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Grand Jury Tells County to Attack State Pension Laws

By Nick Marnell

The Contra Costa County grand jury in May charged the Board of Supervisors to orchestrate a direct attack on state pension law in order to reduce its pension obligations, both of the county and of the Contra Costa County Fire Protection District, which it also governs. The grand jury suggested that the county could save $100 million per year through pension reform, and it directed the Board to form a task force to review all options available to change California public pension law and allow future, unearned pension benefits to be subject to reductions through collective bargaining.

As noted in the report, the county shortfall in pension funding was $2.6 billion, which included $1.26 billion in unfunded pension liability, a nearly $800 million deficit in promised retiree health benefits, $276 million in pension obligation bonds and $280 million in ConFire pension liability. If that bill came due today in the form of a property tax on all county parcels, each homeowner would be liable for more than $7,200.

Three major factors contribute to this deficit. In a triumph of wishful thinking, the California Public Employees Retirement System convinced lawmakers in 1999 that excess earnings in its retirement fund, due to the dot-com boom, would cover the costs of earlier employee retirement and increased benefits. Three years later, to stay competitive, the county granted retroactive pension benefits to its employees. Stock market gains failed to materialize, and the county had to increase its payment to the Contra Costa County Employees' Retirement Association, its pension manager, to cover the deficit.

Then came the Great Recession in 2008. Investment losses multiplied in the retirement fund, resulting in even larger bills to the county to cover the fund's failure to meet its investment goals.

And maybe most critical, obstacles arising from California court decisions have prevented the county from negotiating reductions in future pension benefit rates for existing employees. Only employees hired after Jan. 1, 2013 fall under the dictates of the California Public Employee Pension Reform Act, which provides for gradual cost savings over the next 30 years. Benefits for employees hired before that date are unaffected and cannot be reduced.

Pension and retiree health benefits cost Contra Costa County more than $375 million a year. In order to pay these costs the county has had to cut back a wide variety of services, including the reduction of ConFire staffing and the closure of district fire stations.

Despite this huge cost, and the consequent hardship to county residents who are directly affected by the service cutbacks, the grand jury said the county has not challenged the assumption that state law prohibits it from negotiating pension benefit reductions for pre-2013 employees. "We believe that assumption is in error," states the grand jury report. "The Board of Supervisors should without delay seek such a change or clarification in California law."

"We already can collectively bargain our pension benefits," said Vince Wells, president of Local 1230 of the firefighters' union, which represents ConFire firefighters. "If I got 100 percent of my membership to agree to a reduction in pension benefits, we could negotiate that. Of course, we would have to be compensated with a fair and equal benefit."

Which is at the crux of the problem, according to grand jury member Michael Moore, speaking at the July 22 Orinda Rotary Club luncheon. "Yes, you can collectively bargain pension benefits," he said. "But you are not allowed to reduce the pension benefit unless you replace that benefit with something of equal value. Pensions are a special category. They cannot be reduced."

"I'm always looking for ways to reduce our pension liability, but under state law, and as defined by the courts, any reduction negotiated would need to be offset by other comparable benefits and agreed to by the employees," said Supervisor Candace Andersen, whose district includes Lamorinda. "The case law is quite clear that we cannot unilaterally take away vested retirement benefits, and we would need to negotiate any change with our labor groups."

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