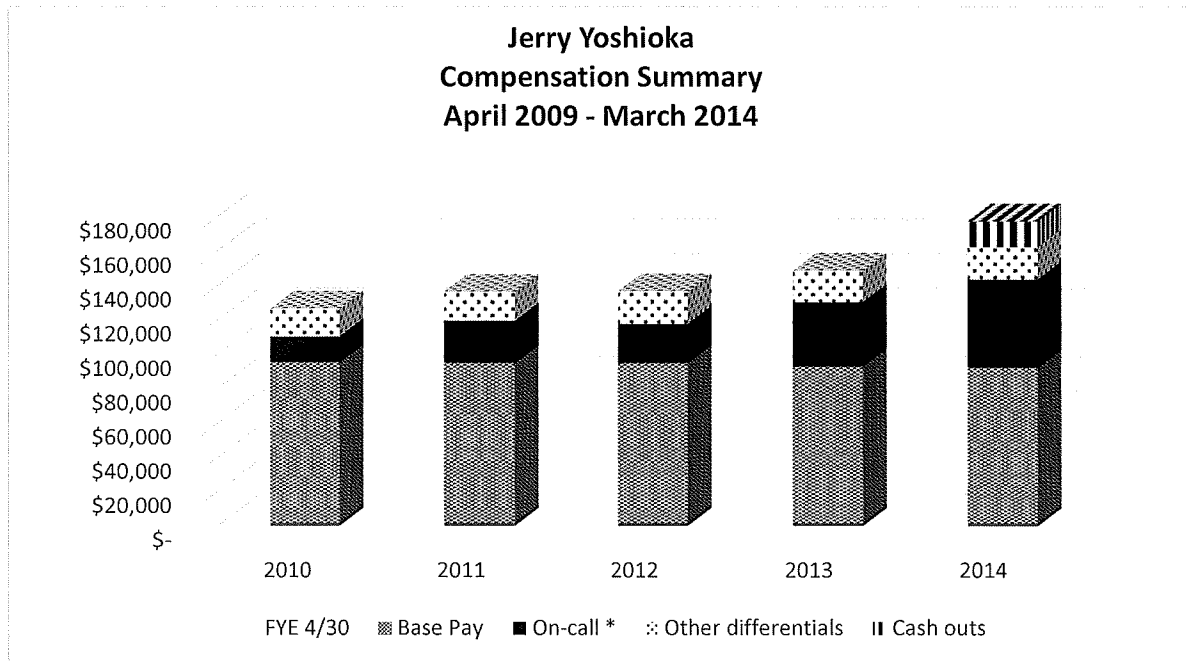


Chart B:

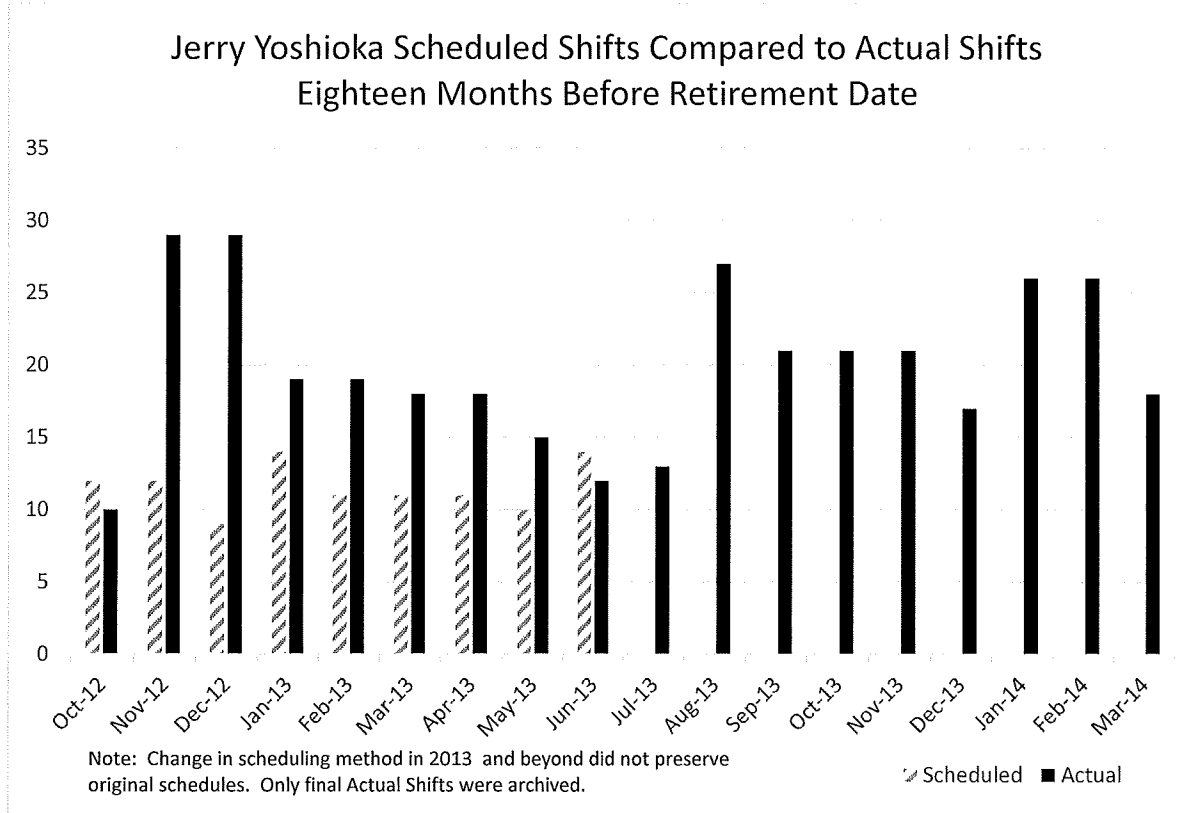
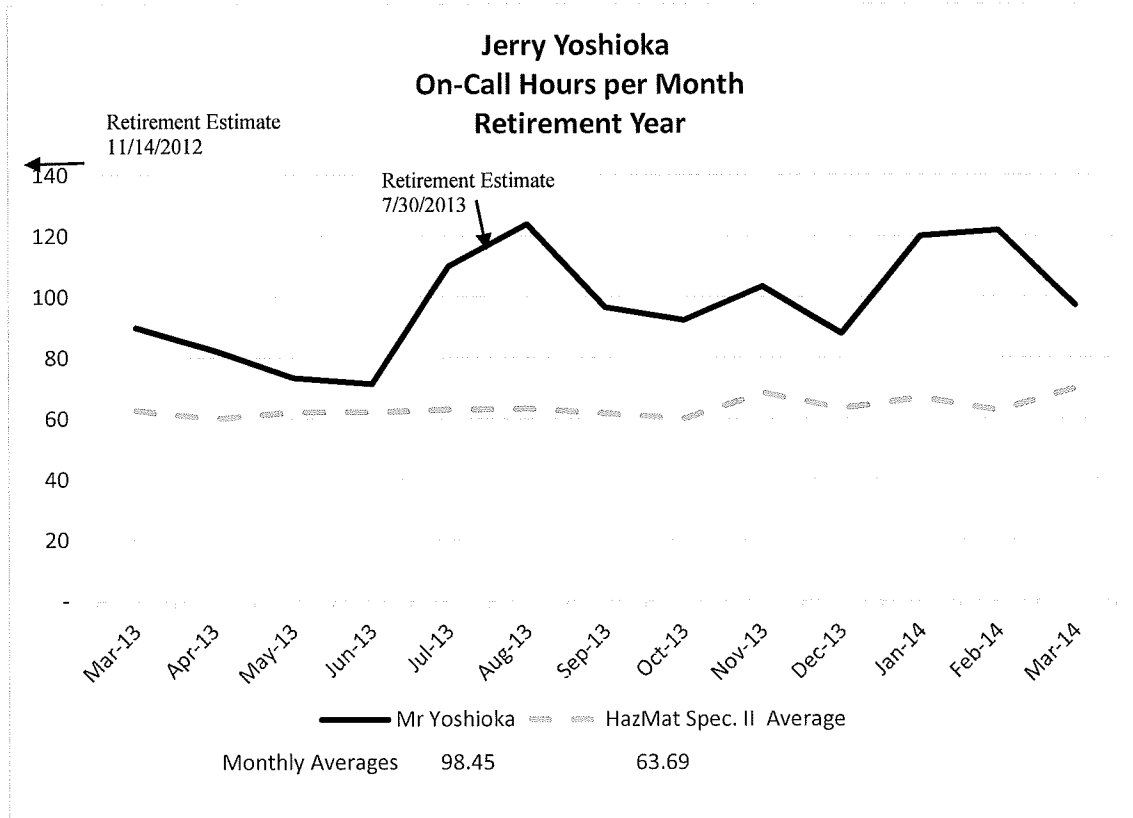


Chart C:



	Diff	34.76		
Exclusion Amount	Hours	417.137	\$Amount	\$18,100.30

Ret Date	3/28/2014	On-Call In FAS	\$51,734.54	Adjusted On-Call In FAS	\$33,634.24
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Attachment #17

Chart A:

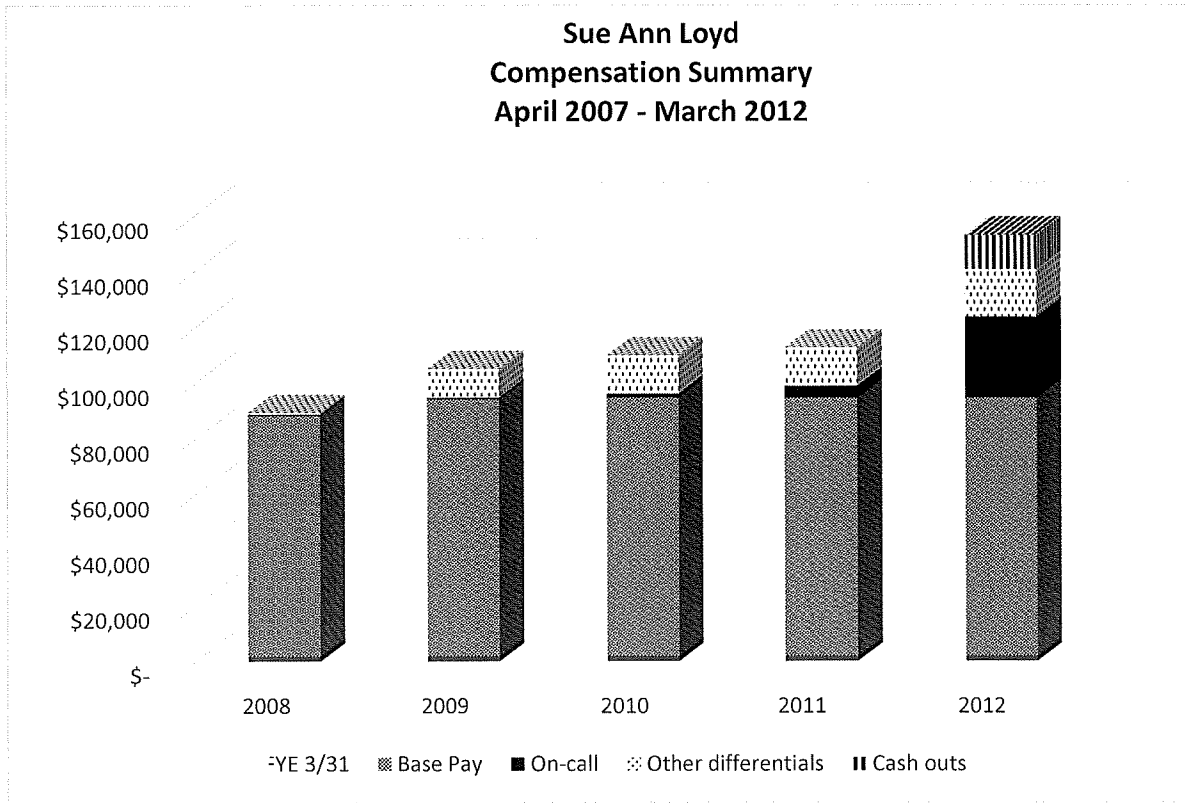


Chart B:

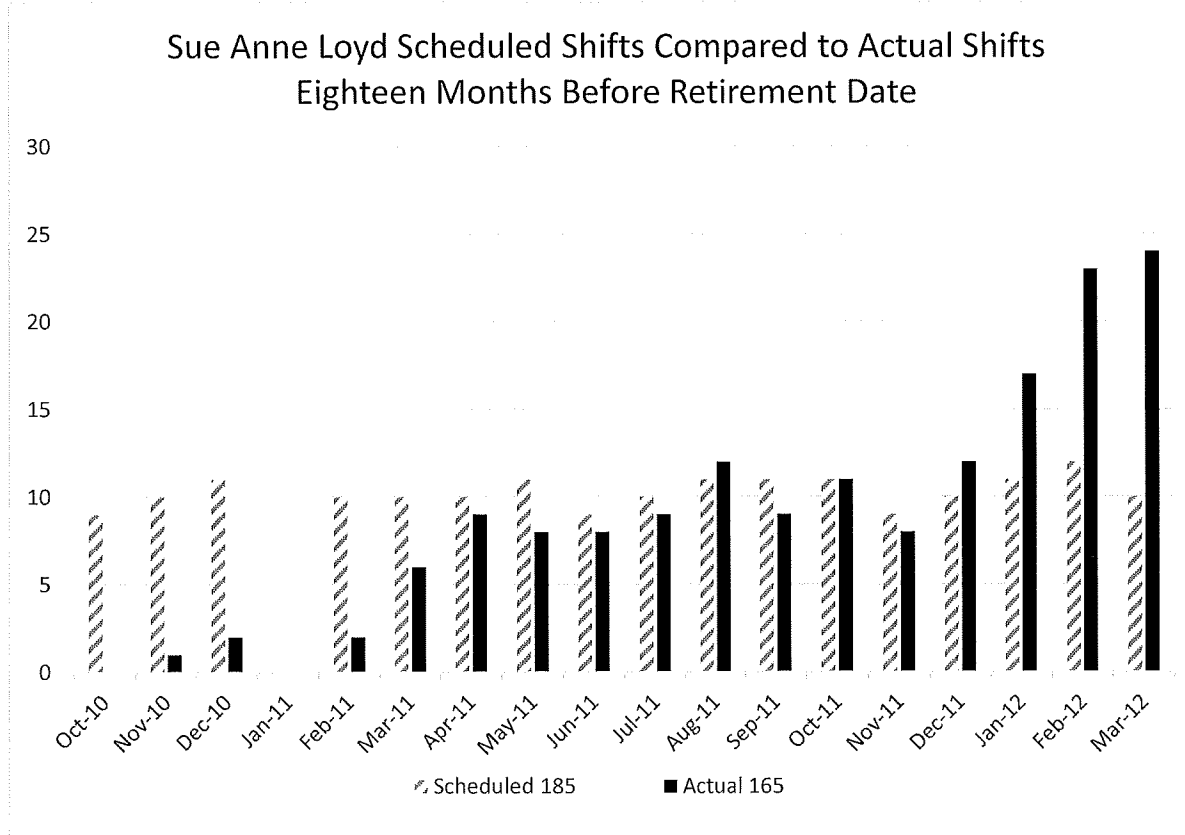
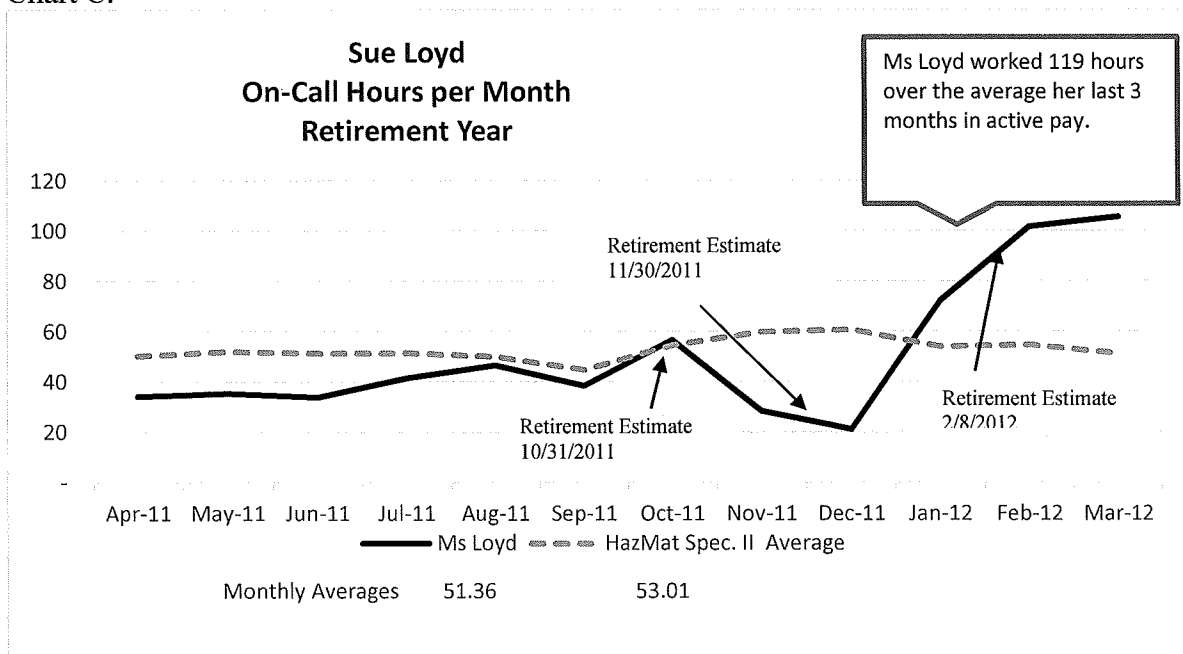


