

ATTACHMENT B

STAFF'S ARGUMENT

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

Respondent William Richards (Respondent) established membership with CalPERS through employment with Los Angeles County Schools and the Metropolitan Water District of Southern California (MWD) from 1990 to 2001. He separated from MWD in 2001 but retained his CalPERS membership. On November 13, 2001, Respondent was hired by South Coast Air Quality Management District (District) as a Human Resources Manager, and he became a member of the San Bernardino County Employees' Retirement Association (SBCERA) where he worked until retirement.

CalPERS and SBCERA 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 Public Employees Retirement Law (PERL).

On July 23, 2020, Respondent submitted an application for service retirement to CalPERS. Respondent also retired concurrently with SBCERA. He receives a service retirement allowance from each system.

CalPERS worked with SBCERA to obtain Respondent's final compensation amounts. SBCERA submitted a report showing Respondent's highest consecutive one-year salary as Human Resources Manager from 2019-2020. CalPERS reviewed the documentation submitted by SBCERA to determine Respondent's final compensation amount that would be used to calculate his monthly service retirement benefit.

Following review of documents, CalPERS determined that the following items did not meet the definition of compensation earnable, and so would be excluded from the calculation of his final compensation: Employer Paid Benefit Cap A, Parking Fee Advance, Ride Share Incentive Pay, Sick Leave Time Sell Back, and Offset Pay. On February 10, 2021, CalPERS notified Respondent and the District that those items would be excluded from calculation of his final compensation.

On April 11, 2021, Respondent appealed this determination and exercised his right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). Respondent did not appeal CalPERS' determinations regarding Employer Paid Benefit Cap A, Parking Fee Advance, Ride Share Incentive Pay and Sick Leave Time Sell Back. The only item left for hearing was whether CalPERS correctly excluded Offset Pay from the calculation of his final compensation.

A hearing was held on April 14, 2022. Neither SBCERA nor the District appeared at the hearing. Respondent appeared on his own behalf. The ALJ found that the matter could proceed as a default against the District, pursuant to Government Code section 11520.

Respondent testified that because SBCERA bases the employee contribution amount on the age of the employee upon entry into the system, each employee within a job classification pays a different percentage toward retirement contribution. In 2015, the District reduced the amount it would contribute to its employees' retirement. To offset the deduction, the District increased employee pay to correspond with the reduction in retirement contributions. The District did not amend its salary schedules to reflect the increase in compensation.

CalPERS' witness testified that the Offset Pay did not qualify as compensation earnable as defined in PERL section 20636. On December 5, 2014, the District's governing Board voted to approve a three-year labor agreement with Teamster's Local 911 and reached comparable terms for non-represented employees (i.e., management and confidential employees), effective July 1, 2015. Under the provisions of these labor agreements, the District ceased paying any portion of an employee's retirement contributions to SBCERA, but it offset this cost by increasing the employee's salary by an amount equal to what the District had previously paid on the employee's behalf. The offset amount is unique to each individual employee because an employee's retirement contribution is dependent on the bargaining group and the employee's age at the time of initial membership with SBCERA.

During Respondent's highest paid consecutive year with the District (2019-2020), the District reported his hourly base pay at \$76.85 for all but one pay period. The published salary schedule for the District provides that a Human Resources Manager at the highest step has an hourly pay of \$71.23. Under the PERL, a member's compensation earnable to be used for calculation of retirement benefits consists of the member's payrate and special compensation. Payrate is defined as the normal monthly rate of pay or base pay of the member, paid in cash, to similarly situated members of the same group or class of employment pursuant to publicly available pay schedules (Gov. Code § 20636). Because Respondent's pay exceeded the maximum pay for the Human Resources Manager position listed in the District's pay schedule, CalPERS reduced Respondent's payrate from \$76.85 to \$71.23 per hour.

After considering all of the evidence introduced and the Precedential Decision, *In the Matter of the Appeal Regarding Final Compensation of Mark L. Wheeler* (CalPERS Case No. 2016-1073, made precedential by the CalPERS Board, eff. September 18, 2019), as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that the burden of proof is on the Respondent to prove his base pay should include Offset Pay when calculating his final compensation.

The ALJ found that Offset Pay does not qualify as payrate because Respondent's pay exceeded the maximum pay listed in the District's publicly available pay schedule for his position. In determining Respondent's final compensation under the PERL, his

compensation earnable is limited to the maximum pay available as specified in the District's pay schedule. Although the Offset Pay is pensionable by SBCERA, CalPERS is required to apply the PERL to determine Respondent's final compensation. Respondent essentially is requesting that CalPERS "exercise grace" and find that his Offset Pay can be included in his final compensation. The ALJ found that CalPERS is bound to uniformly apply the PERL. In this case, the Board cannot exempt Respondent from the PERL's requirement that his final compensation be based on his payrate, which in turn is based on the District's publicly available pay schedule.

Pursuant to Government Code section 11517 (c)(2)(C), the Board is authorized to "make technical or other minor changes in the Proposed Decision." Staff recommends adding the word "members" after the word "situated" in paragraph 7 on page 9 of the Proposed Decision.

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

June 15, 2022.

JOHN SHIPLEY
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