

**ATTACHMENT C**

**RESPONDENT'S ARGUMENT**

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10 **BEFORE THE BOARD OF ADMINISTRATION**  
11 **CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM**  
12 **STATE OF CALIFORNIA**

13 **In the Matter of the Appeal of Retirement**  
14 **Benefit Formula of:**

**Agency Case No. 2021-0468**  
**OAH Case No. 2021090259**

15 **TYLER DIAMOND, ALEX DUNCAN, and**  
16 **RYAN LAWRENCE,**  
17 **Respondents,**

**Administrative Law Judge: Cindy F.**  
**Forman**

18 **and**  
19 **CITY OF BEVERLY HILLS,**  
20 **Respondent.**

**RESPONDENT MEMBERS TYLER**  
**DIAMOND, ALEX DUNCAN AND**  
**RYAN LAWRENCE ARGUMENT**  
**AGAINST PROPOSED ORDER/**  
**DECISION**

**Board of Administration**  
**Hearing Date: November 16, 2022**

21  
22 **I. INTRODUCTION**

23 This case involves the appeal of Respondent Members Ryan Lawrence, Alex Duncan  
24 and Tyler Diamond **hired before July 1, 2012** as Police Officers by the Respondent City of  
25 Beverly Hills. Respondent Members contend that they were improperly enrolled in the 3% at  
26 55 retirement formula instead of the 3% at 50 retirement formula contrary to the terms of the  
27 2011-2016 Memorandum of Understanding ("MOU") negotiated between the City and the  
28 Members' recognized employee organization (Beverly Hills Police Officers Association).

1 Section 16D of the 2011-2016 MOU added a new CalPERS retirement plan formula for  
 2 represented employees of the Association which would comprise a 3% at 55 retirement formula  
 3 for Police Officers hired on or after July 1, 2012. In particular, the MOU clearly specified that:  
 4 “The City will amend its contract with **P.E.R.S. to provide for the 3% at 55** retirement  
 5 formula set forth in California Government Code section 21363.1 **for employees hired on or**  
 6 **after July 1, 2012.”** (Administrative Record “AR”, City’s Exh E, Section 16D; Emphasis  
 7 Added). In conjunction with the above MOU provision in Section 16D as to the application of  
 8 the new 3% at 55 retirement plan, it was correspondingly agreed in MOU Section 16C that:  
 9 “The City’s contract with P.E.R.S. provides for the **3% at 50 retirement formula** set forth in  
 10 California Government Code Section 21362.2 **for all current sworn police personnel hired**  
 11 **prior to July 1, 2012”** (City’s Exh.E, Section 16C).

12 Contrary to the City’s binding, contractual and ministerial duty under Section 16D of  
 13 the 2011-2016 MOU to “amend its contract with P.E.R.S. to provide for the 3% at 55  
 14 retirement formula set forth in California Government Code section 21363.1 for employees  
 15 *hired on or after July 1, 2012*”, **the City entered into a CalPERS contract amendment,**  
 16 **which applied the 3% at 55 formula to all persons entering CalPERS membership in a**  
 17 **safety classification after the date of the CalPERS amendment**: which resulted in the  
 18 improper inclusion of Respondent Members into the 3% at 55 formula—even though they were  
 19 hired as Police Officer before July 1, 2012.

20 According to the Proposed Order issued by the Administrative Law Judge in this case  
 21 “[T]he issues therefore in this proceeding are whether PERB correctly interpreted the contract  
 22 amendment with City **and whether the contract amendment accurately reflected the**  
 23 **retirement provisions in the 2011 MOU.”** (Proposed Order “PO” at p.4; Emphasis Added)

24 As thoroughly established *infra*, the preponderance of the evidence in this record  
 25 demonstrates that the CalPERS contract amendment with the City did not accurately reflect the  
 26 newly negotiated retirement provisions in the Association/City 2011 MOU where: a.) the  
 27 contractual terms of the 2011-2016 MOU were clear and explicit that “[T]he City will amend  
 28 its contract with **P.E.R.S. to provide for the 3% at 55** retirement formula set forth in

