Roberto L. Peña
Retirement Administrator

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Bulletin #3

An Update from FCERA Regarding Final Compensation

Readers: A second public hearing was held Saturday, March 15, regarding the final compensation issue. The attorney hired by FCERA concluded that FCERA cannot legally continue the practice of using non-consecutive pay periods to calculate final compensation for the purposes of retirement. The Retirement Board took additional testimony and set the matter for its next consideration on Saturday, April 12, at which time they are expected to take action. Below are further details from the hearing.

- ***About 85 people attend Saturday hearing***. Some 24 speakers gave a range of input. Many speakers said that any reduction in their retirement benefit would be a hardship and unfair; two said they did not want to pay higher future contributions to finance the current method of calculation. Many speakers called for a solution that selects a future date for any change without harming current retirees or those about to retire.

- ***Legal conclusion: FCERA cannot continue "Fresno approach."*** After extensive legal research and surveys of other public pension funds, attorney Bob Blum concluded that FCERA cannot legally continue to use the current method of calculating final compensation, sometimes referred to as the Fresno approach. Blum said his San Francisco-based firm researched relevant law and its application in California and elsewhere. He said no other among the twenty 1937 Act counties, or anywhere in California public sector that he can find, is anyone calculating the highest paid year by allowing them to select isolated, spiked pay periods from different years to include in the "highest" year. Further, Blum reported that case law back to the late 19th century rules that a year is an interval of time with a beginning and end, made up of consecutive increments. He also noted that FCERA's own retirement booklets called for a calculation using 26 "consecutive" pay periods until 2001, when the word "consecutive" was deleted from the text.

  Blum also outlined a range of options to correct the situation. At one extreme, the Board could decide to stop the practice and collect back overpayments of public funds made to members. The Board could also decide to continue the practice into the future. Options between these extremes include continuing payments to those who retired based on FCERA's information and have been receiving the additional benefits, but stopping the practice now or at some designated future date for everyone, or just for future retirees. Recognizing the likelihood of legal action, Blum stressed that speakers' testimony about the “fairness” and hardship of the situation could be helpful in a court setting, where the judge is allowed to consider those issues in decisions.

- ***Actuary quantifies the issue.*** Consulting actuary Ira Summer found that 276 of 3,500 current retirees are receiving additional benefits as a result of the Fresno approach. The average additional benefit is about 4 percent, with many receiving far less, and one receiving almost 28 percent additional. To continue to pay these retirees through their lifetimes would cost an estimated $6.7 million.

  Summer also said that 967 of 1,581 people currently eligible to retire would realize additional benefits if the Fresno approach were to continue, costing an estimated $22 million. Summer also explained that any additional benefits paid under the Fresno approach would have to be made up through higher contributions by the County, districts, and members.

Questions answered. Consultants also addressed questions raised at the first hearing:

FCERA cannot take away vested rights, can they? Blum agrees, but notes that the law says clearly there is no vested right to a mistake, such as he believes is the case here.

FCERA approved it, so don’t they have to provide it? Blum explained that the Board has no authority to provide benefits outside the statutes (law) governing FCERA.

Isn’t this a meet-and-confer item? Blum reported that FCERA cannot meet-and-confer about the law, and this is a legal issue. The Board must comply with the law.

If we made contributions on those high pay periods, we should get the benefit. Both Blum and Summer explained that we pay contributions to retirement on *all* pay over *all* years of employment. By making those contributions you receive credit for the period worked and the pay can be part of the 26 consecutive pay periods that make up your highest average pay. You do not receive a refund of contributions from pay periods that do not make up the highest 26 group, whether using the standard or the Fresno approach.

The cost will go down, so why bother to correct? Blum and Summer stressed that while changes in the County’s policies related to pay could cause the problem to diminish (or increase), the most crucial issue here is the need to comply with the law, which is very strict about protecting the public funds held by the County’s Retirement Fund.

Next meeting: Saturday, April 12, 2003 at 9:00 AM in the Fresno Unified School District Board Chambers, corner of Tulare and M streets, Room 201 This issue will be on the agenda for action