CALIFORNIA ASSOCIATION OF
PROFESSIONAL SCIENTISTS

MEMO

To: The CAPS Bargaining Team
From: Christiana Dominguez, Legal Counsel
Date: January 27, 2016
Re: **Pre-funding retiree health benefits**

Summary

In recent rounds of bargaining, Governor Brown has prioritized reducing the state's unfunded liability when it comes to post-retirement benefits such as health care costs. Bargaining units are joining the 450 or so local public agencies participating in the California Employers' Retiree Benefit Trust Fund (CERBT), administered by CalPERS. CERBT is a mechanism by which employers can prefund employees' post-employment benefits. Employees are not able to withdraw their contributions to the fund at any time, regardless of whether they leave state service prior to retirement or remain with the state until they retire. The fund is also not available to be raided during General Fund shortfalls or tough budget years. Employees do not receive regular payments from the CERBT Fund after retirement; rather, employers use the contributions (and investment earnings) to pay for health benefit costs.

The provision further protects the State's ability to make good on benefit promises made to employees at hiring.

Introduction

The CAPS Tentative Agreement provides for a 2.8% contribution by all Unit 10 employees towards pre-funding health benefits received during retirement. This memo addresses member questions about the provision to clarify where the post-retirement benefit contributions go and for what purposes they can be used.

California Employers' Retiree Benefit Trust Fund

The California Employers' Retiree Benefit Trust Fund (CERBT) is a CalPERS-administered trust set up for the purpose of receiving employer contributions that will prefund health and other post-employment benefit costs for retirees and their beneficiaries.

By joining, California public employers can help finance future costs from investment earnings managed by CalPERS. Employer assets (contributions and investment return) are held in the CERBT fund and will be used by the participating local agencies to pay the future Other Post-Employment Benefits (OPEB) (which include health, dental, vision and other benefits) costs of the agency.

The CERBT is self-funded and participating employers pay for all of the costs of administering the fund.

CalPERS received the first employer contribution in June, 2007. More than 450 public employers (including the State, cities, counties, and special districts) have elected to join CERBT as their OPEB trust fund. (For a list of participating agencies, please see: https://www.calpers.ca.gov/page/employers/benefit-programs/cerbt/cerbt-participating-agencies)

Since 2008, all California public agency employers can join CERBT. At one time, agencies were required to contact for health benefits through CalPERS, but that is no longer the case.

CalPERS's website touts the benefits of prefunding as follows:

- Prefunding enables employers to make actuarially determined periodic contributions to partially or completely fund future obligations.
- Earnings on assets reduce employer contributions.
- Investment return assumptions, known as discount rate assumptions, will be higher, making the annual required contribution and unfunded liability lower.
- May prevent employers' net OPEB obligation from becoming a significant liability on balance sheets.
- Can contribute to a positive credit rating.
- Enhances financial security for retirees.

Interested agencies must submit an OPEB cost actuarial report by an approved method as well as a CERBT participation agreement and some related documents. Agreements must be adopted at a public meeting by the governing body of the public entity electing to participate in the Prefunding Plan and submitted to CalPERS for review and approval.

All contributions to the plan are voluntary. Contracting employers are not required to fully fund the amount show in their valuation. To comply with reporting requirements, employers must measure and report their liabilities. Those requirements do not mandate contributions. Employers may, however, voluntarily contribute as often as they wish.

Employers pay the actual costs of trust operation. CalPERS retains no profit from fund administration as it is a state agency.

Employee Contributions to CERBT

While the fund does not require employees to directly contribute, public employers are increasingly electing to negotiate with their represented employees to share employer OPEB costs. In the most recent rounds of bargaining, Governor Brown has made participation by employees a top priority for new bargaining unit MOUs.

There are certain conditions under which the employer contributions received from a cost sharing arrangement may be contributed to the CERBT trust employer account:

“Mandatory employee contributions” may be permitted under the following conditions:

- Contributions must be mandatory. Employees are not permitted to elect in or out of participation.
- Contribution rates must be uniform for all participating employees. Employees cannot elect to vary their individual contributions. Contribution rates may vary by bargaining unit.
- No cash out of mandatory employee contributions is permitted at any time. Employees have no claim or right to any assets held in the CERBT.

The contribution negotiated in the current Tentative Agreement for a successor MOU satisfies these requirements.

“Voluntary or elective employee contributions” are not permitted, including one-time irrevocable elections. This exclusion of voluntary or elective employee contributions covers all such contributions, including and not limited to:

- Pre-tax, salary reduction contributions
- Elections between cash or non-taxable future benefits
- Voluntary or elective contributions of the cash value of unused paid time off

From the CalPERS website: “The CERBT does not separately account for contributions of any employee, former employee or dependent. All amounts contributed to the CERBT are assets of the participating employer. No employee, former employee or dependent has any claim or right to any CERBT assets.”

CERBT creates a shared responsibility for funding OPEB between the employer and employees, potentially adding additional protections for the benefits in the event that future administrations or legislatures seek to reduce the post-retirement benefits provided.

Closing Summary

Contributions to the CERBT fund, then, cannot be raided should General Fund revenue fall in future years. Employees cannot “cash out” what they pay into the account, either, regardless of whether they leave state service prior to retirement or through service retirement. They will not see a monthly check in retirement similar to a pension check. Rather, this fund is meant to reduce potential future unfunded liabilities and helps guarantee that the public agency employers – including State agencies – can make good on the promises made when employees were hired to cover vested post-retirement benefit costs in the future.