

Goodwin, Andrea

From: Frost, Marcie <Marcie.Frost@calpers.ca.gov>
Sent: Sunday, October 18, 2020 7:38 AM
To: Fiona ma
Cc: Ruffino, Frank
Subject: Re: Confidential Premium for City of Santa Ana

Thanks Fiona.

Sent from my iPhone

On Oct 17, 2020, at 10:03 AM, Fiona ma <fionamacpa@gmail.com> wrote:

[External Email Caution]

Keeping you in the loop. Here's the latest...

Begin forwarded message:

Begin forwarded message:

From: Gerry Serrano <gerry.serrano@santaanapoa.com>
Date: October 16, 2020 at 5:38:43 PM PDT
To: "Suine, Anthony" <Anthony.Suine@calpers.ca.gov>, Jason Perez <Jason.Perez@CoronaCA.gov>, "Lau, Kevin" <Kevin.Lau@calpers.ca.gov>, "fionamacpa@gmail.com" <fionamacpa@gmail.com>
Cc: "Hanson, Brad" <Brad.Hanson@calpers.ca.gov>, "Ostrander, Renee" <Renee.Ostrander@calpers.ca.gov>, Charles Goldwasser <cgoldwasser@goldwasser-law.com>
Subject: RE: Confidential Premium for City of Santa Ana

Mr. Suine –

First and foremost, thank you so much for your time on Wednesday. I found our phone conversation very beneficial and wanted to elaborate a bit more and am providing the following additional information for your consideration and review.

In further analysis, I feel the statute allows my past reoccurring & reported compensation as pensionable. Plus, as stated earlier by Irwin Nowick (from CA Treasurer Fiona

Ma's office) this has been reoccurring, reported compensation for almost 5 years so is pensionable. I pray after further review, hopefully a decision to accept my prior years compensation and language cleanup to be in clear compliance with CalPERS law.

CalPERS Law states:

Definition of Special Compensation – 571(5)(b)(2) available to all members in a group or class

- The key wording in this section defines a group or job classification. It does not reference or pertain to “positions” or assignments. A classification is a recognized work group in the city like police officer, police sergeant, etc. Within the city there are positions like Field Training Coordinator, K9 Officer, Helicopter Observer, Investigator, etc. These positions are not recognized job classifications in the city. The city of Santa Ana, like most cities throughout the state, may have some positions/assignments that are only filled by one person from a job classification. For example, we may only have one K9 Officer, FTO, or one individual that is bilingual. As long as the positions are available to all members in the job classification, per statute it is reportable compensation whether or not there is only one position or assignment.

Pensionable Compensation – 571.1(a)(1)(C) must be reported periodically as earned

- I have been receiving this compensation and both the city and I paying and reporting it as compensation for almost five (5) years. Also, according to Irwin Nowick (from CA Treasurer Fiona Ma's office) has been reoccurring, reported compensation so is pensionable.

Pensionable Compensation – 571.1(a)(A) group or class of employment means a number of employees... one employee may not be considered a group or class.

- My classification is police sergeant which is a recognized job classification with the city of Santa Ana. My classification is not POA president; this is not a recognized job classification. The association's president is an ancillary position.

The current MOU is flawed in language and needs to be brought into compliance.

Recently, as a result of a CalPERS audit the city discovered our reporting on Holiday Pay was not in compliance and CalPERS was helpful and assisted in allowing the city to correct MOU language and get into compliance for holiday pay reporting moving forward and none of our employees were harmed.

Our MOU is flawed in the descriptor of the Confidential Premium. The city has been reported this pay and paying on it for years. As the employee, I have also been paying on this reported premium pay. Below is a proposed language revision for CalPERS approval. I pray this brings the language into compliance and CalPERS accepts the prior years of reported compensation.

- **Rank and file employees who are routinely and consistently assigned to sensitive positions or assignments requiring trust and discretion will be paid 5% over top step pay of the next higher rank including all available pay additives.**

I humbly request consideration and respectfully await for a positive resolution.

