

REGIONAL TRANSIT ISSUE PAPER

Agenda Item No.	Board Meeting Date	Open/Closed Session	Information/Action Item	Issue Date
15	12/12/16	Open	Action	12/05/16

Subject: Approving the First Amendment to the AEA Personnel Rules and Procedures, Also Applicable to Unrepresented Employees (MCEG), the Collective Bargaining Agreement for AFSCME Supervisor Employees, and the Collective Bargaining Agreement for AFSCME Administrative/Technician Employees

ISSUE

Whether to approve the First Amendment to the Administrative Employees' Association (AEA) Personnel Rules and Procedures (PRPs), which are also applicable to the unrepresented employees referred to as the Management and Confidential Employee Group (MCEG), the Collective Bargaining Agreement (CBA) for the American Federation of State, County and Municipal Employees (AFSCME) Supervisor Employees and the CBA for AFSCME Administrative/Technician Employees modifying the vacation, floating holiday, and sick leave sell-back provisions of each Contract.

RECOMMENDED ACTION

- A. Adopt Resolution No. 16-12-____, Approving the First Amendment to the Administrative Employees Association Personnel Rules and Procedures (PRP) Modifying Articles 11.02 E, 13.04.B.6. and 13.04.B.8. of the PRPs, Also Applicable to the Unrepresented Management and Confidential Employee Group, Affecting the Vacation and Sick Leave Accruals and Floating Holidays Sell-Back Procedures; and
- B. Adopt Resolution No. 16-12-____, Approving the First Amendment to the Collective Bargaining Agreement (CBA) Between RT and American Federation of State, County and Municipal Employees, District Council 57, Local Union 146, Administrative/Technical Unit, Modifying Article 23.06 of the CBA Affecting the Vacation Accrual, Floating Holiday and Sick Leave Sell-Back Procedures; and
- C. Adopt Resolution No. 16-12-____, Approving the First Amendment to the Collective Bargaining Agreement Between RT and American Federation of State, County and Municipal Employees, District Council 57, Local Union 146, Supervisor Unit, Modifying Article 23.06 of the CBA Affecting the Vacation Accrual, Floating Holiday and Sick Leave Sell-Back Procedures.

FISCAL IMPACT

There is no fiscal impact associated with these modifications.

DISCUSSION

Sacramento Regional Transit District employees who are represented by the American Federation of State, County and Municipal Employees (AFSCME) and the Administrative

Approved:

Presented:

Final 12/7/16

General Manager/CEO

Tim Spangler, Chief Counsel

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Employees Association, along with the unrepresented employees (MCEG) who are covered by the AEA Personnel Rules and Procedures (PRP) are permitted, on an annual basis, to sell back accrued vacation for its cash value if the employee has more than 80 hours of unused vacation in their vacation bank. An employee with more than 80 hours may sell back up to 80 hours of vacation above the 80 hour cap.

In addition, employees covered by the AEA PRPs are permitted to sell back unused, accrued sick leave if the employee has at least 480 accrued sick leave hours. The AEA PRPs allow employees with at least 480 accrued sick leave hours to sell back sick leave under two different provisions. Under the "Stay Well" provision, employees may sell-back up to 24 hours of sick leave in a calendar year. Under the "Sick Leave to Deferred Compensation or Cash Payment" provision employees may sell back 100% of the hours above 480 hours in a calendar year. The AFSCME CBA's both allow employees to sell back up to 100% of accrued sick leave in excess of 480 hours.

The AEA PRPs and the AFSCME Collective Bargaining Agreements also allow employees to sell-back for cash any unused Floating Holidays. The AEA PRPs allow an employee to sell-back any unused Floating Holidays for their cash value or roll them over to the following year. However, employees who roll over their Floating Holidays are subject to a reduction in the total number of days they can accrue in the following year. Thus, if an employee rolls over two unused days, they will only accrue 3 new Floating Holidays in the following year. The AFSCME CBA for Administrative and Technical Unit employees has the same provision which allows employees to take, sell back for cash or roll over their Floating Holidays to the next calendar year. The AFSCME CBA for Supervisors allows employees to either use or sell-back their Floating Holidays, but the provision is unclear what happens when an employee fails to use their Floating Holidays or fails to sell them back by December 31 of a calendar year.

Earlier this year, RT's Office of the Chief Counsel was asked to provide an opinion regarding the administration of the vacation sell-back program. During the review, counsel determined that the manner in which the vacation, floating holiday and sick leave sell-back programs are currently structured and implemented may run afoul of the doctrine of constructive receipt as set forth in Internal Revenue Code Section 451 (IRC Section 451).

