

ATTACHMENT C

RESPONDENT(S) ARGUMENT(S)

Respondent: James Hall

RESPONDENT'S ARGUMENT

Summary:

My employer submitted all my verified hours for the time in question. City of Ontario is a CalPERS covered employer. CalPERS determined I was eligible to be a member on February 23, 1992 after the first six months period beginning after my hire date of August 5, 1991. CalPERS acknowledged being fully aware of the City's exclusion, stating on several occasions it did not apply in my case. This determination was made by several CalPERS team members. The exclusion to part-time employees is based on the six-month maximum employment for the Public Service Employee 1 position I held. I was required to work 4 ½ years without being included in membership- over 1000 hours in the first year. The City falsified and invalidated several Individual Personnel Action documents in my case by signing after-the-fact in 1995. The City of Ontario was attempting to indicate that I was rehired every 6 months, in order to take advantage of the hourly paid position and use me as a full-time employee. The first Personnel Action was dated 6-6-91, 2 months before my Hire date. Several Individual Personnel Action Forms clearly state **"This is temporary employment which will begin 3-1-92 and end 9-6-92. The city may terminate employment at any time prior to employment end date. All temporary appointments are for periods not to exceed six (6) months. Employment may be extended with approval of City Manager."** Effective Date 3-1-92. Approval from City Manager would be required because its acknowledgement that if I were to be kept past the 6 months, I should be brought into membership **under Government Code (Gov. Code) sections 20305 of the California Public Employees' Retirement Law.** There are several of these Personnel Action Forms in my file and attached as evidence in this case (B30-41). I never received a break in employment, consistently working on a full-time basis. I was never given vacation or sick time. Like a full-time employee, I was required to work 40 hours a week. I received evaluations, in which my attendance was noted when I needed to take time off for my newborn daughter born 1/05/1992 who required 3 emergency surgeries. Then the birth of my son born 09/18/1993. By keeping me part-time, I remained classified "Hourly" and, therefore, did not obtain medical coverage for my family and consequently had to take the said time off without pay. In my position, I was extensively trained in the street department and was required to obtain a class A commercial license in order to drive company vehicles. I was an essential part of the Street Department. Since it was made clear that I was an at-will employee if I did not comply or questioned anything that was required of me by my supervisors I would simply be "Let Go." In a desperate attempt to support my family I followed every full-time expectation of my supervisors. I performed the exact same duties of my co-workers that received almost double the compensation, CalPERS, Health and Welfare, Vacation, and sick time. If you look back at the pay-roll and compare my work history with that of a street maintenance worker you will see that I worked more days and hours than them because I worked over 4 years without a vacation or sick day! My work history was very consistent any hours unpaid were due to medical

emergencies, several times I had to leave my family at the hospital after sleeping in a chair all night to report to work so I did not lose this job. This is proven through documentation of verified work hours and evaluations signed by my immediate supervisor and City Head submitted as evidence presented in this case.

The city of Ontario kept me as a classified, part-time employee to misuse an exclusion with CalPERS and not provide me with any Health and Welfare benefits. I was employed full-time and worked more than 1000 hours each year for more than 4 years. I was required to work 40 hours per week. According to my evaluations, failure to complete 40 hours in a work week, resulted in reprimand. Anything less than 80 hours in a 4/10 bi-weekly pay period over this 4-year time were due to a Holiday or surgeries/medical emergencies for my daughter and the birth of my son. I had to take this time with no pay. This again was referenced in several Signed evaluations by my supervisor.

Facts:

According to correspondence from CalPERS on 5/18/2020, the Employer Account Management Division reviewed my application for member paid arrears. In their statement, CalPERS acknowledged that my time-base and tenure reflected the definition of a full-time employee- completing 1,000 hours of work within the fiscal year, without break. (Government Code section 20305 of the California Public Employees' Retirement Law). The City of Ontario submitted my employment history and payroll information in the certified Request for Payroll Information form, in which CalPERS stated I did qualify for membership. (CID: 5250537897) employment history and payroll information provided on the MEM-1344 Request for Payroll Information Form certified by the City of Ontario; "we have determined the time frame from February 23, 1992 to November 12, 1995 qualified for membership in California Public Employees' Retirement System (CalPERS)."