Respectfully,

Gerry Serrano

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From: Suine, Anthony <Anthony.Suine@calpers.ca.gov>
Sent: Wednesday, October 14, 2020 9:30 AM
To: Gerry Serrano <gerry.serrano@santaanapoa.com>; Jason Perez <Jason.Perez@CoronaCA.gov>; Lau, Kevin <Kevin.Lau@calpers.ca.gov>
Cc: Hanson, Brad <Brad.Hanson@calpers.ca.gov>; Ostrander, Renee <Renee.Ostrander@calpers.ca.gov>; Charles Goldwasser <cgoldwasser@goldwasser-law.com>
Subject: RE: Confidential Premium for City of Santa Ana

Mr. Serrano and Mr. Perez,

Let me review your ideas with my team and we will get back to you with any comments or concerns. Thank you.

From: Gerry Serrano <gerry.serrano@santaanapoa.com>
Sent: Tuesday, October 13, 2020 1:58 PM
To: Jason Perez <Jason.Perez@CoronaCA.gov>; Suine, Anthony <Anthony.Suine@calpers.ca.gov>; Lau, Kevin

<Kevin.Lau@calpers.ca.gov>

Cc: Hanson, Brad <Brad.Hanson@calpers.ca.gov>; Ostrander, Renee <Renee.Ostrander@calpers.ca.gov>; Charles Goldwasser <cgoldwasser@goldwasser-law.com>

Subject: RE: Confidential Premium for City of Santa Ana

[External Email Caution]

Mr. Suine –

Is the below language acceptable to CalPERS as a pay incentive:

- Master Police Officer - Sworn rank and file officers who are assigned to a specialty assignment (Santa Ana Police Athletic & Activity League), have a four-year degree from an accredited college or university, a supervisory POST certificate and at least twenty-five years of service will be compensated 5% over top step pay of the next higher level rank including all available pay additives.

Respectfully,

Gerry

From: Jason Perez <Jason.Perez@CoronaCA.gov>

Sent: Tuesday, October 13, 2020 12:49 PM

To: Suine, Anthony <Anthony.Suine@calpers.ca.gov>; Gerry Serrano <gerry.serrano@santaanapoa.com>; Lau, Kevin <Kevin.Lau@calpers.ca.gov>

Cc: Hanson, Brad <Brad.Hanson@calpers.ca.gov>; Ostrander, Renee <Renee.Ostrander@calpers.ca.gov>; Charles Goldwasser <cgoldwasser@goldwasser-law.com>

Subject: RE: Confidential Premium for City of Santa Ana

Mr. Suine,

Can Santa Ana create a Administrative Sergeant position, whos' base rate is top-step of the next rank? They would open it up for testing or request for transfer.

Thanks.

Be safe and have fun,

Perez

<image001.png>

Jason Perez, Sergeant
Firearms Training Unit
730 Public Safety Way
Corona Ca., 92880
Desk: (951) 736-2360

From: Suine, Anthony <Anthony.Suine@calpers.ca.gov>
Sent: Tuesday, October 13, 2020 12:04 PM
To: Gerry Serrano <gerry.serrano@santaanapoa.com>; Lau, Kevin <Kevin.Lau@calpers.ca.gov>; Jason Perez <Jason.Perez@CoronaCA.gov>
Cc: Hanson, Brad <Brad.Hanson@calpers.ca.gov>; Ostrander, Renee <Renee.Ostrander@calpers.ca.gov>; Charles Goldwasser <cgoldwasser@goldwasser-law.com>
Subject: Re: Confidential Premium for City of Santa Ana

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Good afternoon Mr. Serrano,

I'd like to clarify the issue with the confidential premium pay identified in the MOU. As we discussed previously, the primary issue is that it is payable to a group or class of only one, that being the POA President. This violation prohibits CalPERS from allowing the pay as reportable compensation. From our review, it looks as if the City has been reporting this pay for you since June 2020. The employer can receive a full refund of employer contributions and employer paid member contributions upon reversal of the payroll entries for you and any others. We apologize for any issues with your employment this has caused and we are happy to work with the employer to resolve the reporting issues. Please let me know if I can be of any further assistance.