1 California Government Code section 21363.1 for employees hired on or after July 1,  
2 2012.”(AR City’s Exhs E, Section 16D; Emphasis Added); b.) the City/CalPERS contract  
3 amendment inaccurately provided that the 3% at 55 retirement formula would apply to “local  
4 safety member entering membership for the first time in the safety classification after the  
5 effective date of this amendment to contract” (AR CalPERS Exh. 12 at p.3; Emphasis  
6 Added); and c.) overwhelming and undisputed evidence introduced at hearing that numerous  
7 representatives involved in the hiring process of Respondent Members understood and  
8 communicated to such Members that due to their hire date before July 1, 2012, they would be  
9 eligible for the 3% at 50 retirement plan upon their successful completion of Police Academy  
10 and becoming sworn employees.

11 Based upon the administrative record and applicable law, Respondent Members  
12 respectfully submit that the Proposed Decision be rejected and that their appeals be granted.

13 **II. THE PERS CONTRACT AMENDMENT DID NOT ACCURATELY**  
14 **REFLECT THE PROVISIONS IN THE 2011-2016 WHICH, WHEN**  
15 **REASONABLE CONSTRUED, AFFORDED RESPONDENT**  
16 **MEMBERS, HIRED AS POLICE OFFICER PRIOR TO JULY 1, 2012,**  
17 **THE 3% AT 50 RETIREMENT PLAN UPON THEIR COMPLETION**  
18 **OF POLICE ACADEMY AND CONFERRAL OF SWORN STATUS**

19 Courts have uniformly held that a memorandum of understanding, once adopted by  
20 the governing body of a public agency, becomes a binding agreement. (*Glendale City*  
21 *Employees' Ass'n v. Glendale*, (1975) 15 Cal. 3d 328, 337)

22 A Memorandum of Understanding between a public employer and a recognized  
23 employee organization is a binding contract and are interpreted in accordance with the  
24 general rules of contract interpretation. (*National City Police Officers' Assn. v. City of*  
25 *National City*, (2001) 87 Cal.App.4th at pp. 1278–1279)

26 The words of a contract are to be understood in their ordinary and popular sense,  
27 rather than according to their strict legal meaning; unless used by the parties in a technical  
28 sense, or unless a special meaning is given to them by usage, in which case the latter must be

1 followed." (Civil Code Section 1644.)

2 In the instant case, a binding and enforceable 2011-2016 Memorandum of  
3 Understanding was entered between the City of Beverly Hills and the Beverly Hills Police  
4 Officers' Association. (AR City's Exhs E). According to the clear terms of Section 16D of  
5 the MOU, **only employees hired on or after July 1, 2012** would be subject to the 3% at 55  
6 CalPERS retirement plan:

7  
8 3% at 55 Formula- For Employees Hired On Or After July 1, 2012.

9 The City will amend its contract with P.E.R.S. to provide for the 3% at 55  
10 retirement formula set forth in California Government Code section 21363.1 for  
11 employees **hired on or after July 1, 2012.** ( AR City's Exh. E, Section 16D;  
12 Emphasis Added)

13 According to Section 16C of the MOU, those employees **hired on or before July 1,**  
14 **2012** would be eligible for the 3% at 50 retirement formula:

15 3% at 50 Formula

16 The City's contract with P.E.R.S. provides for the 3% at 50 retirement  
17 formula set forth in California Government Code Section 21362.2 for  
18 **all current sworn police personnel hired prior to July 1, 2012.** (AR City's  
19 Exh.E Section 16C Emphasis Added)

20 Despite the language of Section 16D of the City/Association MOU that the City shall  
21 amend its CalPERS contract to provide for the new retirement formula of 3% at 55 for  
22 employees hired on or after July 1, 2012, the City failed to do so which directly resulted in  
23 Respondent Members hired in May 2012 to be wrongly placed in the 3% at 55 retirement  
24 formula—instead of the 3% at 50 retirement formula which they were entitled to be placed  
25 pursuant to Section 16C of the MOU.

26 The Proposed Order found that "Section 16C only pertains to 'current sworn police  
27 personnel hired prior to July 1, 2012.' Respondents were not 'current sworn police officers'  
28 as of July 1, 2012, or in March or November 2012, when City adopted the 2011 MOU. They  
only became sworn officers on December 13, 2012. Until that time, they were miscellaneous  
employees entitled to miscellaneous employee retirement benefits." (PO at para. 15).