Chart C:



Diff	-1.65
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Exclusion Amount	Hours	119	\$Amount	\$5,309.63
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NOTE: Exclusion Amount is the amount over the department average in the last three months.

Ret Date	On-Call In FAS	Adjusted On-Call In FAS
3/31/2012	\$28,948.90	\$23,639.27

Attachment #18

Chart A:

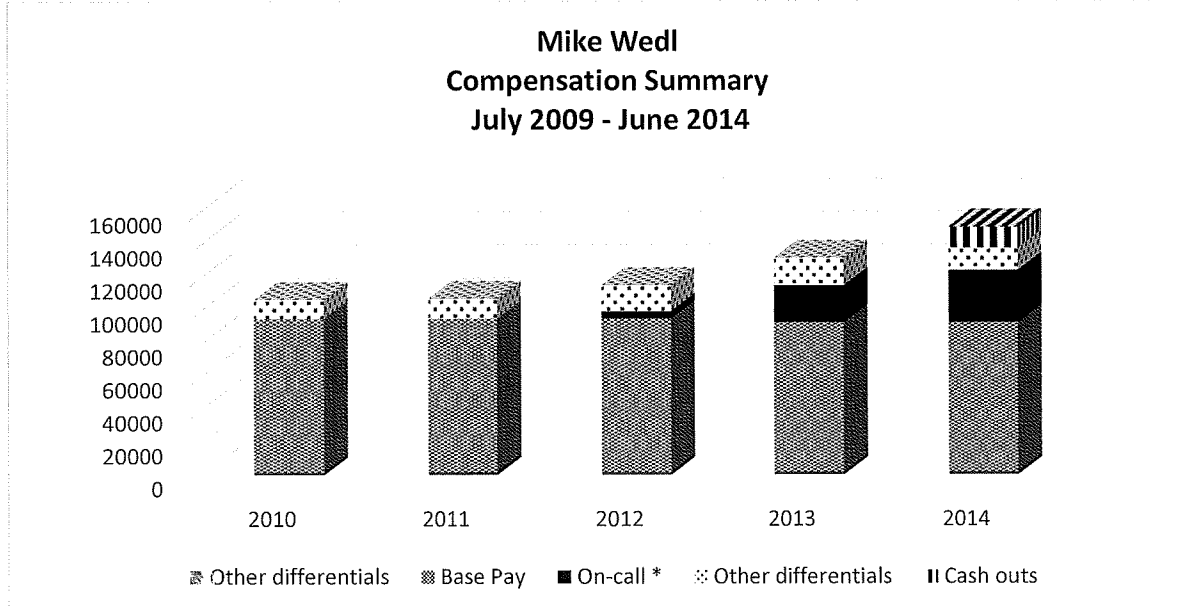


Chart B:

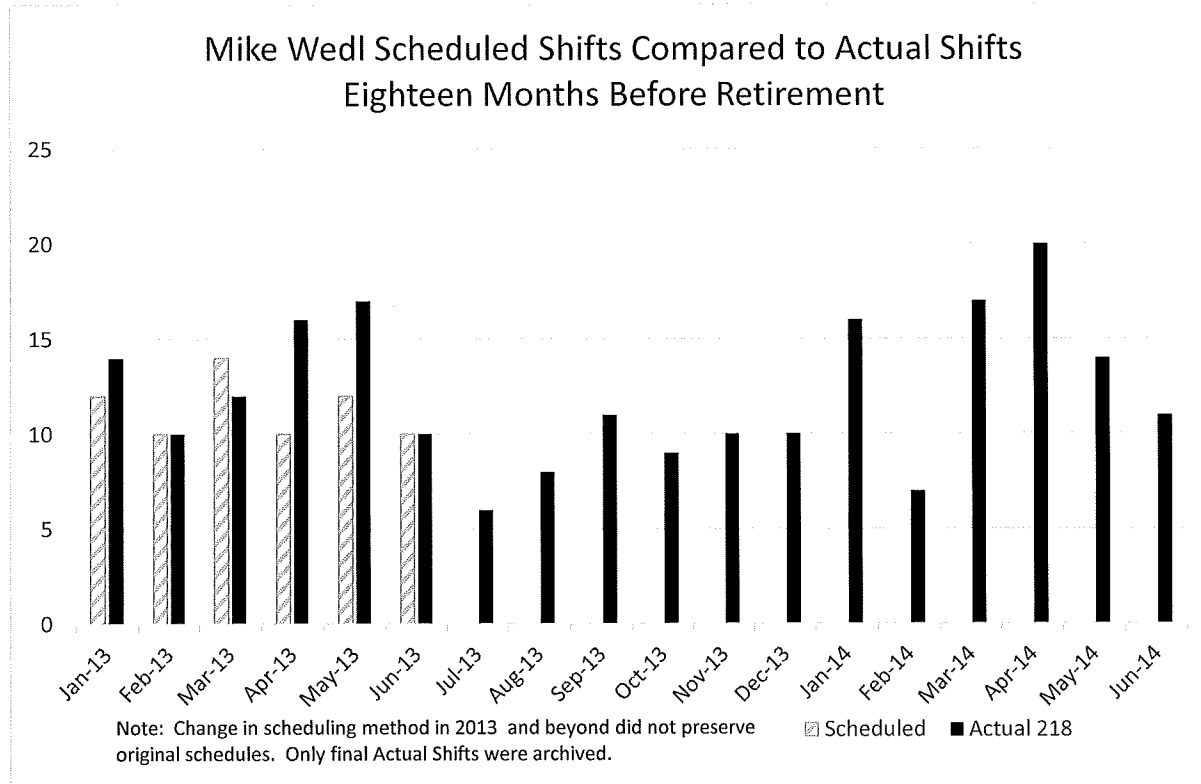
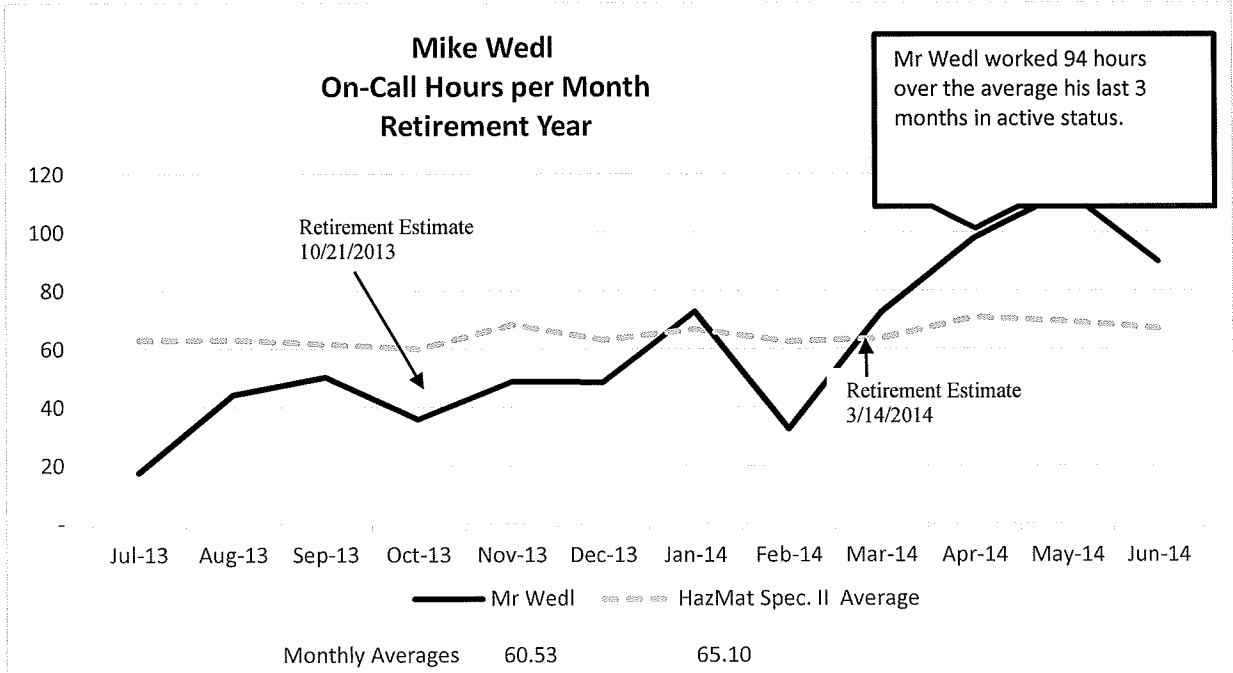


Chart C:



Diff	-4.57
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Exclusion Amount	Hours	94	\$Amount	\$4,078.82
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NOTE: Exclusion Amount is the amount over the department average in the last three months.

Ret Date	7/1/2014	On-Call In FAS	\$31,504.56	Adjusted On-Call In FAS	\$27,425.74
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Attachment #19

Chart A:

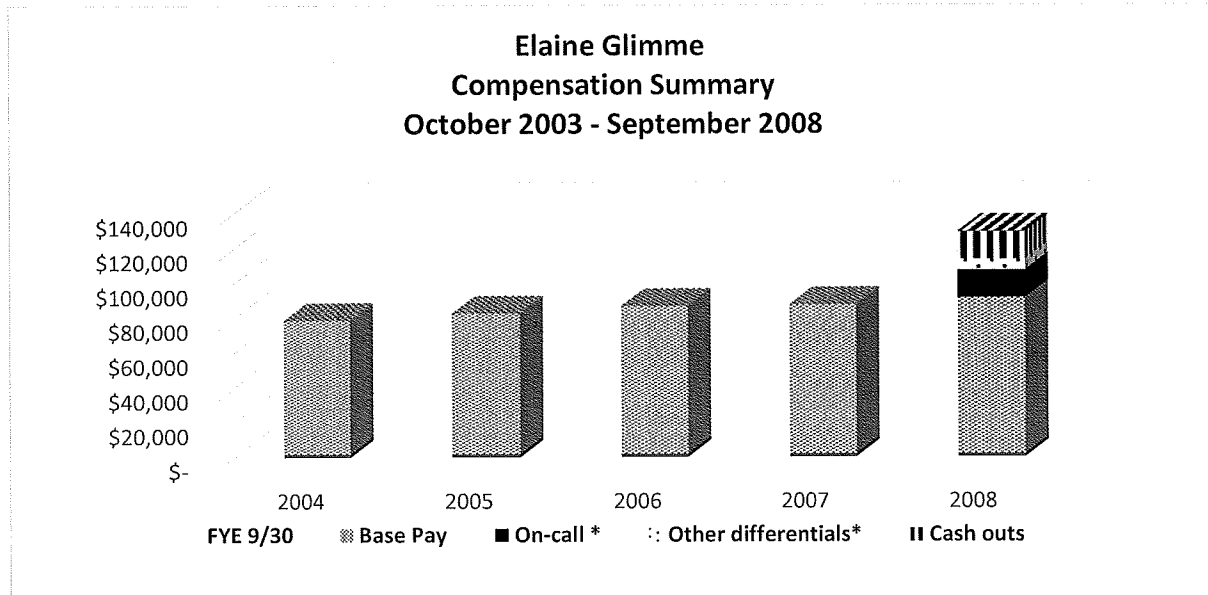


Chart B:

