

ATTACHMENT A

THE PROPOSED DECISION

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

**In the Matter of the Appeal to Purchase Comprehensive
Employment and Training Act Service Credit of:**

SAMUEL B. VILLALOBOS, Respondent

Agency Case No. 2021-0321

OAH No. 2021080130

PROPOSED DECISION

Julie Cabos-Owen, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on November 10, and December 6, and 7, 2021. The California Public Employees' Retirement System (CalPERS, PERS, or Complainant) was represented by Senior Staff Attorney John Shipley. Samuel B. Villalobos (Respondent) represented himself.

At the hearing, the ALJ was provided with Exhibit 45, which contained confidential information protected from disclosure to the public. Redaction of the document to obscure this information was not practicable and would not provide adequate privacy protection. To prevent the disclosure of confidential information, the ALJ issued a Protective Order providing that Exhibit 45 shall be placed under seal following its use in preparation of the Proposed Decision. This exhibit shall remain

under seal and shall not be opened, except by order of the CalPERS Board of Administration, by OAH, or by a reviewing court. A reviewing court, parties to this matter, their attorneys, or a government agency decision maker or designee under Government Code section 11517 may review the document subject to this order provided that such document is protected from release to the public.

Testimony and documents were received in evidence. The record was left open to allow the parties to submit simultaneous closing briefs (due January 10, 2022) and simultaneous reply briefs (due January 24, 2022). Complainant timely filed a closing brief, which was marked as Exhibit 46 and lodged. Respondent timely his closing brief, and on January 11, 2022, Respondent also filed and served a notice of correction, identifying and correcting mistakes in his closing brief. Respondent's closing brief and notice of correction were collectively marked as Exhibit WWWW and lodged.

After the January 10 deadline Complainant filed an Amended Closing Brief because the caption of Exhibit 46 reflected erroneous case numbers. Complainant's Amended Closing Brief was not marked for identification; instead, the ALJ corrected the case numbers in the caption of Exhibit 46 by editing the pdf. document.

Respondent timely filed a reply brief, which was marked as Exhibit XXXXX and lodged. Complainant timely filed a reply brief, and also timely filed an amended reply brief. Only Complainant's amended reply brief was marked for identification as Exhibit 47 and lodged.

The record closed and the matter was submitted for decision on January 24, 2022.

FACTUAL FINDINGS

Respondent's Employment History and Requests for CETA Credit

1. From March 1977 through early December 1977, Respondent worked for the Farm Advisor Department (Farm Advisor) of Los Angeles County (County). He was never hired as a permanent employee of the County during his 10-month employment with the CETA program.

2. Respondent was employed by the University of California Cooperative Extension (UCCE) from November 1977 to December 1980. On November 21, 1977, Respondent began contributing to the University of California Retirement Plan (UCRP), and he last contributed to UCRP on December 14, 1980. The UCRP was formerly known as the University of California Retirement System (UCRS).

3. On December 15, 1980, Respondent established membership with CalPERS through his employment with Community Redevelopment Agency for the City of Los Angeles (CRA-LA or CRA/LA).

4. On December 17, 1980, Respondent submitted a Disposition of Accumulations requesting termination/refund of his contributions in the UCRP for his employment period of November 21, 1977, to December 14, 1980. Pursuant to Respondent's request, his UCRP contributions were refunded to him on April 30, 1981.

5. On April 20, 1993, Respondent requested that CalPERS redeposit his withdrawn contributions from his employment with Whittier Unified School District from September 1976 to February 1977, the County from February 1977 to November 1977, and the UCCE from November 1977 to December 1980. He sought to have the

redeposited contributions added to his CalPERS "account balance and service credit."
(Exhibit 7.)

6. On January 14, 1994, CalPERS denied Respondent's request to redeposit his withdrawn contributions and to add to his CalPERS service credit. CalPERS explained there were no provisions in the Public Employees' Retirement Law (PERL) that allowed credit for his service with UCCE to count as CalPERS service credit. CalPERS also informed Respondent the County did not contract with CalPERS to provide retirement benefits to its eligible employees. CalPERS suggested Respondent contact the Los Angeles County Employees' Retirement Association (LACERA).

7. On February 21, 1994, Respondent provided CalPERS with information regarding his employment with the County and UCCE from 1977 through December 1980.

8. On June 28, 1995, CalPERS informed Respondent it had learned that, during the period when Respondent worked for UCCE, no employees were placed into PERS, and the University of California stopped doing so in the 1960's. (Exhibit 10.)

9. On November 17, 1995, Respondent asked CalPERS to perform a comprehensive review of his request for service credit for his employment with UCCE for the period of November 1977 to December 1980.

10. On June 19, 1997, Respondent informed CalPERS he had contacted LACERA requesting service credit for the period of March 1977 to December 7, 1977, when he "was employed in the Comprehensive Employment Training Act (CETA) position as administrative assistant to the Acting County Director of the [County Farm Advisor/UCCE]." (Exhibit 12.) Respondent also requested that CalPERS coordinate with LACERA to provide him "with the approval of service credit and eligibility for payment

to PERS by the [County] as the Public Agency which I served during that period of time." (*Ibid.*)

11. On June 20, 1997, CalPERS informed Respondent that his service from November 21, 1997 through December 14, 1980 was reported to UCRP and provided him with contact information for that retirement system.