"Indicated below is the qualifying basis under Government Code (Gov. Code) sections 20305 of the California Public Employees' Retirement Law by which membership was attained. Members completed 1,000 hours of work within the fiscal year (July to June 30th).

{Mr. Hall's employment history does not fulfill the definition of a part-time/temporary/hourly appointment, less than 30 hours/week on an intermittent basis. His time-base and tenure best reflects that of a full-time appointment that continued without break in service for over four years, achieving 1000 hours in every fiscal year."}

Additional correspondence from Gail Donoghue and the Membership Review Division of CalPERS on March 02, 2020 stated that.

“The City’s exclusion of hourly paid employees is not in compliance with CalPERS’s definition of service subject to omission of CalPERS credit.” In following emails on March 20 and May 04 of 2020, the same determination was reiterated.

Correspondence from CalPERS’ Membership Reporting Section on 01/27/2020, stated that **“CalPERS is working with the City of Ontario to remove hourly employee exclusion,”** regarding my case.

Another correspondence on 12/04/2019, from an Attorney at Western States Pension Assistance Project who reviewed all my evidence also advised that I qualify for membership with CalPERS, citing PERL Section 20305.

CalPERS determined that I was eligible to be brought into membership February 23, 1992. On several occasions, backed up by Legal Verification. CalPERS was fully aware of the City Of Ontario’s exclusion, However clearly stated several times with signed documentation that it did not apply to my case (Evidence B4-9).

Mr. Harris was not involved during the time my application for service credit was submitted and approved by CalPERS Management Division therefor his testimony is not relevant with my unique situation. The Legal Determination by CalPERS that I was eligible to be brought into membership 2/29/1992 was made by a CalPERS team that evaluated my employment history with The City of Ontario. This Legal determination was also supported by others. That thoroughly investigated my situation, a Pension Lawyer, and City of Ontario Union Representatives.

Facts:

Personnel Rules and Regulations for the City of Ontario dated January 1990 defines a temporary employee as a person employed to meet a short-term need of the City. An employee cannot remain in this category over six months without the express approval of the Personnel Officer.

City of Ontario’s Part-time Employee Group Profile, under Section 2.02 - Hours of Work, states employees in the part-time group shall not be scheduled or permitted to work more than a total of 999 hours during any fiscal year or more than 29 hours in any work week. Any exceptions to these provisions must be pre-approved by the City Manager.

During my 4 ½ year employment with the City of Ontario, I had one hire date on August 5, 1991. After ending employment on November 12, 1995, I received personnel action forms that were fraudulently signed and delivered only after resignation/promotion. 8 personnel action forms, each requiring pre-approval every six months, were instead signed on the same date,

November 16, 1995. The City attempted to indicate I was rehired every 6 months during this time, however, there is no signed evidence, documentation or notification on my behalf. In fact, verified Payroll by City of Ontario proves I was hired on 8/5/1991 and had no break in service through November 5, 1995. There was no approval of continued employment from city personnel/manager during my time of employment. The falsified PACs were given to me after they were signed on 11/16/1995 when I was no longer a Public Service Trainee.

My Personnel Action forms clearly state "All temporary appointments are for periods not to exceed six (6) months. Employment may be extended with approval from the City Manager" Approval is required for extending appointments beyond six months. This did not happen in my case. Documents were signed 11/16/1995. Proven with evidence submitted. The City attempted to falsify these documents after the fact. There was no signed documentation or Approval from the City Manager or any representative during the time in question. This contract issue is to keep a Temporary Employee from receiving any benefits. By falsifying these documents, the City is basically admitting to knowing and intentionally keeping me classified as a Part-time employee beyond the six months in order to use me as a full-time employee without bringing me into membership with CalPERS, providing proper compensation or Health and Welfare. There would be no reason for the City to try and go back and sign these documents years later, unless they were attempting to cover their tracks. The reason employment in this position required approval of City officials after six months is because they would be **acknowledging** and approving the fact that if an employee stayed in this position for more than six months, they would then be eligible to be brought into CalPERS and be eligible for benefits under all contracts (Evidence Master B34-41).

Formal Grievances on my behalf issued by Teamsters Local 1932 and AFSCME Local 3061, both state that the City of Ontario violated the MOU Section 1.02, 1.06E, 1.07C, 1.09, Section 2.05, Section 5.02, Section 6.05, 10.02 and all others that apply. City PRs, CalPERS Rules and Regulations.

