

ATTACHMENT B

STAFF'S ARGUMENT

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

Respondent Stephen M. Lecouve (Respondent) established membership with CalPERS through employment with the City of Oakdale on August 14, 1989. He remained a member of CalPERS through employment with three CalPERS-covered employers until 2002, when he separated employment with the City of Modesto. He retained his CalPERS membership after separating from employment with the City of Modesto.

On March 24, 2002, Respondent became a Deputy Sheriff for the County of Sacramento (County) and thereby established membership with the Sacramento County Employees' Retirement System (SCERS).

CalPERS and SCERS are reciprocal retirement systems. Reciprocity is an agreement among public retirement systems to allow members to move from one public employer to another within a specific period of time without losing certain valuable retirement and related benefits. Respondent has reciprocity rights for concurrent retirement with CalPERS and SCERS.

On December 20, 2019, Respondent submitted an application for service retirement with CalPERS. He retired for service effective December 30, 2019, with 12.839 years of CalPERS service and has been receiving his service retirement allowance since then.

As part of the retirement process, the County remitted a Retirement Salary Request Form to CalPERS on Respondent's behalf. The County identified components of Respondent's final compensation, including "Holiday in Lieu Paid Over Max;" "Vacation Paid Over Max;" "Animal Allowance;" "Clothing Allowance;" "10% K-9 Handler;" and "20% Educational Incentive."

By letter dated March 13, 2020, CalPERS notified Respondent that CalPERS excluded the "Vacation Paid Over Max;" "Animal Allowance;" and "10% K-9 Handler" from the calculation of his final compensation. Based on the Public Employees' Retirement Law (PERL), these items of pay do not qualify as "compensation earnable" for purposes of calculating Respondent's CalPERS retirement benefit.

Respondent appealed the determination as to "Animal Allowance" and "10% K-9 Handler" 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 August 30, 2021. Respondent appeared and represented himself at the hearing. Respondent County of Sacramento (County) did not appear at the hearing.

Prior to the hearing, CalPERS explained the hearing process to Respondent and the need to support his case with witnesses and documents. CalPERS provided Respondent with a copy of the administrative hearing process pamphlet. CalPERS

answered Respondent's questions and clarified how to obtain further information on the process.

At hearing, CalPERS presented evidence that when a member retires for reciprocal service, he must retire simultaneously with CalPERS and (in this case) SCERS. He receives a retirement benefit from CalPERS and a separate benefit from SCERS. CalPERS must apply its own rules to calculate his compensation regardless of the reciprocal entity's rules.

At the hearing, CalPERS presented evidence that "Animal Allowance" was renamed "10% K-9 Handler" pay in October 2019. In order for CalPERS to include Respondent's reported "Animal Allowance" and "10% K-9 Handler" special compensation, they must be listed in CCR 571(a) and must comply with all requirements in CCR 571(b). While "Canine Officer/Animal Premium" is listed in CCR 571(a)(4), the pay that Respondent received did not comply with CCR 571(b)(4) which provides that all items of special compensation must be for work "[p]erformed during normal hours of employment." SCERS' MOU section covering canine handlers states that canine handlers were awarded a 10% pay differential for time spent "in ordinary care and informal training that cannot be performed during regularly scheduled hours." CalPERS' witness testified that for this reason, CalPERS could not include Respondent's "Animal Allowance" or "10% K-9 Handler" pay because by definition each item of pay is for work that cannot be performed during regular working hours.

For these reasons, CalPERS determined that Respondent's "Animal Allowance" and "10% K-9 Handler" pay items did not constitute "compensation earnable" under the PERL and should not have been reported to CalPERS as final compensation for purposes of determining his monthly retirement allowance.

Respondent testified that the language in the MOU does not reflect the parties' intent. When re-negotiating the language, the parties intended that the canine allowance would be pensionable. Respondent also testified that the County intended to recognize the danger presented to canine handlers. He believes the pay differential was not meant to compensate him to care for the canine after regular working hours but because of the hazardous nature of the work which is pensionable.

The ALJ found that Respondent has the burden to prove by a preponderance of evidence that the "Animal Allowance" and "10% K-9 Handler" pay items should be included in the calculation of his final compensation. The ALJ found that the MOU specifically states that the pay is awarded to canine handlers for animal care "that cannot be performed during regularly scheduled hours," and the only evidence submitted at the hearing is the MOU as written. There was no evidence to support Respondent's argument that the allowance is actually hazard pay, so it was properly excluded.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. Based on the evidence and the law, the ALJ concluded that CalPERS correctly excluded the "Animal Allowance" and "10% K-9 Handler" special compensation reported by SCERS because neither one qualifies as compensation earnable under the PERL.

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 confusion, staff recommends modifying page five, paragraph 10 and footnote two as well as page six, paragraph 13 of the proposed decision by substituting "CCR 571" in place of "CCR 570."

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

February 15, 2022

John Shipley
Senior Attorney