12. On July 7, 1997, Respondent sent a request to the County for "approval of full service credit with . . . CALPERS for my service with the [County] from March 1977 to December 1977 in [CETA]." Respondent also requested the County's approval as follows:

[T]hat the [County], a former employer, pay the entire cost of the service credit including all accrued interest because the [County] did not make or reported [*sic*] any contribution to either PERS or [LACERA] on my behalf [*sic*]. During this period of time, I served the [County] and held an Administrative Assistant CETA position which reported to Richard Maire, Acting County Director and subsequently Robert E. Reynolds, County Director of the Farm Advisor Cooperative Extension. [¶] . . . [¶] Subsequently, I held an Assistant Cooperative Extension Advisor position with the [UCCE] and was employed as a 4-H Youth Advisor in Los Angeles County. . . . I worked for the University of California until December 1980. Since then, I have been employed by the CRA-LA and I am covered by CALPERS.

(Exhibit 14.)

13. On July 11, 1997, Respondent submitted a request to CalPERS for CETA service credit for employment with the County/UCCE for the period of March 1977 through December 1977.

14. On July 14, 1997, the County sent Respondent a letter informing him it was referring his July 7, 1997 request "directly to the Farm Advisor for handling" to verify the years he was employed under the CETA program. (Exhibit 16.) The County referred Respondent's request to the attention of Rachel Mabie, County Director for the UCCE. On November 21, 1997, Ms. Mabie, sent a letter to the County Department of Human Resources, confirming Respondent worked with the UCCE under the CETA program from March 1977 to December 1977, first as an administrative assistant for the Acting County Director at UCCE, and then as a 4-H Youth Advisor. Ms. Mabie opined that Respondent was entitled to CETA service credit "for the nine-month period he worked with the CETA program with [UCCE] (Farm Advisor)." (Exhibit P.) Ms. Mabie's letter was addressed only the County, and it did not address (nor was she authorized to address) whether Respondent was entitled to CETA service credit with CalPERS.

15. On July 16, 1997, CalPERS denied Respondent's request for CETA service credit in CalPERS for his employment with the County/UCCE from March 1977 through December 1977. CalPERS noted the County did not contract with CalPERS and suggested that Respondent contact LACERA which has its own retirement system.

16. On December 1, 1997, Respondent sent a letter to the County's Senior Human Resources Manager "to, once again, request a favorable decision and approval of full-service credit with CalPERS for my employment with the [County] from March to December 1977 under the [CETA] and approval of my request that the County pay the entire cost of eligible service credit including all interest." (Exhibit 18.)

17. On December 9, 1997, Respondent requested that CalPERS reevaluate his request for CETA service credit for employment with the County/UCCE from March 1977 through December 1977.

18. On February 25, 1998, CalPERS informed Respondent that its denial of his request for CETA service credit for employment with the County/UCCE from March 1977 through December 1977 remained unchanged. CalPERS once again noted the County did not contract with CalPERS and that the County had its own retirement system. CalPERS explained, "We cannot credit service to an agency that does not contract with CalPERS." (Exhibit 20.)

19. On January 30, 2001, the University of California, Human Resources and Benefits Retirement Claims Division, responded to Respondent's "inquiry concerning prior University service and entitlements under the [UCRP]." The letter informed Respondent of the following:

Our records indicate that you first contributed to the [UCRP] in November 21, 1977 and last contributed to it in December 14, 1980. Records further indicate [UCRP] contributions with interest, totaling \$806.02, were refunded to you in April 30, 1981. Since your accumulations were refunded, you have no entitlements under the [UCRP].

We are unable to find any account of UCRP membership for the period of April 8, 1977, to November 20, 1977. Casual or temporary appointments or appointments where you did not receive covered compensation are not eligible for

membership under UCRP in accordance with [UCRP]
Regulations[.]

(Exhibit 21.)

20. On June 16, 2001, Respondent submitted another request to CalPERS for CETA service credit for his employment with the County/UCCE from March 1977 through December 1977.

21. On June 21, 2001, CalPERS denied Respondent's request for CETA service credit "because there is no provision in the retirement law to allow service worked under another retirement system to be transferred or credited in CalPERS" and suggested that he contact the County/UCCE. (Exhibit 23.)

22. On December 4, 2001, CalPERS also sent Respondent a letter specifically addressing his request as it pertained to the UCCE. CalPERS informed Respondent its conclusion remained the same regarding his request for service credit with UCCE. Specifically, CalPERS stated:

You are not eligible to purchase the [UCCE] service credit because since October 1, 1963, all employees of the University of California are members of the [UCRS]. Therefore, any employment under the University of California would have to be credited with UCRS. There is no provision in the [PERL] to allow service worked under another retirement system to be transferred or credited in CalPERS.

(Exhibit 25.)

23. In January 2006, Respondent again submitted a request to CalPERS for CETA service credit for his employment with the County/UCCE for the period of March 3, 1977, through December 7, 1977.

24. By letters dated March 8, 2006, and December 8, 2006, CalPERS denied Respondent's request for CETA service credit because there was no provision in the retirement law to allow credit in CalPERS for his service with the County/UCCE from March 3, 1977, to December 7, 1977. CalPERS suggested Respondent contact LACERA and the UCRS.

25. On April 29, 2010, Respondent submitted another request to CalPERS for CETA service credit for his employment with the County/UCCE for the period of March 1977 through December 7, 1977.

