



Berkeley Housing Authority

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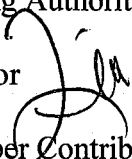
Office of the Executive Director

Item 61

NEW BUSINESS

April 16, 2013

To: Honorable Chairperson and
Members of the Berkeley Housing Authority Board

From: Tia M. Ingram, Executive Director 

Subject: CalPERS - Employer Paid Member Contribution

RECOMMENDATION

Authorize a resolution allowing the Authority to continue paying the full member (employee) contribution for all represented and non-represented employees, pending adoption of new labor contracts with SEIU Local 1021 and Local One, and Board action relative to unrepresented employees.

BACKGROUND

Effective, June 24, 2012, the Human Resources function, including benefit management, for Housing Authority employees transferred to BHA to administer. Since then the Board has taken the following actions with regard to the retirement plan for employees:

- a. Applied for and obtained approval for a separate contract with CalPERS, that is very similar to that which the City has;
- b. Adopted various implementing resolutions as required by CalPERS; and
- c. Approved a policy allowing the employee contribution (paid by the employer) to remain tax deferred, until funds are drawn in retirement.

Pension Reform

We find ourselves implementing a new contract during a period when CalPERS is changing in response to recently passed state legislation, PEPRA (Public Employees Pension Reform Act). Under the CalPERS contract, two contributions are required each month: an employer contribution and an employee contribution. The BHA compensation plan for represented and unrepresented employees (by combination of contract, resolution and past practice) includes CalPERS retirement, fully paid by employer.

One significant change under PEPRA is treatment of pre- and post January 1, 2013 *hires*, with regard to contributions and benefits, the subject of this report.

1. **Payment of Premium**

- For employees hired on or after January 1, 2013 (“new members”), the employer cannot make the member (employee) contribution on behalf of the employee; no exceptions.

- For employees hired on or before December 31, 2012 (“classic members”) the employer may elect to continue to pay all or a portion of the member (employee) portion.

BHA currently pays 100% of the member (employee) contribution for all 13 staff members (plus one authorized Full Time Equivalent position which is currently vacant). This benefit is authorized by contract (Memorandum of Understanding) for the 9 that are represented by SEIU Local 1021, and the two represented by Local One; and for the Executive Assistant and Executive Director consistent with the policies contained in the City’s Unrepresented Employee Manual, which we have followed, but acknowledge failed to formally adopt.

Compensation, including benefits, is governed by labor contracts for 12 of the Authority’s 14 budgeted employees. Notwithstanding the fact that both agreements (Local 1021 and Local One) expired in June 2012, BHA cannot unilaterally impose salary or benefit reductions simply because the MOUs have expired [*City of Fresno v. Fresno Firefighters IAFF Local 753* (1999) 71 Cal.App.4th 82, 99-100]. After an MOU expires, a public entity must refrain from making unilateral changes to employees’ wages or benefits until the employer and union have bargained to impasse.

- We are scheduled for mediation with SEIU Local 1021 on April 24th. If we are not successful in reaching agreement during mediation, we can declare impasse. Until then, BHA is required to honor the provisions in the MOUs and continue paying 100% of the member contribution on behalf of the 10 represented employees *until* other terms are negotiated (one position is vacant).
- We are scheduled to meet with Local One on April 17th. We cannot impose unilateral wage or benefit reductions until we reach impasse in the labor negotiations, and thus BHA is required to honor the MOU and continue paying 100% of the member contribution on behalf of the 2 represented employees *until* other terms are negotiated.
- The same does not apply with regard to preserving benefits provided for in the Unrepresented Employee Manual, which as noted above, BHA has not formally adopted. The Board could elect to discontinue paying the employee contribution for the two unrepresented employees (Executive Director and Executive Assistant).

2. Determining Benefit Amount

The second issue to be addressed is determining the amount of the employer paid member (employee) contribution.