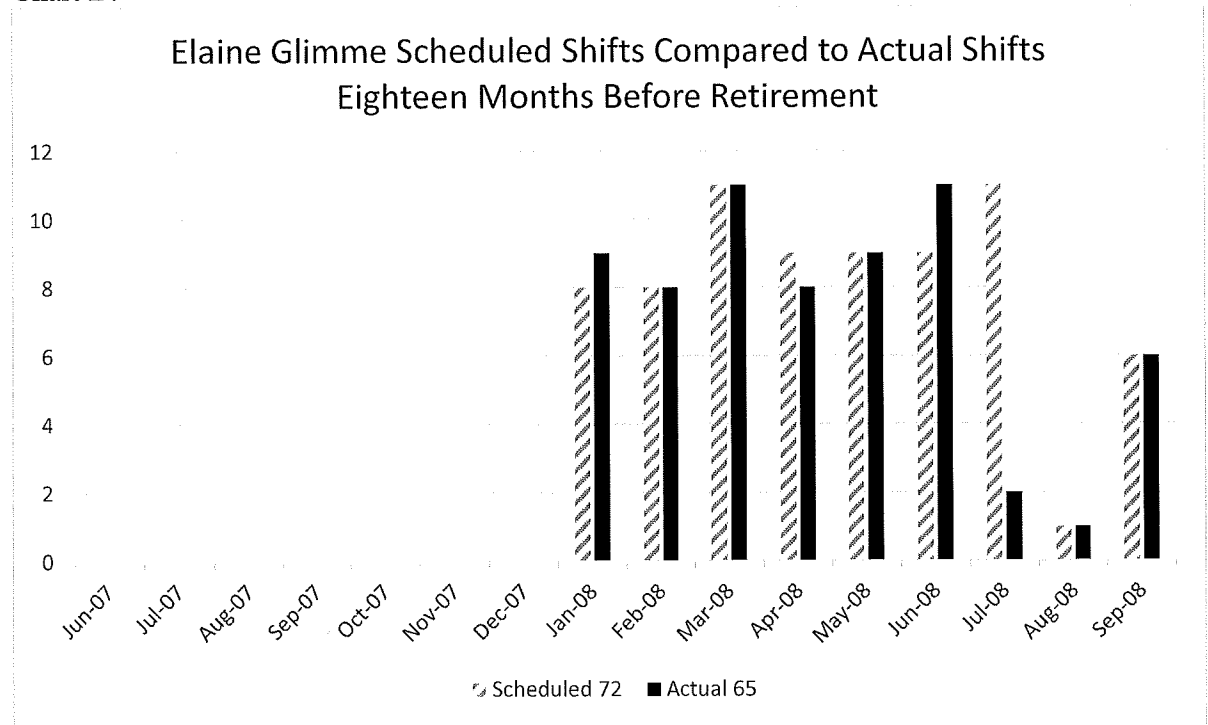
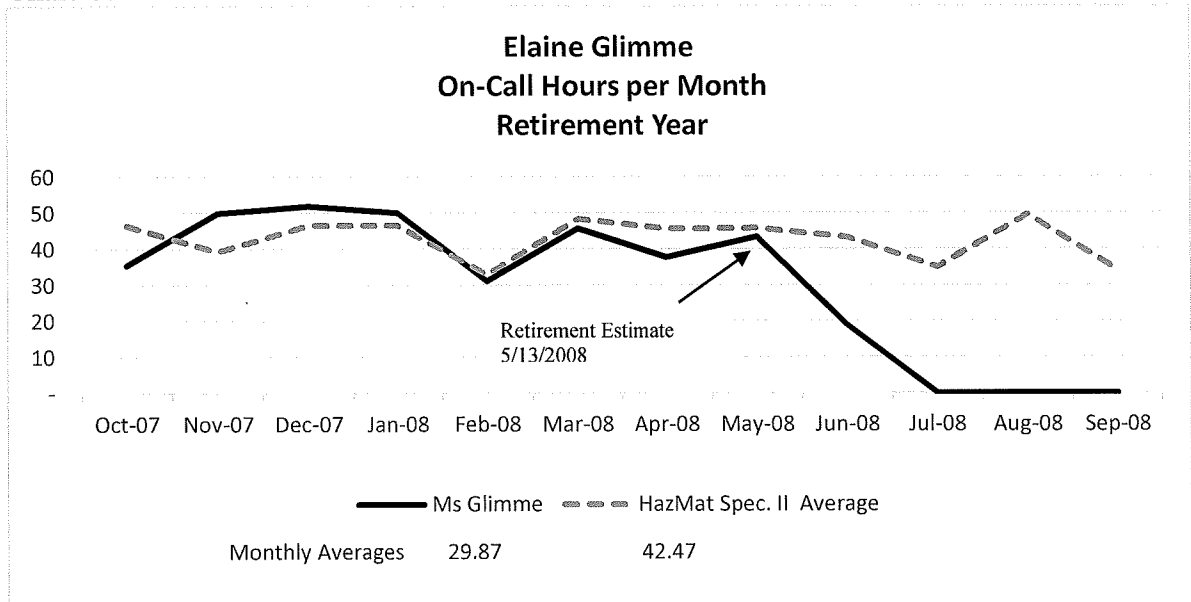


Chart C:



	Diff	-12.60	
Exclusion Amount	Hours	(151.2208)	\$Amount \$0.00


HazMat IRT Compensation Enhancement Review Attachment List

Attachment #	Description
A.	Board of Retirement May 4 th , 2016 Hearing Notices to Retirees
B.	Board of Retirement May 4 th , 2016 Hearing Notice to Employer
C.	<p>Responses Received from Retirees</p> <ul style="list-style-type: none">• Price, Neal – Letter Received 4/22/2016• Ginsberg, Barbara on behalf of Adebisi, Gabriel – Letter Received 4/25/2016• Response to Information Request to Barbara Ginsberg dated 4/26/2016 regarding Mr. Adebisi• Hanson, Scott – Letter received 4/25/2016• Stevens, Isaac on behalf of Nicholson, Charles – Letter Received 4/25/2016

Attachment A

CONTRA
COSTA
COUNTY **CCCERA**
Employees' Retirement Association

March 31, 2016

Gabriel Adebiyi


VIA FEDEX

Re: Retirement Board Hearing on Includable Compensation for Retirement Purposes

Dear Mr. Adebiyi,

You retired from CCCERA effective July 19, 2007. In 2014, the Board of Retirement resolved to review past incidents of unusual compensation increases at the end of employment. The Board initially voted on May 7, 2014 to begin the review. On July 23, 2014, the Board directed as follows:

1. The Board's intent is to scrutinize apparently intentional acts of pension spiking, through members' receipt of pay items that were not earned as part of their regularly recurring employment compensation during their careers.
2. The review will concentrate on specific, unique items of pay and not on regularly recurring vacation, sick or compensatory leave time.

The Board directed that any proposed adjustments to retirement benefits will occur only after the Board has conducted a thorough examination of all applicable facts and applicable law, and only after affording any affected members the opportunity to appear before, and present their positions to, the Board before any action is taken.

NOTICE IS HEREBY GIVEN that the Board is scheduled to hear the matter of whether adjustments to your retirement allowance are warranted at its regular meeting:

May 4, 2016

9:00 a.m.

Contra Costa County Employees' Retirement Association
1355 Willow Way, Suite 221
Concord, California 94520

This meeting is your opportunity to present to the Board your position and any information you believe is relevant to the calculation of your retirement allowance. You may submit written materials relevant to this issue in advance of the Board meeting. The materials will be included with the agenda distributed to the Board and the public if received by CCCERA on or by Monday, April 25, 2016. The public meeting materials prepared by CCCERA for the purpose of the hearing are enclosed.

March 31, 2016
Gabriel Adebisi
Page 2

Note that Retirement Board meetings are open, public meetings, and any member of the public may comment or present information to the Board. Any written materials you submit will be made public.

If you have any questions, please contact the undersigned at (925) 521-3960.

Sincerely,

A handwritten signature in black ink, appearing to read "Wally Dutkiewicz", with a long horizontal flourish extending to the right.

Wally Dutkiewicz
Compliance Officer

Encl.



March 31, 2016

Scott A. Hanson
[REDACTED]

VIA FEDEX

Re: Retirement Board Hearing on Includable Compensation for Retirement Purposes

Dear Mr. Hanson,

You retired from CCCERA effective February 29, 2012. In 2014, the Board of Retirement resolved to review past incidents of unusual compensation increases at the end of employment. The Board initially voted on May 7, 2014 to begin the review. On July 23, 2014, the Board directed as follows:

1. The Board's intent is to scrutinize apparently intentional acts of pension spiking, through members' receipt of pay items that were not earned as part of their regularly recurring employment compensation during their careers.
2. The review will concentrate on specific, unique items of pay and not on regularly recurring vacation, sick or compensatory leave time.

The Board directed that any proposed adjustments to retirement benefits will occur only after the Board has conducted a thorough examination of all applicable facts and applicable law, and only after affording any affected members the opportunity to appear before, and present their positions to, the Board before any action is taken.

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1355 Willow Way, Suite 221
Concord, California 94520

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March 31, 2016
Scott A. Hanson
Page 2

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If you have any questions, please contact the undersigned at (925) 521-3960.

Sincerely,


A handwritten signature in black ink, appearing to read "Wrally Dutkiewicz", with a long horizontal flourish extending to the right.

Wrally Dutkiewicz
Compliance Officer

Encl.



March 31, 2016

Dena Hutchin


VIA FEDEX

Re: Retirement Board Hearing on Includable Compensation for Retirement Purposes

Dear Ms. Hutchin,

You retired from CCCERA effective October 1, 2009. In 2014, the Board of Retirement resolved to review past incidents of unusual compensation increases at the end of employment. The Board initially voted on May 7, 2014 to begin the review. On July 23, 2014, the Board directed as follows:

1. The Board's intent is to scrutinize apparently intentional acts of pension spiking, through members' receipt of pay items that were not earned as part of their regularly recurring employment compensation during their careers.
2. The review will concentrate on specific, unique items of pay and not on regularly recurring vacation, sick or compensatory leave time.

The Board directed that any proposed adjustments to retirement benefits will occur only after the Board has conducted a thorough examination of all applicable facts and applicable law, and only after affording any affected members the opportunity to appear before, and present their positions to, the Board before any action is taken.

NOTICE IS HEREBY GIVEN that the Board is scheduled to hear the matter of whether adjustments to your retirement allowance are warranted at its regular meeting:

May 4, 2016

9:00 a.m.

Contra Costa County Employees' Retirement Association
1355 Willow Way, Suite 221
Concord, California 94520

This meeting is your opportunity to present to the Board your position and any information you believe is relevant to the calculation of your retirement allowance. You may submit written materials relevant to this issue in advance of the Board meeting. The materials will be included with the agenda distributed to the Board and the public if received by CCCERA on or by Monday, April 25, 2016. The public meeting materials prepared by CCCERA for the purpose of the hearing are enclosed.

March 31, 2016
Dena Hutchin
Page 2

Note that Retirement Board meetings are open, public meetings, and any member of the public may comment or present information to the Board. Any written materials you submit will be made public.

If you have any questions, please contact the undersigned at (925) 521-3960.

Sincerely,

A handwritten signature in black ink, appearing to read "Wally Dutkiewicz", with a long horizontal flourish extending to the right.

Wally Dutkiewicz
Compliance Officer

Encl.



March 31, 2016

Eric Jonsson


VIA FEDEX

Re: Retirement Board Hearing on Includable Compensation for Retirement Purposes

Dear Mr. Jonsson,

You retired from CCCERA effective March 31, 2011. In 2014, the Board of Retirement resolved to review past incidents of unusual compensation increases at the end of employment. The Board initially voted on May 7, 2014 to begin the review. On July 23, 2014, the Board directed as follows:

1. The Board's intent is to scrutinize apparently intentional acts of pension spiking, through members' receipt of pay items that were not earned as part of their regularly recurring employment compensation during their careers.
2. The review will concentrate on specific, unique items of pay and not on regularly recurring vacation, sick or compensatory leave time.

The Board directed that any proposed adjustments to retirement benefits will occur only after the Board has conducted a thorough examination of all applicable facts and applicable law, and only after affording any affected members the opportunity to appear before, and present their positions to, the Board before any action is taken.

NOTICE IS HEREBY GIVEN that the Board is scheduled to hear the matter of whether adjustments to your retirement allowance are warranted at its regular meeting:

May 4, 2016

9:00 a.m.

Contra Costa County Employees' Retirement Association
1355 Willow Way, Suite 221
Concord, California 94520

This meeting is your opportunity to present to the Board your position and any information you believe is relevant to the calculation of your retirement allowance. You may submit written materials relevant to this issue in advance of the Board meeting. The materials will be included with the agenda distributed to the Board and the public if received by CCCERA on or by Monday, April 25, 2016. The public meeting materials prepared by CCCERA for the purpose of the hearing are enclosed.

March 31, 2016
Eric Jonsson
Page 2

Note that Retirement Board meetings are open, public meetings, and any member of the public may comment or present information to the Board. Any written materials you submit will be made public.

If you have any questions, please contact the undersigned at (925) 521-3960.

Sincerely,

A handwritten signature in black ink, appearing to read "Wally Dutkiewicz", with a long horizontal flourish extending to the right.

Wally Dutkiewicz
Compliance Officer

Encl.



March 31, 2016

Sonny Khoo


VIA FEDEX

Re: Retirement Board Hearing on Includable Compensation for Retirement Purposes

Dear Mr. Khoo,

You retired from CCCERA effective November 1, 2012. In 2014, the Board of Retirement resolved to review past incidents of unusual compensation increases at the end of employment. The Board initially voted on May 7, 2014 to begin the review. On July 23, 2014, the Board directed as follows:

1. The Board's intent is to scrutinize apparently intentional acts of pension spiking, through members' receipt of pay items that were not earned as part of their regularly recurring employment compensation during their careers.
2. The review will concentrate on specific, unique items of pay and not on regularly recurring vacation, sick or compensatory leave time.

The Board directed that any proposed adjustments to retirement benefits will occur only after the Board has conducted a thorough examination of all applicable facts and applicable law, and only after affording any affected members the opportunity to appear before, and present their positions to, the Board before any action is taken.

NOTICE IS HEREBY GIVEN that the Board is scheduled to hear the matter of whether adjustments to your retirement allowance are warranted at its regular meeting:

May 4, 2016

9:00 a.m.

Contra Costa County Employees' Retirement Association
1355 Willow Way, Suite 221
Concord, California 94520

This meeting is your opportunity to present to the Board your position and any information you believe is relevant to the calculation of your retirement allowance. You may submit written materials relevant to this issue in advance of the Board meeting. The materials will be included with the agenda distributed to the Board and the public if received by CCCERA on or by Monday, April 25, 2016. The public meeting materials prepared by CCCERA for the purpose of the hearing are enclosed.

March 31, 2016
Sonny Khoo
Page 2

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Sincerely,


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Wally Dutkiewicz
Compliance Officer

Encl.



March 31, 2016

Charles Nicholson


VIA FEDEX

Re: Retirement Board Hearing on Includable Compensation for Retirement Purposes

Dear Mr. Nicholson,

You retired from CCCERA effective December 1, 2011. In 2014, the Board of Retirement resolved to review past incidents of unusual compensation increases at the end of employment. The Board initially voted on May 7, 2014 to begin the review. On July 23, 2014, the Board directed as follows:

1. The Board's intent is to scrutinize apparently intentional acts of pension spiking, through members' receipt of pay items that were not earned as part of their regularly recurring employment compensation during their careers.
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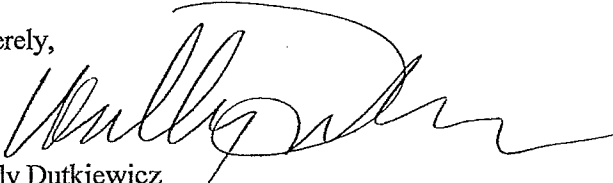
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March 31, 2016
Charles Nicholson
Page 2

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If you have any questions, please contact the undersigned at (925) 521-3960.

Sincerely,

A handwritten signature in black ink, appearing to read "Wally Dutkiewicz", with a large, sweeping flourish at the end.

Wally Dutkiewicz
Compliance Officer

Encl.



March 31, 2016

Neal Price



VIA FEDEX

Re: Retirement Board Hearing on Includable Compensation for Retirement Purposes

Dear Mr. Price,

You retired from CCCERA effective February 23, 2013. In 2014, the Board of Retirement resolved to review past incidents of unusual compensation increases at the end of employment. The Board initially voted on May 7, 2014 to begin the review. On July 23, 2014, the Board directed as follows:

1. The Board's intent is to scrutinize apparently intentional acts of pension spiking, through members' receipt of pay items that were not earned as part of their regularly recurring employment compensation during their careers.
2. The review will concentrate on specific, unique items of pay and not on regularly recurring vacation, sick or compensatory leave time.

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March 31, 2016
Neal Price
Page 2

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Sincerely,


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Wally Dutkiewicz
Compliance Officer

Encl.



