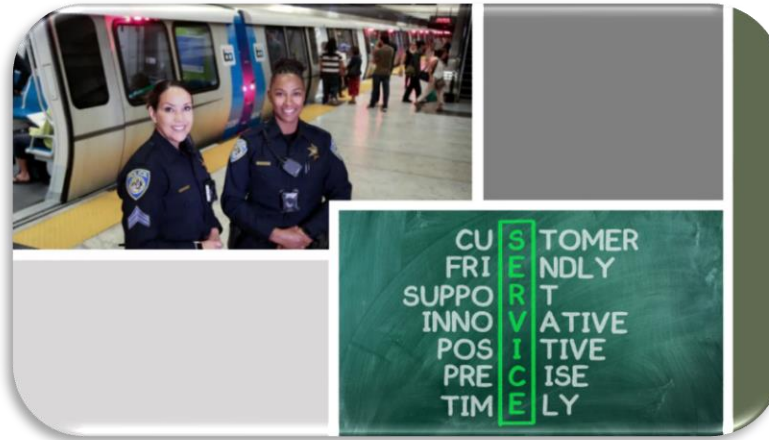


# BART has been Unresponsive to Police Retirees in Correcting Pay and Benefit Reporting Errors

## Office of the Inspector General



### Investigation Results

BART has been unresponsive to retired police officers in correcting pay and benefit errors. After one year of no communication from BART concerning missing wages, a retired police officer filed a lawsuit to recover his wages. The officer prevailed in the lawsuit and BART later paid him. Separately, the police officer and 14 others have been waiting three years for BART to correct their reporting error to the California Public Employees' Retirement System (CalPERS) that has resulted in an inaccurate calculation of the officers' pensions. The correction would increase the amount of the officers' monthly retirement checks. There is currently no expected resolution date. BART has made some recent improvements to their retiree service by developing a group in Human Resources that is responsible for ensuring payroll coding agrees with CalPERS requirements, which should limit or prevent future problems with CalPERS reporting. However, BART still lacks a tracking system to make sure retiree concerns are addressed timely and has not designated an office to manage benefit inquiries.

### Recommendations

1. Create a tracking system to monitor the resolutions of retiree benefit inquiries. This system should have benchmark timeframes for resolution, require communication updates to the retiree, and include escalation triggers to involve higher-level management.
2. Designate a single office to manage retiree benefit inquiries for timely resolutions, regardless of whether they are first submitted through Human Resources, the Office of the Controller-Treasurer, or Labor Relations.
3. Set a firm date by which to have the CalPERS underreporting error corrected and communicate with the affected retirees and the BART Police Officers' Association's law firm that BART is working on the problem, when BART expects to have it corrected, and then when the error is corrected.

## Background and Investigation



BART police officers receive a variety of incentive, shift, and premium pay based on the terms of the BART Police Officers' Association collective bargaining agreement. Beginning in July 2013, changes to the collective bargaining agreement resulted in some officers being assigned to work 84-hour instead of 80-hour pay periods. Those hours must be properly recorded in the PeopleSoft time and labor application for payroll processing and reporting to CalPERS for future pension calculations. Human Resources, the Office of the Controller-Treasurer, Department of Labor Relations, and the Office of the Chief Information Officer all have a role in ensuring police officers are paid correctly and reporting accurate payroll information to CalPERS. Human Resources, the Office of the Controller-Treasurer, and Labor Relations all receive inquiries from retired police officers to correct benefit errors.



The Office of the BART Inspector General (OIG) received a complaint alleging BART was unresponsive in correcting retired police officer pay and benefit errors. OIG is empowered under its enabling statute to review and recommend best practices that BART should follow to maintain positive and productive relations with its employees, and accordingly, our office launched an investigation.

## Key Findings



In August 2018, a retired police officer contacted Labor Relations and inquired about missing wages during the officer's last year of employment. BART did not respond to the officer's inquiry. Therefore, in July 2019, the officer filed a lawsuit to recoup the missing wages. According to the police officer, BART's failure to communicate was the impetus for the lawsuit and that he would have welcomed court mediation to resolve the problem and get answers. BART did not communicate their position to the police officer after he filed the lawsuit and, according to the police officer, declined to use the court mediation program to resolve the dispute. Instead, BART proceeded directly to a small claims court trial in which they did not prevail and were ordered to pay the officer the missing wages. According to BART, there were no missing wages, and the issue was about misreporting hours to CalPERS. BART provided the OIG documentation that supported this ascertain; however, the OIG did not evaluate the evidence provided to the court and is not questioning the court's decision. The matter under investigation is that BART did not respond to the police officer and engage in timely discussions to help resolve the problem and avoid a lawsuit.

In August 2018, Labor Relations confirmed to the retired police officer that BART had not reported four hours of biweekly compensation to CalPERS covering several pay-periods, which resulted in reduced retirement checks. This underreporting coincided with the implementation of the 84-hour pay periods that some BART police officers began working in July 2013. BART continued to report only 80-hour pay periods to CalPERS. No later than June 2019, Human Resources also became aware of this underreporting

and that it affected another 14 other retired police officers. By October 2020, the BART Police Officers’ Association’s law firm was engaging with Human Resources and emphasizing that 15 retired police officers remained affected by BART’s error. As of June 2021, nearly three years after BART was first made aware of the underreporting of monthly compensation to CalPERS, BART has not made the necessary corrections and the 15 police officers’ retirement checks continue to be understated.