1 However, it is undisputed that in May 2012, the Respondent Members were offered, accepted  
2 employment and **were hired by the City as Police Officers.** (Reporter’s Transcript “RT”  
3 Duncan Vol I p. 171:25-p.172:3; Lawrence p. 104:21-p.1054, p.106:21-24; Diamond p.203:10-  
4 12; AR Respondent Members’ Exh. H).

5 In addition, the fact that newly hired entry-level police officers are non-sworn employees  
6 (and local miscellaneous employees under PERS) until they graduate from the Police Academy  
7 and are sworn in as police officers, was a pre-existing term in the Association/City MOU,  
8 Section 2(A)3 (AR City’s Exh. E p.132). Therefore, MOU Section 16C providing that  
9 employees hired as Police Officers prior to July 1, 2012 are eligible for the 3% at 50 retirement  
10 plan, when harmonized with the language of Section 2, must be reasonably construed as  
11 affording Respondent Members enrollment in 3% at 50 retirement plan at such time as they  
12 graduated Police Academy and were sworn in as police officers. The whole of a contract is to  
13 be taken together, so as to give effect to every part, if reasonably practicable, each clause  
14 helping to interpret the other. (Cal Civ Code § 1641)

15 Indeed, the reasonable interpretation of the 2011-2016 MOU that Respondent Members  
16 were eligible for the 3% at 50 retirement plan upon their graduation from Police Academy and  
17 sworn-in as police officers --was precisely the interpretation applied by City Human Resources  
18 Analyst Sheryl Jacobson who informed Ryan Lawrence that upon his graduation from the  
19 Police Academy he would be switched from the 2.5% at 55 non-safety retirement formula to  
20 the “3% at 50 plan.” (RT Lawrence Vol II p. 64-65; AR City’s Exh. E, Section 16C-D; AR  
21 Respondent Members’ Exh. T-U).

22 In addition, the record contains undisputed testimony of Sergeant Jay Kim, Supervisor of  
23 Personnel and Training at the Beverly Hills Police Department, who advised Respondent  
24 Members during their hiring process that since they were to be hired before July 1, 2012- they  
25 would be eligible for the 3% at 50 CalPERS Retirement Plan formula. He advised Respondent  
26 Members of such fact after confirming the same with the City Human Resources staff. (RT  
27 Kim Vol III p.22:24 -p. 25:11; Duncan Vol I p.173-174, Diamond Vol I p.207:12-p.208:1;  
28 Lawrence: Vol II p. 57-58)

1 The Proposed Order erroneously found that such testimony of City representatives was  
2 not relevant because such representatives did not participate in negotiations for the 2011-2012  
3 MOU negotiations. (PO para 19). **Yet, the Administrative Law Judge relied on City’s**  
4 **interpretation of the Section 16C of the 2011 MOU based on the testimony its MOU**  
5 **negotiator (Peter Brown) who admitted that there was no discussion at the bargaining**  
6 **table as to what would happen with employees who were hired as police officers prior to**  
7 **July 1, 2012, who were still in the academy.** (RT Brown Vol I at p.155:11-15).

8 In addition, the evidence is undisputed in the record that contrary to clear and plain  
9 language of Section 16D of the MOU that “[T]he City will amend its contract with P.E.R.S. to  
10 provide for the 3% at 55 retirement formula set forth in California Government Code section  
11 21363.1 for employees **hired on or after July 1, 2012.** (AR City’s Exh. E, Section 16D;  
12 Emphasis Added), the City instead amended its contract with PERS which made effective the  
13 3% at 55 formula to **all persons entering CalPERS membership in a safety classification**  
14 **after the date of the CalPERS amendment;** which resulted in the improper inclusion of  
15 Respondent Members who were hired as Police Officer before July 1, 2012. (AR CalPERS  
16 Exh. 12 at p.3; Emphasis Added)