March 31, 2016

Jerry Yoshioka


VIA FEDEX

Re: Retirement Board Hearing on Includable Compensation for Retirement Purposes

Dear Mr. Yoshioka,

You retired from CCCERA effective March 28, 2014. In 2014, the Board of Retirement resolved to review past incidents of unusual compensation increases at the end of employment. The Board initially voted on May 7, 2014 to begin the review. On July 23, 2014, the Board directed as follows:

1. The Board's intent is to scrutinize apparently intentional acts of pension spiking, through members' receipt of pay items that were not earned as part of their regularly recurring employment compensation during their careers.
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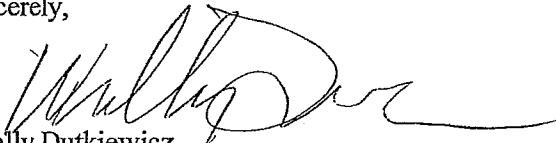
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March 31, 2016
Jerry Yoshioka
Page 2

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Sincerely,


A handwritten signature in black ink, appearing to read "Wally Dutkiewicz", written in a cursive style.

Wally Dutkiewicz
Compliance Officer

Encl.



March 31, 2016

Sue A. Loyd


VIA FEDEX

Re: Retirement Board Hearing on Includable Compensation for Retirement Purposes

Dear Ms. Loyd,

You retired from CCCERA effective March 31, 2012. In 2014, the Board of Retirement resolved to review past incidents of unusual compensation increases at the end of employment. The Board initially voted on May 7, 2014 to begin the review. On July 23, 2014, the Board directed as follows:

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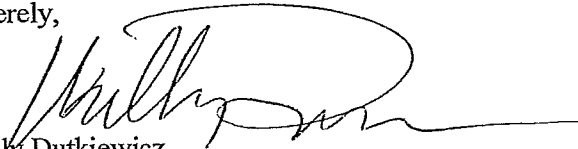
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March 31, 2016
Sue A. Loyd
Page 2

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Sincerely,


A handwritten signature in black ink, appearing to read "Wrally Dutkiewicz", with a long horizontal flourish extending to the right.

Wrally Dutkiewicz
Compliance Officer

Encl.



March 31, 2016

Michael Wedl


VIA FEDEX

Re: Retirement Board Hearing on Includable Compensation for Retirement Purposes

Dear Mr. Wedl,

You retired from CCCERA effective July 1, 2014. In 2014, the Board of Retirement resolved to review past incidents of unusual compensation increases at the end of employment. The Board initially voted on May 7, 2014 to begin the review. On July 23, 2014, the Board directed as follows:

1. The Board's intent is to scrutinize apparently intentional acts of pension spiking, through members' receipt of pay items that were not earned as part of their regularly recurring employment compensation during their careers.
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9:00 a.m.

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1355 Willow Way, Suite 221
Concord, California 94520

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March 31, 2016
Michael Wedl
Page 2

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Sincerely,

A handwritten signature in black ink, appearing to read 'Wally Dutkiewicz', with a long horizontal line extending to the right.

Wally Dutkiewicz
Compliance Officer

Encl.



March 31, 2016

Elaine Glimme
[REDACTED]

VIA FEDEX

Re: Retirement Board Hearing on Includable Compensation for Retirement Purposes

Dear Ms. Glimme,

You retired from CCCERA effective October 1, 2008. In 2014, the Board of Retirement resolved to review past incidents of unusual compensation increases at the end of employment. The Board initially voted on May 7, 2014 to begin the review. On July 23, 2014, the Board directed as follows:

1. The Board's intent is to scrutinize apparently intentional acts of pension spiking, through members' receipt of pay items that were not earned as part of their regularly recurring employment compensation during their careers.
2. The review will concentrate on specific, unique items of pay and not on regularly recurring vacation, sick or compensatory leave time.

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March 31, 2016
Elaine Glimme
Page 2

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If you have any questions, please contact the undersigned at (925) 521-3960.

Sincerely,

A handwritten signature in black ink, appearing to read 'Wrally Dutkiewicz', with a long horizontal flourish extending to the right.

Wrally Dutkiewicz
Compliance Officer

Encl.

CONTRA
COSTA
COUNTY **CCCERA**
Employees' Retirement Association

April 20, 2016

Elaine Glimme



Dear Ms. Glimme,

This is a follow up letter to my correspondence to you of March 31, 2016 which informed you of the Retirement Board Hearing on Includable Compensation for Retirement Purposes which will be held on May 4th, 2016. The purpose of this letter is to notify you that the Board will *not* consider making adjustments to your retirement allowance on May 4th. Your compensation and retirement data was included in the review because you belonged to the universe of Hazardous Materials Specialist II members during the years preceding your retirement date that CCCERA included in its study of "unusual increases" in compensation in the final years of members' employment.

As the materials that were sent to you with the March 31, 2016 letter reflect, CCCERA found that there was no observable increase in your compensation attributable to On-Call Pay compensation paid to you in your final years of active service. For this reason there is no recommendation to adjust your retirement allowance based on On-Call Pay. The Board of Retirement will therefore not be considering or taking any action that will affect your pension at its May 4th, 2016 meeting. CCCERA Board of Retirement meetings are open and public and you are most welcome to attend if you so wish.

If you have any questions about the materials that were sent to you, the Board of Retirement hearing on May 4th, 2016, or any other item pertaining to this issue please feel free to contact me.

Best regards,

A handwritten signature in black ink, appearing to read "Wrally Dutkiewicz", with a long horizontal flourish extending to the right.

Wrally Dutkiewicz
Compliance Officer

Attachment B



April 11, 2016

Dr. William Walker
Director
Contra Costa Health Services Department
50 Douglas Drive
Martinez, CA 94553

Re: Retirement Board Hearing on Includable Compensation for Retirement Purposes
For Ten Retired Hazardous Materials Specialist II (V4VC) Members

Dear Dr. Walker,

In 2014 the CCCERA Board of Retirement requested the review of past incidents of unusual compensation increases at the end of employment. Pursuant to this request CCCERA staff undertook the review of pension calculations for retirees that had retired between 2004 and 2014, of which eleven Hazardous Materials Specialist II (V4VC) retirees appeared to have unusual increases in their final average salary (FAS) as compared to their pre-FAS salary. In May of 2015 the Board of Retirement considered and took action to exclude excess on-call pay from the FAS of one retiring Hazardous Materials Specialist II member that was above the average on-call pay for all active Hazardous Materials Specialist II during the member's FAS period. A further ten (10) Hazardous Materials Specialist II retired members were identified in the study that had unusual increases in their FAS as compared to their pre-FAS compensation. The retirees by name and employee ID are:

- Adebisi, Gabriel (40208)
- Hanson, Scott (64180)
- Hutchin, Dena (43303)
- Jonsson, Eric (46771)
- Khoo, Sonny (46770)
- Loyd, Sue (3780)
- Nicholson, Eric (46898)
- Price, Neal (49513)
- Wedl, Michael (64015)
- Yoshioka, Jerry (55631)

CCCERA staff has completed its research and is prepared to present its findings to the Board.

NOTICE IS HEREBY GIVEN that the Board is scheduled to hear this matter at its regular meeting:

May 4, 2016

9:00a.m.

Contra Costa County Employees' Retirement Association
1355 Willow Way, Suite 221
Concord, CA 94520

Representatives from the employer entity are invited to attend this meeting and provide any information the employer believes is relevant to the Board's determination of how much on-call pay should be included in calculating the retirement allowance of the retired members listed

Employer Notice HazMat Pension Review
Board of Retirement Meeting May 4, 2016
April 11, 2016
Page 2 of 2

above. The employer may submit written materials relevant to this issue in advance of the Board meeting. The materials will be included with the agenda distributed to the Board and the public if received by CCCERA on or by Monday April 25th, 2016. Any public meeting materials prepared by CCCERA for the purpose of the hearing will be provided to you in advance of the meeting.

Note that Retirement Board meetings are open, public meetings, and any member of the public may comment or present information to the Board. Any written materials you submit will be made public.

If you have any questions, please contact the undersigned at (925) 521-3960.

Sincerely,



Wrally Dutkiewicz
Compliance Officer

Cc: Randall Sawyer, Chief Environmental Health & Hazardous Materials Officer

Attachment C

APR 22 2016

To: Wrally Dutkiewicz

From: Neal Price

Re: Retirement Contributions for On-Call (D-33) and Call-Back (D-19)

Date: April 21, 2016

On April 1, 2016, I received notification from CCCERA on the reduction of my pension due to the reduction of my on-call emergency response hours. At this time, I would like clarification regarding these items:

1. What formula was used to determine the amount of on-call hours that applied to my retirement for my last year of service?
2. Will I be compensated for my on-call retirement contributions that I contributed to over this set amount?

This document also does not delineate between pay grades:

1. This document mentioned that it took into account Hazardous Materials Specialist II in the same class or pay grade. At the time of my retirement I was at pay grade 4, not pay grade 5 as other Hazardous Materials Specialist II. When I retired, I was the only Hazardous Materials Specialist II, pay grade 4. To maximize my retirement as a Hazardous Materials Specialist II pay step 5, I should have worked an additional 15 months before retiring.

I would also like clarification from CCCERA on my call-back (D-19) that I contributed to from January 1, 2001 to February 22, 2013. In my retirement conference with Kurt Schneider, May 2013, he said that I would be reimbursed for this retirement contribution with interest. To date, I have not received information on what this amount is or when I will receive reimbursement.

I understand CCCERA's fiduciary responsibility to both retirees and current members. When I retired, I was made aware of the possible reduction of my on-call hours, as indicated by Kurt Schneider, during my May 2013 meeting at CCCERA. My on-call hours were assigned to me by my supervisor due to both employee retirements and employees leaving the department. Also at the time of my initial retirement Group Counseling session, June 19, 2007, CCCERA staff advised me to maximize my retirement accruals, this included both on-call (D-33) and call-back (D-19). At that meeting, I established my initial retirement date for August, 1, 2017, not February 22, 2013.

Very Respectfully,



Neal Price

REC'D APR 25 2016

BARBARA A. GINSBERG
ATTORNEY AT LAW

P.O. Box 2707, Oakland, CA 94602

TELEPHONE: (510) 842-3622

FAX: (510) 842-3209

E-MAIL: barbaraginsberg@earthlink.net

April 22, 2016

Wrally Dutkiewicz, Compliance Officer
Contra Costa County Employees' Retirement Association
1355 Willow Way, Suite 221
Concord, CA 94520

*Re: Gabriel Adebisi [REDACTED]
Retirement Board Hearing on Includable Compensation for
Retirement Purposes
Release of Records to Barbara A. Ginsberg*

Dear Mr. Dutkiewicz:

I spoke to you by telephone recently, and you confirmed that the above-described matter is separate from the "Call-Back Pay" issue in which I already represent Mr. Adebisi. For that reason, you indicated that you could not send records to me without a specific release by Mr. Adebisi which related to this particular issue. Therefore, I am now enclosing the following:

1. A very broad authorization, signed by Mr. Adebisi last July, which indicates that CCCERA is authorized to release to me any records and information which Mr. Adebisi would be entitled to receive in regards to his retirement benefits.
2. A letter signed by Mr. Adebisi on 4-18-2016 which is addressed to you and which specifically authorizes you to release the records which were sent to Mr. Adebisi by FEDEX on or about March 31, 2016 in regards to the above-captioned issue in regards to the compensation used in calculating his retirement benefits.

Therefore, as requested by Mr. Adebisi, please forward that information to me. Mr. Adebisi's letter uses my post office address, which is where I normally receive mail. However, as set out in that letter, if the package will be sent by FEDEX and you need a street address, you may forward the package to:

Attn: Barbara A. Ginsberg
2631 School Street
Oakland, CA 94602

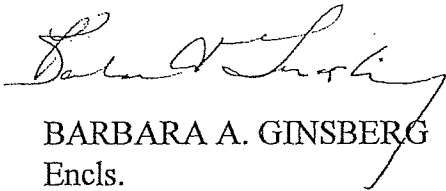
Wrally Dutkiewicz, Compliance Officer
Contra Costa County Employees' Retirement Association

Page Two

*Re: Gabriel Adebisi [REDACTED]
Retirement Board Hearing on Includable Compensation for
Retirement Purposes
Release of Records to Barbara A. Ginsberg*

Thank you for your assistance in this matter. If you have any questions or if you need any further documents or information before you are able to send the entire package to me, please contact me either by e-mail at barbaraginsberg@earthlink.net or by telephone at 510-842-3622.

Very truly yours,



BARBARA A. GINSBERG

Encls.

cc: client

CONTRA
COSTA
COUNTY
Employees' Retirement Association

CCCERA

April 26, 2016

VIA FEDEX

Barbara A. Ginsberg
Attorney at Law
2631 School Street
Oakland, CA 94602

Re: Gabriel Adebisi, Retirement Board Hearing on Includable Compensation for Retirement
Purposes – Release of Records

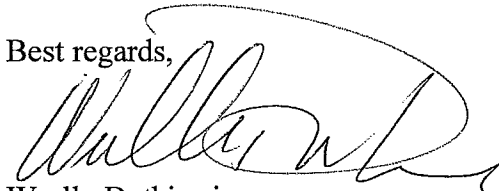
Dear Ms. Ginsberg,

Pursuant to your records request dated April 22, 2016 that was received in our office on April 25, 2016 please consider this letter along with its accompanying enclosures as CCCERA's fulfillment of your request.

I have enclosed the materials that were dated and sent to Mr. Adebisi on March 31, 2016 that includes a copy of the Memo to the Board of retirement dated May 4, 2016, the individual observations of on-call pay and scheduling for Mr. Adebisi, copy of the Hazardous Materials Incident Response Team Schedules, and Mr. Adebisi's timesheets as provided by the Contra Costa Health Services Department.

Should you require any further items or wish to discuss the enclosed please contact me.

Best regards,



Wrally Dutkiewicz
Compliance Officer

Enclosures.

APR 25 2016

April 25, 2016

TO: Wrally Dutkiewicz
Contra Costa County Employees' Retirement Association

RE: Scott Hanson's Response to CCCERA's Letter dated March 31, 2016

In my opinion any error, and I am not saying any was made, was by CCCERA. They are the ones that told us how to maximize our benefit. In this very boardroom, during a group counseling session, I asked if it would be in my best interest to make myself available for as much on call as possible my last year, The CCCERA counselors said that would be an excellent idea. I have witnesses.

To be absolutely clear on that point, I never "traded" or "took" any on call time. I made myself available for unfilled shifts, and was appointed those shifts by someone of at least the Deputy Director level.

All of my retirement estimates, prepared by CCCERA acknowledged this additional on call. I discussed it with the CCCERA counselor assigned to me. I did not pick my counselor nor did I have any influence over her. We were assigned counselors based on the first letter of our last name and everyone was treated the same. CCCERA definitely knew and understood what was happening. They encouraged it. CCCERA had every opportunity to review my, and everybody else's, retirement application and calculations before approval. The fact is they did not object to any of it until years later, after it became an issue in the local newspaper, when records were lost and memories faded. This review came years after the agreements were well established and memorialized.

Incidentally that newspaper, due to low and falling readership primarily caused by poor editorial content, no longer exists.

With great merit, others in my class will argue that the final year average on call calculations have statistical and method errors. In reality, the calculations are irrelevant. Correct or incorrect, they simply do not matter.

CCCERA recommended we maximize availability for on call duty, and everybody did it, I can't see a competent finding of "unusual" compensation in the final

year. It was the usual thing, with the encouragement, knowledge and approval of the CCCERA Board, or at least people they had direct control of, and were responsible for their actions.

So CCCERA proposes a review of all facts and regulations regarding this matter. I doubt this will be done.

