MAINLINE

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The holidays are upon us again, and it is time to recount our blessings and good fortune, to give and to share, and to remember those who are in need.

Notes on PEPRA
By Eric Larsen

As the attorneys and administrators continue pour over the Public Employees Pension Reform Act of 2012 (PEPRA, which has been a boon the former) and the legislature considers a 'clean-up bill' (expected in earl 2013), many of us continue to wonder what it means for us. It's complicated. Even statutory coverage of EBMUD under PEPRA is convoluted by Governor Pardee's attachment of EBMUDers (our employee retirement system) to CalPERS by way of a reciprocity agreement back in 1937 when our plan was established, and without which we would likely be considered a stand-alone system not covered by PEPRA.

The good is that the legislature was not able to push public pensions, our defined benefit plans, into a 401k style retirement system subject to Market conditions. Our system has been run relatively conservatively and many of the perks that other systems had: allowing their employees to drastically spike their final salary, such as calculating unused sick leave, vacation and overtime, uniform and vehicle allowance and the like into the pensionable final rate of pay, have never been allowed under our system. (Really, the only problem with paying very high pensions relative to earnings is that no one was paying for the additional costs. The retirement systems were relying on Wallstreet to make up the difference, and when the bottom fell out it all became "unfunded liabilities" the agencies had to pass on to tax payers. And since corporations have been successful in transferring their tax burden to the middle-class, and we all hate taxes, no body wanted to pay for it. The irony is that while all the corporations and banksters were making massive profits on Wallstreet, if they had been paying a more responsible tax rate our agencies could have been funded well enough to weather the recession and grant us all health pensions – there is enough money.) Anyways, on the surface, it appears current employees wont be impacted much by PEPRA – we will be forbidden from buying "air-time" (paying for a break in service), and we will forfeit the pension if found guilty of commissioning a felony in connection with the pension (this is the 'City of Bell' clause, the intent of which is to prevent administrators from illegally manipulating their pension, but we should all be wary of it being extended to unrelated felonies which would amount to double penalty).

But the truth is that this is VERY BAD for us because PEPRA has legislatively created a two tier system for us with new members entering with a significantly reduced pension benefit, members who may not be inclined to fight for us as we retire. New Highers (after Jan 1, 2013) will have to pay 50% of the 'Normal Cost' of their pension (for comparison, at 6.8% payroll deduction we currently pay about 22% of the Normal Cost of our pension. An increase to about 11% would get us near 50% of the Normal Cost, according to HR.) It is not clear how much the payroll deduction for New Highers will have to be to make the 50%, but it will likely be 11-14%. They will have a lower retirement multiplier of 2.5% at the later age of 67 (we have a multiplier of 2.6% at 62), and their highest compensation will be averaged over 3 years, rather than 2. They will not be able to calculate stand-by or shift differential into their pensionalbe compensation, either. This is the legislatively mandated two-tier system, and it is bad for labor solidarity, which is our strength.

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Researching PEPRA has led me, necessarily, to researching the health of our own pension, which is 66% funded (85% is considered healthy). The funding ratio has been inching up about 1% a year since loosing about $250 million during the '08-'09 collapse. The actuary expects it to take about 14 years to reach 85% again. The current unfunded liabilities – the problem this creates for the District is $60 million annually that it is costing the District to fund our pension. This equates to about 1/3 of payroll and is a quite large expense for the District. This must not be confused, however, with pensions that are under-funded; the difference being that the District is able to make payments necessary to make up for the 'unfunded' portion so that the liabilities (what will have to be paid later) are accounted for.

As it turns out, the rate structure for water service is not in fact what it costs us for construction, operations and maintenance of the water system, but rather a ratio of at least 1.1 times or bonded debt, which is now at $2.3 Billion (with a 'B'), and current projections are of a funding ratio of 1.6-1.8.

So here's where it gets tricky, or troublingly, our more recent series of bonds were sold in 2005-07 as variable rate bonds whose interest rates fluctuate with LIBOR interest rate benchmark (the London Inter-Bank Offer Rate – the rate at which banks lend to each other). To protect against the risk of high interest the District purchased financial derivative instruments called swaps from various investment banks. Unbeknownst to the District, UBS was involved in illegal manipulation of LIBOR interest rates, keeping them artificially low. UBS has agreed to pay $1.5 Billion penalty for the criminal manipulation[1]. And now the District is trying to get out of this bad deal by restructuring its debt – selling a new set of fixed rate bonds to pay off the variable rate bonds and the banks to let us out of the deal.

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At the recent CALPELRA conference the theme was "concession bargaining" – how to implement "give backs". Many of the agencies represented there are under-funded and will be facing or are in the midst of dire financial straights. But EBMUD revenues are stable, the water source secure and

[1] http://www.reuters.com/article/2012/12/19/us-ubs-libor-idUSBRE8BI00020121219

reliable, earning easily service the debt, and rates are around the middle for the region.

As we enter negotiations we should be clear that there is plenty of money for the District to pay investment banks for complex financial derivatives, even when they don't work, and there is plenty of money for COLA increases and pension funding.

