

# **The Elk Grove Benefits Employee Retirement Trust**

## **Issues**

Does the Elk Grove Benefits Employee Retirement Trust (EGBERT), an organizational affiliate of the Elk Grove Unified School District (EGUSD), need to comply with the Brown Act<sup>6</sup> by providing open access to the EGBERT meetings?

Has the EGUSD provided appropriate fiscal safeguards for its retirees' health insurance?

## **Reason for Investigation**

The Grand Jury initiated this investigation as a result of a complaint. A member of the community had been attending the EGBERT meetings. When a disagreement arose between that individual and the EGBERT Board, the EGBERT's by-laws were changed to prohibit attendance by individuals not specifically invited to its meetings. The complainant raised the issue that the EGBERT, as an organization directly tied to the EGUSD, should be required to comply with the Brown Act and thus, their meetings should be open to the public.

## **Method of Investigation**

The Grand Jury met with members of the EGUSD Board of Education and with members of the EGBERT Board. The Grand Jury requested an invitation to an EGBERT meeting and attended the April, 2008, meeting of its Board of Directors. Interviews were conducted with individuals responsible for providing other health retirement plans to employees in Sacramento County.

## **Background**

Since its inception, the EGBERT meetings were open to interested persons. A 2007 change in its by-laws now requires an invitation from the EGBERT for members of the public to attend these meetings. An EGBERT officer stated the reasons for "closing" the EGBERT meetings were:

- Articles written by a reporter were "inaccurate".
- Collective bargaining issues were discussed.
- EGBERT directors, as volunteers, "shouldn't be subjected to harsh comments from outsiders".

Some members of the Elk Grove Board of Education believe the EGBERT meetings should be open. The EGUSD also appears to have a current commitment to transparency, disclosure, and public participation. The EGBERT view, and that of their legal advisor, is that it is a non-profit organization, distinct and separate from the District, and is therefore excluded from the requirements of the Brown Act.

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<sup>1</sup> The Brown Act (Government Code §§ 54950-54962) governs meeting access for local public entities.

School districts and other private and public organizations provide health benefits and insurance coverage to their employees and oftentimes to their retired employees. These health and welfare plans can include: medical, dental, vision, prescriptions, life insurance, long-term care, and disability insurance. These “perks” are part of the negotiated benefits package that results from collective bargaining.

School administration groups must decide what their district can provide in the way of salary and wage increases, health and welfare benefits, and the scope of coverage for employees, retirees, and spouses and/or dependents. Recent increases in the cost of health insurance coverage create a growing concern and dilemma for school budgets.

The five EGUSD labor unions and the District’s administration wanted to provide high quality health and welfare benefits for their eligible retired employees and dependents on an insurer-paid or self-funded basis. This is accomplished through the EGBERT, a trust organization, qualified as a non-profit organization under Section 501(c) (9) of the Internal Revenue Code.

After study of similar plans in Southern California, the EGUSD, in 1995, adopted a resolution establishing the EGBERT. It serves as a locally, self-managed, Voluntary Employee Beneficiary Association (VEBA) trust plan. The District, as part of collective bargaining agreements, contributes to the EGBERT in the amount of \$3 million per year to provide health and welfare benefits for its retirees. It is supplemented by employee contributions from salaries negotiated through collective bargaining.

The EGBERT agreement calls for a Board of Directors comprised of individuals who represent each of the labor unions, management, and retirees. Directors manage the trust fund but are not compensated for their services.

The EGBERT contracts with consultants for the following: Legal and investment advice, actuarial data, and auditing services. EGUSD employees perform the managerial and clerical services on a reimbursable basis. Most EGBERT meetings take place at the District office.

The District supports the EGBERT because it takes retiree health benefit funding off the District books. The District is no longer responsible for managing these funds. Union members approved this approach since it gave them more of a local say in employee benefits.

At the time the EGBERT was adopted, the California Public Employees Retirement System (CalPERS) did not offer such a plan. Another option is a third party financial institution approach. Neither the district administration nor the labor groups felt this latter approach offered enough options or controls. VEBAs have been traditionally used by private non-profit organizations and others, but have more recently been adopted by some public education organizations.

Although CalPERS has recently established a post-retirement benefit plan, the EGBERT is not eligible to transfer its holdings and to participate in the CalPERS plan at this time. State legislation is necessary to accomplish this strategy option.

