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## PROTECTING EMPLOYEE RIGHTS IN PUBLIC SECTOR PENSION PLANS

by Bruce Payer

Representatives of public employee organizations in California are concerned about a broad range of problems affecting the major pension plans which cover their members (PERS, the 20 county plans under the 1937 Act, and the independent city-county-district plans). First, the multi-tier options continue to proliferate, promising future benefits that will be drastically reduced, both for new employees, and for those who opt out of better plans (often with a cash incentive to do so).

Second, in the management of the investment function in the public sector funds, employers still exercise the greatest amount of control over both administration and policy decisions. The California Pension Investment Unit sought during the Brown Administration to develop new objectives and guidelines for investment policy, but the unit was abolished by the Deukmejian Administration. California's public employees are the state's biggest group of investors in the free enterprise system, but their interests are still not properly represented in their pension fund investment policies and decisions.

Third, the major plans in the state remain tempting targets for "creative diversions" of pension funds to help balance revenue-starved general budgets. Fortunately for PERS, the recent attempt to "divert" \$180 million of its reserves to help balance the state's general budget was turned back by the courts. Local jurisdictions which relied on the illegal "diversion" strategy, approved by the Governor and the legislature, are now confronted with penalties for late payments, in addition to the amounts which were legally required, but not contributed.

These problems are part of a larger framework of inadequate protection of public employee pension rights in California. Private sector employees throughout the nation have basic protections which were enacted in ERISA in 1974. It is not likely that similar legislation will be enacted to protect the pension rights of public employees throughout the nation. California public employees need similar protection, which could and should be legislated in Sacramento, and not in Washington.

**The Need for Protection of Basic Employee Rights**—The stakes are huge. More than a million public employees in California are covered by various public pension systems. About 350,000 retired public employees are receiving benefits. The public sector plans in California alone invest assets which now total more than \$100 billion.

An overview and comparison of all public sector pension plans in California was completed by the Senate Committee on Public Employment and Retirement (Senator Russell was then Chair), and made public in a three volume study in 1978. The following conclusions from this report have concerned the representatives of public employee organizations a great deal, but have not received the attention they deserve from the state legislature:

- No statute requires reports to plan members and beneficiaries, or to others concerned; there is no uniform definition of the "yields" which are reported; there is no analysis or comparison of investment performance; the funding plan and progress in meeting it is not reported, although there are numerous failures to fund benefits adequately; no statute sets forth the accounting procedures to be followed . . .
- There are no requirements for independent, external review and analysis of California public employee retirement systems . . .
- Significant changes in California plans are still enacted without full knowledge of the full fiscal impact . . .

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- There is no uniformity in actuarial valuations—including assumptions about inflation, future salary levels, and interest earnings . . . .
- Development of the concept of fiduciary responsibility, to be discharged solely in the interests of participants and beneficiaries, as set forth in ERISA, still has no counterpart in the public sector plans; and there are no ERISA-type prohibitions against conflicts of interest, including direct interests in the outcome of investment policy . . . .
- The trust nature of public retirement systems is not recognized in California law. Public employee trust funds should be declared to be trusts for the uses and purposes set forth in the retirement laws, "and for no other use or purpose," as in Oregon . . . .

**Announcing a Conference**—To analyze these and other problems confronting public employees and public employers, in dealing with current issues affecting their pension plans in California, the Institute of Industrial Relations, U.C. Berkeley, in cooperation with the PERS Retirement Betterment Committee, Glendale, are co-sponsoring :

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**A Conference on the Subject of  
PUBLIC SECTOR PENSION PLANS:  
COPING WITH THE CURRENT CRISIS**

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to be held at the  
**WOODLAKE INN**  
**SACRAMENTO, CALIFORNIA**  
on  
**JANUARY 26–27–28, 1984**

The opening session will provide a general overview of problems and trends, and will convene on Thursday evening, January 26, at 8 p.m. There will be four general sessions from 9 a.m. to 5 p.m. on Friday, January 27, and a conference luncheon on Friday at noon. The two concluding sessions will be held on Saturday, January 28 from 9 a.m. to 1 p.m.

The registration fee for the conference is \$65. To register or to obtain further information, contact the Center for Labor Research and Education, Institute of Industrial Relations, University of California, Berkeley, California 94720, 415/642-0323.

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-- Bruce Poyer

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