Anthony Suine

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From: Gerry Serrano <gerry.serrano@santaanapoa.com>
Sent: Thursday, October 8, 2020 3:14:35 PM
To: Lau, Kevin <Kevin.Lau@calpers.ca.gov>; Jason.Perez@CoronaCA.gov <Jason.Perez@CoronaCA.gov>
Cc: Hanson, Brad <Brad.Hanson@calpers.ca.gov>; Ostrander, Renee <Renee.Ostrander@calpers.ca.gov>; Suine, Anthony <Anthony.Suine@calpers.ca.gov>; Charles Goldwasser <cgoldwasser@goldwasser-law.com>
Subject: RE: Confidential Premium for City of Santa Ana

[External Email Caution]

Mr. Lau –

Please allow me to provide further on the correct fact pattern. You are correct that I'm a sergeant with the city of Santa Ana Police Department. I am also the represented labor association's president. As sergeant and president of the recognized labor group per the Meyer Miliias Brown Act and agreement with the city do routinely work in sensitive positions requiring trust and confidentiality such as employee grievances, policy implementation meet & confers, legal litigation, lawsuits and labor negotiations to name a few. The additional duties along this vein as association president is why the city has been paying the confidential premium for years, even past personnel assigned in this position.

I took this assignment with detrimental reliance and was never admonished that this premium was not reportable. The city has been paying me this premium for years, contributing to CalPERS as I the employee. This is not spiking. According to California Treasurer, Fiona Ma, *"according to Irwin Nowick, this is recurring Compensation which is pensionable under PEPRRA and he has been paying for this."*

In a recent audit, the city of Santa Ana was notified that our MOU language was flawed so our intent is to correct the language so we are in compliance. I have not taken a pay cut, but rather have been receiving this pay and paying the pension on it, as the city, for years. We are looking for a positive resolution to be in compliance.

Respectfully,

Gerry Serrano

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From: Lau, Kevin <Kevin.Lau@calpers.ca.gov>
Sent: Thursday, October 8, 2020 12:55 PM
To: Jason.Perez@CoronaCA.gov; Gerry Serrano <gerry.serrano@santaanapoa.com>
Cc: Hanson, Brad <Brad.Hanson@calpers.ca.gov>; Ostrander, Renee <Renee.Ostrander@calpers.ca.gov>; Suine, Anthony <Anthony.Suine@calpers.ca.gov>
Subject: Confidential Premium for City of Santa Ana

Good Afternoon,

Thank you for your patience.

After further review with my team, it appears the Side Letter has not been finalized; therefore, we will not be issuing a Formal Determination with Appeal Rights at this time.

From the fact gathering, it appears Mr. Gerry Serrano accepted an appointment as the Santa Ana Police Officer Association (SAPOA) President. From Mr. Serrano's email, it appeared the appointment as a President resulted in roughly 30% in pay reduction. To compensate the loss, Mr. Serrano is looking to amend a Side Letter to the MOU to provide Confidential Premium of 30%:

“Employees who are routinely and consistently assigned to sensitive positions and assignments requiring trust and discretion shall receive a Confidential Premium of 30% above their current monthly total salary.”

Although CalPERS has no issues with this language if it is approved and it is provided to the group or class, it appears the amendment for this pay is exclusively for the reason to make up Mr. Serrano's reduction in pay “for the rest of [his] life would be devastating to [his] family[.]” The City can certainly pay the President for this pay, but it is currently not reportable as the language is not finalized and secondly, this poses a group or class and pension spiking issues if it is approved for this specific reason.

We also noticed the Confidential Premium is currently reported for Mr. Serrano; which is about 43% of his base salary. According to the current [SAPOA MOU](#), Section 5.1 does not speak to this pay. In addition, Mr. Serrano as a President is not an employee who is routinely and consistently performing job duties for Confidential Premium as a Sergeant; therefore, special assignment pays do not appear to be reportable. The remuneration of funds for the President position are credited by members of the SAPOA donating Holiday Credits. Lastly, Section 5.1 speaks to special assignment pays that are around 2.5% to 5.0% of base salary, the ‘proposed’ Side Letter is seeking 30% of base salary for Confidential Premium.

<image002.png>

Respectfully, CalPERS does not see this Confidential Premium as a reportable item for Mr. Serrano.

Please let us know if you have further questions.

Thank you,

Kevin Lau | Section Manager | Audit Compliance & Resolution Section | Employer Account Management Division | California Public Employees' Retirement System | Office: (916) 795-2665 | Fax: (916) 795-9372

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