17 **III. CONCLUSION**

18 Pursuant to the clear statutory authority of Government Code Section 20160, the Board of  
19 Administration should exercise its authority to correct the error by the City amending the  
20 CalPERS contract which resulted in the improper exclusion of Respondent Members in the 3%  
21 at 50 retirement plan. Consequently, the Proposed Order/Decision should be rejected and that  
22 Respondent Members’ appeals be granted

23 Dated: October 19, 2022

Rains Lucia Stern St. Phalle & Silver, PC

25 /s/ Richard A. Levine  
Richard A. Levine Esq.  
26 Attorneys for Respondent Members  
27 Ryan Lawrence, Alex Duncan and Tyler Diamond

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**PROOF OF SERVICE**

I am employed in the City of Encino, State of California. I am over 18 years of age and not a party to this action. My business address is Rains Lucia Stern St. Phalle & Silver, PC, 16130 Ventura Boulevard, Suite 600, Encino, CA 91436.

On the date below I served a true copy of the following document(s):

**RESPONDENT MEMBERS TYLER DIAMOND, ALEX DUNCAN AND RYAN LAWRENCE ARGUMENT AGAINST PROPOSED ORDER/DECISION**

on the interested parties to said action by the following means:

**(BY MAIL)** By placing a true copy of the above, enclosed in a sealed envelope with appropriate postage, for collection and mailing following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

**(BY OVERNIGHT DELIVERY)** By placing a true copy of the above, enclosed in a sealed envelope with delivery charges to be billed to Rains Lucia Stern St. Phalle & Silver, P.C., for delivery by an overnight delivery service to the address(es) shown below.

**(BY FACSIMILE TRANSMISSION)** By transmitting a true copy of the above by facsimile transmission from facsimile number (925) 609-1690 to the attorney(s) or party(ies) shown below.

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**(BY HAND DELIVERY)** By personal delivery of a true copy of the above to the attorneys or parties shown below

**(BY E-MAIL or ELECTRONIC TRANSMISSION)** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed below. I did not receive, within a reasonable period of time, after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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I declare under penalty of perjury under the law of the State of California that the foregoing is true and correct.

DATED: October 19, 2022

/s/ Michele Hengesbach  
Michele Hengesbach



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8 BEFORE THE BOARD OF ADMINISTRATION  
9 CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM  
10

11 In the Matter of the Appeal of Retirement  
Benefit Formula of:

Agency Case No.: 2021-0468  
OAH Case No.: 2021090259

12 RYAN LAWRENCE; ALEX DUNCAN;  
and TYLER DIAMOND,

**RESPONDENT CITY OF BEVERLY HILLS'  
ARGUMENT IN SUPPORT OF THE  
PROPOSED ORDER OF ADMINISTRATIVE  
LAW JUDGE CINDY FORMAN**

Respondent,

v.

Board Meeting Date: November 16, 2022

15 CITY OF BEVERLY HILLS,

Respondent.

17 **I. INTRODUCTION**

18 The Board of Administration ("Board") should adopt the Proposed Order ("Order") by  
19 Administrative Law Judge Cindy Forman ("ALJ"), denying the appeal filed by Respondents  
20 Ryan Lawrence, ("Lawrence"), Alex Duncan ("Duncan") and Tyler Diamond ("Diamond")  
21 (collectively "Officers") because the ALJ correctly concluded that the Officers failed to provide  
22 any evidence in support of their claim that (1) the City of Beverly Hills ("City") and California  
23 Public Employees' Retirement System ("CalPERS") incorrectly enrolled each Officer in the 3%  
24 at 55 local safety formula under the City's amended contract with CalPERS or (2) that the 2011-  
25 2016 Memorandum of Understanding ("MOU") between the City and the Beverly Hills Police  
26 Officer's Association ("BHPOA") provided the Officers with a right to a 3% at 50 retirement  
27 formula rather than the 3% at 55 formula in which they are correctly enrolled.  
28

1 Based on the overwhelming evidence presented at the hearing, the ALJ found that the City  
2 established that the BHPOA and the City agreed to a two tier retirement formula in which the 3%  
3 at 50 formula would only be continued as to (at the time) current sworn employees hired prior to  
4 July 1, 2012. As to sworn officers who joined the Police Department (“Department”) after July 1,  
5 2012, they would receive 3% at 55 retirement formula. This agreement was memorialized in the  
6 parties’ operative collective bargaining agreement. The City’s contract amendment with CalPERS  
7 to establish same became effective in September 2012. The Officers do not dispute that they  
8 became sworn police officers on December 13, 2012 and that none of them had served in a sworn  
9 position before December 13, 2012. Thus, the Officers do not qualify for the 3% at 50 formula  
10 and were correctly enrolled in the 3% at 55 retirement formula. The Officers’ arguments against  
11 the Order are not sound and are based on a misapplication of law and misstatement of the facts  
12 established at hearing.