26. On April 30, 2010, CalPERS denied Respondent's request for CETA service credit, noting:

As stated in our previous letter, your service with [County/UCCE] cannot be credited in CalPERS. The CETA time you wish to purchase was not covered under a CalPERS contracted employer. The UCCE is contracted with [LACERA] to provide the CETA program. [¶] You are currently a member of CalPERS with your employment with [CRA-LA]. Although your current employer is contracted with CalPERS, the CETA time you worked was not covered by this employer. CalPERS offers CETA as a service credit purchase for contracted employers to provide their employees.

(Exhibit 31.)

27. In 2012, the CRA-LA was replaced by a successor agency, the Community Redevelopment Agency for Los Angeles, A Designated Local Authority (CRA-LA/DLA). Respondent was thereafter employed by the CRA-LA/DLA.

28. On October 17, 2014, Respondent again submitted a request to CalPERS for CETA service credit for his employment with the County/UCCE for the period of March 31, 1977, through December 7, 1977.

29. On October 23, 2014, CalPERS sent Respondent a letter in response to his request for CETA service credit and included citations to statutes dealing with CETA service, specifically Government Code sections 21020, 21030, 21050, subdivision (a), and 21052. CalPERS explained CETA service credit to Respondent as follows:

This is regarding your request for information pertaining to [CETA] service credit in [CalPERS].

CETA was a federal or state sponsored program, from 1973 to 1982. In order to be eligible to purchase CETA service in CalPERS, the time must have been worked with a CalPERS contracted employer. In addition, CETA is an optional benefit that CalPERS employers may choose to exclude. If eligible to purchase this service, the cost is based on our present value method.

As stated in prior letters to you, the CETA time you worked was not with a CalPERS contracted employer, therefore you are not eligible to purchase this service in CalPERS. Though your employer may allow for the purchase a CETA service, they only allow for CETA service worked with their agency. If

the CETA service were to be purchased, it would be credited to the agency it was worked at.

[¶] . . . [¶]

CalPERS is governed by the [PERL], which specifically and exclusively sets forth the procedures by which a member accrues service credit, including the purchase of service credit.

(Exhibits 33 and YY.)

30. On October 27, 2014, LACERA sent Respondent a letter confirming he was "never a member of [LACERA]." (Exhibit 34.)

31. On October 29, 2014, Respondent requested CalPERS reevaluate his request for CETA service credit and that any purchase calculation be based on the 1990's cost. Respondent attached documents purportedly "showing that my CETA work service performed with the [County] Farm Advisor Department in 1977 over time has merged into the Community Development Commission [for the] County of Los Angeles [(CDC-LA)] – a CalPERS agency." (Exhibit 34.) However, the documents Respondent attached did not demonstrate the purported merger of the County Farm Advisor Department into the CDC-LA. Rather, as Respondent also pointed out, the CDC-LA website "shows that in 1982 [County] Board of Supervisors consolidated three entities – The Housing Authority, the Community Development Department, and the Redevelopment Agency – to form the CDC[-LA]." (*Ibid.*)

32. In his October 29, 2014 letter, Respondent also raised a new assertion of entitlement to CETA service credit under his then-current employer, the CRA-LA/DLA.

He contended the 2012 Memorandum of Understanding (MOU) between the CRA-LA/DLA and its employees contained "Article 59 ENHANCED RETIREMENT BENEFIT, Section 2, Prior Retirement Benefit Enhancements[,] page 64, Subsection 2.4," stating "Employees are eligible to purchase service under [CETA] without cost to the CRA-LA/DLA." (Exhibit 34.)

33. On November 3, 2014, Respondent submitted a Service Retirement Election Application requesting an effective retirement date of November 15, 2014. (Exhibit 3.) Respondent has been receiving retirement benefits from CalPERS since February 2, 2015. (Exhibits 3 and TTT.)

Respondent's Post-Retirement Requests to Purchase CETA Credit

34. On November 17, 2014, CalPERS responded to Respondent's October 29, 2014 letter and submission of additional documentation. CalPERS explained Respondent was not eligible to purchase CETA service with CalPERS because the County/UCCE did not contract with CalPERS and was not a part of the CDC-LA, a contracting agency. Specifically, CalPERS stated:

Thank you for the additional documentation you provided regarding your [CETA] service with the [UCCE]. We appreciate the time you took to research how the [UCCE] may fall under the [CDC-LA's] contract with [CalPERS].

With the help of our Contracts Department, we have completed an in depth review of the service you have claimed with the [UCCE], under the [CDC-LA]. You provided the CDC[-LA]'s 2013 Annual Budget that allocated monies to be spent with the UCCE. You also provided information

showing the CDC[-LA] and the UCCE have the same address.

Our findings show the [County], the CDC[-LA], and the UCCE are a collaborative effort. The CDC[-LA] may choose to contract with the UCCE for services. The CDC[-LA] allocated monies in their budget to contract for services with the UCCE however, the UCCE is not part of the CDC[-LA]. The UCCE is independent of the CDC[-LA], and may contract with various agencies, not just the CDC[-LA]. The CDC[-LA]'s organization chart does not list the UCCE as a department within the CDC[-LA]. We have confirmed the CDC[-LA] and the UCCE have the same address, but are not the same agency; they are merely housed within the same building. We have taken the opportunity to contact the UCCE's Director of Media Outreach and Advocacy liaison to confirm our findings.