A binding contract: All of the elements of a contract are present, a promise made and consideration given. All of my actions, as my fellow retirees, were in good faith. All accusations of fraud or any other misconduct are unfounded. CCCERA as the producer of the contract, should have ambiguity (and I believe none exists, nor has any been claimed) construed against them.

On this matter, CCCERA board members that in a public forum, claim fraud has been committed should expose that fraud. As no fraud occurred I doubt this possible. Lacking that it stands as a slanderous statement against me and others. It obviously demonstrates hostility by some members of this Board towards HazMat retirees. Clearly this shows we cannot get a fair and impartial hearing before this Board.

Detrimental reliance: I, and all the other Hazmat Specialists and others relied to our detriment on the commitment made by CCCERA. We made decisions about when we retired, where we live, where our children go to school, what assisted living arrangements we made for our parents, etc. based upon the promises made by CCCERA. CCCERA refusing it legitimate obligations could cause serious and unnecessary hardship for those of us that relied on those promises.

Contributory negligence: My expertise lies in the field of environmental science. I never even heard the idea of "codeable for retirement" until after I retired. CCCERA has long employed, at great expense to its members, inside and outside Counsel with alleged expertise in retirement systems, as well as employees with advanced degrees and in public administration and decades of experience. I reasonably thought they knew what they were doing, would comply with their fiduciary duty and would act in my interest.

I didn't think it was necessary to hire my own counsel to review my application for retirement because there were plenty of experts at CCCERA that were obligated to do that for me.

Regarding the 384 hours of on call that I worked my final year CCCERA says should be excluded in final calculations, I would like to be informed of exactly

what hours and shifts that CCCERA believes do not count. Then I can make a solid, irrefutable argument that I was on call those days and they should be included.

CCCERA I fear, is making a distinction without a difference.

Once CCCERA identifies the specific shifts that they say should be excluded it can involve itself in the pointless (and expensive) task of claiming I was not on call those days.

All this, whatever it is, clearly is the fault and responsibility of the Board of Directors of CCCERA and the employees they selected and supervised. The Board clearly needs to own up to its own actions in this matter and accept responsibility its own mismanagement.

In a December 10, 2015 memo from Kurt Schneider to the CCCERA Board, page 2 paragraph 5 says: "... Is that there is no distinction between assigned on call duty and voluntary on call duty." That is because there is no difference. Any difference only exists in the imagination of some CCCERA Board Members.

In the May 4, 2016 Memoranda to CCCERA Board of Retirement on page 3 paragraph 2, "...one interpretation is the on call duty." Yes it is one interpretation but it is the wrong one. By indicating that it is only one interpretation, accepts that other interpretations exist that have neither been identified or developed. It also says "The voluntary on call duty is a form of overtime." This is not true. On call was never a form of overtime. Overtime occurs when you are called back to work. To define any on call time as overtime is erroneous. And most definitely is not "... considered to have been paid services due to normal working hours."

In the same memo I find the following curious, page 4 last paragraph continued onto page 5.

"(1) by crossing off other employee names or initials from the department schedule and adding the retirement member's name or initials to note swapping of shifts, or,

(2) by the retiring member making notations in order to sign up for additional on-call hours."

In number 1, all this did was making ourselves be available and we were

appointed to that duty by the Deputy Director. I am clueless as to what number 2 means.” The simple truth is that neither I or any other of the specialists own on call time. It was the County’s responsibility to assign that duty. All work assignments were done by management. Specialists did not assign work or on call duty.

Regardless, the scheduling methods used during the year that I retired were the same as they were the day I was hired and the same as they are currently used now.

As an aside, CCCERA continued to collect on call contributions from current employees. It seems that CCCERA is clueless as how to deal with that issue also.

Regards,

Scott Hanson

DAVID P. MASTAGNI
JOHN R. HOLSTEDT
MICHAEL D. AMICK
CRAIG E. JOHNSON
BRIAN A. DIXON
STEVEN W. WELTY
STUART C. WOO
DAVID E. MASTAGNI
RICHARD J. ROMANSKI
PHILLIP R.A. MASTAGNI
KATHLEEN N. MASTAGNI STORM
SEAN D. HOWELL
WILLIAM P. CREGER
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ISAAC S. STEVENS
PAUL T. DOLBERG
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CAROLYN M. ORR
SHAWN B. COLLINS
DANIEL G. WOOD
TASHAYLA D. BILLINGTON
DAVID L. KRUCKENBERG
MATTHEW S. KANE

April 25, 2016

Sent Via Facsimile & U.S. Mail

CCCERA
Attn: Luz Casas
1355 Willow Way, Suite 221
Concord, California 94520
Fax: (925) 521-3969

RE: Statement for May 4, 2016 Meeting Regarding CCCERA's Calculation of Retirement Allowance for Charles Nicholson

Honorable Members of the CCCERA Board:

I write on behalf of retiree Charles Nicholson to submit this statement regarding CCCERA's calculation of his retirement allowance and to provide information relevant to the issue. As discussed herein, there is no reason to reduce Mr. Nicholson's retirement allowance.

As a preliminary matter, it is not entirely clear what item(s) of pay will be addressed at the Board's May 4, 2016 meeting. The letter CCCERA sent Nicholson regarding the meeting does not identify with specificity any item(s) of pay at issue. Instead, it merely states the Board's review "will concentrate on specific, unique items of pay and not on regularly recurring vacation, sick or compensatory leave time." (3/31/16 Letter from CCCERA to Nicholson, p.1.)¹ The materials provided with the letter discuss only "on call" pay. As such, this letter focuses exclusively on "on call" pay. If the Board intends to review any other pay items, Nicholson respectfully asks the Board to postpone its review of such items to allow him an opportunity to collect any relevant documents and submit a supplemental statement regarding whether those items should have been included in his retirement allowance.

As set forth herein, all On Call Pay Nicholson earned while working for the County of Contra Costa should be included in his retirement allowance. The On Call Pay Nicholson earned was not compensation for overtime work, and was not paid for the purposes of enhancing his retirement benefits. As evidenced by IRT's on call schedules, Nicholson's on call hours increased

¹ A copy of the March 31, 2016 letter is attached as Attachment A. Copies of the enclosures sent with the letter are not included in this attachment, because the materials are voluminous and already in CCCERA's possession.

annually from 2006-2011, not just during his final average salary period. Finally, in the event the Board elects to exclude any portion of Nicholson's On Call Pay from his retirement allowance, it cannot and should not "claw back" any purported "overpayments" for pension benefits Nicholson received. On Call Pay was included in his retirement calculations.

I. FACTS

Charles Nicholson began working for the County as a Supervising Environmental Health Specialist in 1990. As a County employee, Nicholson was a member of CCCERA and contributed towards his pension benefits. In 1996, he transferred to the County's Health Services Hazardous Materials Division, where he worked as a Hazardous Materials Specialist II.

After transferring to the Hazardous Materials Division, Nicholson joined the Incident Response Team ("IRT"). As a member of the IRT, Nicholson was required to be on call to respond to emergencies. On call shifts were scheduled and assigned by management personnel in the Hazardous Materials division. Any changes to the on call schedule required management approval. On call duty was not "voluntary." When Nicholson was scheduled to be on call, he had to be available to respond to any emergencies. He could not leave town for a trip, get intoxicated, or ignore a call out. Doing so would be grounds for discipline, up to and including removal from the IRT. Nicholson would receive Callback Pay instead of On Call Pay for any time he spent actually performing work for the County during an on call shift.

When an employee scheduled to be on call could not make himself or herself available, the employee could ask another employee to take his on call shift. However, management had to approve any changes to the schedule.

During his career, the County told Nicholson that On Call Pay was pensionable. As such, Nicholson believed the On Call Pay he received would be included in the compensation used to determine his retirement allowance.

When Nicholson discussed his retirement benefits with CCCERA representatives, he was informed that On Call Pay was pensionable. Indeed, the retirement estimate CCCERA provided Nicholson when he was considering whether to retire included On Call Pay in the compensation earnable used to calculate his retirement allowance.

Nicholson relied on the County's and CCCERA's representations regarding On Call Pay when planning his retirement. The retirement allowance estimate he used to decide whether he could afford to retire included On Call Pay, because the County and CCCERA told him it would. Nicholson counted on the money he would receive for On Call Pay to support his family, and pay for his children's education. He also planned on being able to use the money to purchase a home in Nevada or Florida, where he planned to move.

He retired on December 1, 2011.

II. DISCUSSION

There are no factual or legal grounds to support excluding any portion of the On Call Pay Nicholson received from his retirement allowance.

A. PRE-PEPRA DEFINITIONS OF “COMPENSATION EARNABLE” AND “SPECIAL COMPENSATION” GOVERN BECAUSE MR. NICHOLSON RETIRED BEFORE PEPRA’S ENACTMENT

As an initial matter, it should be noted that CCCERA must evaluate whether Nicholson’s pay items are pensionable using the definitions and laws in effect when Nicholson retired. For example, the changes to the definition of special compensation enacted with the Public Employees’ Pension Reform Act of 2012 (“PEPRA”) are inapplicable because PEPRA was enacted after Nicholson retired. Relying on such changes to exclude pay items from Nicholson’s pensionable income would violate the constitutional prohibition on ex post facto laws.

As discussed herein, Nicholson’s On Call Pay compensation is not excludible under the definition of “compensation earnable” set forth in Government Code section 31461 as it existed when Nicholson retired.

B. ON CALL PAY IS NOT EXCLUDIBLE FROM NICHOLSON’S COMPENSATION EARNABLE

1. ON CALL PAY IS NOT PAYMENT FOR HOURS WORKED

On Call Pay is not excludible as “payments for additional services rendered outside of normal working hours” within the meaning of Government Code section 31461(b)(3) because On Call Pay was not paid for work performed outside normal working hours. The act of being on call does not constitute work. Nicholson did not receive On Call Pay for doing anything outside his normal working hours. Instead, he received it for being *available* to do something if an after-hours emergency arose. In fact, he received Callback Pay instead of On Call Pay whenever he had to perform work during an on call shift. Thus, On Call Pay cannot be considered payment for work performed outside normal working hours. Rather, it is an incentive paid to employees for agreeing to be available to respond to after-hours emergencies.

The County never treated Nicholson’s on call hours as hours worked for the purposes of calculating Nicholson’s overtime compensation. For example, the County never included time Nicholson spent on call in the hours used to determine whether he was entitled to overtime compensation. This is unsurprising, considering the considerable jurisprudence establishing that being on call is generally not viewed as performing work for an employer. *See, e.g., Berry v. County of Sonoma* (1994) 30 F.3d 1174 (coroners not entitled to overtime compensation because being on call was not compensable work.)

Notably, the County did not pay Nicholson On Call Pay for time he spent responding to an emergency during an on call shift. Unlike most other employees, if a Hazardous Material Specialist was called back and received callback pay, his On Call Pay would be reduced by the

number of hours of callback pay he received. In other words, the County would actually stop paying Nicholson for On Call Pay if he worked – further showing On Call Pay was not pay for worked he performed.

Because being on call is not performing work, On Call Pay is not payment for additional work performed outside normal working hours. Therefore, it is not excludible as such a payment pursuant to Government Code section 31461(b)(3.) Therefore, the On Call Pay must be included in Nicholson's pensionable compensation.

2. THE ON CALL SHIFTS NICHOLSON COVERED FOR OTHER EMPLOYEES WERE NOT "VOLUNTARY."

Contrary to the assertions in the staff report prepared by Wrally Dutkiewicz, the fact that Nicholson and his coworkers were allowed to cover on call shifts initially scheduled for other employees does not mean those shifts were "voluntary."

Dutkiewicz's assertion that Nicholson worked additional on call shifts he was not required to² ignores the practical reality that, when an employee was unavailable for his or her on call shift, another employee in the Division would have to work it. If the employee originally scheduled to work the shift could not find someone to take it, management would have to order someone to cover it. What is characterized as "volunteering" for a shift in the staff report is actually an act of self-preservation – if you do not cover for an unavailable colleague, you could be "voluntold" to cover it anyway. As such, an employee not wanting to be ordered to cover an undesirable on call shift (e.g. Fourth of July, Christmas, etc.) would agree to cover other shifts when the opportunity arose.

The facts do not support Dutkiewicz's contention that on call time was divided between "assigned" and "voluntary" on call work.³ "Voluntary" on call time was simply not a concept that existed with respect to the IRT. Throughout Nicholson's career, management stressed that on call time was mandatory and required. This became especially true when the IRT was mandated by the Contra Costa County Hazardous Materials Plan and management upgraded to a Type II Hazardous Materials Response Team. This required the division to increase staffing from five to six person teams. Being available to cover on call shifts was not optional – being on call was a requirement of the job.

3. NICHOLSON DID NOT IMPROPERLY INCREASE HIS PENSION BY SIGNING UP FOR ON CALL WORK

Even if Nicholson worked more On Call Shifts during his final average salary period than other years, this would not establish that Nicholson worked those shifts to increase his retirement allowance. The number of on call shifts Nicholson worked increased each year from 2006 to 2011 – so while he worked more on call shifts during his final average salary period, this does not reflect

² See Staff Report, p. 4, stating "some of the on-call shifts worked by the IRT members was [sic] on a voluntary basis above and beyond that which had been scheduled by the Director, and therefore was not required work."

³ See Staff report, pp. 3-4, stating "all assigned and voluntary on-call duty is paid using the same pay code."

an attempt to enhance his retirement allowance. Moreover, most of the shifts Nicholson worked for other employees during his final average salary period were at the other employees' request – not Nicholson's.

The charts relating to Nicholson's on call hours attached to the staff report paint an incomplete picture. They fail to show the number of on call hours Nicholson had each year from 2006 to 2011. This information can be extracted from the schedules included in the attachments to the staff report. These schedules show that Nicholson's on call hours increased each year from 2006 to 2011. Thus, evidence that Nicholson covered more on call hours during his final average salary period than he worked the year before does not establish that he covered extra on call shifts to boost his pension – it is just consistent with the trend of annual increases in his on call hours.

Moreover, the on call schedules included in the materials show that almost all the shifts Nicholson covered for other employees from December 2010 to December 2011 were at the request of other employees. These schedules reflect the changes made to employees' on call shifts during the time period at issue. From December 2010 to December 2011, Nicholson covered 54 on call shifts for other employees. Other employees asked Nicholson to work all but six of those shifts.⁴ Moreover, on many occasions, Nicholson agreed to cover these shifts with the understanding the employees he was covering for would cover a shift for him at a later date. As such, the fact that Nicholson covered other employees' on call shifts does not reflect an intent on Nicholson's part to "spike" his retirement.

Even if, for the sake of argument, Nicholson accepted a few shifts believing the extra pay would enhance his retirement, this would not show Nicholson *improperly* increased his pension. CCCERA's own representatives encouraged employees to boost their salaries during their final average salary periods. When Nicholson was reclassified as a safety member, he called CCCERA to discuss his retirement. During the call, the representative he spoke to told him he needed to do everything he could to boost his salary during his final year. A CCCERA representative told him the same thing when he called to discuss retirement in or around 2006. These and similar representations show employees, including Nicholson, were made to understand that earning as much pensionable income as possible in their final year was expected – failing to do so would, in effect, reduce the benefits they would otherwise be entitled to. CCCERA cannot now claim such conduct was improper.

