

**ATTACHMENT B**

**STAFF'S ARGUMENT**

## **STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION**

Deiter Dammeier (Respondent) established membership with CalPERS through employment with the City of Claremont from 1989 to 1999. From 1999-2022, Respondent separated from CalPERS membership and worked in private practice. On March 7, 2022, Respondent returned to CalPERS membership and began employment as an Administrative Law Judge (ALJ) with the California Unemployment Insurance Appeals Board (CUIAB). By virtue of his employment, Respondent is a state miscellaneous member of CalPERS.

Respondent submitted two requests for a retirement allowance estimate; one on August 24, 2022 (Estimate #1) and one on September 28, 2022 (Estimate #2). CalPERS provided Respondent with both estimates. Each was computed using two different final compensation amounts, one for his classic membership and one for his PEPRA membership. Both estimates were based on Respondent's anticipated retirement date of March 7, 2023. However, Respondent did not retire and is still working as an ALJ for the CUIAB.

The Public Employees' Pension Reform Act (PEPRA) became effective on January 1, 2013. One of PEPRA's provisions, Government Code section 7522.04, subdivision (f)(3), states that a "new member" includes "[a]n individual who was an active member in a retirement system and who, after a break in service of more than six months, returned to active membership in that system with a new employer."

Regulations implementing PEPRA further address how retirement benefits are to be calculated when there is both pre-PEPRA service credit and post-PEPRA service credit. Under California Code of Regulations, title 2, section 579.24 (Rule 579.24), members may separately accrue service credit as a new member and as a classic member. Rule 579.24, subdivision (b) specifically addresses those in Respondent's position and provides:

Where a member has accrued service credit as a classic member and separately accrues service credit as a new member, each with a period of service resulting in a different final compensation amount, CalPERS will apply one final compensation amount for the service credit accrued as a classic member, and a second final compensation amount for the service credit accrued as a new member. CalPERS will then use both figures to calculate the total retirement benefit owed.

Respondent separated from the City of Claremont in 1999 and reinstated as a CalPERS member with the CUIAB more than 22 years later (well after PEPRA went into effect). Thus, his service credit earned with the City of Claremont is as a "classic" member and his service credit earned with the CUIAB is as a "new member" (Gov. Code § 7522.04, subd.

(f)(3)). Therefore, the retirement allowance estimates applied Respondent's higher state final compensation only to the service credit accrued after 2022.

Respondent appealed CalPERS' computation of his retirement benefits using two different final compensation amounts. He contends that his last highest final compensation amount should be used to calculate his retirement benefit for both his classic and PEPRA time. A remote hearing was completed on May 25, 2023, before an ALJ with the Office of Administrative Hearings (OAH).

Because Respondent currently works as an ALJ, CalPERS did not need to explain the hearing process to him nor the need to support his case with witnesses and documents. CalPERS did provide him with a copy of the administrative hearing process pamphlet.

At the hearing, the ALJ inquired if Respondent had retired on March 7, 2023, as the retirement allowance estimates had projected. It is undisputed that Respondent did not retire and continues to work for CUIAB to this day. Because he has not retired, the ALJ determined that both estimates which formed the basis of Respondent's appeal had become moot. The ALJ cited Government Code section 11504 which states that a hearing can only be completed "to determine whether a right, authority, license, or privilege should be granted, issued, or renewed..." Here, because Respondent did not retire on March 7, 2023, the ALJ found that there is no "right, authority, license, or privilege" to be granted or issued. The ALJ determined that the OAH has no jurisdiction to hear the matter and dismissed Respondent's appeal.

The ALJ concluded that Respondent's appeal should be dismissed. The Proposed Decision is supported by the law and the facts. Staff argues that the Board should adopt the Proposed Decision.

November 15, 2023

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