Since the UCCE is not part of the CDC[-LA], you are not eligible to purchase your CETA service with CalPERS. You would only be eligible to purchase CETA service if the UCCE was independently contracted with CalPERS, and that contract allowed the purchase of CETA time.

(Exhibit 35.)

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35. On December 2, 2014, LACERA denied Respondent's request to purchase CETA service credit through that retirement plan. Specifically, LACERA explained:

LACERA membership begins on the first of the month after your permanent hire date. That is the date that the LACERA membership begins and LACERA starts counting the member's service credit for retirement purposes. [CETA] was a program that provided temporary employment with [the County]. CETA employees were not hired on a permanent basis and therefore were not LACERA members.

The [County] Department of Human Resources was able to confirm your employment under the CETA program from March 1977 through December 7, 1977. This would be a total of 10 months of service credit.

You were never hired on a permanent item with [the County] after your employment with the CETA program. Therefore, you were never a LACERA member.

(Exhibit EEEE.)

36. On January 30, 2015, CalPERS sent Respondent a letter after its Retirement Account Services management completed a review of Respondent's request to purchase service credit for his CETA service with the County/UCCE from March 1977 to November 1977. CalPERS informed Respondent:

After reviewing the additional documentation you supplied and the basis for your request for reconsideration, CalPERS'

determination to deny your request for the purchase of CETA service credit remains unchanged. It would not be lawful under the [PERL] to allow the purchase of CETA credit for service not rendered with a CalPERS contracted employer.

You provided documentation which showed you were paid by the [County]. The [County] is contracted with [LACERA]. Your 1997 letter to LACERA stated the service was worked under their retirement system. As you know, LACERA referred you to the [UCCE], for verification of your CETA employment. Additional documentation you provided showed the [CDC-LA] allocates funds to hire the UCCE, but that does not grant the UCCE coverage under the contract the [CDC-LA] has with CalPERS. The UCCE is hired for services only, and thus, is not a CalPERS-covered agency.

Our research further shows the UCCE works with a variety of businesses and communities throughout the state of California; they are not limited to the [CDC-LA], nor does the [CDC-LA] control who the UCCE provides services to.

[¶] . . . [¶]

At one time you may have been eligible to purchase this CETA service with either LACERA or the [UCRS]. Unfortunately, based on the documentation you provided it appears you may no longer meet the eligibility

requirements to purchase this service with either System, so that option may no longer be available to you. However, that does not afford you the ability to purchase the CETA service credit with CalPERS. There have never been provisions within the PERL to allow the service in question to be credited in CalPERS.

(Exhibit 36.)

37. On March 27, 2015, Respondent sent CalPERS a letter requesting an "Executive Review and an administrative hearing." (Exhibit 37.) Respondent again asserted he "performed public service for the Farm Advisor Department of the [County] from March 1977 to November 1977 in a [CETA]" position, that in 1993, the County Board of supervisors merged all the functions of the Farm Advisor Department into the CDC-LA, and that the CDC-LA is now covered by CalPERS and not LACERA. Respondent asserted he was "grandfathered" in CDC-LA based on his 1977 service. He again pointed out the 2012 MOU between the CRA-LA/DLA and its employees contained "Article 59 ENHANCED RETIREMENT BENEFIT, Section 2, Prior Retirement Benefit Enhancements[,] Subsection 2.4," stating "Employees are eligible to purchase service under [CETA] without cost to the CRA-LA/DLA." (*Ibid.*)

38. On May 29, 2015, CalPERS sent Respondent a letter reiterating its denial of his request to purchase CETA service credit. CalPERS explained:

In our most recent letters to you dated October 30, 2014, November 17, 2014, and January 30, 2015, you were informed that you are not eligible to purchase CETA service credit with CalPERS because the agency you worked for, the

[County], also known as the [UCCE], does not contract with CalPERS for retirement benefits. You must contact [LACERA] to request the purchase of CETA service credit, as your time worked as a CETA employee from March 1977 to November 1977, was rendered under the [County], a LACERA-covered employer. This decision was based on the law and facts surrounding your employment under the CETA program with a non-CalPERS covered employer. [¶] . . . [¶]

Since the [County] and the UCCE do not contract with CalPERS for retirement benefits, we cannot attach liability to that employer for the purchase of CETA service credit. Following procedures dictated by legislation and written in the PERL, we cannot accommodate your request to allow you to elect CETA service credit with CalPERS.

You must contact LACERA directly regarding your eligibility to purchase CETA service credit with their System for time worked for an employer that contracts with them for retirement benefits. You cannot purchase service credit with CalPERS for employment rendered under any other public retirement system supported wholly or in part by public funds.

We have carefully reviewed and considered all of the information you have provided for our review prior to reaching our final determination. Our final determination is based on the law and facts of your employment, which is

why you have been repeatedly denied the purchase of CETA service credit with CalPERS, regardless of the documentation you submitted for our review. The law and facts of your employment is very clear and specific in this case.

(Exhibit 38.)