13 For all these reasons, the City respectfully requests that the Board adopt the Order.

14 **II. ARGUMENT**

15 In the Order, ALJ Forman concluded that “Respondents offered no evidence that the 2011  
16 MOU negotiators intended the hiring dates of Pre-Service Employees to be determinative of a  
17 sworn officer's retirement benefits.” (Order, p. 24 at ¶ 17.) The ALJ also found that “Mr. Brown's  
18 testimony made clear the negotiators never discussed [the hire dates of Pre-Service Officers] in  
19 their negotiations.” (*Ibid.*) Finally, the ALJ concluded that there is no policy reason why  
20 retirement benefits available only to sworn officers should be based on the officer's date of hire as  
21 an unsworn employee. (*Ibid.*) Each of these findings and conclusions is supported by the evidence  
22 presented at hearing.

23 **A. THE LEGAL STANDARD FOR CONTRACT INTERPRETATION  
24 SUPPORTS THE ALJ’S INDIVIDUAL FINDINGS, CONCLUSIONS AND  
25 THE ORDER**

26 The interpretation of contracts under California law is well settled regardless of the venue  
27 of the contractual dispute. (See Cal. Civil Code, §§ 1635, et seq.) “The fundamental goal of  
28 contract interpretation is to give effect to the mutual intention of the parties as that intent existed  
at the time they entered into the contract.” (Cal. Civil Code, § 1636, see also *Marzec v. California  
Public Employees Retirement System* (2015) 236 Cal.App.4th 889, 909-910.) And the whole of a

1 contract is to be taken together, so as to give effect to every part, if reasonably practicable, each  
2 clause helping to interpret the other." (Civ. Code, § 1641.) Moreover, when the terms of a  
3 promise are in any respect ambiguous or uncertain, the promise must be interpreted the way that  
4 the promisor believed it was being understood by promisee. (Civ. Code, § 1649.) Finally,  
5 California law recognizes that a contract may be explained by reference to the circumstances  
6 under which it was made and the matter to which it relates. (Civ. Code, § 1647.) In *Badie v. Bank*  
7 *of America*, (1998) 67 Cal.App.4th 779, 798, 801, the Court summarized all of these critical  
8 tenants of contract interpretation, which the ALJ relied on in reaching her conclusions.

9 **B. ALL OF THE RELEVANT EVIDENCE PRESENTED AT THE HEARING**  
10 **SUPPORTS THE ALJ FINDINGS AND THE CITY'S INTERPRETATION**  
11 **OF THE MOU**

12 **1. Respondents Failed To Meet Their Burden Because They Provided No**  
13 **Evidence To Support Their Interpretation Of The MOU**

14 The Officers did not present any witnesses who participated in the negotiations between  
15 the BHPOA and the City for the 2011-2016 MOU and thus they provided no evidence that  
16 supports their contention that the parties' collective bargaining negotiations included any  
17 discussion, much less agreement, that pre-service officers hired prior to July 1, 2012 but not  
18 sworn until after the City amended its contract with CalPERS ("Amended CalPERS Contract";  
19 City's Exhibit I) were eligible for 3% at 50 formula. (See generally, Transcript ("Tr.") Volume  
20 ("Vol") 1, 2, and 3.) Moreover, as the ALJ correctly found, inaccurate statements made by  
21 mistaken City employees who were *not* part of the 2011-2016 MOU negotiations process were  
22 *not relevant* to interpreting the contract. (Order, p. 24-25, ¶ 19.) Moreover, none of the Officers  
23 testified that they only decided to work for the City based on the promise of the 3% at 50  
24 retirement formula, and thus, they did not show detrimental reliance on the mistaken statements.