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A Synopsis of Important Issues and Workshops
By Cheryl Franklin

The general session opened with keynote speaker Phil Batchelor speaking about the challenges facing public entities, employees and unions during times of economic disasters. The main points of his speech were integrity, accountability and collaboration. I was surprised at how many workshops also spoke to these issues; upon reflection I realize that many public elected officials and city managers have been exposed as corrupt and self serving. Mr. Batchelor said most of the problems start when good people make small changes (that they know are not quite right) that amount to larger poor choices and eventually find themselves taking advantage of public entities and all public workers are tainted by these situations.

Workshop on context for vested rights was very informative in that public agencies are desperately trying to finds ways around the vested rights for active employees and retirees due to rising costs and unfunded liabilities. Public pensions were created to serve "as an inducement to enter and continue in public employment" and to "provide agreed subsistence to retired public servants who have fulfilled their employment contracts". The question public agencies are trying to use to stop vested rights is; "Is it really a vested right?" and "when are Benefits not vested". Public agencies are pushing the express reservation of right to change the benefit and stating that changes are an integral part of pension systems and to state the presumption against vesting of retiree medical benefits. So for retirees; public agencies say they may be vested in current benefit but have no right to enhanced benefits granted after leaving employment such as cost of living or the right to active employees health care group. The most important issue is the language of the contract. Public agencies are looking to seal vested rights by changing the MOU language for represented employees and to deny directly to non represented employees. AB 340 states that public agencies cannot offer better vested benefits to management but they can make the changes by looking to legally limit benefits such as not offering Cadillac medical programs. Public agencies are also looking to make changes to the sick leave policies and vacation policies with active employees with each MOU negotiations.

Another workshop was "strategies for Concession Bargaining and Unilateral Implementation: Bargaining with the end game in mind." Basically they offered strategies to prepare for bargaining. Preparation is essential for success and this is done by having the negotiation team meet with elected officials, supervisors and managers of all departments, and the finance director. Be sure to explain to the Board what they believe the goals for both sides will be and why, make sure all elected officials understand the economic consequences of bargaining. Set up strategies by comparison information from other agencies, using only those that compliment goals. The negotiating team must be able to justify their decisions with data. They must always be credible. Fully evaluate cost proposals, long term measures, and notify all employees of parameters and goals. The object of negotiations for the agency is to get trade offs and concessions that allow the public agency to viably move forward. Always look to the language of the

MOU and try to enhance the language to meet the goals. Be sure to understand the budgets, regular and mid-year. Know what length of time you want the contract to run for. Management should be trying to keep contract short9two years). Public agencies should start bargaining early, make proposals as evenhandedly as is organizationally possible, communicate on a continuing basis with all departments and disseminate accurate and consistent information to employees especially regarding the need for concessions. The more represented employees hear about concessions the more likely they will agree. Public agencies are told to adopt problem solving approaches by identifying problems and articulate agency objectives; offer concessions as an exchange for other non economic proposals. They tell the public agencies that aggressiveness must be balanced with diplomacy. Do not over reach. Keep written records and all data. Be prepared for last, best and final. Be ready with good documentation for impasse so that you can prove you bargained in good faith. Other things important to bargaining—ground rules, timeline and who controls it, and understanding the procedures of impasse.

Another workshop involved “preparing for a strike, a step by step guide for public agencies”. The public agencies are told that union’s strike to put political pressure on the public and the Board and to prove solidarity of the rank and file. They do not believe it involves economic reasons or pressures. A strike by public employees is legal UNLESS the strike creates a substantial and imminent threat to public health and safety OR the strike occurs before impasse or completion of mandatory impasse procedures AND is not provoked by the employer’s unfair labor practices. Public employees are barred from sick outs or sit-ins and can be disciplined for actions taken. Actions are allowed such as buttons and t-shirt; it becomes a matter of degree. If employer allows pictures/articles of sport figures or collectibles in work area then union workers are protected when placing pictures of striking unions or active union posters. Public employers will seek injunctions when notified of impending strike in order to keep public safe. Courts will order essential workers back to work. Public agencies must prove to the court what employees are essential and why. If the public agency is prepared for a strike then the strike is less likely to be effective. Public agencies are told to put together a strike management team six months prior to bargaining so that the agency is prepared and ready to act. The management strike team will set up public relation team to speak for the agency to news media and get news out to employees. Having a public relations person will get the point across. Management team will give regular updates to elected officials. Offering employees who do not go on strike pizza’s or chocolate is not coercive but cannot offer them extra pay, more vacation, etc. Speaking of vacation, employees could be denied vacation even if planned months ahead of time during a strike but public agencies are told to look at each case individually and use it to their advantage. Public agencies have a hard time hiring temporary workers due to civil service requirements and due process afforded all public represented employees. Picketing is for informational knowledge to the public and protected.

Calpera offers the union an insight to managements processes and plans.

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Letters, comments and submissions can be e-mailed to AFSCME444@gmail.com