39. In its May 29, 2015 letter, CalPERS noted for Respondent, "You were employed as a CETA worker under the [County] Department of Farm Advisor. . . . [The County Farm Advisor/UCCE] has never reported to CalPERS, nor contracted with CalPERS for retirement benefits. You cannot purchase CETA time with CalPERS for this employment." (Exhibit 38.) CalPERS also disagreed with Respondent's assertion that his employment duties and liabilities of the former County Farm Advisor had "merged into" the CDC-LA. CalPERS pointed out the CDC-LA "budgets for and expenses [the Farm Advisor/UCCE] as a subcontractor." (*Ibid.*) CalPERS acknowledged the CDC-LA contracts with CalPERS for retirement benefits but explained the CDC-LA "retirement benefits are not extended to subcontractors of the [CDC-LA]." (*Ibid.*) Consequently, the Farm Advisor/UCCE "does not contract with CalPERS for retirement benefits." (*Ibid.*) CalPERS once again recommended Respondent contact LACERA regarding his request to purchase CETA service credit and possibly seek an administrative hearing with their system if his request was denied. CalPERS concluded, "Your appeal would not apply to CalPERS because CalPERS does not contract with the employer you worked the CETA employment with; therefore, your CETA time cannot be purchased under CalPERS." (*Ibid.*)

40. Regarding Respondent's assertion that he could purchase CETA service credit from his employer CRA-LA, CalPERS explained in its May 29, 2015 letter, "The

CRA/LA allows for the purchase of CETA service credit. This means CETA time worked as an employee of CRA/LA may be purchased." (Exhibit 38.) CalPERS pointed out the Respondent's 1977 CETA service occurred when he was not an employee of CRA/LA but instead, "employed by the [County], as proven by the pay stubs and additional documentation that you provided to CalPERS." CalPERS once again concluded, "You cannot purchase CETA service credit with CalPERS because the agency you worked for does not have a retirement contract with CalPERS." (*Ibid.*)

41. On March 8, 2016, Respondent sent a letter to CalPERS, entitled "Appeal CalPERS University of California Academic," seeking to purchase "UC Academic Service" credit for his work with the UCCE from November 21, 1977, through December 14, 1980. (Exhibit 39.) He noted he had previously withdrawn his UCRS contributions because he only had three years of service when he voluntarily terminated his UCCE employment on December 14, 1980.

42. On April 7, 2016, CalPERS denied Respondent's request for redeposit of withdrawn contributions, noting that he earned his service credit under another retirement system (i.e., UCRS), and UCRS was not a contracted CalPERS agency. CalPERS reiterated, "As stated in multiple letters to you, are not eligible to purchase your March 1977 through November 1977 CETA service in CalPERS." (Exhibit 40.)

43. On July 19, 2017, Respondent submitted a request to the CDC-LA seeking an Executive Review and approval of CalPERS service credit for his CETA service with the County/UCCE for the period of March 1977, through December 7, 1977. Additionally, on January 25, 2019, Respondent sent a letter to the County Department of Human Resources reiterating his request for County and CDC-LA approval of CalPERS service credit for his CETA service with the County/UCCE for the period of March 1977, through December 7, 1977.

44. In January 2019, Respondent submitted to CalPERS a "Request for Service Credit Cost Information – Service Prior to Membership, CETA & Fellowship," seeking to purchase CalPERS service credit for his CETA service with the County/UCCE from March 31, 1977, through December 7, 1977. (Exhibit 43.)

45. On April 19, 2019, CalPERS once again denied Respondent's request to purchase CETA service credit for his employment with the County/UCCE. CalPERS reiterated its suggestion that he contact LACERA or the UCRS. CalPERS enclosed copies of the 14 previous letters sent to Respondent informing him that his CETA service with the County/UCCE was not eligible for CalPERS service credit. The letters were dated January 14, 1994; June 28, 1995; June 15, 1997; June 20, 1997; February 25, 1998; December 4, 2001; June 21, 2001; March 8, 2006; December 8, 2006; April 30, 2010; October 23, 2014; November 17, 2014; May 29, 2015; and April 7, 2016.

46. On a date not established by the evidence, Respondent submitted a Congressional Casework Authorization Form (CCAF) to Congresswoman Linda T. Sanchez regarding his request to CalPERS to provide him with CETA service credit. On September 5, 2019, CalPERS received a copy of the CCAF Respondent submitted to Congresswoman Sanchez with a request for CalPERS to provide a response.

47. On October 8, 2019, CalPERS issued a letter addressing the CCAF and upholding its prior denials of Respondent's request to purchase CETA service credit for his employment with the County/UCCE from March 1977 through December 1977. CalPERS noted its final determination "that the service credit you have requested to purchase for your employment with the [County] Farm Advisor Department and the [UCCE] was not worked with CalPERS contracted employers. As such, you are not eligible to purchase the service credit you have requested." (Exhibit 4.) Respondent was notified of his appeal rights.

48. By letter dated November 7, 2019, Respondent appealed CalPERS' denial of his request to purchase CETA service credit for his employment with the County/UCCE from March 1977 through December 1977.

Issue on Appeal

49. This appeal is limited to the issue of whether Respondent is eligible to purchase CETA service credit with CalPERS for his employment with the County/UCCE from March 1977 through December 1977.

Evidence and Testimony at Hearing

50. Juli Torres and Andy Nguyen testified for CalPERS at the administrative hearing. Their demeanor was professional and forthright, and their testimony was consistent and convincing. They presented as credible witnesses and were not impeached on any grounds. Ms. Torres and Mr. Nguyen persuasively substantiated CalPERS' bases for denying Respondent's request for CalPERS CETA service credit as detailed in CalPERS's prior correspondence. (See Factual Findings 1 through 48.)

