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Daniel Borenstein: Fire board aided chief's pension spike

By Daniel Borenstein
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THREE DAYS BEFORE the chief of the Moraga-Orinda Fire District announced his retirement, the Board of Directors approved benefit changes to his contract that had the effect of spiking his pension by as much as 20 percent, increasing his annual retirement pay by about $40,000 to $241,000 a year.

According to three board members, the directors knew when they approved the contract amendment on Dec. 10, 2008, that Chief Pete Nowicki was planning to retire. Indeed, Director Pete Wilson said the board members deliberately made the changes to help Nowicki increase his pension and that the chief presented them with calculations documenting the effect.

One might understand giving the chief what amounts to a raise to retain him. But boosting his compensation when he was headed out the door is unconscionable.

Director John Wyro told me that the directors never saw calculations of the financial effect of the changes they were approving. Their goal, he said, was to give Nowicki benefits that his battalion chiefs already enjoyed. In fact, they gave him much more.

It all raises questions that District Attorney Robert Kochly and the Contra Costa County Grand Jury should investigate about whether the contract amendment constituted an illegal gift of public funds. Moreover, the Contra Costa County Employee Retirement Association, which administers the fire district's retirement plan, should review Nowicki's pension to determine whether the last-minute spiking violates state law.

Finally, there's the question of whether Nowicki hoodwinked the board. "Did I fully understand ... the full impact to his pension? I did not fully understand the impact," Director Frank Sperling said. "I wouldn't say we were taken by the chief. I would agree the chief understood the pension system better than I did."

Wyro and Wilson added that the board members relied on Nowicki's representations that the contract amendments would put his benefits on par with his top subordinates, the battalion chiefs. They never independently verified his claims. That's pretty amazing: While negotiating a contract with their fire chief, the board members relied on that very person for their information.

The board unanimously approved the contract amendment. Nowicki and Director Fred Weil did not respond to telephone and e-mail inquiries. Director Brook Mancinelli said he didn't have time to answer questions.

Nowicki's tenure as chief began in 2006, when he and the district agreed to his original contract. That document was amended in February 2008 and then again in December. The negotiations between the chief and the board over the second amendment lasted several months, during which time Nowicki revealed his plans to retire.

Nevertheless, Sperling said, "My intention of approving the second amendment to the contract was to provide for appropriate current compensation and I did not take into consideration

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pension implications."

The amount of Nowicki's exorbitant pension has been known for months. I reported in April that he had converted a $185,000 annual salary ($194,400 with adjustments) into a $241,000 yearly pension. I spelled out the spiking methods, which included selling back unused vacation and holidays hours. He not only received cash for the unused time, the payments were applied to his final year's salary used for his pension calculation.

What's new is that much of sell-back was made possible by the second amendment to his contract. The amendment was first uncovered in July by the local firefighters union and was subsequently mentioned by The Wall Street Journal in a recent article on pension spiking that featured the Nowicki case.

Until now, however, it was not publicly known that the directors were aware of Nowicki's retirement plans when they approved the contract amendment. And there has been no public calculation of the effect of the amendment on his pension payments. Exactly how much it increased his pension has been difficult to determine because Nowicki and the district have stalled responses to specific questions and records requests.

That said, most of the financial effect can be calculated by examining the contract amendments and records on file with the retirement association:

Vacation buyback. In the February 2008 contract amendment, Nowicki was granted a one-time buyback of 200 hours of vacation leave. But in the December 2008 contract amendment, that amount was increased to 260 and allowed annually. (In contrast, battalion chiefs are allowed 196 hours annually.) The effect was to allow Nowicki to sell back an additional 320 hours of vacation. The income from those sales counted toward final-year salary when calculating his pension, thereby boosting his annual retirement pay by $25,280.

Administrative leave. In his original contract, Nowicki, like his battalion chiefs, was specifically prohibited from carrying over from year to year his 80 hours of administrative leave. It was "use it or lose it." But in the December 2008 amendment, that was specifically changed to allow him to accrue administrative leave and convert it to vacation leave. It's unclear from the contract amendment whether Nowicki was entitled to convert 80 or 160 hours when he retired. But if he converted 80 hours to vacation and then received a payout for it upon retirement, that would have added $6,320 to his annual pension.

Floating holiday. In his original contract, Nowicki was granted the same 10 paid holidays each year as other administrative and clerical positions. In the December 2008 contract amendment, Nowicki was increased to the 13 holidays granted to battalion chiefs. More significantly, under the original contract, if he worked the holiday he was entitled to take a different day off within two months. He could not accrue the time beyond that. Under the amendment, he was entitled to accrue a year's worth of holidays, retroactive until January 2008, which he could cash out upon leaving. When Nowicki's pension was calculated, he was credited for all 13 holidays. The effect of this was to add $8,216 to his annual pension.

Wyro said he was "shocked" to learn from me that the changes spiked Nowicki's pension by 20 percent. "It would have been better to know what that number was going in so we could have made a more-informed decision." Wilson, on the other hand, was unmoved by the figure. "Yeah, so what's the problem?" he said.

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Three days after the board agreed to the contract changes that had implications Nowicki apparently understood better than the directors, the chief sent out an e-mail announcing his official retirement. In an amazing display of hypocrisy, Nowicki bemoaned the system that paid him more to retire than to keep working. "The concept is akin to the government paying farmers not to grow crops ... ," he wrote. "Nonetheless, I've reached that financial plateau and it's no longer economically feasible to continue in my current capacity."

The epilogue to the story is that Nowicki started drawing his pension and the board hired him back as interim chief under a $176,400 annual contract that remains in effect today. Board members say they are concerned about rising pension costs and, believe it or not, have turned to Nowicki to help them understand what to do about it.

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