C. CCCERA IS TIME-BARRED FROM DEMANDING REPAYMENT FOR ALLEGED OVERPAYMENTS.

Even if, for the sake of argument, CCCERA overpaid Nicholson as a result of including On Call Pay in his retirement allowance, it could not recover the \$29,482.29 it claims it overpaid him since 2011. Government Code section 31540 (b) establishes a three-year statute of limitations period for recovering overpayments the retirement system makes to a member. This statute of

⁴ Nicholson asked to cover one shift in September 2011, and five in November 2011.

limitations runs from the date of the payment. As such, any claim for alleged overpayments occurring before May 2013 will be time-barred by the time the Board meets on May 4, 2016.

D. CCCERA IS ESTOPPED FROM EXCLUDING ON CALL PAY, BECAUSE IT PROMISED SUCH PAY WOULD BE INCLUDED IN RETIREMENT CALCULATIONS

CCCERA is equitably estopped from excluding On Call Pay from Nicholson's retirement allowance now, more than four years after Nicholson retired. For many years, CCCERA advised employees, including Nicholson, that On Call Pay would be included in the compensation used to calculate their retirement benefits. In 1999, for example, CCCERA's Administrator, Pat Wiegert, issued a memorandum unequivocally stating "On-call pay is considered compensation for retirement purposes. It's reported to us, we collect contributions on it, and we use it as part of salary when computing the [pension] benefit." (August 11, 1999 Memo from Wiegert to Leslie Knight, Director of Human Resources.)⁵ CCCERA affirmed this promise repeatedly, including in the retirement allowance estimates it provided Nicholson. In September 2011, for example, CCCERA issued Nicholson a "Basic Retirement Estimate" showing that On Call Pay would be included in the final compensation used to calculate his retirement benefits.⁶

E. EVEN IF CCCERA DECIDES TO EXCLUDE SOME ON CALL PAY FROM NICHOLSON'S RETIREMENT ALLOWANCE GOING FORWARD, CCCERA IS ESTOPPED FROM RETROACTIVELY EXCLUDING IT FROM THE PENSION BENEFITS HE ALREADY RECEIVED

Regardless of whether "on call" pay should be included in Nicholson's retirement benefits going forward, there is no basis for recovering money he already received as a result of On Call Pay being treated as pensionable compensation in the past.

1. CCCERA IS ESTOPPED FROM DEMANDING REPAYMENT FROM NICHOLSON

The doctrine of equitable estoppel bars CCCERA from requiring Nicholson to repay any alleged overpayments resulting from the inclusion of On Call Pay in his pensionable compensation. Estoppel may be invoked against a government agency when "justice and right require it." *Driscoll v. City of Los Angeles* (1967) 67 Cal.2d 297, 306. Here, estoppel lies to prevent CCCERA from requiring Nicholson to repay and money he received as the result of any compensation improperly included in his pensionable compensation.

The elements that must be present for equitable estoppel to apply are: (1) the party to be estopped must be apprised of the facts; (2) that party must intend for its conduct to be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his

⁵ A copy of Pat Wiegert's memorandum is attached as Attachment B.

⁶ A copy of the Basic Retirement Estimate, dated 8/09/11, is attached as Attachment C. Certain sensitive information has been redacted, to protect Nicholson's privacy.

injury. *Crumpler v. Board of Administration* (1973) 32 Cal.App.3d 567, 581 (citing *Driscoll v. City of Los Angeles* (1967) 62 Cal.2d 297, 305.)

These elements are easily established here. First, the County was apprised of the fact that employees were permitted to take on call shifts from each other, yet still advised Nicholson and other employees that On Call Pay received for such work would be included in their pensionable compensation. Second, the County intended for its conduct to be acted on. Third, Nicholson was ignorant of the fact that CCCERA could determine his On Call Pay was not pensionable. Fourth, Nicholson relied on the County and CCCERA's representations to his injury. Nicholson planned his retirement based on CCCERA's representations that On Call Pay would be included in his pension benefits. If CCCERA excludes it from Nicholson's retirement allowance in the manner discussed in the materials it included with its March 31, 2016 letter, Nicholson will lose almost \$600 in retirement pay each month. This loss is bad enough by itself – requiring Nicholson to repay over \$29,000 for past pension benefits would be financially devastating.

As such, equitable estoppel applies. Thus, even if – for the sake of argument – CCCERA could exclude On Call Pay from Nicholson's future pension benefits, it cannot require him to repay money he received in the past as a result of the pay being included in his retirement calculations.

CCCERA cannot avoid estoppel by claiming it did not know how On Call Pay was administered for Nicholson. In *Crumpler*, the court held that equitable estoppel barred PERS from retroactively reclassifying a group of employees as miscellaneous members. When the employees began employment, they were classified as local safety members of PERS. Years later, PERS conducted an investigation and determined the employees should have been classified as miscellaneous employees because their job duties did not constitute active law enforcement service. The employees sued PERS when it tried to reclassify them as miscellaneous members retroactive to the date they were hired. The court held while PERS was estopped from retroactively reclassifying the employees. In so doing, the court rejected PERS' assertion that it had no knowledge of the employees' job duties when it initially classified them as safety members. According to the court, in the administration of PERS as it pertained to city contract members, the City and PERS' Board were agents of the state, and were therefore in privity. Accordingly, the estoppel of the city applied to estop PERS. *Id.* at p. 584.

2. EVEN IF CCCERA COULD DEMAND REPAYMENT, IT SHOULD NOT DO SO

Even if, for the sake of argument, CCCERA could force Nicholson to repay the money he received as a result of On Call Pay being included in his pension calculations, CCCERA should not do so. Nicholson is a retiree, who planned his retirement around receiving pension benefits that included his On Call Pay. Requiring him to repay the approximately \$30,000 CCCERA's staff claims Nicholson received as a result of including supposedly non-includible On Call Pay would have a crippling impact on Nicholson's finances.

It is well established that a retirement association is not required to seek repayments from retirees for overpayments arising from the inclusion of pay items that are later determined not to

Luz Casas
April 25, 2016
Page 8

be pensionable compensation in retirees' pension benefit calculations. *See City of Oakland v. Oakland Police and Fire Retirement System* (2014) 224 Cal.App.4th 210, 245-46. Likewise, forgoing repayment from retirees for such overpayments would not constitute a "gift of public funds," or otherwise violate the retirement association's legal obligations. (*Id.*)

Moreover, Nicholson was acting in reliance on representations from the County and CCCERA when he signed up for additional on call shifts. He was not trying to game the system, or obtain something he was not entitled to. Requiring Nicholson to pay back pension benefits he already received would punish him for the acts and omissions of the County and CCCERA.

F. IN THE EVENT CCCERA PLANS TO EXCLUDE ANY OTHER PAY ITEMS FROM NICHOLSON'S PENSION, IT SHOULD PROVIDE NICHOLSON NOTICE AND AN OPPORTUNITY TO RESPOND

As stated previously, Nicholson submits this statement with the understanding that On Call Pay is the only pay item CCCERA plans to discuss at its May 4, 2016 meeting. CCCERA did not identify any other pay items potentially at issue in its March 31, 2016 letter to Nicholson. Likewise, CCCERA did not provide information about any additional pay items. Accordingly, Nicholson has only addressed On Call Pay in this statement. In the event CCCERA's Board intends to address additional pay items at the May 4, 2016 meeting, Nicholson respectfully asks for notice of the items to be considered and copies of any documents the Board may consider with respect to such pay items. Nicholson needs such information to meaningfully respond to any matters concerning other pay items.

III. CONCLUSION

For the reasons set forth herein, Nicholson's retirement allowance should not be reduced. There is no basis for excluding any On Call Pay from Nicholson's pension benefits. Moreover, even if such compensation was excludible, CCCERA is barred from retroactively recalculating benefits Nicholson already received or demanding repayment of any alleged overpayments resulting from the inclusion of On Call Pay in Nicholson's pensionable compensation.

Thank you for your attention to this matter.

Sincerely,

MASTAGNI HOLSTEDT, A.P.C.



ISAAC STEVENS

Lawyer for Charles Nicholson

ISS/jee
Enclosures
Cc: Wrally Dutkiewicz

ATTACHMENT A

CONTRA
COSTA
COUNTY
Employees' Retirement Association

CCCERA

March 31, 2016

Charles Nicholson
[REDACTED]

VIA FEDEX

Re: Retirement Board Hearing on Includable Compensation for Retirement Purposes

Dear Mr. Nicholson,

You retired from CCCERA effective December 1, 2011. In 2014, the Board of Retirement resolved to review past incidents of unusual compensation increases at the end of employment. The Board initially voted on May 7, 2014 to begin the review. On July 23, 2014, the Board directed as follows:

1. The Board's intent is to scrutinize apparently intentional acts of pension spiking, through members' receipt of pay items that were not earned as part of their regularly recurring employment compensation during their careers.
2. The review will concentrate on specific, unique items of pay and not on regularly recurring vacation, sick or compensatory leave time.

The Board directed that any proposed adjustments to retirement benefits will occur only after the Board has conducted a thorough examination of all applicable facts and applicable law, and only after affording any affected members the opportunity to appear before, and present their positions to, the Board before any action is taken.

NOTICE IS HEREBY GIVEN that the Board is scheduled to hear the matter of whether adjustments to your retirement allowance are warranted at its regular meeting:

May 4, 2016

9:00 a.m.

Contra Costa County Employees' Retirement Association
1355 Willow Way, Suite 221
Concord, California 94520

This meeting is your opportunity to present to the Board your position and any information you believe is relevant to the calculation of your retirement allowance. You may submit written materials relevant to this issue in advance of the Board meeting. The materials will be included with the agenda distributed to the Board and the public if received by CCCERA on or by Monday, April 25, 2016. The public meeting materials prepared by CCCERA for the purpose of the hearing are enclosed.

March 31, 2016
Charles Nicholson
Page 2

Note that Retirement Board meetings are open, public meetings, and any member of the public may comment or present information to the Board. Any written materials you submit will be made public.

If you have any questions, please contact the undersigned at (925) 521-3960.

Sincerely,



Wally Dutkiewicz
Compliance Officer

Encl.

ATTACHMENT B

MEMO

Date: August 11, 1999
To: Leslie Knight, Director
Human Resources
From: Pat Wiegert, Administrator
Subject: On-Call Pay vs. Call-Back Pay

The Retirement Board discovered what appears to be an inequity in the way on-call pay is paid to different employee groups. There may be a good reason for this disparity, but the Board asked that I advise you in the event you were not aware of it.

The difference is in the way on-call pay is paid to an employee when the employee is actually called back to work. In some cases, the on-call pay stops accruing and the call-back pay goes into effect. In other cases, the call-back pay goes into effect, but the on-call pay continues for the remainder of the time the employee was scheduled to be in "on call" status.

As I noted there may be a good reason for this, but it directly affects the pension these people will eventually receive. On-call pay is considered compensation for retirement purposes. It's reported to us, we collect contributions on it, and we use it as part of salary when computing the benefit. Call-back pay is considered overtime and therefore not included in compensation for retirement purposes.

Two employees, each scheduled for the same number of hours in on-call status will receive different pensions if one is called back to work and the other isn't. The one called back to work will get a lower pension.

The Board became aware of this situation during its review of requests from two employee groups to include their overtime pay in pensionable compensation under the *Ventura Decision*. While both groups' requests were denied, it became apparent that their on-call pay, which was not in question because it has always been included, was paid in two different ways.

The two groups involved were the Social Services Children's Protective Services after hours emergency response team and the Health Services hazardous materials after hours emergency response team. The first group continues to receive on-call pay even though called back to work. The second group does not.

There may be other groups who also receive on-call pay. We have no knowledge of who they may be nor do we know how their on-call pay is handled when they're called back to work. Since on-call pay and how it's handled was not the original reason for the Board's review, we limited our attention to the overtime issue only.

CCPRA

CONTRA COSTA COUNTY
EMPLOYEES RETIREMENT ASSOCIATION
1355 Willow Way, Suite 221, Concord, CA 94520-5728
Telephone: (925) 646-5741, Fax: (925) 646-5747

ATTACHMENT C

BASIC RETIREMENT ALLOWANCE

Tier 1					
0.022740	X	\$		X	2.0638 = \$
2.6531	X		2.0638	X	= \$ 5.45 \$
Tier 2					
0.000000	X	\$		X	0.0000 = \$
0	X		0.0000	X	= \$ - \$
Tier 3					
0.000000	X	\$		X	0.0000 = \$
0	X		0.0000	X	= \$ - \$
Safety					
0.030000	X	\$		X	19.6029 = \$
					\$ 2
Sick Leave					
0.022740	X	\$		X	0.6308 = \$
2.6531	X		0.6308	X	= \$ 1.67 \$
TOTAL ALLOWANCE WITHOUT SICK LEAVE \$					
TOTAL ALLOWANCE INCLUDING SICK LEAVE \$					

Curr. Serv.	=	12.5000
Conv. From Tier 1	=	7.1029
Total	=	19.6029
Hours = #hrs.		7200
		0.6308

Maximum accruals used for
 Vacation and personal Holiday
 Current Accruals for Holiday
 comp used.
 Assumes differentials
 continue as currently paid.

Date: 08/09/11 Initials: mr Date: _____ Initials: _____

MEMORANDUM

Date: May 4, 2016

To: Board of Retirement
Gail Strohl, Chief Executive Officer

From: Karen Levy, General Counsel

Subject: State Association of County Retirement Systems 2016 Legislative Proposal

Background

The State Association of County Retirement Systems (SACRS) Legislative Committee is recommending two legislative proposals for SACRS sponsorship for 2016. The proposals will be up for a vote by the SACRS member systems at the Business Meeting of the SACRS Spring Conference, Friday, May 13, 2016. SACRS member systems may vote to support, oppose, or take no position on the legislative proposals.

Specifically, the SACRS member systems will be asked at the SACRS Spring Conference whether the two legislative proposals should be pursued as SACRS-sponsored legislation.

The legislative proposals to be considered for SACRS Sponsorship in 2016 are as follows:

Proposal 1 – Independent District Legislation. This proposal would offer county Boards of Retirement operating under the County Employees Retirement Law of 1937 (CERL) options for pursuing independent district status. The CERL Retirement Boards could choose from a menu of options including following the San Bernardino County and Orange County models (retirement system's management staff become District employees), the Ventura County model (retirement system's top five executive level staff become District's employees) or the CCCERA model (all retirement system staff become District employees). The current language for this proposal was introduced as AB 1853, a copy of which is enclosed.

Impact on CCCERA: CCCERA is already an independent district. The Independent District Proposal would allow other systems to enjoy the same status that CCCERA has had since the enactment of 31522.9 in January of 2015.



Proposal 2 – Employee Sworn Statements. This proposal will allow CERL systems to accept electronic data from employers in lieu of sworn statements from county employees. The proposal will not prevent systems from maintaining the requirement for, or continuing to utilize sworn statements. The current language of this proposal is part of AB 2376 which would amend CERL Section 31526 and provide as follows:

The [Retirement Board] regulations shall include provisions:

- (a) For the election of officers, their terms, meetings, and all other matters relating to the administrative procedure of the board.
- (b) For one of the following:
 - (1) The filing of a sworn statement by every person who is or becomes a member, showing date of birth, nature and duration of employment with the county, compensation received, and other information as is required by the board.
 - (2) In lieu of a sworn statement, the submission by the member's employer to the retirement association of the information otherwise required in paragraph (1), in a form determined by the retirement association.
- (c) For forms of annuity certificates and other forms as required.

Impact on CCCERA: This proposal would allow CCCERA to accept electronic data from employers in lieu of sworn statements from CCCERA members. It would not prevent CCCERA from continuing to accept sworn statements directly from the members. In some cases, CCCERA already accepts electronic information from the employers, and so, this legislation would codify the practice.

