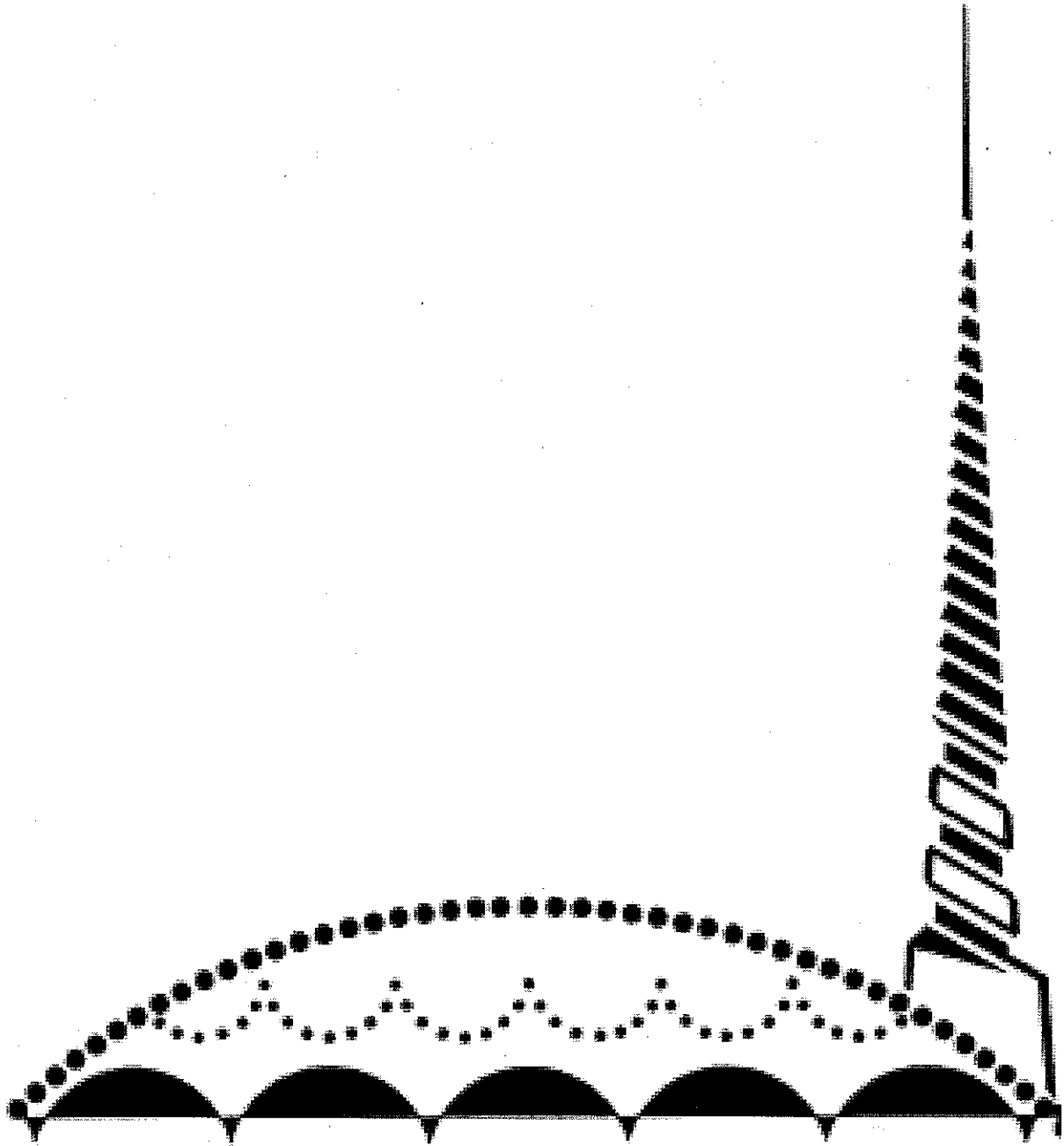


2008-2009 MARIN COUNTY CIVIL GRAND JURY

The Retirement Board: Time to take charge

June 22, 2009





SUMMARY

Complaints about the administration of the Marin County Employees' Retirement Association (MCERA) come from a variety of sources, including retirees, employees, former employees, some County executives and even the Board of Supervisors. MCERA manages the pension (and health) plan for retired employees of the County and several local governmental agencies. The complaints range from failure to respond to telephone calls and other discourteous behavior to excessive delays in computing and delivering retirement benefits.