BART staff indicated a desire to resolve inquiries concerning pay and benefits of retired police officers. Some staff reported to the OIG that they resolve many inquiries individually and, when unable to do so, they forward the inquiry to the department they believe is responsible for addressing the inquiry, with the expectation that that department will do so. However, inquiries do not always get resolved when forwarded and there is no tracking system or designated office to monitor and manage benefit inquiries to ensure timely resolution. In 2017, BART established a Manager of Compensation and Analytics role in the Department of Human Resources and later created the email address, [compensation@bart.gov](mailto:compensation@bart.gov), for retirees to submit their inquiries. Retired police officers noted an improvement in customer service and communication once informed of the new office. However, the office was not assigned to resolve the still-pending issue regarding the underreporting of the 84-hour pay period to CalPERS until May 2020. When the inquiry was assigned, BART said they were unable to prioritize resolution because of COVID shutdowns followed by a competing priority of processing District Retirement Incentive Program (DRIP) benefits.



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Providing independent oversight of the District’s use of revenue.

## BART OFFICE OF THE GENERAL MANAGER RESPONSE TO OIG FINDINGS & RECOMMENDATIONS

### **Report Title: BART has been Unresponsive to Police Retirees in Correcting Pay and Benefit Errors**

#### **Management Response:**

1	<b>Recommendation:</b>	Create a tracking system to monitor the resolutions of retiree benefit inquiries. This system should have benchmark timeframes for resolution, require communication updates to the retiree, and include escalation triggers to involve higher-level management.
	<b>Responsible Department:</b>	Human Resources, Benefits & Retirement
	<b>Implementation Date:</b>	July 19, 2021
	<b>Corrective Action Plan:</b>	<p>The following procedure will be used to address questions and concerns about pension or retiree benefits.</p> <ol style="list-style-type: none"> <li>1. Retirees should first check with CalPERS for any questions regarding calculation of their pension or issues with their retiree medical.</li> <li>2. If after confirming the information with CalPERS the retiree still has questions about actions that occurred during employment with BART or about BART retiree benefits, the retiree should contact the BART HR Benefits.</li> <li>3. Benefits will serve as the point of contact for retirees. Benefits will review the issue and either direct the retiree to the right department for resolution or if more than one department is involved, Benefits will coordinate the process and monitor the resolution through the use of a worksheet tracking system.</li> <li>4. The retiree will receive acknowledgement of their request/inquiry and will be advised within 30 days of the status of their request.</li> <li>5. Issues that are not able to be resolved in a timely manner will be escalated to the Director of Human Resources and the retiree will be notified.</li> </ol> <p>Communications will be sent out to recent retirees regarding this new protocol.</p>

**BART OFFICE OF THE GENERAL MANAGER RESPONSE TO OIG FINDINGS & RECOMMENDATIONS**

<b>2</b>	<b>Recommendation:</b>	Designate a single office to manage retiree benefit inquiries for timely resolutions, regardless of whether they are first submitted through Human Resources, the Office of the Controller-Treasurer, or Labor-Relations.
	<b>Responsible Department:</b>	Human Resources, Benefits & Retirement
	<b>Implementation Date:</b>	July 19, 2021
	<b>Corrective Action Plan:</b>	<p>Prior to retirement, Benefits will review the process for addressing questions and concerns about pension or retiree benefits with the employee during the offboarding process.</p> <p>Benefits will send a notification to all AGMs, Board Appointed Officers, and managers to advise if they are contacted by a retiree regarding a pension or retiree benefit issue, to direct the retiree to contact HR Benefits.</p> <p>Procedures for addressing retiree questions and concerns will be posted on Employee Connect under the Benefits Section.</p>
<b>3</b>	<b>Recommendation:</b>	Set a firm date by which to have the CalPERS underreporting error corrected and communicate with the affected retirees and the BART Police Officers' Association's law firm that BART is working on the problem, when BART expects to have it corrected, and then when the error is corrected.
	<b>Responsible Department:</b>	Human Resources, Benefits & Retirement and the BART Payroll Department
	<b>Implementation Date:</b>	July 14, 2021- Initiated
	<b>Corrective Action Plan:</b>	<p>The record for each pay period for each retiree impacted must be manually corrected. This is thousands of lines of data corrections. Due to recent retirements and staff changes, the Payroll Department is currently severely understaffed, however, their target is to make all the correction by August 31, 2021. The District will be securing temporary help to process the corrections. Once the corrections are made, we will notify CalPERS and CalPERS will do the recalculations. The District is not involved in recalculation process. Tentatively, the retirees will see the adjustment in their monthly retirement check in October or November 2021.</p> <p>Communications will be sent out to the BPOA, the BPOA's law firm, and the impacted retirees regarding the status of the corrections with periodic updates until the correction are completed. Any pension recalculations will be processed by CalPERS. CalPERS will notify the retirees directly.</p>