

Waterfall Basics
Submitted by Joe Flynn - June 5, 2007

Retirees: Today a small group of retirees, Judi Italiano of MEA, and Ron Saatoff of 145 spent most of the day in the Council Chambers, waiting to speak on Item 331, the "Waterfall Issue." The draft ordinance (more of a strikeout) was before the Council for a second reading and adoption. This is the fifth time out for this issue, so you may have guessed that it is a point of contention.

Waterfall.....Excess Earnings.....Contingent benefits

For those of you unfamiliar with the "Waterfall" concept as used in paying retirement benefits, a brief explanation. The idea was an attempt to assign a priority among the pension benefits adopted by Council which were to be paid out of "excess earnings," that is the amount of pension fund earnings above 8%. Stay with me on this, it gets better.

So with four or more benefits to be paid out of the "excess earnings," a plan had to be developed to decide in what order they would be paid. You see, in some years, there was not enough money to pay all of these benefits. These benefits were therefore known as "contingent benefits" since their payment was "contingent" on there being enough money to pay them.

The Waterfall established the order of which contingent benefit got paid first, second, etc., as long as the money lasted. Just like drawing water out of a river, as long as the water lasts. So we have a "Waterfall" of "excess earnings" used to pay "contingent benefits."

Complicated, and at the heart of it, it was not a good idea. All of the reports, from Vincent & Elkins to Navigant rapped this process soundly. Bad accounting, and contrary to IRS regulations. By 2005 everyone agreed that the Waterfall should go.

The Retirement Board in 2005 brought the contingent benefits into the realm of fund liabilities, and accounted for them in a way that corrected the accounting and IRS problems. Still, some changes in the Municipal Code were necessary to expunge the Waterfall concept.

So along comes the City Attorney with an ordinance that strikes all of the Waterfall language. Solves one problem, but creates three new ones. Because imbedded in the Waterfall language in the ordinance are the mechanisms that allow SDCERS to pay; the Corbett payment, the 13th Check, and the Cost of Living Adjustment (COLA.) If that language is removed, SDCERS cannot pay the benefits. Only the plan sponsor, the City, can establish or confer benefits. SDCERS can only administer the benefits that have been established. SDCERS is the payroll clerk.

A recent example of a benefit not authorized in the ordinance was the oversight in the Corbett settlement language which overlooked the non-service eligible disability retirees. SDCERS Tax attorney's reviewed the Pension Plan as shown in the Municipal Code and could find no reference to this group for the Corbett payment. They therefore advised SDCERS that these payments were unauthorized and contrary to IRS regulations. Based on that advice, 120 disabled retirees lost their Corbett payment. That oversight was brought to the attention of the Council and the City Attorney. It has yet to be corrected.

When the current proposed Ordinance change was sent to Council, the Independent Budget Analyst, Andrea Tevlin, Chris Waddell, SDCERS General Counsel, and a representative of Council Pres. Scott Peters recognized the problem and got together with a Deputy City Attorney to surgically remove the Waterfall concept but retain the language necessary to allow SDCERS to pay the benefits established by the City. All parties thought they had a compromise. Not so. The City Attorney did not agree; he thought that all the ordinance should be removed and that SDCERS could take care of it and figure out a way to make the payments.

So now we are up to today, June 5th, the fifth time this issue has been before the Council. Speaking in opposition were retirees Virginia Silverman, Patricia Karnes and I; Judi Italiano, Ron Saatoff, and Chris Waddell. The City Attorney is still on square one; strike it all, and let SDCERS take care of it. For the next two hours, everyone took turns speaking. Chris Waddell spoke, then the City Attorney spoke; the IBA rep spoke, and the CA spoke, a councilmember would speak, the CA would speak. If your views conflicted with the City Attorney's, you were deemed to be providing legal advice, which he and only he was qualified to give.

Tedious, contentious, and time consuming. But I never dozed off once. I will confess, however, that at times my mind did wander back to happier times, times when Ed Butler was City Attorney. Always eloquent, he spoke seldom but with clarity and authority. Of to a vision of John Witt in the chair, guiding the Council along legal pathways. But the reverie vanished, because I knew if that were the case this item would have been wrapped up in the second meeting in April.

In the end, the Council recognized the dilemma and continued the matter for 30 days, to ask the City Attorney to bring back an ordinance that removed the Waterfall but retained the language to allow SDCERS to continue to pay the agreed upon benefits.

I know this report ran a little longer than intended, but if you think this is long, you should have been at the Council hearing. It was not an easy day for

the Council. And if you happen to run into Chris Waddell, thank him. He put in a long day in our behalf. SDCERS was well represented today.

See you in 30 days.....

Joe Flynn, Retiree