

2008-2009 GRAND JURY REPORT

Riverside County Temporary Assignment Program (TAP) and 401(a) Retirement Plan

Background

Prior to 1998 each department within the County of Riverside had independent methods for hiring temporary employees. The procedure was to contract with one or more outside agencies with different financial arrangements. At the time California Health & Safety Code Section 31000.4 required temporary employment to be limited to three-month periods. This became inconvenient when a subsequent federal law allowed a full-time employee to be out as long as seven months and more importantly, couldn't be permanently replaced. (The Family and Medical Leave Act of 1993.)

The Riverside County Human Resources Department (HR) initiated a program to consolidate all requests for temporary employees and created a ready pool for forthcoming requests called the Temporary Assistance Pool. It is now known as the Temporary Assignment Program (TAP). This consolidation by HR provided not only rapid response to the requesting departments, but reduced the cost of hiring compared to outside private agencies. For example, outside agencies charge a markup of just over 50 percent, while the TAP program charges just under 30 percent. A decision was made to operate TAP as an enterprise program (revenue generating). A loan of \$600,000 was approved by the Riverside County Board of Supervisors to initiate the program. The loan was repaid in three years.

Initially, there were 200 TAP employees and, at its peak, the number of employees reached 2,000. TAP employee work rules limit employee service to not more than 1,000 hours in a given year without special review and permission.

The Laborers International Union of North America (LIUNA), representing permanent county employees, complained to HR that the pay scale for TAP employees matched that of permanent employees. An agreement was reached between LIUNA and HR, which lowered TAP wages by approximately 5.5 percent below those of permanent employees. (Note that TAP employees do not get paid for holidays, vacations, or sick leave.)

To offset this lower TAP 5.5 percent wage rate, HR developed a plan, which gave TAP employees better take home pay in spite of the lower wage rates. This plan is allowed by a special Internal Revenue Service (IRS) approved pension program called a 401(a). This is a qualified “defined benefit” plan designed to pay benefits in a manner similar to Social Security, in compliance with IRS Code Section 3121(b)(7)(F) for plans provided in lieu of Social Security.

Under this “defined benefit” plan TAP employees are required to contribute a withholding amount of 3.75 percent rather than the 6.2 percent required by Social Security. This increases their take home pay, in spite of the salary scale 5.5 percent below comparable permanent employees in the same job classification. As a comparison, should TAP employees eventually become permanent employees, they are then required to pay 6.2 percent to Social Security as well as 8.0 percent to the California Public Employees Retirement System (CalPERS). The 401(a) plan is nine-years old. As of 2009 there are 86 persons receiving pension payments.

The 401(a) plan also provides the county a financial benefit. The match for the county is also 3.75 percent, saving it 2.45 percent per employee. Funds collected for this plan are accumulated in a county pension trust account.

The Social Security Plan pays pension benefits at age 65. This is also true for the 401(a). The formula for the county’s 401(a) plan is 2 percent of career compensation, which is paid as a monthly benefit for life, beginning at age 65. Like Social Security, participants are not given their contributions plus interest, but a calculated actuarial benefit for the remainder of their lives. Also, like Social Security, many participants receive monies over their lifetimes, which may exceed their contributions and interest.

Findings

- 1a. Sworn testimony revealed that the orientation program for new TAP employees explains the protocols such as working hours, parking, etc., but not the 401(a) pension plan. This plan is outlined in a nine-page handout, which is difficult to understand. It is not uncommon for TAP employees to consider their plan to be the more commonly understood 401(k) plan, which would refund their full contribution.

- 1b. There is a way for those employees who remain employed by the county to cash out their benefits, but not until they terminate their temporary status. If the present value of accrued benefits does not exceed \$5,000 at the time of termination of employment, participants receive a lump-sum equivalent instead of the lifetime benefit. Note: this is not a return of contributions and will not equal their contributions to the 401(a) pension plan. If it does exceed \$5,000 the participants are qualified to receive a pension from the 401(a) pension plan at age 65.

For example, suppose an employee, over many assignments, has earned wages totaling \$35,000. At 3.75 percent the TAP employee would have contributed \$1,312.50 rounded to \$1,313. The method of determining the distribution value is to multiply the eligible earnings by 2 percent resulting in \$700. Then multiplying that value by the actuarial rate for the given age will provide the distribution value.

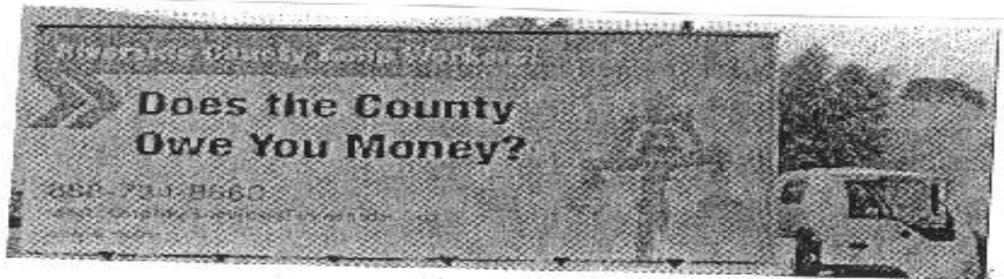
As an example, at age 24 the TAP employee paid-in \$1,313 and opting-out would only result in a return lump-sum of \$194. Note that the older the employee the more payout over the \$1,313 contributed. However, the younger employee opting-out does not receive anywhere close to his/her contribution.

Separation Age	Paid-In (\$)	Actuarial Rate	Distribution Value (\$)	Gain (Loss)(\$)
24	1313	0.277	194	(1119)
30	1313	0.443	310	(1003)
50	1313	2.166	1517	204
60	1313	5.115	3580	2267
65	1313	8.195	5736*	4423

*On the other hand, if the distribution value were over \$5,000 the employee would receive a monthly pension payment of \$58.35 beginning at age 65.

As can be seen by the table, those in their twenties and early thirties actually do not receive the bulk of their contributions. In essence, the county benefits by not returning their full contribution and also benefits by paying only 3.75 percent to the IRS. These monies unjustly enrich the county to the detriment of TAP employees. From their standpoint it would be better to pay full Social Security at 6.2 percent that would be added to their Federal retirement benefit.

- 1c. The Service Employee International Union (SEIU) is attempting to convince TAP employees to join the union by misrepresenting the 401(a) plan. Investigation found no evidence that the unionization of TAP employees serves any useful purpose. A pension plan for temporary employees is an oxymoron, but has become the basis for union organizing. Recognizing the complexity of the 401(a) plan, the SEIU has exploited it by accusing the county of cheating TAP employees. A large truck travels the county with its trailer emblazoned with the following:



(Source: SEIU Local 721)

- 1d. At a recent Riverside County Board of Supervisor's meeting a TAP employee complained about being cheated. This employee expected to get back his full contribution, which demonstrates the lack of understanding of the 401(a) pension plan. The supervisors discussed the possibility of reverting to outside agencies rather than TAP. The SEIU immediately filed a labor relations charge, the outcome of which is still pending.

Recommendations

**Riverside County Board of Supervisors
Riverside County Human Resources Director
Riverside County Chief Executive Officer**

1. Terminate the 401(a) pension plan for TAP employees and let them benefit by paying into Social Security.

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