During my 28 years of employment with The City of Ontario I was told and fully believed that I would be eligible to buy my time back upon retirement. I went in person to CalPERS before applying to retire and gave them the facts of my case they also assured me that I qualify for CalPERS for this time. CalPERS was fully aware of the exclusion with the City of Ontario and consistently documented that it did not apply to me. This exclusion was not brought up to me until after it was determined through a thorough investigation by CalPERS that I should have been brought into CalPERS February 23, 1992.

Ms. Angela Lopez was not employed or involved in my situation during the time in question. She or anyone else representing the City of Ontario at this time cannot testify as to what was expected of me as an employee during this service time.

My case is best supported with signed documentation from the time-of-service August 5, 1991 to November 12, 1995: Certified Payroll 08/05/1991-11/11/1995 no break in service, (Evidence B13-B15)

One Hire date documented 8/5/1991, Personnel Action Forms, Signed after the fact 11/16/1995(Evidence Master B34-41) City of Ontario Personnel Rules and Regulations January 1990-Current, Letter of accommodation from City Manager Michael Milhiser 12/9/1993, City of Ontario Reports of Performance Evaluations for the time period, Several Stating

- **“Since becoming part of the Department team Mr. Hall has exhibited a good attitude and ability to learn quickly. He has been cross-trained on the asphalt crew and also painting and signing. With this training his job knowledge continues to increase. James is in the process of getting his class A Commercial License, which will be advantageous to the Street Department. Overall Mr. Hall has become a valued member of the Street Department.” Signature of Peter D. Corn Supervisor 3/31/1992**
- “Since becoming a member of the Street Department Mr. Hall has been cross trained in roadway maintenance and concrete repair. James has had a problem with his attendance mainly because of family health problems. This is understandable but must be noted at this time. Mr. Hall has secured his commercial drivers license, which allows more flexibility in his assignments. **James has become an essential part of the Street Department operations.” Signature of Peter D. Corn Supervisor and R. Harper Department Head and James Hall 10/22/1992**
- “Since becoming a member of the Street Department Mr. Hall has been cross trained in roadway maintenance and concrete repair. **James has had a problem with his attendance mainly because of family health problems. This is understandable but must be noted at this time.** Mr. Hall has secured his commercial drivers license, which allows more flexibility in his assignments. James has become an essential part of the Street Department operations.” Signature of James Hall 3/15/93.

The City of Ontario has a salary schedule for all City employees issued on the City website. At the bottom of each website page, it states “All rates are hourly unless otherwise noted.”

The City of Ontario classifying me as an hourly paid employee does not give them the authority to violate the California Public Employees’ Retirement Law section 20502 which states,

“Membership in this system is compulsory for all employees included under a contract. This section shall not be construed to supersede section 20303 and 20305.”

Conclusion

All the evidence proves that the City of Ontario knowingly kept me from membership with CalPERS by classifying me as “compensated on an hourly bases” employee well beyond the six-month requirement for the Public Service Trainee 1 appointment. The documents quote Supervisors and department heads own words prove my case “James has become an essential part of the Street Department operations.” “Extensively trained” Signature of Peter D. Corn Supervisor and R. Harper. “Getting his class, A Commercial License, which will be advantageous to the Street Department. Overall Mr. Hall has become a valued member of the Street Department.” The City depended on me and required me to work as a full-time employee. These comments also show there was never any “rehire” I worked consistently from 08/05/1991-11/11/1995 with no break in service. In order to take advantage of the exclusion with CalPERS and deny me any benefits. There are 40 plus pay periods I worked 80 hours or more and 42 plus pay periods I worked 70 hours or more in a period. There is only One (1) pay period out of 113 I worked 40 hours. The hours I worked were docked in pay when I had medical emergencies or unpaid Holidays. My required schedule was very consistent. If I had to take hours off there was a reprimand. Noted in my personal evaluations. The City saved themselves Thousands of dollars while using me as a full-time employee and keeping me at-will (Hourly Paid). If I said anything I could simply be let go. I had a wife, 2 children, and a home to support. I did anything I could to keep my job and serve The City of Ontario.

Respectively,
James Hall
October 15, 2022