The Marin County Civil Grand Jury began an investigation of MCERA in February 2009. Deficiencies quickly became clear. The most critical is the inadequate oversight of MCERA's administration by its retirement board. While the board has a fiduciary duty to oversee administration of the retirement system, it has devoted its energies almost exclusively to investment oversight and has not paid sufficient attention to the administration of the system.

The board has no strategic plan dealing with the benefits and administrative side of MCERA. Staffing needs particular focus. In the last 2½ years the staff has increased from 6 to 20 people. During that period, 28 people were hired but 14 left, many after short periods. The Grand Jury believes this turnover has been detrimental to timely computation and delivery of retirement benefits.

The Grand Jury recommends that the board adopt a strategic plan dealing with benefits and administration of MCERA, including appropriate policies, procedures and practices.

The Grand Jury found weakness in fiscal controls. The retirement administrator approved expenditures but there was little or no verification of those approvals.

The good news is that, during the Grand Jury's investigation, the board recognized some of its shortcomings. At its May 6, 2009 meeting the board established three standing committees: Finance and Risk Management, Member Services, and Governance. Each of these committees is charged with developing "best practices" to provide more active oversight of MCERA operations. The Grand Jury recommends that the board establish a time frame for each committee to develop its respective best practices.

The board recently hired an independent accountant to review the internal controls over expenditures for operating expenses as well as investments. The accountant proposed several changes in operations to address the shortcomings of the internal controls system, and the Grand Jury recommends that these changes be adopted.

Complaints of poor customer service and discourteous conduct by staff were addressed in team-building seminars held in November 2008. These seminars have provided staff a sense of direction and commitment that could lead to improved customer service. The Grand Jury recommends that MCERA's board continue to provide team-building opportunities.

BACKGROUND

MCERA was established in July 1950 to administer the retirement benefits of County employees and members of the following participating public agencies:

- Marin County Courts
- City of San Rafael
- San Rafael Redevelopment Agency
- Novato Fire Protection District
- Marin City Community Services District
- Tamalpais Community Services District
- Southern Marin Fire Protection District
- Marin/Sonoma Mosquito & Vector Control District
- Local Agency Formation Commission

MCERA is governed by a nine-member retirement board. The members include the County Treasurer who serves ex-officio. The others are: four appointed by the Board of Supervisors; one and an alternate elected by retiree members; one and an alternate elected by employees of public safety agencies; and two elected by the remaining members. Their duties and powers are governed principally by the California Constitution and the County Employees Retirement Law of 1937.

MCERA serves approximately 3,500 employees and 2,500 retirees, with about 1,700 receiving health care benefits in addition to pension payments. The cost of the annual retiree payroll and health care benefits approaches \$66 million.

The Grand Jury of 2006/07 issued a report on MCERA's disability determination process, but that is the only Grand Jury attention MCERA has received in the last decade. It is time for a review. This Grand Jury has received numerous complaints and there are several newspaper accounts complaining of a lack of prompt customer service.

METHODOLOGY

The Grand Jury interviewed more than 20 people, including County officials, seven MCERA board members, and retirement officials in neighboring counties. The Grand Jury reviewed applicable provisions of California law, agendas and minutes of the MCERA board, MCERA policies posted on the agency's website and the MCERA

Trustee Handbook. In addition, the Grand Jury reviewed numerous other documents and conducted research on the Internet.

DISCUSSION

MCERA has two sides of the house. The investment side manages fund investments, the value of which was estimated at \$1.2 billion in May 2009. The board works closely with its professional advisors in determining which investments to make. The retirement administrator and a staff secretary assist the board in executing its investment decisions. The administrative side is responsible for calculating and paying out retirement and health benefits. It is here that staff contact with members and retirees occurs, that complaints have arisen and that the Grand Jury focused its review.

Poor customer service

Over the last five months the Marin Independent Journal has chronicled a chorus of complaints about MCERA's administration. The complaint heard most often is that it takes too long to obtain a calculation of benefits from MCERA staff. The County Board of Supervisors recently decried MCERA's poor service record. One supervisor characterized the delays in providing benefit calculations as "totally unacceptable and insane." Complaints about poor service, however, are not new.