51. Ms. Torres is Associate Government Program Analyst in CalPERS' Account Management Section, Service Credit Costing Unit, handling members' requests to purchase service credit. The Service Credit Costing Unit uses the PERL to determine if a member is eligible to purchase service credit and, if so, the amount of time eligible for purchase and the cost to purchase.

52. In this case, Respondent sought to purchase credit for service he provided under CETA, which was a 1973-1982 program instituted to get people back to work. The liability for CETA service credit falls on the agency under which the CETA employment was worked. Respondent performed service that qualifies as CETA service

with the County Farm Advisor/UCCE. Consequently, liability for Respondent's CETA service would lie with LACERA. Although Respondent later worked for a CalPERS contracting entity, CRA-LA, and its successor agency, CRA-LA/DLA, Respondent's CETA service was not performed for either entity or for any other CalPERS covered agency, and there is no provision in law to allow his prior non-CalPERS covered employment to become eligible for CalPERS service credit at a later point.

53. Mr. Nguyen is the Assistant Division Chief for the CalPERS Pension Contracting Unit. His unit was brought in to determine how CalPERS' contracts with various agencies affected Respondent's pension benefits. Mr. Nguyen noted Respondent's CETA service was performed for the County Farm Advisor/UCCE. At the time Respondent worked for these entities, they did not have a contract with CalPERS for benefits. Rather, the County had its own retirement system, LACERA, and the UC had its own retirement system as well.

54. Mr. Nguyen confirmed that, on March 1, 1983, the CDC-LA contracted with CalPERS. In 2004, the County Housing Authority merged into the CDC-LA, and the CDC-LA became a successor agency of the County Housing Authority. In 2019, the CDC-LA requested CalPERS change their name to the Los Angeles County Development Authority. Other than the name change, all contract provisions remain the same.

55. Mr. Nguyen rejected Respondent's assertion that his prior CETA service with the County should be credited in CalPERS because the CDC-LA now contracts with CalPERS. Although the CDC-LA and the County may share a funding source, the CDC-LA is an independent and separate employer from the County. The County has its own retirement system and is not a CalPERS covered employer. Only active employees of the CDC-LA at the time of the contract were eligible for benefits under that

contract. Respondent was not an active employee of the County or the CDC-LA at the time the CDC-LA contracted with CalPERS.

56. Mr. Nguyen also rejected Respondent's assertion that the County Farm Advisor/UCCE had merged into the CDC-LA. After reviewing documentation, Mr. Nguyen determined the CDC-LA had taken over some of the functions of the Farm Advisor which may have been a subcontractor prior to the transfer of functions. Mr. Nguyen noted, in 1993, the County asked CDC-LA to take over the Farm Advisor operations that were part of UCCE. Mr. Nguyen confirmed that, despite the CDC-LA taking over some Farm Advisor operations, there was nothing indicating a merger of the County Farm Advisor and the CDC-LA. When a CalPERS contracting agency such as CDC-LA takes over operations, it can choose to hire active employees (e.g., employees of the County/UCCE), and those CDC-LA hired employees would become members of CalPERS. However, the hired employees must be active employees at time of consolidation to become a CalPERS member. Former employees do not gain membership. There is no provision in any CalPERS contract that would allow someone (like Respondent) who previously performed work for a non-CalPERS-contracted agency to have his prior service converted to CalPERS credit.

57. Mr. Nguyen also rejected Respondent's assertion that his employment with CRA-LA and CRA-LA/DLA, and the MOUs under which he was employed, provided him with the right to purchase CalPERS CETA service credit.

58. Mr. Nguyen noted CRA-LA contracted with CalPERS in September 1962, and Respondent was hired by CRA-LA in 1980. When CRA-LA/DLA merged with CRA-LA by 2013, that merger did not change Respondent's membership. Mr. Nguyen noted the language in Government Code 20508, dealing with successor agencies: "Credit for prior and current service to members under the former agency's contract, which

accrued while they were eligible for membership, shall not be reduced by the merger.” Mr. Nguyen explained that, with the merger of the CRA-LA to CRA-LA/DLA, all liabilities, including pension obligations, of CRA-LA transferred to the successor agency. Employees/members of CRA-LA at the time of the merger would have their pension obligations of the former agency transferred to CRA-LA/DLA.

59. Mr. Nguyen also acknowledged the following language of Government Code section 20508:

When a contracting agency is succeeded by another agency, whether or not the former agency ceases to exist, or when the functions of a contracting agency are assumed by a succeeding agency, the succeeding agency, may, if it is not already a contracting agency, become a contracting agency of this system. If a succeeding agency is or becomes a contracting agency, the contract of the former agency shall be merged into the contract of the succeeding agency.

[¶] . . . [¶]

Employees of a noncontracting public agency included in the succeeding agency contract shall become members in the manner applicable to employees of other contracting agencies and shall receive credit for service accordingly.

60. Mr. Nguyen correctly interpreted this combined language to mean that, if a non-contracting successor agency absorbs a contracting agency, the successor agency does not automatically have a contract with CalPERS. If the successor agency becomes a contracting agency, the former contracting agency’s contract is merged

into the successor agency's contract. The statute does not envision a contracting successor agency absorbing the liabilities of a non-contracting former agency or that the successor agency is responsible for service the employee previously performed for a non-contracting agency.

