

ATTACHMENT B

Staff Argument

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

Lynnelle Grumbles (Respondent) earned unused sick leave (USL) while she was employed at Tulare County Schools - Visalia Unified School District (Visalia School District). Visalia School District is a school employer and contracts with CalPERS as such. Respondent's USL from Visalia School District was transferred to Respondent Santa Clarita Valley School Food Service Agency (Respondent Agency) and reported to CalPERS by Respondent Agency for pension purposes. Respondent Agency is a local government entity that contracts with CalPERS for pension benefits as a local agency. It is not a school employer.

USL earned by a member through the course of their employment may be reported to CalPERS for additional service credit at retirement. How much USL can be reported and whether it can be transferred and then reported to CalPERS, for pension purposes, is dictated by the Public Employees' Retirement Law (Gov. Code §§ 20000 et seq., the "PERL").

CalPERS determined that although the USL accrued with the Visalia School District can be transferred to Respondent Agency; it cannot be reported to CalPERS by Respondent Agency for pension purposes at retirement. Based on the PERL, CalPERS' policy and division between school and local agency employers, CalPERS determined as follows:

- Visalia Schools District is a school employer;
- Respondent Agency contracts with CalPERS as a local agency employer, it elected to be subject to the provisions of PERL section 20965;
- PERL section 20965 applies to miscellaneous members of contracting agencies and only allows the reporting of USL that was accrued during the normal course of a member's employment with the local agency that the member is retiring from;
- PERL section 20965 does not allow any transfer of benefits from school employers;
- Prior to 2019, CalPERS' policy allowed transfer of USL between school employers;
- CalPERS' policy was codified in 2020, amending section 20963 and allowing transfer of USL under PERL section 20963.5 among school employers;
- Local agency employers are not part of PERL section 20963.5, so the USL from a school employer cannot be transferred to a local agency because the local agency employers do not share assets and liabilities with school employers.

Respondent Agency appealed this determination and exercised its right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings

(OAH). A hearing was held on February 15, 2023. Respondent represented herself at the hearing. Respondent Agency was represented by counsel.

Respondent presented testimony regarding her position at Respondent Agency and the work she performed for Respondent Agency. Respondent also testified that she earned USL while employed at Visalia School District, which was transferred to Respondent Agency and reported to CalPERS upon her retirement.

Respondent Agency presented evidence that it is required to accept the transferred USL pursuant to the Education Code. Respondent Agency argued that it should be treated like a school employer, and any USL transferred to Respondent Agency by other school employers should be reportable as USL to CalPERS for pension purposes.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied in part and affirmed in part Respondent Agency's appeal. The ALJ found that CalPERS is bound by the PERL and the PERL does not allow the reporting of USL that is transferred from a school employer to a non-school employer. While a school employer may transfer USL to a non-school employer under the Education Code, that USL does not then become reportable for pension purposes under the PERL.

In the Proposed Decision, the ALJ concludes that CalPERS correctly determined that Respondent's service credit may not be based on USL hours transferred from Visalia School District to Respondent Agency. Thus, CalPERS may reduce Respondent's service credit and monthly retirement allowance accordingly, and may recapture any overpayments it has made to Respondent in excess of amounts allowable under the PERL. The ALJ also concluded that when recalculating Respondent's retirement allowance, CalPERS shall subtract her 29.50 used sick leave days from the 193.06 sick leave days transferred from Visalia School District, not from the sick leave days she accrued while at the Respondent Agency.

Pursuant to Government Code section 11517, subdivision (c)(2)(C), the Board is authorized to "make technical or other minor changes in the proposed decision." To avoid ambiguity, staff recommends correcting paragraph 19, page 15: to read "The PERL is the sole authority...." and paragraph 22, page 16, by adding a period between "accrued at the Agency. Respondent argues.." of the Proposed Decision.

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

July 19, 2023

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