Language in the City CalPERS contract defines the EPMC (Employer Paid Member Contribution) to include an adjustment to the 8% such that the *value* of the contribution is 8%. For example:

Employee earnings	\$1,000 per month
Tax deferred member contribution (8% of salary)	<u>\$ 80</u>
Adjusted earning	\$1,080

Thus, for the employee contribution to retain its *value* (8%), the EPMC is \$80 x 1.8% or \$86.40. It was our understanding that the BHA CalPERS contract would include this same definition, as a carryover from the City contract. However, we learned that this provision was

inadvertently omitted in the new BHA CalPERS contract. Upon Board approval, we will work with CalPERS to revise the contract accordingly.

STATUS

In March 2013, we were contacted by our CalPERS representative (by phone), and advised that we must submit a resolution of the Board, advising how we wish to handle the member (employee) paid contribution, and the value of the employer paid member contribution. The representative suggested we continue the current practice, make the required contributions, and make adjustments at a later date. This will allow us to avoid having penalties assessed against our account.

We are legally contractually obligated to continue making the *full* employer paid member contribution (as defined above) on behalf of the 11 represented employees. This issue is contemplated under PEPRRA:

- a. The employer *may* reduce or eliminate the employer paid member contributions; however
- b. If the employer is constrained by an *existing* MOU, employees hired prior to January 1, 2013 may be exempted through the duration of the MOU.

As a matter of equity and fairness, I urge the Board to extend the same consideration to the only 2 unrepresented employees (Executive Director and Executive Assistant) until new labor contracts are approved which may change this employee benefit, and pending adoption of a policy for unrepresented employees.

FINANCIAL IMPACTS OF RECOMMENDATION

None. The approved FY 2012-13 budget assumes the Authority will make the member (employee) contribution for all BHA employees.

CONTACT PERSON

Jesy Yturalde, Finance Manager, 981-5488
Tia M. Ingram, Executive Director, 981-5471

Attachments:

1. BHA Resolution
2. CalPERS Resolution (CalPERS format)

BERKELEY HOUSING AUTHORITY
RESOLUTION 13-
EMPLOYER PAID MEMBER CONTRIBUTION-CalPERS

WHEREAS, the governing body of the Berkeley Housing Authority Board has the authority to implement Government Code Section 20691; and

WHEREAS, the governing body of the Berkeley Housing Authority has a written labor policy or agreement which specifically provides for the normal member contributions to be paid by the employer; and

WHEREAS, the Berkeley Housing Authority has a practice of extending benefits of the 12 represented employees at least equally to the 2 unrepresented employees; and

WHEREAS, our interpretation of the employee retirement benefit is to preserve full value of the 8% member contribution; and

WHEREAS, we are continuing to finalize the CalPERS contract for Berkeley Housing Authority employees; and

WHEREAS, one of the steps in the procedures to implement Section 20691 is the adoption by the governing body of the Berkeley Housing Authority of a Resolution to commence said Employer Paid Member Contributions (EPMC); and

WHEREAS, we are currently in negotiations with SEIU Local 1021 and Local One around employee benefits; and

WHEREAS, pending approval of new labor agreements BHA is honoring all the terms of the recently expired contracts; and

WHEREAS, the governing body of the Berkeley Housing Authority has identified the following conditions for the purpose of its elections to pay EPMC:

- This benefit shall apply to all classic miscellaneous employees of the Berkeley Housing Authority represented by SEIU Local 1021 and Local One; and equally to all unrepresented employees.
- This benefit shall consist of paying 8% of the normal member contributions as EPMC.
- The effective date of this Resolution shall be June 24, 2012.

NOW, THEREFORE, BE IT RESOLVED that the governing body of the Berkeley Housing Authority elects to pay the Employee Paid Member Contribution, as set forth above.

FURTHER RESOLVED, that the employer paid member contribution is subject to change consistent with the newly approved labor contract for represented employees, and action by the Board for unrepresented employees.

Ayes:

Noes:

Absent:

Abstain:

Attest: _____
Tia M. Ingram, Secretary

**RESOLUTION FOR EMPLOYER PAID MEMBER CONTRIBUTION
BERKELEY HOUSING AUTHORITY
RESOLUTION 13-**

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BY:

(Name of Official)

(Title of Official)

(Date adopted and approved)