25 **2. The City Provided Convincing And Uncontested Evidence Supporting**  
26 **Its Interpretation Of The MOU**

27 At hearing, the City established that in the fall of 2011, the City and the BHPOA began  
28 negotiating the terms of a successor memorandum of understanding. (Tr. Vol. I, p. 128:14-129:9,  
see City's Exhibit A.) The City's negotiations team included Brown, the City's Chief Negotiator,  
and Sandra Olivencia Curtis, the City's Director of Human Resources. (Tr. Vol. I, p. 126:8-14,  
157:20-22.) The BHPOA's negotiating team included Stephen Silver, the BHPOA's Chief

1 Negotiator (“Silver”), Detective Sergeant Mike Publicker, and at times Sergeant Terry Nutall.  
2 (Tr. Vol. I, p. 126:15-17, 157:24-158:5.)

3 Brown and Silver had known each other professionally since 1989, negotiated collective  
4 bargaining agreements for the City and BHPOA respectively since 2007, and were well versed  
5 with one another’s negotiating styles and understanding of collective bargaining through their  
6 years of interaction. (Tr. Vol. I, p. 124: 7-14. 126:18-127:9.) During the initial rounds of  
7 negotiations in the fall 2011, the City proposed a two tier retirement formula with a different  
8 benefit for newly hired sworn personnel because the City was grappling with the ongoing  
9 recession and wanted to reduce the costs of the 3% at 50 retirement formula. The BHPOA and the  
10 City continued to negotiate the retirement formula and calculation terms until November 8, 2011  
11 when the parties tentatively agreed to provide a second tier retirement formula of 3% at 55 for  
12 sworn personnel hired on or after July 1, 2012. (Tr. Vol I, p. 131:7-132:4; City’s Exhibit B, p.  
13 E23.) Brown repeatedly provided uncontested testimony under oath, including on cross-  
14 examination, that the intent of the parties was that the new 3% at 55 retirement formula would  
15 take effect on July 1, 2012 and would apply to sworn officers joining the Department on or after  
16 that date. (Tr. Vol I. pp. 132:5-21; 151:20-152:10; 161:21-162:22.) Brown further explained that  
17 that the parties did not discuss retirement benefits for pre-service officers at any time during the  
18 2011-2016 MOU negotiations. (Tr. Vol. I, pp. 146:15-147:2.) He extensively testified that  
19 negotiations around retirement benefits were only focused on existing sworn police personnel  
20 because pre-service officers are prohibited from the sworn retirement benefit formula pursuant to  
21 the MOU.

22 Consistent with the above, the 2011-2016 MOU Section 2, subpart A (3) expressly that  
23 states: **“Each newly hired entry level Police Officer . . . shall serve as a non-sworn civilian**  
24 **employee until such time as he/she successfully graduates from the Police Academy and is**  
25 **sworn in as a Police Officer. These Pre-Service employees shall receive similar benefits as a**  
26 **sworn Police Officer with the exception of retirement . . . benefits. Because Pre-Service**  
27 **employees are not sworn they are considered miscellaneous employees under the Public**  
28 **Employees’ Retirement Law [ . . . ].”** (Emphasis added.) (City’s Exhibit E, p. E102 and Exhibit

1 F, p. E132.)

2 Thus, the MOU clearly and unambiguously states that the Officers were not entitled to  
3 sworn retirement benefits and were considered to be miscellaneous employees until such time that  
4 they became sworn.

5 **3. Predicating Benefits For Sworn Officers Based On Their Date Of Hire**  
**Is Not Supported By Any Policy**

6 California statutory law defines who is a “local safety member” and eligible for retirement  
7 benefits under the PERL. Pursuant to Government Code section 20371, employees generally fall  
8 into the categories of either (1) miscellaneous classification or (2) safety member classification,  
9 which Government Code section 20425, defines as local police officers whose work clearly falls  
10 within the scope of active law enforcement. Moreover, Government Code section 20050 states  
11 that a “‘Local safety service’ means a [. . .] **local police officer** [...]”