In March 2008 representatives of two large unions, as well as a County official whose office had received numerous complaints, and an individual complainant appeared before the MCERA board to complain about delays in obtaining benefit calculations. At that time the board acknowledged the validity of these complaints. While the board suggested that it had been following these issues closely during the previous year, in fact it undertook no independent action to assess the cause for the delays nor did it come up with any solutions. It simply accepted the explanation of the retirement administrator that the delays were due to a lack of staff, exacerbated by snags in getting the County's new computer system to work properly. Fast-forward a year to March 2009 and the president of one of the unions complained that customer service continued to plummet. There was a growing backlog in calculating benefits. There were also complaints about discourteous treatment by staff.

Poor administrative staff service can be blamed on a doubling of the number of retirements processed annually since 1998 and a staff that is too small and inadequately trained. These circumstances combined in what was described to the board as a "perfect storm" that led to backlogs and significant delays in obtaining retirement estimates and information.

While the number of retirements processed each year doubled during the period 1998 through 2005, the total staff, including the retirement administrator, remained the same at six. Moreover, the MCERA staff was housed in space that was too small to hold it and the equipment necessary to perform the work properly. No additional space was

available anywhere in the Civic Center. To make matters worse, when the County began implementing its new computer system, the time needed to complete even the normal workload increased substantially.

Improvement was expected in February 2007 when the retirement administrator and three administrative staff moved out of the Civic Center to a branch office, creating room for four additional employees. Instead of improving working conditions and service, however, staff turnover became a serious problem. During 2007 and 2008, there were 14 people who were hired and then left after two to five months. Given the complexity of the benefit calculations, and the training and experience needed to perform them properly, this turnover exacerbated an already difficult state of affairs. Statistics submitted to the Grand Jury indicate that from February, 2008 through March, 2009 the MCERA administrative staff completed 539 retirement calculations with an ending backlog of 175.

The MCERA board is responsible

The MCERA board appears to have delegated all staffing issues to the retirement administrator. While responsibility for anticipating computer system implementation issues may arguably lie with the County, MCERA staffing policies and long-range plans are the exclusive responsibility of the MCERA board.

Membership on the MCERA board carries a heavy burden of responsibility mandated not only by statute but by the express terms of Article XVI, section 17 of the California Constitution, which vests in the board the authority and fiduciary responsibility for investment of money and administration of the system. The board has the exclusive fiduciary responsibility for the prompt delivery of benefits and related services to the participants and their beneficiaries. The board has adopted a standard of "prudent expert" in carrying out its duties and responsibilities. This standard requires the board to use the care, skill and diligence of a prudent expert in the management of the system and investing of the funds.

Even though the board has known about the poor customer service delivered by its administrative staff, it is only now beginning to develop appropriate solutions. The Grand Jury believes that the board should undertake two inter-related major areas of improvement. It needs to develop a comprehensive strategic plan for properly administering MCERA. It should also adopt and implement staffing policies and procedures to ensure that MCERA employs an adequate number of properly trained people to administer its benefits and interact with the public.

Board oversight: The buck stops here

The board needs to improve its oversight of benefits operations. The focus has, until now, primarily been on the investment side. For example, there is an Investment Committee but until recently there has been no committee dealing with the benefits operations. There is also an investment policy that addresses the general goals of the investment program, as well as the policies and procedures for the management of the investments

and specific asset allocations, rebalancing procedures and investment guidelines and performance objectives and responsible parties.

This policy has also been periodically updated to ensure continued vitality. It walks, talks and looks like a strategic plan setting forth the board's assessment of the investment goals and needs of the system and strategies to address those goals. Unfortunately, it addresses investment issues only and does not assess organizational needs for the delivery of benefits and related services to participants and their beneficiaries.

A number of people interviewed by the Grand Jury, including an expert in governmental strategic planning with significant local experience, stated that MCERA needs a strategic plan. The Grand Jury reviewed the strategic plans of two other counties as well as the strategic plan for Marin County and finds this planning process to be a vital component of a fiduciary board fulfilling its oversight obligations.

At present MCERA has no ongoing process to assess needs, strategies or goals. While some strategic planning was undertaken in mid-2008, nothing resulted and no plan was adopted.

The Grand Jury finds that the board has a fiduciary duty to oversee the benefit operations to the same extent it oversees the investments of the association. The Grand Jury finds the board has not developed a long-range plan that assesses the administrative goals and needs of the system and defines strategies to ensure the prompt delivery of benefits and related services to the participants and their beneficiaries.

The Grand Jury recommends that the board develop and adopt a strategic plan that meets these objectives and ensures permanent board oversight of the administration of the association.

