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Pension Issues Plague the MOFD

By Andrea A. Firth

A spotlight has been shining on the small, semi-rural communities of Orinda and Moraga over the issues surrounding the retirement of the Moraga Orinda Fire District (MOFD) Chief, Pete Nowicki. Residents have decried the amount of the Chief's pension, the MOFD Board has defended its actions as appropriate and by the book, and the regional and national media have latched onto Nowicki characterizing him as an example of a highly paid retiree from the public sector who was able to "spike" or boost his pension payout.

At question is the process that led to Nowicki's pension benefit of $241,000 per year for life. Nowicki had been earning $186,000 a year before his retirement at the end of January. His retirement benefit was augmented with accrued vacation, vacation buy-back hours, and purchased service credits-all legitimate additions under the rules of the retirement program according to both Nowicki and the Board. (The complexities of the county retirement system in which the MOFD participates are beyond the scope of this article. Some of the basics are outlined in the sidebar.)

Union Reacts. In early July, members of I.A.F.F. Local 1230, the union representing the MOFD firefighters and paramedics, wrote to the Board of Directors expressing their displeasure with the Chief's now notorious pension package and the timing of an amendment to the Chief's contract. "The Chief convinced the Board to approve an amendment to his contract on December 10th [2008] that gave him a substantial amount of extra vacation to add to his last year's compensation and hence pension as well," states union representative Mark DeWeese. "None of this extra vacation was ever funded for and the Chief announced his retirement three days later on December 13th to start drawing from his now inflated pension."

"Personally, I was disappointed to be a recipient of this letter, especially during negotiations," states Frank Sperling, one of the five members of the MOFD Board. "The implication that this was a last minute deal is absolutely incorrect." Fellow Board member Brook Mancinelli was surprised by the union communication. "I am unbelievably perplexed by the union's letter," says Mancinelli, noting that the union also receives some of the vacation accrual benefits that were part of the Chief's pension calculation.

The Contract Amendments. In February of 2008, the MOFD Board approved an amendment to the Chief's contract that allowed him to sell back 200 hours of accrued vacation time. The Chief had no vacation buy-back provision in his initial contract (initiated in July of 2006), according to Sperling. He felt the vacation buy-back was reasonable and placed the Chief on par with the lower ranking Battalion Chiefs who are able to sell back up to 198 hours of vacation annually. Vacation sell-back is a negotiated item that is not currently part of the local firefighters' contract.

In December of 2008, the Board again amended Chief Nowicki's contract to include paid holidays, administrative leave that could be converted to vacation leave, and a bump in the vacation sell-back time to 260 hours. A few days later the Chief's retirement was officially announced. The timing of these two events has the rank and file frustrated. "No other employees get amendments made to their contracts right before they decide to retire," states DeWeese.

According to Chief Nowicki, he began talking to the Board about revisions to his contract late in the Spring of 2008, and they came to an agreement on the terms of the amendment by late August. He says legal review and other delays kept the approval of the amendment from being placed on a Board meeting agenda until December. Nowicki says that he did not begin to consider retirement until November.

Sperling confirms that the Board had been in contract discussions with the Chief for over six months. He believes that he became aware that the Chief was retiring sometime in the fourth quarter of 2008. "The need to be competitive in the marketplace and the need to ensure equity within the District drove my decision [to support the Chief's contract amendment]," states Sperling.

Communication Chasm. The union has yet to receive a formal response to their letter from the Board of Directors, but direct communication between the two groups is a challenge. "It has been a long standing Board policy not to talk with the union representatives during contract negotiations," states Sperling. This policy is in place to avoid the potential, real or perceived, that conversations are construed as side deals, he explains. Contract negotiations between the Board and the union started in February and are ongoing.

"Morale is low and frustrations are high with respect to the Board of Directors and the issues surrounding the Chief," states Deweese. However he is quick to add, "The firefighters still love their jobs and enjoy providing a high level of service to the communities of Moraga and Orinda." Chief Nowicki admits that the agency's morale may be impacted, but he agrees that the MOFD employees remain focused. "The department's response to the community and the operational tempo is tremendous. Nothing else matters but taking care of business once they arrive at work."

What next? The Chief's retirement and pension benefit have raised a number of philosophical and practical questions for the District. The next work session of the MOFD Board on August 5th will include a discussion of the Board's response to the press and community reaction to the pension issues.

The structure and rules associated with the Moraga Orinda Fire District's (MOFD) pension program are complex.

Here are some of the basics:

- The MOFD has three bargaining units: the firefighters and paramedics, I.A.F.F. Local 1230; the Battalion Chiefs and Fire Marshall, the Chief Officers; and the administrative staff. The Fire Chief negotiates his/her own contract.
- All MOFD employees participate in the Contra Costa County Employees Retirement Association (CCCERA) defined benefit plan. All safety employees (firefighters and managers including the Chief) contribute to the retirement system-significantly. The contribution rates ranges from 23% to 28% of salary.
- The plan provides for 3% at 50-As of the 50 years of age, eligible employees are entitled to a pension benefit equal to 3% of his/her annual salary (based on the last 12 months of employment) for each year worked. Example: A 50 year-old employee who retires after 30 years of service earning $100,000 during the last 12 months of employment will receive 90% of their current base salary, or $90,000/year in pension benefit for the rest of his/her life. [$100,000 (salary) x 3%/year x 30 years = $90,000]
- Within the CCCERA program, MOFD safety employees may factor up to one year of accrued vacation time into their final pension calculation. Differentials (e.g., a uniform allowance), unused sick leave accruals, vacation buy-back, and service credit purchases may also be factors in the final pension calculation.

Is the county retirement system sustainable?

The sustainability of the CCCERA retirement program has been questioned. In 2005 the MOFD issued Pension Obligation Bonds to pay off the District's unfunded liability of $28 million. "There was a massive unfunded liability in the magnitude of hundreds of millions of dollars for the entire county retirement system that came about due to CCCERA's less than stellar investment return which fell short of their actuary's projections," states MOFD Board member Frank Sperling. Although the District's contributions to the retirement system for this fiscal year have not increased, the future does not look bright. The impact of the economic downturn and market decline of the past year will be not be reflected in the District's contributions to CCCERA until next year.

Whether the county's retirement system is the best option for the MOFD in the long run has also been questioned. The MOFD Board had investigated a switch to the State public pension fund, CalPERS. For Board member Brook Mancinelli, CCCERA is the problem. He was a proponent of a move to CalPERS believing it would have reduced the contribution rates and provided a more stable and financially beneficial program for the District. Sperling suggests another alternative. "I would like to provide a good retirement program for the MOFD employees and at the same time reduce the risks associated with our current defined benefit plan. A 401(k)-type plan could be a good

alternative."
A. Firth

Reach the reporter at: andrea@lamorindaweekly.com

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