Recommendation

Consider and take possible action to direct the CCCERA Board voting delegate to vote in support of the 2016 SACRS legislative proposal at the May 2016 SACRS Conference.

AMENDED IN ASSEMBLY MARCH 29, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1853

Introduced by Assembly Member Cooper

February 10, 2016

An act to amend Sections *31459.1*, 31468, 31522.5, 31522.7, 31522.9, 31528, 31529.9, 31535, *31557.3*, and 31580.2 of, and to add Section 31522.75 to, the Government Code, relating to county employees' retirement.

LEGISLATIVE COUNSEL'S DIGEST

AB 1853, as amended, Cooper. County employees' retirement: districts: retirement system governance.

The County Employees Retirement Law of 1937 (CERL) authorizes counties to establish retirement systems pursuant to its provisions in order to provide pension benefits to their employees. CERL defines a district for these purposes, includes specified county retirement systems within that definition, and permits a district to participate in CERL retirement systems. CERL generally provides that the personnel of a county retirement system are county employees, subject to county civil service provisions and salary ordinances, but also authorizes the boards of retirement in specified counties to adopt provisions providing for the appointment of personnel who are to be employees of the retirement system, as well as other administrative provisions that reflect the independence of the retirement system from the county.

The California Public Employees' Pension Reform Act of 2013 (PEPRA) requires a public retirement system, as defined, to modify its plan or plans to comply with the act and establishes new retirement formulas that a public employer offering a defined benefit pension plan

for employees first hired on or after January 1, 2013, may not exceed. PEPRA authorizes individuals who were employed by any public employer before January 1, 2013, and who became employed by a subsequent public employer for the first time on or after January 1, 2013, to be subject to the retirement plan that would have been available to employees of the subsequent employer who were first employed by the subsequent employer on or before December 31, 2012, if the individual was subject to reciprocity, as specified.

This bill would authorize the retirement board of any retirement system operating under CERL to elect, by resolution, to be a district under the law. The bill would authorize a board to adopt, by resolution, specified administrative provisions that would classify various personnel of the retirement system as employees of the retirement system and not employees of the county. In regard to county employees who would become retirement system employees, the bill would prescribe requirements in connection with their compensation and employment benefits and status. These provisions would include maintaining their county retirement benefits that would otherwise be reduced under PEPRA, keeping their employment classifications, and affording employees the opportunity to continue participation in group health and dental plans, among other plans and programs. The bill would also prescribe requirements regarding labor negotiations and the continuity of labor agreements. The bill would grant a retirement system electing these provisions the authority to adopt the regulations and enter into the agreements necessary to implement them. The bill would authorize retirement systems currently operating under alternative administrative structures also to adopt these provisions. *The bill would also extend this authorization and the associated provisions to a board of investment, as specified.* The bill would make various technical and conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 31459.1 of the Government Code is
- 2 amended to read:
- 3 31459.1. (a) In a county in which a board of investments has
- 4 been established pursuant to Section 31520.2:

1 (1) As used in Sections 31453, 31453.5, 31454, 31454.1,
2 31454.5, 31472, 31588.1, 31589.1, 31591, 31592.3, 31594,
3 31595.1, 31595.9, 31596, 31596.1, 31601.1, 31607, 31610, 31611,
4 31612, 31613, 31616, 31618, 31621.11, 31625, 31639.26, 31784,
5 and 31872, “board” means board of investments.

6 (2) As used in the first paragraph of Section 31592.2 and the
7 first paragraph and subdivision (c) of the second paragraph of
8 Section 31595, “board” means a board of investments.

9 (3) Sections 31521, 31522, 31522.1, 31522.2, 31523, 31524,
10 31525, 31528, 31529, 31529.5, 31535.1, 31580.2, 31614, 31680,
11 and 31680.1, apply to both the board of retirement and board of
12 investments, and “board” means either or both the board of
13 retirement and board of investments.

14 (4) Subdivision (a) of Section 31526 and subdivisions (a) and
15 (b) of the second paragraph of Section 31595 apply to both the
16 board of retirement and board of investments, and “board” means
17 either or both the board of retirement and board of investments.

18 (5) *Paragraph (5) of subdivision (l) of Section 31468 and*
19 *Sections 31522.5, 31522.7, 31522.75, and 31522.9 apply to both*
20 *the board of retirement and board of investments. For these*
21 *purposes, “board” means both the board of retirement and board*
22 *of investments. “Board of retirement” also means both the board*
23 *of retirement and board of investments.*

24 (b) In Article 17 (commencing with Section 31880) of this
25 chapter, “board” means the Board of Administration of the Public
26 Employees’ Retirement System.

27 (c) In all other cases, “board” means the board of retirement.

28 (d) This section shall apply only in a county of the first class,
29 as defined in Section 28020, as amended by Chapter 1204 of the
30 Statutes of 1971, and Section 28022, as amended by Chapter 43
31 of the Statutes of 1961.

32 **SECTION 1.**

33 *SEC. 2.* Section 31468 of the Government Code is amended
34 to read:

35 31468. (a) “District” means a district, formed under the laws
36 of the state, located wholly or partially within the county other
37 than a school district.

38 (b) “District” also includes any institution operated by two or
39 more counties, in one of which there has been adopted an ordinance
40 placing this chapter in operation.

1 (c) "District" also includes any organization or association
2 authorized by Chapter 26 of the Statutes of 1935, as amended by
3 Chapter 30 of the Statutes of 1941, or by Section 50024, which
4 organization or association is maintained and supported entirely
5 from funds derived from counties, and the board of any retirement
6 system is authorized to receive the officers and employees of that
7 organization or association into the retirement system managed
8 by the board.

9 (d) "District" also includes, but is not limited to, any sanitary
10 district formed under Part 1 (commencing with Section 6400) of
11 Division 6 of the Health and Safety Code.

12 (e) "District" also includes any city, public authority, public
13 agency, and any other political subdivision or public corporation
14 formed or created under the constitution or laws of this state and
15 located or having jurisdiction wholly or partially within the county.

16 (f) "District" also includes any nonprofit corporation or
17 association conducting an agricultural fair for the county pursuant
18 to a contract between the corporation or association and the board
19 of supervisors under the authority of Section 25905.

20 (g) "District" also includes the Regents of the University of
21 California, but with respect only to employees who were employees
22 of a county in a county hospital, who became university employees
23 pursuant to an agreement for transfer to the regents of a county
24 hospital or of the obligation to provide professional medical
25 services at a county hospital, and who under that agreement had
26 the right and did elect to continue membership in the county's
27 retirement system established under this chapter.

28 (h) "District" also includes the South Coast Air Quality
29 Management District, a new public agency created on February
30 1, 1977, pursuant to Chapter 5.5 (commencing with Section 40400)
31 of Part 3 of Division 26 of the Health and Safety Code.

32 (1) Employees of the South Coast Air Quality Management
33 District shall be deemed to be employees of a new public agency
34 occupying new positions on February 1, 1977. On that date, those
35 new positions are deemed not to have been covered by any
36 retirement system.

37 (2) No retirement system coverage may be effected for an
38 employee of the South Coast Air Quality Management District
39 who commenced employment with the district during the period
40 commencing on February 1, 1977, and ending on December 31,

1 1978, unless and until the employee shall have elected whether to
2 become a member of the retirement association established in
3 accordance with this chapter for employees of Los Angeles County
4 or the retirement association established in accordance with this
5 chapter for employees of San Bernardino County. The election
6 shall occur before January 1, 1980. Any employee who fails to
7 make the election provided for herein shall be deemed to have
8 elected to become a member of the retirement association
9 established in accordance with this chapter for the County of Los
10 Angeles.

11 (3) The South Coast Air Quality Management District shall
12 make application to the retirement associations established in
13 accordance with this chapter for employees of Los Angeles County
14 and San Bernardino County for coverage of employees of the South
15 Coast Air Quality Management District.

16 (4) An employee of the South Coast Air Quality Management
17 District who commenced employment with the district during the
18 period commencing on February 1, 1977, and ending on December
19 31, 1978, and who has not terminated employment before January
20 1, 1980, shall be covered by the retirement association elected by
21 the employee pursuant to paragraph (2). That coverage shall be
22 effected no later than the first day of the first month following the
23 date of the election provided for in paragraph (2).

24 (5) Each electing employee shall receive credit for all service
25 with the South Coast Air Quality Management District. However,
26 the elected retirement association may require, as a prerequisite
27 to granting that credit, the payment of an appropriate sum of money
28 or the transfer of funds from another retirement association in an
29 amount determined by an enrolled actuary and approved by the
30 elected retirement association's board. The amount to be paid shall
31 include all administrative and actuarial costs of making that
32 determination. The amount to be paid shall be shared by the South
33 Coast Air Quality Management District and the employee. The
34 share to be paid by the employee shall be determined by good faith
35 bargaining between the district and the recognized employee
36 organization, but in no event shall the employee be required to
37 contribute more than 25 percent of the total amount required to be
38 paid. The elected retirement association's board may not grant that
39 credit for that prior service unless the request for that credit is
40 made to, and the required payment deposited with, the elected

1 retirement association's board no earlier than January 1, 1980, and
2 no later than June 30, 1980. The foregoing shall have no effect on
3 any employee's rights to reciprocal benefits under Article 15
4 (commencing with Section 31830).

5 (6) An employee of the South Coast Air Quality Management
6 District who commenced employment with the district after
7 December 31, 1978, shall be covered by the retirement association
8 established in accordance with this chapter for employees of San
9 Bernardino County. That coverage shall be effected as of the first
10 day of the first month following the employee's commencement
11 date.

12 (7) Notwithstanding paragraphs (2) and (4) above, employees
13 of the South Coast Air Quality Management District who were
14 employed between February 1, 1977, and December 31, 1978, and
15 who terminate their employment between February 1, 1977, and
16 January 1, 1980, shall be deemed to be members of the retirement
17 association established in accordance with this chapter for the
18 employees of Los Angeles County commencing on the date of
19 their employment with the South Coast Air Quality Management
20 District.

21 (i) "District" also includes any nonprofit corporation that
22 operates one or more museums within a county of the 15th class,
23 as described by Sections 28020 and 28036 of the Government
24 Code, as amended by Chapter 1204 of the Statutes of 1971,
25 pursuant to a contract between the corporation and the board of
26 supervisors of the county, and that has entered into an agreement
27 with the board and the county setting forth the terms and conditions
28 of the corporation's inclusion in the county's retirement system.

29 (j) "District" also includes any economic development
30 association funded in whole or in part by a county of the 15th class,
31 as described by Sections 28020 and 28036 of the Government
32 Code, as amended by Chapter 1204 of the Statutes of 1971, and
33 that has entered into an agreement with the board of supervisors
34 and the county setting forth the terms and conditions of the
35 association's inclusion in the county's retirement system.

36 (k) "District" also includes any special commission established
37 in the Counties of Tulare and San Joaquin as described by Section
38 14087.31 of the Welfare and Institutions Code, pursuant to a
39 contract between the special commission and the county setting
40 forth the terms and conditions of the special commission's

1 inclusion in the county’s retirement system with the approval of
2 the board of supervisors and the board of retirement.

3 (l) (1) “District” also includes the retirement system established
4 under this chapter in Orange County.

5 (2) “District” also includes the retirement system established
6 under this chapter in San Bernardino County at such time as the
7 board of retirement, by resolution, makes this section applicable
8 in that county.

9 (3) “District” also includes the retirement system established
10 under this chapter in Contra Costa County.

11 (4) “District” also includes the retirement system established
12 under this chapter in Ventura County.

13 (5) “District” also includes a retirement system established under
14 this chapter at the time that the board of retirement, by resolution,
15 makes this section *subdivision* applicable to the retirement system
16 in that county.

17 (m) “District” also includes the Kern County Hospital Authority,
18 a public agency that is a local unit of government established
19 pursuant to Chapter 5.5 (commencing with Section 101852) of
20 Part 4 of Division 101 of the Health and Safety Code.

21 ~~SEC. 2.~~

22 *SEC. 3.* Section 31522.5 of the Government Code is amended
23 to read:

24 31522.5. (a) In a county in which the board of retirement has
25 appointed personnel pursuant to Section 31522.1, the board of
26 retirement may appoint an administrator, an assistant administrator,
27 a chief investment officer, senior management employees next in
28 line of authority to the chief investment officer, subordinate
29 administrators, senior management employees next in line of
30 authority to subordinate administrators, and legal counsel.

31 (b) Notwithstanding any other provision of law, the personnel
32 appointed pursuant to this section may not be county employees
33 but shall be employees of the retirement system, subject to terms
34 and conditions of employment established by the board of
35 retirement. Except as specifically provided in this subdivision, all
36 other personnel shall be county employees for purposes of the
37 county’s employee relations resolution, or equivalent local rules,
38 and the terms and conditions of employment established by the
39 board of supervisors for county employees, including those set
40 forth in a memorandum of understanding.

1 (c) Except as otherwise provided by Sections 31529.9 and
2 31596.1, the compensation of personnel appointed pursuant to this
3 section shall be an expense of administration of the retirement
4 system, pursuant to Section 31580.2.

5 (d) The board of retirement and board of supervisors may enter
6 into any agreements as may be necessary and appropriate to carry
7 out the provisions of this section.

8 (e) Section 31522.2 is not applicable to any retirement system
9 that elects to appoint personnel pursuant to this section.

10 (f) This section shall apply in Orange County.

11 (g) This section shall apply to the retirement system established
12 under this chapter in San Bernardino County at such time as the
13 board of retirement, by resolution, makes this section applicable
14 in that county.

15 (h) This section shall apply to a retirement system established
16 under this chapter at the time that the board of retirement, by
17 resolution, makes this section applicable in that county.

18 ~~SEC. 3:~~

19 *SEC. 4.* Section 31522.7 of the Government Code is amended
20 to read:

21 31522.7. (a) In addition to the authority provided pursuant to
22 Section 31522.5, the board of retirement in the County of San
23 Bernardino, or in any other county in which this section has been
24 made applicable, may appoint an administrator, an assistant
25 administrator, a chief investment officer, senior management
26 employees next in line of authority to the chief investment officer,
27 subordinate administrators, senior management employees next
28 in line of authority to subordinate administrators, supervisors and
29 employees with specialized training and knowledge in pension
30 benefit member services, investment reporting compliance,
31 investment accounting, pension benefit tax reporting, pension
32 benefit financial accounting, pension law, and legal counsel.

33 (b) Notwithstanding any other provision of law, the personnel
34 appointed pursuant to this section may not be county employees
35 but shall be employees of the retirement system, subject to terms
36 and conditions of employment established by the board of
37 retirement. Except as specifically provided in this subdivision, all
38 other personnel shall be county employees for purposes of the
39 county's employee relations resolution, or equivalent local rules,
40 and the terms and conditions of employment established by the

1 board of supervisors for county employees, including those set
2 forth in a memorandum of understanding.

3 (c) Except as otherwise provided by Sections 31529.9 and
4 31596.1, the compensation of personnel appointed pursuant to this
5 section shall be an expense of administration of the retirement
6 system, pursuant to Section 31580.2.

7 (d) The board of retirement and board of supervisors may enter
8 into any agreements as may be necessary and appropriate to carry
9 out the provisions of this section.

10 (e) Section 31522.2 is not applicable if the retirement system
11 elects to appoint personnel pursuant to this section.

12 (f) This section shall apply to the retirement system established
13 under this chapter in San Bernardino County at such time as the
14 board of retirement, by resolution, makes this section applicable
15 in that county.