61. In this case, CRA-LA and CRA-LA/DLA were both CalPERS contracting agencies so CRA-LA/DLA is the entity responsible for all pension liabilities incurred by the CRA-LA. However, neither the CRA-LA nor its successor CRA-LA/DLA can take on liabilities of non-contracting agencies for whom Respondent worked previously.

62. Typically, a CalPERS member agency confirms an employee performed service during a period that can be reported to CalPERS. In this case, no contracting agency can confirm Respondent performed CETA service for it. Rather, Respondent performed his CETA service for the County Farm Advisor/UCCE, which was not a contracting agency. Specifically, CRA-LA cannot confirm Respondent performed CETA service under the CRA-LA contract, and the CDC-LA cannot confirm Respondent performed CETA service under the CDC-LA contract. All documentation indicates Respondent's CETA service was performed while employed with the County, which is not a contracting member. LACERA determined Respondent was not a member of that retirement system, and CalPERS cannot force them to pick up liabilities.

63. Steve Koffroth and Luciana Giorgi, who are familiar with Respondent's CRA-LA and CRA-LA/DLA employment, testified on Respondent's behalf at the administrative hearing. Their demeanor was professional, and their testimony was forthcoming. They presented as credible witnesses. However, none of their testimony acted to discredit the testimony of Ms. Torres or Mr. Nguyen.

64. Steve Koffroth is currently employed by the Service Employees International Union. He is familiar with the transition from CRA-LA to CRA-LA/DLA and the MOU provision allowing employees to purchase CETA service credit. Mr. Koffroth did not know when and for whom Respondent performed his CETA service. He did not believe Respondent's CETA service was performed while Respondent was employed by CRA-LA or CRA-LA/DLA, and he understood Respondent was employed by CRA-LA after he had already performed his CETA service. Mr. Koffroth did not know whether Respondent had to be an employee of CRA-LA or CRA-LA/DLA at the time of the CETA service in order to purchase that benefit.

65. Ms. Giorgi is familiar with the provisions of the CRA-LA and CRA-LA/DLA MOUs. She did not know who employed Respondent's from March 1977 through December 1977. She did not know whether the CRA-LA and CRA-LA/DLA's MOUs would govern someone's employment prior to becoming an employee of CRA-LA.

66. Respondent testified earnestly at the administrative hearing. He insists he is entitled to purchase CETA service credit with CalPERS. He provided thousands of pages of documentation comprising correspondence, MOUs, and employment verification. However, neither the documentation nor Respondent's testimony established Respondent is entitled to purchase CETA service credit with CalPERS for his prior CETA service with the County/UCCE from March 1977 through November 1977.

LEGAL CONCLUSIONS

1. In an administrative hearing concerning retirement benefits, the party asserting the claim has the burden of proof by a preponderance of the evidence. (*McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051, fn. 5.) Thus,

Respondent has the burden of establishing by a preponderance of the evidence that he is entitled to purchase CETA service credit with CalPERS for his employment with the County/UCCE from March 1977 through December 1977. Respondent has not met his burden of proof.

2. CalPERS is a statutory entity governed by the PERL. In determining a CalPERS member's retirement benefits, CalPERS looks to the provisions of the PERL and relevant regulations.

3. Government Code section 20508 (Succeeding Agency) provides:

When a contracting agency is succeeded by another agency, whether or not the former agency ceases to exist, or when the functions of a contracting agency are assumed by a succeeding agency, the succeeding agency, may, if it is not already a contracting agency, become a contracting agency of this system. If a succeeding agency is or becomes a contracting agency, the contract of the former agency shall be merged into the contract of the succeeding agency.

Whenever there is a merger of contracts pursuant to this section, whether in whole or in part, the assumed contracts, or portions thereof, of the former agency's contract shall cease to exist and the contract of the succeeding agency shall be deemed a continuation of the prior agency's contract. However, any changes in contract terms in the succeeding agency's contract with respect to employees of

the former agency shall be considered as a new contract with respect to those provisions.

Accumulated contributions held for or made by the former agency and its employees, and assets derived from those contributions, shall be merged with analogous contributions under the contract of the succeeding agency. Credit for prior and current service to members under the former agency's contract, which accrued while they were eligible for membership, shall not be reduced by the merger. Employees of a noncontracting public agency included in the succeeding agency contract shall become members in the manner applicable to employees of other contracting agencies and shall receive credit for service accordingly.

The liability to this system with respect to service credited under the former agency's contract shall become a contractual liability of the succeeding agency. The former and succeeding agencies may agree to apportion and adjust between them any payments with respect to service credit liability. However, no agreement shall operate to defeat the liability of the succeeding agency with respect to that service.

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4. Government Code section 20936 (Credit for Service with Agency or Function Assumed by Other Agency – Local Member) provides, in pertinent part:

Credit for prior service shall be granted to each local member who rendered service to a public agency if that agency or a function of that agency is assumed by a contracting agency or a public agency that thereafter becomes a contracting agency. [¶] . . . [¶]

This section shall not apply to any contracting agency nor to the employees of any contracting agency until the agency elects to be subject to this section by contract or by amendment to its contract made in the manner prescribed for approval of contracts.