Generally, IRC Section 451 prohibits taxpayers who receive income in one year from delaying payment of taxes until a subsequent year. Under Section 451(a) an individual must include an item in gross income for the taxable year in which the funds are made available to the taxpayer, whether he or she takes the income or not. Treasury Regulations Section 1.451-2 provides that income, although not actually in the taxpayer's possession, is constructively received by the taxpayer in the taxable year during which it was made available so that the taxpayer could draw upon those funds at any time or could have drawn upon those funds if the taxpayer had given notice of his or her intention to do so. Thus, even if the taxpayer chooses not to take the income available to them, they are not allowed to defer payment of taxes on

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that income to a later year. What that means for RT's employees who are covered by the AFSCME CBAs and the AEA PRPs is that, even if an employee who qualifies to sell back vacation, floating holiday, or sick leave, chooses not to do so, he or she must still be taxed for the cash value of those vacation hours he or she would have been able to draw upon in a calendar year.

RT's Office of the Chief Counsel sought the assistance of an outside law firm, Chang, Ruthenberg & Long, (Chang) who specialize in providing tax advice. RT asked Chang for assistance in identifying a permissible modification to RT's program so that employees could still sell back vacation and sick leave hours for their cash equivalent, while avoiding exposing employees who have chosen not to sell back vacation to the tax obligation under the doctrine of constructive receipt. Chang advised that if RT's vacation and sick leave sell-back programs are restructured consistent with a Private Letter Ruling (PLR) 200450010 issued by the IRS, RT could continue to have a vacation and sick leave sell-back program, while protecting employees who choose not to avail themselves of the sell-back programs from suffering the tax consequences that arise under the doctrine of constructive receipt. Under the PLR, a sell-back program that requires employees to make an irrevocable election by December 31 of the previous year to sell back a specified number of vacation or sick leave hours that will be accrued in the subsequent tax year, may do so without triggering the doctrine of constructive receipt. The key elements are that the election has to be made no later than December 31 of the previous tax year, once made the election is irrevocable and the sell-back applies only to hours that have not yet accrued and that will accrue in the subsequent tax year.

Based on the advice provided by Chang, RT's Labor Relations Department engaged AFSCME and AEA in discussions regarding modifying the affected provisions of the two AFSCME CBAs and the AEA PRPs. After discussions with both groups, the parties have agreed to modify the affected sections as follows: Employees who qualify to sell back vacation or sick leave hours will be notified no later than November 1 of each year that they can sell back hours in the following tax year. Employees will have until close of business on December 31 to submit their designation form to RT. Once an employee makes a designation, it becomes irrevocable and it will be cashed out as soon as the employee accrues the total number of vacation or sick leave hours he or she has requested to sell back. The current provision in the AEA PRPs that allows employees to sell back 100% of all sick leave hours accrued above 480 hours for the cash equivalent is inconsistent with the IRC and must be modified to comply with the code. Therefore, that provision is being modified so that only prospective sick leave can be sold back for cash and an employee's only option for the sell back of existing accrued sick leave will be to sell back those sick leave hours into their 457 Deferred Compensation Accounts. AFSCME's sick leave sell back provisions in their CBAs will be modified consistent with the changes made to the AEA PRPs.

Additionally, the Floating Holiday sell-back provisions contained in the AEA PRPs and the AFSCME CBAs will be modified to ensure that they do not trigger the tax liability associated

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with constructive receipt. For the Administrative Technical Unit represented by AFSCME, the provision that allows for the roll-over of Floating Holidays will be eliminated and employees will be required to either take all of their Floating Holidays in the calendar year in which they accrue or RT will automatically cash out all unused Floating Holidays in the employees payroll check covering the pay period of December 16 through December 31. The AFSCME CBA for Supervisors does not allow for the roll-over of Floating Holidays, but it does not state what happens to Floating Holidays that go unused in the calendar year. The proposed amendment will clarify that employees must either use their Floating Holidays or sell them back for cash. Any unused Floating Holidays remaining at the end of the calendar year will be automatically cashed out in the employee's payroll check for the pay period December 16 through December 31.

If RT does not make these changes, AFSCME, AEA and unrepresented employees (MCEG) at RT will be subject to having their unused, accrued vacation and Floating Holidays and, as applicable, sick leave hours subject to taxation, even if the employee does not use it nor sells it back for its cash equivalent. Therefore, RT staff recommends that the Board approve the First Amendment to the AEA PRPs, and the AFSCME CBAs.