12 The contract amendment with CalPERS (“Amended CalPERS Contract”), which set forth  
13 the two tier retirement formula, became effective on September 8, 2012 and only applied to *sworn*  
14 police officers. Therefore, the Respondent Officers were precluded from being enrolled in any  
15 retirement benefit offered to sworn employees as they were still considered miscellaneous  
16 employees under BOTH the MOU and the PERL at that time. Only upon completion of the police  
17 academy could they then start to receive retirement benefits provided to the City’s sworn law  
18 enforcement officers. (See Tr. Vol. I, pp. 124:15-125:4, 136:1-12, 142:20-143:23, 146:15-147:2.)

19 Indeed, the Officers testimony supports that they were not entitled to sworn retirement  
20 benefits as of September 8, 2012. They each testified that they (a) were not serving in the role of  
21 “police officers” in May 2012 when they were hired by the City, (2) were required to successfully  
22 complete the police academy and swear-in before serving as police officers, and (3) did not  
23 become sworn police officers until December 13, 2012. (Tr. Vol. I, pp. 99:13-25, 111:24-113:25,  
24 171:25-172:3, 178:7-13, 193:4-13, 196:14-197:7, 200:14-201: 3, 212:1-12, 213:7-214:13 Vol. II,  
25 p. 73:1-8; City’s Exhibits J, K, and L.)

26 The Officers argue that the Board should ignore the contract language in Section 16, C of  
27 the 2011-2016 MOU regarding “current sworn police personnel”, and instead interpret the 2011-  
28 2016 MOU as allowing any employee hired by the City prior to July 1, 2012 to receive the benefit

1 of the 3% at 50 formula once sworn. However, this proposed interpretation, which is not  
2 supported by any direct evidence, is absurd because it would allow a civilian employee, who is  
3 hired by the Department as a miscellaneous employee but who later transitions to a sworn  
4 classification, to receive sworn retirement benefits based on their hire date and not based on the  
5 date of their sworn classification. This was never the intent of any of the contracting parties or  
6 the legislature.

7 Indeed, this was the exact situation with Officer Duncan. Officer Duncan joined the  
8 Department as a police cadet in 2008, a non-sworn position, until he was hired to be a pre-service  
9 officer in May 2012. (Tr. Vol I., p. 171:18-24, 192:4-193:6.) Thus, Duncan was an employee of  
10 the City for over 4 years before he became a sworn police officer. Under the Officers'  
11 interpretation of the 2011-2016 MOU, Duncan became eligible for the 3% at 50 retirement  
12 formula as of 2008 (his hire date). This interpretation is simply illogical and indeed the Officers  
13 do not argue this point. Yet, it is a distinction without difference. For the same reason, the  
14 Officers hire date as pre-service officers is not relevant. Rather, it is the date upon which they  
15 became sworn as it is this date alone that triggers retirement benefits for sworn police personnel  
16 under the applicable MOU.

17 **III. CONCLUSION**

18 Based on all of the facts presented at hearing and legal arguments made in the City's  
19 briefings, the Board should adopt the ALJ's Proposed Order and deny the Respondent Officers'  
20 appeal and request for reclassification.

21 Dated: October 27, 2022

Respectfully submitted,

LIEBERT CASSIDY WHITMORE

23 By: /s/ Anni Safarloo

Jennifer M. Rosner  
Anni Safarloo  
Attorneys for Respondent CITY OF  
BEVERLY HILLS

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**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: **6033 West Century Boulevard, 5th Floor, Los Angeles, California 90045.**

On **October 27, 2022**, I served the foregoing document(s) described as **RESPONDENT CITY OF BEVERLY HILLS' ARGUMENT IN SUPPORT OF THE PROPOSED ORDER OF ADMINISTRATIVE LAW JUDGE CINDY FORMAN** in the manner checked below on all interested parties in this action addressed as follows:

**Board Services Unit Coordinator  
California Public Employees' Retirement  
System  
Post Office Box 942701  
Sacramento, Ca 94229-2701  
Board@CalPERS.ca.gov**

**Elizabeth Tourgeman  
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- (BY U.S. MAIL)** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
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Executed on **October 27, 2022**, at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

/s/ Anni Safarloo  
Anni Safarloo