5. Government Code section 21020 (“Public Service”) defines public service and provides, in pertinent part:

“Public service” for purposes of this article means the following:

(a) The period of time an employee served the state, a school employer, or a contracting agency prior to becoming a member, when the service was rendered in a position in which the employee was excluded provided one of the following conditions is met:

(1) The position has since become subject to compulsory membership in this system.

(2) The employee was excluded because the employee was serving on a part-time basis.

(3) The employee was excluded because the employee failed to exercise the right to elect membership under this part. [¶] . . . [¶]

(c) Employment as an academic employee of the University of California prior to October 1, 1963. [¶]

(e) Employment in a function formerly performed by a public agency other than a contracting agency and assumed by a contracting agency where the employees who performed those functions are or were transferred to or employed by the contracting agency without change in occupation or position.

6. Government Code section 21030 ("Public Service" – Comprehensive Employment and Training Act of 1973) defines public service to include CETA service, and provides, in pertinent part:

(a) "Public service" for purposes of this article also means employment under a program sponsored by, and financed at least in part by, the Comprehensive Employment and Training Act of 1973, as amended. [¶]

(c) Benefits arising from service credited to a member under this section shall become a liability of the employer for which the service was rendered.

7. Government Code section 21030, subdivision (c), specifies that benefits arising from CETA service credit become the liability of the employer for which the CETA service was rendered. In this case, Respondent's 1977 CETA service was performed for the County, not any CalPERS-contracting agency. Consequently, Respondent must look to the County retirement system, i.e., LACERA, and not CalPERS to obtain CETA service credit.

8. Respondent seeks eligibility to purchase CalPERS CETA service credit by asserting his CETA service qualifies as public service and insisting that, in 1993, the County Farm Advisor/UCCE merged into the CDC-LA, which is a CalPERS-contracting agency. However, as Mr. Nguyen credibly established, despite the CDC-LA taking over some Farm Advisor operations, there was nothing indicating a merger of the County Farm Advisor Department and the CDC-LA. As specified in Government Code section 21020, subdivision (e), for functions previously performed by a public agency (like the County/UCCE) that are later assumed by a CalPERS-contracting agency, the employees who performed those functions must have been "transferred to or employed by the contracting agency without change in occupation or position." Thus, at the time of transfer of functions (i.e., in 1993), the CDC-LA could have hired County/UCCE employees who would then become members of CalPERS. However, the hired employees must have been active employees at time of transfer to become a CalPERS member. Former employees like Respondent, who left County/UCCE employment prior to 1993, do not gain membership. There is no statutory provision that would allow Respondent to have his prior non-CalPERS service converted to CalPERS credit.

9. To support his argument of eligibility to purchase CalPERS CETA service credit as prior public service, Respondent cites to Government Code section 20508 and characterizes the CDC-LA or the CRA-LA and CRA-LA-DLA as successor agencies under

that statute. Respondent specifically cites the language, "Whenever there is a merger of contracts pursuant to this section, . . . the assumed contracts, . . . of the former agency's contract shall cease to exist and the contract of the succeeding agency shall be deemed a continuation of the prior agency's contract." Respondent selectively misreads Government Code section 20508, which must be read in totality. Government Code section 20508 first notes that, when a CalPERS-contracting agency transfers functions to a non-contracting successor agency, the non-contracting successor agency can choose to become a contracting-agency. If the successor agency becomes a CalPERS-contracting agency, the contract of the former contracting agency, and its liabilities, are merged into the contract of the successor agency. Section 20508 does not envision a CalPERS-contracting successor agency absorbing the liabilities of a non-CalPERS-contracting former agency or that the contracting successor agency is responsible for prior service the employee performed for a non-contracting agency. In this case, neither the CDC-LA, the CRA-LA, nor the CRA-LA/DLA constitute successor agencies who would fall under the mandates of Government Code section 20508. Consequently, neither the CDC-LA, the CRA-LA, nor the CRA-LA/DLA must take on the liabilities of non-CalPERS-contracting agencies for whom Respondent worked previously, and therefore, no CalPERS-contracting agency must provide Respondent credit for his prior CETA service.

10. Respondent pointed to the language of the CRA-LA and CRA-LA/DLA MOU's as authority for him to purchase CalPERS CETA service credit. However, as noted above, neither the CRA-LA, nor its successor agency, the CRA-LA/DLA, were required by the PERL to take on the liabilities of non-CalPERS-contracting agencies like the County/UCCE for whom Respondent previously performed CETA service. Respondent did not establish the language of the MOUs (allowing employees to purchase CETA service credit) specifically authorizes purchase of credit for CETA

service performed for a non-CalPERS-contracting agency. Such an interpretation of that MOU language would contravene the provisions of the PERL, including Government Code section 21030, subdivision (c), which specifies CETA service credit to be the liability of the employer for which the CETA service was rendered.

11. Given the foregoing, Respondent is not entitled to purchase CETA service credit with CalPERS for his employment with the County/UCCE from March 1977 through December 1977. Consequently, CalPERS's denial of Respondent's request to purchase CETA service credit with CalPERS must be upheld.

ORDER

The appeal of Respondent, Samuel B. Villalobos, is denied.

DATE: 02/10/2022

Julie Cabos-Owen

JULIE CABOS-OWEN

Administrative Law Judge

Office of Administrative Hearings