

MEMORANDUM OF LAW

DATE: October 22, 1991

TO: Larry Grissom, Retirement Administrator

FROM: City Attorney

SUBJECT: Port District Retirement Issues

You have posed several questions concerning the possibility of safety member status for certain Unified Port District members of CERS such as the Harbor Police. Your questions and our responses follows:

Question No. 1: Does the position of Harbor Police Officer meet the necessary definitions of peace officer?

Answer: Yes. Penal Code section 830.1(a) states in pertinent part that "any police officer of a district (including police officers of the San Diego Unified Port District Harbor Police) authorized by statute to maintain a police department . . . is a peace officer."

Question No. 2: Must they be included in the Municipal Code definitions of safety member, etc.?

Answer: Yes. San Diego Municipal Code ("SDMC") section 24.0103(f)(2) sets forth the definition of a safety member under the City Employees' Retirement System ("CERS"). Under the current definition of safety members, only "sworn officers of the Police Department of The City of San Diego employed since July 1, 1946, a uniformed member of the Fire Department of The City of San Diego employed since July 1, 1946, or a full-time employed lifeguard . . ." are considered safety members. Clearly, this section would require an amendment to include Harbor Police.

Question No. 3: Do the terms of the present contract allow for there to be more than one category of Port District membership?

Answer: No. Pursuant to the Agreement between The City of San Diego and the San Diego Unified Port District dated February 14, 1963, document No. 651832 ("Agreement"), only one category of Port District membership is authorized. Paragraph 2 of this Agreement states:

Those employees of District who continue as members of the San Diego City Employees' Retirement System pursuant to this Agreement shall consist only of such members, now classified as 'general members' under Ordinance No. 6168 (New Series). Their contributions to the Retirement System and their benefits therefrom shall be identical with those of 'general members' who are employed by City,

including any future adjustment thereof. (Emphasis added.)

In light of the foregoing, only a "general member" membership category is authorized for Port District members.

Question No. 4: If the Harbor Police become safety members, can they chose which of the three levels to be covered under? Can we establish a fourth level? Can the election of benefit level, once made, be changed in the future?

Answer: If the Harbor Police become safety members, they would have the option of choosing which one of the three levels available that they desired to be covered under. Since they are paying for the benefit, they have the choice. The proposition of a fourth level is really an administrative decision to be handled accordingly. The costs associated with the creation and administration of another level may not be warranted in view of the number of members affected.

Question No. 5: Can Port District employees be included with CERS for actuarial valuation purposes?

Answer: This question should be directed to the Actuary. Pursuant to Paragraph 4 of the Agreement:

District agrees to pay contributions to the San Diego City Employees' Retirement System for its employees who continue as members of said system sums to be determined by the said system's actuary to reflect the proper actuarial consideration for the limited class of District employees which this Agreement will create. Said contributions shall be paid in a sufficient amount and at such times as necessary to maintain the actuarial soundness and integrity of the District's portion of the City Employees' Retirement System.

It would appear that Port District employees could be included with CERS for actuarial valuation purposes so long as the Port District's contributions to CERS for its employees "reflect the proper actuarial consideration" for their limited class in CERS. Depending on what the Actuary reports, it may be, as you suggest, to everyone's benefit from a cost and administrative standpoint to have all CERS members valued together for actuarial purposes.

Final Question: Should CERS set up a cost accounting to charge the Port District for the specific services rendered?

Answer: Yes. As long as the "specific services rendered" refer to administration costs, Paragraph 5 of the Agreement currently provides: "Regardless of any arrangements between City and City Employees' Retirement System regarding payments of administration costs, District agrees to pay its proportionate share of all costs of administering the City Employees' Retirement System"

Please contact me if you have any questions or if I can be of further

assistance.

JOHN W. WITT, City Attorney

By

Loraine L. Etherington

Deputy City Attorney

LLE:mrh:352(x043.2)

ML-91-83