Staffing

The board needs to pay closer attention to MCERA staffing. Board oversight of the staffing needs is part of its fiduciary duties.

The most frequent complaint made to the Grand Jury, as well as reported publicly, is the lengthy time a plan beneficiary is kept waiting for a retirement calculation. In order to improve customer service the Grand Jury believes that the board must ensure there is adequate trained staff whose regular assignment is to calculate benefits. Cross-training additional staff to perform benefit calculations is also necessary to ensure backup is available at all times to meet customer requests.

At present the only administrative executive is the retirement administrator. Multiple sources informed the Grand Jury that the administrator is spread too thin. We recommend that the board proceed with all deliberate speed to hire a retirement benefits supervisor and an assistant retirement administrator with strong people skills. The addition of such executives to MCERA's administrative team can provide a positive

effect on staff relationships and on the efficiency and effectiveness of the organization. We were told that recruiting for a retirement benefits supervisor was underway at the time of this report and recruitment for an assistant retirement administrator was to begin soon. The Grand Jury recommends the board take an active role in interviewing and selecting these supervisory personnel.

The number of extra hires should be reduced

The County Employees Retirement Act of 1937 provides that staff appointments *shall* (emphasis added) be made from eligibility lists created in accordance with the county civil service rules, they *shall* be county civil service employees and *shall* be subject to the county civil service rules and *shall* be included in the salary ordinance adopted by the county Board of Supervisors. A lot of “*shall*s.” Nevertheless, 35 percent of the MCERA administrative staff is comprised of employees who are not subject to civil service rules and are not civil service employees. Of the 19 MCERA administrative employees, seven are “extra hires.”

Extra hires are temporary employees whose appointment is limited to six months, with the possibility of renewal for one additional six-month term. If an extra hire is a retiree of another county retirement system, there is no two-term limitation and such employee may continue for as long as the appointing agency desires. MCERA employs two such retirees.

The Grand Jury is informed that MCERA employs extra hires because:

- The process of employing an extra hire is faster than using the County civil service lists.
- MCERA can keep an employee on probation for an extra year. Under County civil service rules, an employee has a one-year probation period. If MCERA hires a person who was originally an extra hire, the one-year probation period begins anew when the civil service appointment is made.
- It is easier to dismiss an extra hire.

The Grand Jury believes the board and management should be aware that the extra hire practice could be inconsistent with the spirit of the 1937 Act if taken too far and recommends that the board adopt and implement hiring policies that meet operational needs as well as the provisions of the 1937 Act.

Staff turnover needs to be reduced

According to sources, it takes an employee two to three years to develop the knowledge and experience necessary to be able to calculate retirement benefits and all their variations. Thus, turnover among staff capable of calculating retirement benefits is detrimental to the efficiency and effectiveness of the organization and should be avoided. In the last 2½ years, however, turnover at MCERA has been disturbingly high. Over this period 34 employees have filled 20 positions. There has been recruiting several times for the same job. It is unusual and highly disruptive for a retirement system to experience such high staff turnover, and has adversely affected the staff's performance. The Grand

Jury visited the retirement system offices of two neighboring counties and found both have stable work forces with minimal turnover.

The Grand Jury recommends that the MCERA board develop appropriate solutions to the high staff turnover.

Staff morale needs to improve

Complaints of dysfunctional staff relationships have been filed with the Grand Jury as well as reported publicly. These complaints range from discourteous treatment of customers to backbiting and undermining members of the staff. At the April 2009 board meeting 15 staff members submitted a letter heralding their team-building and unity. The letter credited two seminars with improving internal communications and laying the foundations for vision- and goal-building among the staff.

The seminars the staff praised occurred in the fall of 2008 and were conducted by an organizational consultant experienced in strategic planning. Sources informed the Grand Jury that there are no additional seminars scheduled. The Grand Jury finds these seminars have provided staff with a sense of direction and commitment to MCERA and recommends that the board direct that additional team-building efforts such as these seminars continue.

Oversight committees

Earlier this year the board established three standing committees that may help set a new course for improved oversight of the administration of MCERA. A Finance and Risk Management Committee is charged with developing financial oversight functions of the board, including internal controls to ensure all financial activities are undertaken according to best practices. A Member Services Committee is charged with developing policies for the level and delivery of member benefits. A Governance Committee is to develop policies and procedures directly related to the board's oversight of the administration of the system.

