



March 30, 2015

TO: Business, Payroll, and Personnel Administrators
HRS District Coordinators
Los Angeles County School and Community College Districts
and Other Local Educational Agencies

FROM: Donald Dobrow, Assistant Director
District Personnel Information Services
Division of School Financial Services

SUBJECT: Declaration of Indefinite Salaries for Retroactive Pay

This bulletin discusses retroactive salary increases for bargaining unit represented employees and unrepresented, management, and confidential employees. Although Education Code Sections 45032, 45162, and 87806 provide that salaries can be set at any time during the year, these sections do not supersede California Constitution, Article 11, Section 10(a). The Constitution prohibits officers or employees from receiving additional compensation for services already rendered. Courts have generally allowed retroactive pay within the constitution, if salaries were legally “indefinite.”

School Financial Services (SFS) obtained County Counsel opinion regarding the requirement to declare salaries indefinite prior to June 30 of the fiscal year.

1. Governing boards of school and community college districts **can take action to provide for salary increases or decreases** to certificated, unrepresented and management employees, and classified, unrepresented and management and confidential employees retroactive to the beginning of the current fiscal year **if they have passed a resolution declaring such salaries to be indefinite before the beginning of the current fiscal year.**
2. Governing boards of such districts **may not take action to provide salary increases or decreases** to certificated, unrepresented and management employees, and classified, unrepresented, management and confidential employees **retroactive to any date of the prior fiscal year, unless such salaries had previously been deemed to be indefinite.**
2. Governing boards of such districts **are required to pass a resolution declaring salaries** for certificated, unrepresented and management employees, and for classified, unrepresented and management and confidential employees **to be indefinite on or before June 30 of the previous fiscal year in order for retroactive salary payments to be granted.**

If all salaries for the next fiscal year, 2015-2016, are not set before the year begins, and if your district intends to permit retroactive salary increases or decreases for any period of time during the year, it will be necessary for your governing board to take advance action by no later than June 30, 2015. In some instances, a follow-up governing board action may also be needed.

Represented Employees

Salaries for bargaining-unit represented employees automatically become indefinite upon expiration of a collective bargaining agreement or expiration of the salary/compensation provisions of the agreement. It is **not** necessary for the governing board to take an action to declare salaries indefinite for represented employees in advance of next year if a bargaining agreement or relevant provisions expire on a fixed date.

Although bargaining agreement salaries often expire on June 30, other dates may apply. The date that salaries become indefinite may vary.

No action by the governing board is required for indefinite salary status if a contract reopener **on salaries:**

- exists, and
- is legally operative on a specific date, and
- was agreed to on or before that date.

Salaries become fixed if:

- there is governing board approval of a bargaining agreement, and/or
- contract reopeners on salaries do not exist, and/or
- reopeners exist, but without a specific date.

Salaries may be reopened by mutual agreement with a specific governing board action. The effective date of the action to reopen salary negotiations may be the date of the action itself, a future date, **but not a retroactive date**. Once a valid and legal reopening date is in place, there may generally be later agreement for salary changes retroactive to the reopening date, an intervening date, or a future date, but not a date before the reopening date.

Unrepresented: Management, Confidential, and Other

No bargaining is required for unrepresented employees. A governing board may change salaries by unilateral action.

Problem Areas

After a governing board has taken **advance** action to declare salaries indefinite for unrepresented employees, problems may arise. The following are examples of such problems.

Problem Examples

1. "Me Too"

The XYZ governing board declares salaries indefinite for **unrepresented** employees prior to July 1, 2015. In October, the board approves a pay increase of 3 percent for unrepresented employees retroactive to July 1, 2015. Following that action, those salaries are no longer indefinite.

In December, the board takes action to increase a **represented** unit's salaries by 4 percent retroactive to July 1, 2015. The board then desires to increase salaries for **unrepresented** employees by an additional 1 percent. Because of the October board action, the board may **only** increase salaries for unrepresented employees **prospectively**, effective on the date of action, or a future date, but not a retroactive date.

