

**ATTACHMENT B**

**Staff Argument**

## STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Tyler Diamond, Alex Duncan, and Ryan Lawrence (Respondents) are members of CalPERS by virtue of their employment with City of Beverly Hills (Respondent City). Respondents established membership with CalPERS on May 30, 2012, June 22, 2009, and May 30, 2012, respectively, by way of their employment with Respondent City. Respondents each entered the safety classification with CalPERS on December 13, 2012, when they became sworn police officers.

The formula for determining a member's retirement benefit takes into account: (1) years of service; (2) a percentage figure based on the age on the date of retirement; and (3) final compensation. (*Prentice v. Public Employees' Retirement System* (1991) 229 Cal.App.3d 1470, 1479.) The "percentage figure" is commonly referred to as the benefit formula and is dependent on the member's classification and age at retirement. There are multiple types of classifications, but they are generally broken down into safety and miscellaneous. Agencies that contract with CalPERS may determine which types of retirement benefits they provide their employees.

Respondent City first contracted with CalPERS to provide safety members retirement benefits using a 3% at 50 benefit formula in 2009. In 2012, Respondent City and Beverly Hills Police Officers' Association (Association) renegotiated the Memorandum of Understanding (MOU) governing police officers' employment with the City. The MOU provides a 3% at 50 retirement formula for all current sworn police personnel hired prior to July 1, 2012; and a new retirement formula, 3% at 55, for all employees hired after July 1, 2012.

After amending the MOU, Respondent City amended its contract with CalPERS to revise the benefit formula applicable to safety members entering membership in the safety classification on or prior to the effective date of this amendment. Under the amended contract, the retirement formula for local safety members entering membership for the first time in the safety classification after the effective date of the contract amendment would be 3% at 55, which was a reduced benefit from the 2009 contract providing a 3% at 50 formula. Those employees who became sworn police officers before July 1, 2012, received a more favorable retirement formula than those who became sworn officers after that date. All Respondents in this case became sworn officers on December 13, 2012, well after the effective date of the Amendment.

Respondents requested that CalPERS enroll them in the 3% at 50 retirement formula. By letters dated February 2, 2021, CalPERS informed each of the Respondents that they were not eligible to be enrolled in the 3% at 50 retirement formula because they were not sworn and enrolled in the safety classification as of the effective date of the Amendment.

Respondents appealed this determination and exercised their right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A hearing was held on February 1, April 13, and April 22, 2022. Respondents were represented by counsel at the hearing. Respondent City was also represented by counsel at the hearing.

The sole issue before OAH was whether CalPERS was correct in its determination that Respondents were correctly enrolled in the 3% at 55 Local Safety-Police benefit formula, rather than the 3% at 50 formula.

At hearing, Respondents admitted that their employment as police officers was contingent on the successful completion of their training at the Police Academy. They argued the City erroneously interpreted the MOU. Because they were hired prior to July 1, 2012, they believed they were entitled to a 3% at 50 retirement formula. Respondents also argued that the City breached the terms of the MOU by amending its contract with CalPERS to preclude them from being enrolled in this retirement formula.

Respondent City testified that Respondents were erroneously interpreting the MOU and that they are not entitled to the 3% at 50 retirement formula because they did not become sworn officers until December 13, 2012. For this reason, Respondent City argued it did not violate the terms of the MOU when it amended its contract with CalPERS. Respondent City also testified that it did not make a mistake when it amended its contract with CalPERS.

CalPERS staff testified regarding the dates of the various contracts and amendments, and the reasons, as summarized above, why Respondents do not qualify for the higher 3% at 50 retirement formula.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondents' appeals. The ALJ found that Respondents failed to prove by a preponderance of the evidence that CalPERS misapplied the 2012 Amendment when determining their retirement formulas or that the 2012 Amendment was based on a mistaken interpretation of the 2011 MOU. The ALJ stated, "[t]o resolve a dispute over the meaning of contract language, the language of the contract itself and extrinsic evidence of the parties' intent must be considered." (*Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 798.) Citing *Badie*, the ALJ considered the 2011 MOU and 2012 Amendment, and held that Respondents' contentions were unsupported. The ALJ found no evidence to support Respondents' claims. They were not sworn police officers before July 1, 2012. That they were hired with the expectation they would become police officers does not make them eligible for sworn police officer benefits based on the date they were hired. Until December 13, 2012, the ALJ found that Respondents were miscellaneous employees entitled only to miscellaneous employee benefits. Moreover, both the 2011 MOU and 2012 Amendment specifically provide for a two-tier retirement formula. Those officers sworn before July 1, 2012, are eligible to receive the more favorable formula due to their seniority. Those officers sworn after July 1, 2012, receive the less favorable 3% at 55 formula.

In the Proposed Decision, the ALJ concludes that CalPERS correctly determined that Respondents were correctly enrolled by the City in the 3% at 55 Local Safety-Police retirement benefit formula. The ALJ denied Respondents' appeals.

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

November 16, 2022

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