



**SAN DIEGO COUNTY
REGIONAL AIRPORT AUTHORITY
STAFF REPORT**

**Item No.
23**

Meeting Date: **SEPTEMBER 2, 2010**

Subject:

Discussion and Possible Direction Regarding Employee Purchases of Service Credits from the San Diego City Employees' Retirement System (SDCERS)

Recommendation:

Receive an update on the outcome of litigation between the City of San Diego and the San Diego City Employees' Retirement System (SDCERS), and possibly provide direction to staff.

Background/Justification:

Thirty-nine Airport Authority employees are potentially affected by the outcome of the litigation between the City of San Diego and SDCERS. On June 7, 2010 the Fourth District Court of Appeals issued a ruling related to the pricing of purchased service credits (PSC). The decision relates to under-pricing of PSC contracts (which likely includes multiple types of PSC time) purchased by City of San Diego participants on or after August 16, 2003. The court's ruling focuses on PSC requests submitted or purchased between August 16 and November 1, 2003, (the "window period"), but more importantly, the decision applies to any City contracts calculated at the old rates and purchased on or after August 16, 2003.

SDCERS has advised Airport Authority staff that the court's ruling affects Airport Authority employees as well. The SDCERS Board of Administration raised Airport Authority PSC pricing at its April 16, 2004 meeting with an effective date of July 1, 2004, creating a window period similar to the City's window period in the above-described case. In the City's case, the window period was deemed to violate the municipal code provisions defining the City's retirement plan. Specifically, the court ruled that SDCERS violated the provisions of the plan relating to purchase of service and could not recover the underfunding created by these underpriced PSCs through the City's Unfunded Actuarial Liability (UAL). The Airport Authority's retirement plan language relating to the purchase of service credits is virtually identical to that contained in the City's plan. SDCERS' tax counsel has advised that, as with the City, SDCERS cannot recover underfunding created by underpriced PSCs during the Authority's window period through the Airport Authority's UAL. As a result, SDCERS may require affected participants to pay additional money toward their PSC, have their PSC reduced, or request a full refund.

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Absent the Airport Authority's Board deciding to absorb the cost of PSC under pricing through the Airport Authority's UAL, approximately thirty-nine employees will likely be asked by SDCERS to decide whether to pay the difference (plus interest), accept a reduced service credit, or receive a full refund (plus interest). SDCERS' Board is striving to fulfill its fiduciary duty to its participants on this issue. Because of advice that the Internal Revenue Service requires SDCERS to collect the underfunding from some source so that the trust fund is made whole, SDCERS has indicated the only viable solution to this problem is to remedy the underfunding directly with the affected participants.

As it is likely that the underfunding is to be resolved by working directly with the participants, SDCERS' Board and staff are developing appropriate correction procedures. Possible options being considered by SDCERS include allowing affected participants to:

- Rescind their contract and receive a full refund plus any applicable interest and forfeit any associated service credit; (or Active Members may also have the option of rescinding their contract and then repurchasing time at the current rates).
- Make no change to their contract and receive an associated reduction in service credit from what they would have received had they paid at the higher rate; or,
- Pay, with interest, the difference between the amount paid at the "old" rate and the amount that should have been paid at the proper rate to fund the full service credit originally anticipated in the contract.

As corrective procedures are finalized, SDCERS will be contacting the Airport Authority's affected participants with more specific details and information.

This situation will have an impact on the Airport Authority's 2010 Actuarial Valuation report, with a likely small positive effect on the plan's UAL. Considering the court ruling, it is management's recommendation that it would not be good public policy for the Authority to subsidize the pricing of purchase of service credits for employees.

Fiscal Impact:

Pending no action by the Authority's Board of Directors to pay for underpriced PSCs, there will likely be a positive impact on the yet to be calculated FY 10 UAL as determined by the SDCERS Actuarial firm, Cheiron.

Environmental Review:

This action is not a project that would have a significant effect on the environment as defined by the California Environmental Quality Act (CEQA), as amended. 14 Cal. Code Regs. Section 15378. This Board action is not a "project" subject to CEQA. Pub. Res. Code Section 21065. This Board action is not a "development" as defined by the California Coastal Act, Pub. Res. Code Section 30106.

Equal Opportunity Program:

Not applicable.

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