If the board had granted a 3 percent salary increase for unrepresented employees and **also** declared that salaries are continued as indefinite for that group, the earlier "indefinite" action for the unrepresented employees would allow a subsequent 1 percent increase to be retroactive.

2. Unclear Board Actions

After several months of negotiations, a district settles with its certificated bargaining unit retroactive to July 1, 2015. The board decides also to take action on salaries for **certificated management**. If the action taken at that time does not apply to any other unrepresented employees, it may possibly preclude later retroactivity for others. Accordingly, if a governing board does not act on **all unrepresented employees at the same time**, it is recommended that continuation of any intended indefinite status for others be restated. See attached example.

3. Individual Contracts

The XYZ governing board declares in advance that 2015-2016 salaries are indefinite for all unrepresented employees, including administrators. In August 2015, the governing board approves a three-year contract for a new administrator. The 2015-2016 salary amount is stated in that individual's employment contract.

In November, the board approves a 3 percent increase for unrepresented groups retroactive to July 1, 2015. This administrator is normally part of that group. The November action may possibly not apply retroactively to the individual administrator. Legal determination would likely depend on all terms and conditions of the employment contract and/or terminology used in board actions. In general, if the salary of any employee is fixed, retroactivity is precluded.

District Action - Indefinite Status

1. If your governing board intends to revise salaries for **unrepresented** employees and possibly make salary changes retroactive to July 1, 2015, or to any other mid-year retroactive date, salaries must be legally **indefinite** as of the retroactive date. District administrators responsible for preparation of governing board agendas should have their boards take action **before July 1, 2015**, declaring that salaries for unrepresented employees are indefinite as of July 1, 2015.

Attached is an example governing board action for this purpose. **If this action does not occur, salaries for unrepresented employees may only be changed prospectively.**

2. Administrators may have individual employment contracts. It is suggested that if there is a board action taken concerning the indefinite status of unrepresented employees, its applicability to employees with individual contracts should be clarified. For example, the action might include terminology such as “to include all management” or “including the superintendent and assistant superintendents.”
3. Forward copies of the board action declaring salaries indefinite for unrepresented employees to our office **by July 15, 2015**, to the attention of:

Laura Gutierrez, HRS Coordinator
Employee Services Section, EC 132
Division of School Financial Services

4. If your district later approves an actual retroactive salary change, SFS will need a copy of the board action(s) approving bargaining agreement salary changes in order to demonstrate legal compliance. That documentation will be requested at the time your district submits the retroactive pay generation form.

Final Note

In most instances, retroactive pay is subject to retirement. It may depend on a variety of legal aspects. There are different rules for the two major retirement systems. If you have any concerns about retirement applicability, please call Zac Ige for PERS questions at (562) 922-6467 or via e-mail at ige_zacten@lacoed.edu or Bertha Romero for STRS questions at (562) 922-6427 or via e-mail at romero_bertha@lacoed.edu. They will attempt to assist you; however, final decisions regarding applicability may only be made by the appropriate retirement system.

Should you have questions regarding this bulletin, please call me at (562) 922-6418.

Approved:
Patricia Smith, Executive Director
Business and Finance

DD:lt
Attachment

SFS-A48-2014-2015

EXAMPLE - GOVERNING BOARD ACTIONS

Indefinite Action for 2015-2016

“As a result of financial uncertainties, negotiations, legislation and other factors, the governing board hereby declares that all management, confidential and other unrepresented employee salaries are declared indefinite for 2015-2016.”

Subsequent Example Actions

*A board subsequently intends to act on **all** unrepresented employees:*

“As a follow-up to governing board action taken (*earlier date*), the governing board hereby approves salary increases, effective July 1, 2015, for all unrepresented employees, including the superintendent and assistant superintendents.”

*A board subsequently intends to act only on **some**, but not all, unrepresented employees.*

“As a follow-up to governing board action taken (*earlier date*), the governing board hereby approves a salary increase, effective July 1, 2015, for classified management and confidential employees. Certificated management, the superintendent and assistant superintendents, and other unrepresented salaries are still declared indefinite.”