Vice President's Report – February 2023

CONTRA COSTA EMPLOYEES' RETIREMENT ASSOCATION PRESENTATON BY SCOTT GORDON, CHAIR OF CCCERA

At the February 24, 2023 meeting of the Board/members of CoCoTax, Scott Gordon, Chair of the Contra Costa County Employees' Retirement Association made an excellent presentation on the history, policies and practices that governed CCCERA, the agency that manages, invests and distributes the benefits of retired employee members of the Contra Costa County and 16 agencies.

CCCERA is a stand-alone entity. It has 12 trustees, of which 9 trustees are voting members. CCCERA is trending as a mature plan toward decreasing current employees paying in while CCCERA is facing more retired members drawing out increasing benefit distributions. The monthly obligations for benefit payments is $49 million per month, $588 Million a year. The CCCERA system has to generate that amount each month to meet the benefit obligations. Critical to the success of the organization are the earnings on investments.

The organization has an Executive officer who serves at the will of the Trustees, who manages the agency's departments to handle applications, distribute defined pension benefits and disability benefits. The Trustees are fiduciaries of the employees under the statutes and policies that govern the organization. The fiduciary duty is to the member employees.

The Pension Tsunami that occurred in the period of 2001-to 2011, reflected that State and local pension systems had too generous pension practices without the means to pay for it. California got itself into deep trouble. The problem was that pension fund earnings, and the assumed investment rate of return at which they would grow, could not keep up with unrealistically high salaries and benefits to be paid at the state and local level. Contra Costa County had pension spiking practices that stood out. If you were an employee retiring after 30 years of employment after age 55 the practice was to cash out accumulated sick pay and vacation pay in the last year, to enhance retirement. This was a legal practice for the most part. The value of sick pay accumulated and vacation pay accumulated over past years was cashed out in the last year of employment and added to the defined benefit. This resulted in a 20-30% increase in the defined benefit, The defined benefit was based on years of service and what you were making in the year in which was the highest. (It had never been funded in the annual contributions). We couldn't figure out how to pay for it. The past practice had been to have an actuarily assumed rate of return of 7.75% and higher to create the illusion the earnings would be there to pay for the promised benefits. The State and local agencies managing pensions needed a new set of rules.

In 2012 Governor Brown signed the Pension Reform Act to reform the system. The Pension Reform Act put a cap on maximum salaries that could be used towards an employee's pension, and put new rules in place on use of cash outs just before retirements to reduce the spiking in order to help fix the system. If you were an existing employee who hadn't yet retired, your final pay would be now governed by a new set of rules. The CCCERA Board has more discretion to be a watchdog to enforce the law and prohibit improper spiking of pensions. Taking a big step, the Board acted as a leader amongst it peer funds and lowered the assumed rate of return from 7.5% in 2013 to 6.75%, a rate of return that more closely approximates anticipated long term market returns from invested assets.

Once the Pension Reform Act was signed into law, the litigation began on behalf of legacy employee groups that went all the way to the State Supreme Court of California in the Deputy Sheriffs Assn v CCCERA case.   The primary issue was what would be compensable pay for legacy employees who said they had been promised a lucrative pensions as inducement to take a lower paying public sector job. The arguments included claims that including pay items such as standby time and cash out leaves at retirement was a vested right that couldn't be taken away. And, CCCERA had previously entered into settlement agreements under old law, which unions asserted were contractual expectations. Besides sick pay accumulation and vacation pay accumulation, "On-Call" employees or weekend on call employees claimed all the "on-call" time was compensable, including shift differentials. These were to be included as salary earned in the last year of employment, making the employee's salary higher for purposes of calculating the pension.. These and many other benefits that were accumulated were considered compensable. The employee received them in the final year of employment boosting their base pay that year by 25% or more, which was the determination of the defined benefit. It was extremely high in the case of public safety for police and fire, but also in emergency response jobs such as haz mat, and the physicians working in the County's health care system. It was possible that some were on call and never took a day off. As a result of these pay practices, the Contra Costa County litigation was a high profile case. Neighboring Alameda County had similar issues and was also sued in the same case.

What transpired in the case was the issue of legacy employees versus the effort to limit the ability to "cash out" being included in the defined pension calculation. . The Supreme Court had to resolve differences in numerous appellate decisions. All the unions were involved and CCCERA, like other pension systems sued, was a necessary party and had to be sued in order to be bound by the final court decisions and judgments. It took seven years to resolve the issues. What came out of the Supreme Court was a decision upholding the validity and effect of the Pension Reform Act to limit many items of terminal pay (just before retirement) being included in pensions, while avoiding "the California Rule". The Court determined that there was no vested right to a benefit that was subject to change in the Pension Reform Act. Prior law had been that once an employee was employed, the retirement policies and benefits then in place became vested rights of the employee. They can't just be taken away. They could be modified by circumstances, provided a different benefit was offered at the same value. This could occur through collective bargaining.

Under the Pension Reform Act in 2013 the maximum compensable pay was dramatically reduced. The maximum was limited to $146,000. For a legacy employee hired prior to the new law taking effect, the maximum salary that can be applied to a pension is still much higher, now $330,000. But new employees will not get this type of deal going forward. It was a new effort to reduce the unrealistic draw on assets from accumulated cash outs.

Even with the Supreme Court's opinion, there are still struggles with what should be called compensable pay. As an example, CCCERA only allows base pay, without enhancements such as uniform allowances and other compensation to be included in pensions. I would expect continued dialog between employers, employees and CCCERA on this topic in the future. The taxpayers and the public interest are not involved in the process because the fiduciary duty under the statutes and the policies are to the employees. CCCERA trustee decisions must be based on what is in the best interests of all members of the retirement system, active members, and retired members. The law creating CCCERA and other County pension systems does not have a formal component that requires taking taxpayer or public concerns into account when making decisions affecting the pension plan.