The Grand Jury believes the board should be commended for its action and recommends that it adopt time frames for each committee to complete development of its respective policies and procedures.

Fiscal controls

The Grand Jury has learned that expenditures for operating expenses as well as investment purposes were approved only by the retirement administrator, with no verification or confirmation of the expenditure from a second person. For example, MCERA has one credit card, which the retirement administrator possesses and uses. The administrator also approves payment of the bill. In the investment context, when one of the investment managers working with the board needed funds to make an investment,

there was no verification that the request for funds from the investment manager was authentic and accurate.

In March 2009 the board hired an independent accountant with significant experience in governmental accounting systems to review specific MCERA practices relating to expenditures in ongoing operations and investments. The accountant submitted his recommendations to the board in May. They call for MCERA's senior accountant, or another appropriate official, to verify expenditures in both the operating area and investments. The Grand Jury believes these recommendations, when implemented, will address shortcomings discovered in the investigation and recommends the board implement each recommendation on a priority basis.

FINDINGS

The Grand Jury finds that:

- F1.** The MCERA board has a fiduciary duty to oversee the administration of the retirement system.
- F2.** The board has not exercised sufficient oversight of the administration of the retirement system.
- F3.** The board has not adopted a strategic plan that assesses the organizational goals and needs of the retirement system and develops strategies that meet these goals.
- F4.** Board oversight of MCERA staffing needs is part of the board's fiduciary duties.
- F5.** There is no overall plan of action that addresses MCERA staffing needs, including ensuring that there is adequate trained staff to calculate benefits, and that adequate staff are cross-trained in benefits calculation.
- F6.** It takes an employee two to three years to develop the knowledge and experience necessary to calculate retirement benefits and all their variations.
- F7.** Employing extra hires to avoid appointing employees from County civil service lists may be inconsistent with the spirit of the law.
- F8.** The addition of a retirement benefits supervisor and/or an assistant retirement administrator with strong people skills could have a positive affect on staff relationships.
- F9.** MCERA has experienced both a rapid increase in staff and high staff turnover in the last 2½ years.
- F10.** Team-building seminars provided to staff have resulted in almost all employees acquiring a new sense of direction and commitment to MCERA.

F11. The board has established three standing committees to develop specific policies and procedures to ensure best practices in exercising oversight of the administration of the retirement system.

F12. The board has received fiscal control recommendations from an independent accountant setting forth specific controls needed to ensure expenditures for operating expenses as well as investments are made according to generally accepted accounting standards.

RECOMMENDATIONS

The Grand Jury recommends that:

R1. The MCERA board adopt a strategic plan that assesses the organizational goals and needs of the retirement system and develops strategies that meet those goals.

R2. The board assess MCERA's staffing needs and adopt an appropriate plan of action ensuring compliance with the 1937 Act.

R3. The board ensure there are adequate personnel for each staff function and sufficient personnel cross-trained in benefit calculations for timely responses to customer requests.

R4. The board direct management to continue providing staff with team-building opportunities on a regular basis.

R5. The board take an active role in interviewing and selecting a retirement benefits supervisor and an assistant retirement administrator.

R6. The board establish time frames for the three new board committees to develop their respective policies and procedures and implement each new policy.

R7. The board develop appropriate solutions to the high staff turnover.

R8. The board adopt and implement the fiscal control recommendations of the independent accountant.

REQUIRED RESPONSES

Pursuant to Penal Code Section 933.05, responses to this report are mandatory as follows:

- Retirement Board, Marin County Employees' Retirement Association all **Findings** and **Recommendations**.

The governing body indicated above should be aware that the comment or response of the governing body must be conducted subject to the notice, agenda and open meeting requirements of the Brown Act.

California Penal Code Section 933 (c) states that "...the governing body of the public agency shall comment to the presiding judge on the findings and recommendations pertaining to matters under the control of the governing body." Further, the Ralph M. Brown Act requires that any action of a public entity governing board occur only at a noticed and agenda public meeting.

The Grand Jury invites a response from:

- The Marin County Board of Supervisors.

Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code Section 929 requires that reports of the Grand Jury not contain the name of any person, or facts leading to the identity of any person who provides information to the Civil Grand Jury. The California State Legislature has stated that it intends the provisions of Penal Code Section 929 prohibiting disclosure of witness identities to encourage full candor in testimony in Civil Grand Jury investigations by protecting the privacy and confidentiality of those who participate in any Civil Grand Jury investigation.