

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION, AS MODIFIED

Raul M. Rojas (Respondent) established membership with CalPERS through employment with the City of Pico Rivera. He was subsequently employed by the City of Upland and then the City of Bakersfield, both are CalPERS employers. On March 22, 2014, Respondent separated from the City of Bakersfield but retained his CalPERS membership. On March 24, 2014, Respondent was hired by Respondent County of Marin (the County) as its Director of Public Works, and he became a member of Respondent Marin County Employees' Retirement Association (MCERA), where he worked until retirement.

CalPERS and MCERA are reciprocal retirement systems. Both systems calculate the member's retirement benefit amount based in part on the member's final compensation. Individuals with reciprocity rights are entitled to have their monthly retirement benefit from each retirement system calculated based on the highest final compensation earned while working under either system. Reciprocal retirement systems may, however, have varying rules for determining a member's final compensation. CalPERS calculates final compensation using the provisions of the California Public Employees' Retirement Law (PERL).

On October 6, 2020, Respondent submitted an application for service retirement to CalPERS. Respondent also retired concurrently with MCERA. He receives a service retirement allowance from each system.

CalPERS worked with MCERA to obtain Respondent's final compensation amounts. MCERA submitted reports showing Respondent's highest consecutive one-year salary as Director of Public Works from December 15, 2019, to November 28, 2020. CalPERS reviewed the documentation submitted by MCERA to determine Respondent's final compensation amount that would be used to calculate his monthly CalPERS service retirement benefit.

Following review of documents, CalPERS determined that the item of payment made to Respondent identified as Automobile Allowance did not meet the definition of compensation earnable, and so would be excluded from the calculation of his final compensation. CalPERS notified Respondent and MCERA that the Automobile Allowance would be excluded from the calculation of Respondent's final compensation.

Respondent appealed this determination and exercised his right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A hearing was held on May 2, 2022. Respondent represented himself at the hearing. Neither MCERA nor the County appeared at the hearing.

CalPERS presented evidence that the Automobile Allowance did not qualify as compensation earnable as defined in Government Code section 20636. It was not payable and did not meet the definition of “special compensation.” CalPERS presented evidence that the Auto Allowance was not included in the exclusive, exhaustive list of special compensation provided in California Code Regulations, title 2, section 571. For these reasons, CalPERS concluded the Automobile Allowance was not compensation earnable as defined by the PERL and should be excluded.

Respondent testified that the Automobile Allowance qualifies as special compensation because it was in reality management incentive pay. Respondent testified that the County paid the Automobile Allowance as a catch-all payment to all County department heads because it was difficult for them to take time off due to the nature of their positions. Respondent testified that he received an Automobile Allowance payment every pay period during his tenure as Director of Public Works and that he used his own vehicle when performing his job.

After considering all of the evidence and arguments by the parties, the ALJ denied Respondent’s appeal. The ALJ found that Respondent did not meet his burden of proving that the Automobile Allowance should be included as compensation earnable for the purposes of calculating his CalPERS retirement benefits.

The ALJ found that Automobile Allowance is specifically excluded by the PERL, and disagreed with Respondent’s assertion that the pay qualifies as management incentive pay. The County reported the pay each month as Automobile Allowance. The ALJ found no evidence that the County intended to classify the Automobile Allowance as management incentive pay. The ALJ concluded that CalPERS correctly determined that Respondent’s compensation earnable for purposes of calculating his retirement benefits cannot include his Automobile Allowance payments.

Pursuant to Government Code section 11517 (c)(2)(C), the Board is authorized to “make technical or other minor changes in the proposed decision.” To avoid ambiguity, staff recommends replacing “May 6, 1994” with “May 5, 1994” in paragraph 1 on page 2 of the Proposed Decision; replacing “Los Angeles County Employees Retirement Association” with “Los Angeles County Employees’ Retirement Association” in paragraph 15 on page 5 of the Proposed Decision; striking “and County Employees Retirement Law (CERL)” from line 14 in paragraph 15 on page 5 of the Proposed Decision; striking “Special compensation and pay rate specifically do not include: ‘Compensation for additional services outside regular duties, such as standby pay, callback pay, court duty, allowance for automobiles, and bonuses for duties performed after the member’s regular work shift.’ (Gov. Code, § 20636, subd. (g)(4)(l) (emphasis added).)” from paragraph 10 on page 12 of the Proposed Decision; replacing “anu” with “any consecutive” in paragraph 11 on page 12 of the Proposed Decision; and replacing “Gov. Code, § 20636, subd. (g)(4)(l)” with “Gov. Code, § 20636, subd. (c)” in paragraph 16 on page 14 of the Proposed Decision.

For all the above reasons, staff argues that the Proposed Decision should be adopted by the Board, as modified.

July 13, 2022

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Attorney