16 (g) This section shall apply to a retirement system established
17 under this chapter at the time that the board of retirement, by
18 resolution, makes this section applicable in that county.

19 ~~SEC. 4.~~

20 *SEC. 5.* Section 31522.75 is added to the Government Code,
21 immediately following Section 31522.7, to read:

22 31522.75. (a) Any retirement system established under this
23 chapter, including a retirement system that, at the time of the
24 enactment of this section, is operating pursuant to Section 31522.5,
25 31522.7, or 31522.9, may elect to make this section, *paragraph*
26 *(5) of subdivision (l) of* Section 31468, and Section 31522.5,
27 31522.7, or 31522.9, applicable to the retirement system upon
28 adoption of a resolution by the board of retirement.

29 (b) A board of retirement may elect to appoint personnel, or
30 may authorize the retirement administrator to appoint personnel,
31 to administer the system as provided in this section.

32 (c) (1) Notwithstanding any other law, the personnel appointed
33 pursuant to this section and the sections referenced in subdivision
34 (a) shall not be county employees, but shall be employees of the
35 retirement system, subject to terms and conditions of employment
36 established by the board of retirement and the provisions of this
37 section.

38 (2) A county employee to whom the California Public
39 Employees' Pension Reform Act of 2013 (~~Article 4, commencing~~
40 ~~4 (commencing~~ with Section ~~7522~~ 7522) of Chapter 21 of Division

1 7 of Title 1) did not apply before becoming a retirement system
2 employee shall maintain that status as an employee of the
3 retirement system.

4 (3) For purposes of employment by a subsequent public
5 employer, as described in paragraph (1) of subdivision (c) of
6 Section 7522.02, the retirement system shall have the status of the
7 county as a subsequent employer.

8 (4) With regard to an individual who was employed by the
9 county before January 1, 2013, and who becomes a retirement
10 system employee and then changes employment positions as
11 described in paragraph (2) of subdivision (c) of Section 7522.02,
12 the retirement system shall have the former obligations of the
13 county to provide a defined benefit plan that otherwise would have
14 been available to the employee had he or she remained a county
15 employee.

16 (d) Any employees who were previously appointed to retirement
17 system personnel positions pursuant to Section ~~31522.2 or 31522.3~~
18 *31522.2, 31522.3, or 31522.4* shall cease to be county employees
19 and shall become retirement system employees at their existing or
20 equivalent classifications as of the date the board of retirement
21 makes this section applicable pursuant to subdivision (a), subject
22 to any subsequent revisions the retirement board may make
23 pursuant to regulations governing terms and conditions of
24 employment, and when applicable, the provisions of a subsequent
25 ~~memoranda~~ *memorandum* of understanding or bargaining
26 agreement covering the employee.

27 (e) Any employees who were previously appointed to retirement
28 system personnel positions pursuant to Section 31522.1 and are
29 subsequently appointed as retirement system employees pursuant
30 to subdivision (a) shall cease to be county employees and shall
31 become retirement system employees at their existing or equivalent
32 classifications as of the date the board of retirement makes this
33 ~~section applicable;~~ *applicable, subject to any subsequent revisions*
34 *the retirement board may make pursuant to regulations governing*
35 *terms and conditions of employment and, when applicable, the*
36 *provisions of a subsequent memorandum of understanding or*
37 *bargaining agreement covering the employee.*

38 (f) A retirement system that elects to make this section
39 applicable shall recognize as the exclusive representative of those
40 former county employees who become retirement system

1 employees the employee organization that represented those
2 employees, if any, and shall honor the provisions in any
3 ~~memoranda memorandum~~ of understanding or bargaining
4 agreement in effect on the date the board of retirement makes this
5 section applicable for the duration of the ~~memoranda memorandum~~
6 of understanding or bargaining agreement.

7 (g) The following shall apply to those persons who become
8 retirement system employees pursuant to this section:

9 (1) Employment seniority of a retirement system employee,
10 including, but not limited to, an employee's continuous service
11 date used for purposes of retirement or other benefits, as calculated
12 and used under the county system in effect before the date this
13 section becomes applicable, shall be calculated and used in the
14 same manner by the retirement system at the time the county
15 employee becomes a retirement system employee, subject to any
16 subsequent revisions the retirement board may make pursuant to
17 regulations governing terms and conditions of employment, and
18 when applicable, the provisions of a subsequent ~~memoranda~~
19 ~~memorandum~~ of understanding or bargaining agreement covering
20 the employee.

21 (2) Retirement system employees shall have the same status
22 they had as probationary, permanent, or regular employees under
23 the county system in effect on the date this section becomes
24 applicable, subject to any subsequent revisions the retirement board
25 may make pursuant to regulations governing terms and conditions
26 of employment, and when applicable, the provisions of a
27 subsequent ~~memoranda memorandum~~ of understanding or
28 bargaining agreement covering the employee.

29 (3) Retirement system employees shall receive their same salary
30 rates, leaves of absence, leave accrual rates, including all related
31 compensation rules and provisions applicable to those salary rates,
32 leaves, and accrual rates as under the county system on the date
33 this section becomes applicable, subject to any subsequent revisions
34 the retirement board may make pursuant to regulations governing
35 terms and conditions of employment, and when applicable, the
36 provisions of a subsequent ~~memoranda memorandum~~ of
37 understanding or bargaining agreement covering the employee.

38 (4) (A) Retirement system employees shall be afforded the
39 opportunity to participate in county benefit plans and programs,
40 including, but not limited to, group health, dental and life insurance,

1 workers' compensation, and deferred compensation that existed
2 on the date this section becomes applicable, under the same terms
3 and conditions as those programs were available to county
4 employees. The retirement board shall contract with the county to
5 administer the county benefit plans and programs for retirement
6 system employees, under the same terms and conditions applicable
7 to county employees, and shall provide the employer cost for
8 participation in the programs unless and until the retirement board
9 chooses to provide different benefits or different benefit levels
10 through another provider.

11 (B) The participation of retirement system employees in county
12 benefit plans or programs, and the county's administration of
13 certain compensation or benefits for retirement employees pursuant
14 to this section, shall not create or be construed to create, a meet
15 and confer obligation between the county and any employee
16 organization recognized to represent retirement system employees.

17 (h) The board of retirement and the county may enter into any
18 agreements necessary and appropriate to carry out this section.

19 (i) Sections 31522.1, ~~31522.2 and 31522.3~~ 31522.2, 32522.3,
20 and 32522.4 shall no longer apply to a retirement system that has
21 made this section applicable.

22 (j) Upon adoption of this section, the board of retirement may
23 make regulations consistent with this chapter, and the provisions
24 of Section 31525 that require approval of retirement board
25 regulations by the board of supervisors shall no longer apply.

26 (k) The compensation of personnel appointed pursuant to this
27 section shall be an expense of administration of the retirement
28 system pursuant to Section 31580.2, except as provided in Section
29 31522.5, 31522.7, or 31522.9, as those sections may apply to a
30 retirement system that has adopted them.

31 (l) This section shall not be construed as to modify any authority,
32 or to require any subsequent action by, a retirement system that
33 has made *paragraph (5) of subdivision (l) of Section 31468* and
34 Section 31522.5, 31522.7, 31522.9, or 31522.10 applicable to the
35 retirement system prior to the effective date of this section.

36 (m) Any retirement system that has elected to make either
37 Section 31522.5, 31522.7, or 31522.9 applicable upon adoption
38 of a subsequent resolution by the board of retirement may make
39 a different section apply.

1 SEC. 5:

2 SEC. 6. Section 31522.9 of the Government Code is amended
3 to read:

4 31522.9. (a) The board of retirement of a county may appoint
5 a retirement administrator and other personnel as are required to
6 accomplish the necessary work of the board. The board may
7 authorize the administrator to make these appointments on its
8 behalf. Notwithstanding any other law, the personnel so appointed
9 shall not be county employees but shall become employees of the
10 retirement system, subject to terms and conditions of employment
11 established by the board of retirement, including those set forth in
12 ~~memoranda~~ a memorandum of understanding executed by the
13 board of retirement and recognized employee organizations.

14 (b) Sections 31522.1 and 31522.2 shall not apply to a retirement
15 system that appoints personnel pursuant to this section.

16 (c) The retirement system that appoints personnel pursuant to
17 this section is a public agency for purposes of the
18 Meyers-Milias-Brown Act (Chapter 10 (commencing with Section
19 3500) of Division 4).

20 (d) The compensation of personnel appointed pursuant to this
21 section shall be an expense of administration of the retirement
22 system, pursuant to Section 31580.2, except as provided in Sections
23 31529.5, 31529.9, and 31596.1.

24 (e) The board of retirement and the board of supervisors may
25 enter into agreements as they determine are necessary and
26 appropriate in order to carry out the provisions of this section.

27 (f) The retirement system, upon the effective date of this section,
28 shall retain, for a 90-day transition employment period,
29 nonprobationary employees who, upon the effective date of this
30 section, were covered by a county memorandum of understanding
31 and employed by the county at the retirement system's facilities,
32 unless just cause exists to terminate the employees or legitimate
33 grounds exist to lay off these employees. If during the 90-day
34 period the retirement system determines that a layoff of these
35 employees is necessary, the retirement system shall retain the
36 employees by seniority within job classification. The terms and
37 conditions of employment of the employees retained pursuant to
38 this subdivision shall be subject to the terms and conditions
39 established by the applicable ~~memoranda~~ memorandum of
40 understanding executed by the board of retirement and the

1 recognized employee organizations. During the 90-day transition
2 period, probationary employees shall maintain only those rights
3 they initially acquired pursuant to their employment with the
4 county.

5 (g) Subject to the employees' rights under the
6 Meyers-Miliias-Brown Act (Chapter 10 (commencing with Section
7 3500) of Division 4), the retirement system, upon the effective
8 date of this section, shall recognize as the exclusive representative
9 of the employees retained pursuant to subdivision (f) the recognized
10 employee organizations that represented those employees when
11 employed by the county. The initial terms and conditions for those
12 employees shall be as previously established by the applicable
13 ~~memoranda~~ *memorandum* of understanding executed by the county
14 and recognized employee organizations.

15 (h) This section shall apply in Contra Costa County.

16 (i) This section shall apply to a retirement system established
17 under this chapter at the time that the board of retirement, by
18 resolution, makes this section applicable in that county.

19 ~~SEC. 6:~~

20 *SEC. 7.* Section 31528 of the Government Code is amended
21 to read:

22 31528. (a) Unless permitted by this chapter, a member or
23 employee of the board shall not become an endorser, surety, or
24 obligor on, or have any personal interest, direct or indirect, in the
25 making of any investment for the board, or in the gains or profits
26 accruing from those investments. A member or employee of the
27 board shall not directly or indirectly, for himself or herself, or as
28 an agent or partner of others, borrow or use any of the funds or
29 deposits of the retirement system, except to make current and
30 necessary payments authorized by the board.

31 (b) A member or employee of the board shall not, directly or
32 indirectly, by himself or herself, or as an agent or partner or
33 employee of others, sell or provide any investment product that
34 would be considered an asset of the fund, to any retirement system
35 established pursuant to this chapter.

36 (c) An individual who held a position designated in Section
37 31522.3, 31522.4, 31522.5, or established pursuant to Section
38 31522.75, or was a member of the board or an administrator, shall
39 not, for a period of two years after leaving that position, for
40 compensation, act as agent or attorney for, or otherwise represent,

1 any other person except the county, by making any formal or
2 informal appearance before, or any oral or written communication
3 to, the retirement system, or any officer or employee thereof, if
4 the appearance or communication is made for the purpose of
5 influencing administrative or legislative action, or any action or
6 proceeding involving the issuance, amendment, awarding, or
7 revocation of a permit, license, grant, contract, or sale or purchase
8 of goods or property.

9 ~~SEC. 7.~~

10 *SEC. 8.* Section 31529.9 of the Government Code is amended
11 to read:

12 31529.9. (a) In addition to the powers granted by Sections
13 31522.5, 31522.75, 31522.9, 31529, 31529.5, 31614, and 31732,
14 the board of retirement and the board of investment may contract
15 with the county counsel or with attorneys in private practice or
16 employ staff attorneys for legal services.

17 (b) Notwithstanding Sections 31522.5, 31522.7, 31522.75,
18 31529.5, and 31580, the board shall pay, from system assets,
19 reasonable compensation for the legal services.

20 (c) This section applies to any county of the 2nd class, 7th class,
21 9th class, 14th class, 15th class, or the 16th class as described by
22 Sections 28020, 28023, 28028, 28030, 28035, 28036, and 28037.

23 (d) This section shall also apply to any other county if the board
24 of retirement, by resolution adopted by majority vote, makes this
25 section applicable in the county.

26 ~~SEC. 8.~~

27 *SEC. 9.* Section 31535 of the Government Code is amended
28 to read:

29 31535. The board may issue subpoenas and subpoenas duces
30 tecum, and compensate persons subpoenaed. This power shall be
31 exercised and enforced in the same manner as the similar power
32 granted the board of supervisors in Article 9 (commencing with
33 Section 25170) of Chapter 1, Part 2, Division 2; except that the
34 power shall extend only to matters within the retirement board's
35 jurisdiction, and committees of the board shall not have this power.
36 Reasonable fees and expenses may be provided for by board
37 regulation for any or all of such witnesses regardless of which
38 party subpoenaed them.

39 Subpoenas shall be signed by the chairman or secretary of the
40 retirement board, except that the board may by regulation provide

1 for express written delegation of its subpoena power to any referee
2 it appoints pursuant to this chapter or to any administrator
3 appointed pursuant to Section 31522.2, 31522.5, 31522.7, 31522.9,
4 or 31522.10.

5 Any member of the board, the referee, or any person otherwise
6 empowered to issue subpoenas may administer oaths to, or take
7 depositions from, witnesses before the board or referee.

8 *SEC. 10. Section 31557.3 of the Government Code is amended*
9 *to read:*

10 31557.3. On the date a district, as defined in subdivision (I) of
11 Section 31468, is included in the retirement system, any personnel
12 appointed pursuant to Sections 31522.5, 31522.9, 31522.10,
13 31522.7, 31522.75, and 31529.9 who had previously been in county
14 service shall continue to be members of the system without
15 interruption in service or loss of credit. Thereafter, each person
16 entering employment with the district shall become a member of
17 the system on the first day of the calendar month following his or
18 her entrance into service.

19 ~~SEC. 9:~~

20 *SEC. 11. Section 31580.2 of the Government Code is amended*
21 *to read:*

22 31580.2. (a) In counties in which the board of retirement, or
23 the board of retirement and the board of investment, have appointed
24 personnel pursuant to Section 31522.1, 31522.5, 31522.7,
25 31522.75, 31522.9, or 31522.10, the respective board or boards
26 shall annually adopt a budget covering the entire expense of
27 administration of the retirement system which expense shall be
28 charged against the earnings of the retirement fund. The expense
29 incurred in any year may not exceed the greater of either of the
30 following:

31 (1) Twenty-one hundredths of 1 percent of the accrued actuarial
32 liability of the retirement system.

33 (2) Two million dollars (\$2,000,000), as adjusted annually by
34 the amount of the annual cost-of-living adjustment computed in
35 accordance with Article 16.5 (commencing with Section 31870).

36 (b) Expenditures for computer software, computer hardware,
37 and computer technology consulting services in support of these

- 1 computer products shall not be considered a cost of administration
- 2 of the retirement system for purposes of this section.

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