From its inception and since establishment of the EGBERT, the District has provided 100% health and welfare benefit plan premiums for retirees and their spouse/dependent. The EGBERT has done very well with their investments and with controlling management and consultant costs. However, this success has a foreseeable limit. The current level of unfunded liability<sup>2</sup>, for the EGBERT, is \$195 million dollars and growing. According to current projections and assumptions, in four to five years the EGBERT will reach a critical point, where its unfunded liabilities will be more than its invested contributions and investment returns.

According to the May, 2007, report, *California's First Retiree Health Valuation*, "There are two general strategies for addressing unfunded liabilities: (1) setting aside additional funds... and (2) changing benefits in some way to reduce costs." Option 1 is not a viable solution for EGUSD. They are currently contributing \$3 million annually into the EGBERT. Significant increase to this amount is not likely, particularly in light of budget cuts. Option 2 is more realistic. Instead of the EGBERT paying 100% of the cost of health benefit premiums, it could lower this percentage and require its retirees to accept some of the cost for their insurance. To date, the EGBERT Board of Directors has not recommended any adjustments.

The Public Employees Post-Retirement Benefits Commission found: "An actuarial cash flow analysis indicates that EGBERT is funded to meet obligations for another 15 years. If annual contributions do not increase and/or there is not a change in the benefit amount provided to retirees, the trust would exhaust all funds in year sixteen."

Government Code § 3547.5 requires that the public be made aware of costs associated with a district's collective bargaining activities. This would include benefit related costs. In addition, districts are also required by Governmental Accounting Standards Board (GASB)<sup>3</sup> to disclose the financial liabilities related to their post-employment benefit offerings.

As employees near retirement, health and welfare benefits become increasingly important. Normally, school districts want to be fair to their employees but also limit their costs by establishing caps. Unions have no legal responsibility for school management or governance. Accountability and legal responsibility rests with the district and the school board.

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<sup>2</sup> Unfunded Liability. A retirement liability is the estimated amount of funds that would need to be set aside today, which, when combined with assumed future investment returns would be sufficient to cover costs of all future retirement benefits earned to date by current and past employees. The unfunded portion of that liability is the amount remaining once existing assets are considered. The average public pension system has enough assets on hand to cover about 88% of its established liabilities for future benefits earned to date by current and past employees.

<sup>3</sup> GASB 43 and 45. GASB 43 applies to trusts which are established in order to pre-fund Other Post- Employment Benefits (OPEB). GASB 45 relates to requirements that public agencies reflect OPEB liabilities on their balance sheets.

## **Findings and Recommendations**

### **Open Meetings**

**Finding 1A:** The EGUSD approves benefit provisions for its employees and retirees. The EGBERT, by “closing” its meetings, has limited the public’s ability to oversee how its retired teachers’ health and welfare benefit funds are managed.

**Finding 1B:** The Elk Grove Board of Education and current management staff were helpful to this Grand Jury. We commend their openness and commitment to transparency.

**Finding 1C:** A recent report on “Funding Pensions and Retiree Health Care for Public Employees”, prepared by the State’s Public Employee Post-Employment Benefits Commission, supports public participation, disclosure, transparency and accountability in these matters.

**Recommendation 1:** The EGBERT should comply with the Brown Act since it is using public dollars to fund benefits for public employees, and using reimbursed public staff time and facilities.

### **Future Unfunded Liabilities**

**Finding 2A:** Admirably, the EGBERT has done well with its investments and with controlling management and consultant costs.

**Finding 2B:** The EGUSD fiscal staff currently projects that in four to five years EGBERT will have a serious gap between the totals of its contributions and invested trust fund dollars and its unfunded liabilities for retirees. There is no current plan on how to answer this future and predicted liability.

**Recommendation 2:** The EGUSD needs to prepare for affiliation with an organization such as CalPERS to administer its health and welfare retirement benefits. The District should see that necessary laws are enacted to allow for this transition.

## **Response Requirements**

**Penal Code sections 933 and 933.05 require that specific responses to both the findings and recommendations contained in this report be submitted to the Presiding Judge of the Sacramento Superior Court by October 1, 2008, from:**

- **President, Elk Grove Unified School District Board of Education, Findings 1A, 1B, 1C, 2A, and 2B; Recommendations 1 and 2.**