RESOLUTION NO. 16-12-_____

Adopted by the Board of Directors of the Sacramento Regional Transit District on this date:

December 12, 2016

APPROVING THE FIRST AMENDMENT TO THE ADMINISTRATIVE EMPLOYEES ASSOCIATION PERSONNEL RULES AND PROCEDURES (PRP) MODIFYING ARTICLES 11.02 E, 13.04.B.6. AND 13.04.B.8. OF THE PRPS, ALSO APPLICABLE TO THE UNREPRESENTED MANAGEMENT AND CONFIDENTIAL EMPLOYEE GROUP, AFFECTING THE VACATION AND SICK LEAVE ACCRUALS AND FLOATING HOLIDAYS SELL-BACK PROCEDURES

BE IT HEREBY RESOLVED BY THE BOARD OF DIRECTORS OF THE SACRAMENTO REGIONAL TRANSIT DISTRICT AS FOLLOWS:

THAT, the First Amendment to the AEA Personnel Rules and Procedures (PRPs) modifying Articles 11.02.E, 13.04.B.6, and 13.04.B.8 of the PRPs, also applicable to the unrepresented Management and Confidential Employee Group (MCEG) affecting Vacation and Sick Leave Accruals and Floating Holidays Sell Back Procedures, is hereby approved.

THAT, the General Manager/CEO is hereby authorized and directed to execute the First Amendment to the AEA Personnel Rules and Procedures and take any steps necessary to implement the modified provisions of the PRPs.

JAY SCHENIRER, Chair

A T T E S T:

HENRY LI, Secretary

By: _____
Cindy Brooks, Assistant Secretary

RESOLUTION NO. 16-12-_____

Adopted by the Board of Directors of the Sacramento Regional Transit District on this date:

December 12, 2016

APPROVING THE FIRST AMENDMENT TO THE COLLECTIVE BARGAINING AGREEMENT (CBA) BETWEEN RT AND AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, DISTRICT COUNCIL 57, LOCAL UNION 146, ADMINISTRATIVE/TECHNICAL UNIT, MODIFYING ARTICLE 23.06 OF THE CBA AFFECTING THE VACATION ACCRUAL, FLOATING HOLIDAY AND SICK LEAVE SELL-BACK PROCEDURES

BE IT HEREBY RESOLVED BY THE BOARD OF DIRECTORS OF THE SACRAMENTO REGIONAL TRANSIT DISTRICT AS FOLLOWS:

THAT, the First Amendment to the Collective Bargaining Agreement between RT and AFSCME modifying Article 23.06 of the CBA affecting Vacation Accrual, Floating Holidays and Sick Leave Sell Back Procedures, is hereby approved.

THAT, the General Manager/CEO is hereby authorized and directed to execute the First Amendment to the AFSCME CBA and take any steps necessary to implement the modified provisions of the CBA.

JAY SCHENIRER, Chair

A T T E S T:

HENRY LI, Secretary

By: _____
Cindy Brooks, Assistant Secretary

RESOLUTION NO. 16-12-_____

Adopted by the Board of Directors of the Sacramento Regional Transit District on this date:

December 12, 2016

APPROVING THE FIRST AMENDMENT TO THE COLLECTIVE BARGAINING AGREEMENT BETWEEN RT AND AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, DISTRICT COUNCIL 57, LOCAL UNION 146, SUPERVISOR UNIT, MODIFYING ARTICLE 23.06 OF THE CBA AFFECTING THE VACATION ACCRUAL, FLOATING HOLIDAY AND SICK LEAVE SELL-BACK PROCEDURES

BE IT HEREBY RESOLVED BY THE BOARD OF DIRECTORS OF THE SACRAMENTO REGIONAL TRANSIT DISTRICT AS FOLLOWS:

THAT, the First Amendment to the Collective Bargaining Agreement between RT and AFSCME modifying Article 23.06 of the CBA affecting Vacation Accrual, Floating Holidays and Sick Leave Sell Back Procedures, is hereby approved.

THAT, the General Manager/CEO is hereby authorized and directed to execute the First Amendment to the AFSCME CBA and take any steps necessary to implement the modified provisions of the CBA.

JAY SCHENIRER, Chair

A T T E S T:

HENRY LI, Secretary

By: _____
Cindy Brooks, Assistant Secretary