BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

In the Matter of the Application to Contract with CalPERS by	)	CASE NO. 8287 OAH NO. N-2007080553
GALT SERVICES AUTHORITY,	)	
Respondent,	)	**PRECEDENTIAL DECISION 08-01**
and	)	**EFFFECTIVE: October 22, 2008**
CITY OF GALT,	)	
Respondent.	)	

PRECEDENTIAL DECISION

RESOLVED, that the Board of Administration of the California Public Employees' Retirement System, acting pursuant to Government Code Section 11425.60, concerning the application of Galt Services Authority and City of Galt; hereby designates its final decision in the GALT SERVICES AUTHORITY and CITY OF GALT matter, as adopted by the Board on May 15, 2008, as a PRECEDENTIAL DECISION of the Board.

I hereby certify that on October 22, 2008, the Board of Administration, California Public Employees' Retirement System, made and adopted the foregoing Resolution, and I certify further that the attached copy of the Board's final decision is a true copy thereof as adopted by said Board of Administration in said matter.

BOARD OF ADMINISTRATION, CALIFORNIA
PUBLIC EMPLOYEES' RETIREMENT SYSTEM
KENNETH W. MARZION, INTERIM CHIEF
EXECUTIVE OFFICER

Dated: NOV 13 2008

BY Original signed
PETER H. MIXON
GENERAL COUNSEL

BOARD OF ADMINISTRATION

CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

In the Matter of the Application to Contract with CalPERS by	)	CASE NO. 8287 OAH NO. N-2007080553
GALT SERVICES AUTHORITY,	)	
Respondent,	)	DECISION
and	)	
CITY OF GALT, [1]	)	
Respondent.	)	

This matter was heard before the Board of Administration of the California Public Employees' Retirement System at its regular meeting on May 15, 2008, pursuant to the Board's determination at its meeting of March 19, 2008, to hear this matter as a Full Board Hearing.

RESOLVED, that the Board of Administration of the California Public Employees' Retirement System hereby adopts as its own decision the Proposed Decision dated January 29, 2008, concerning the application of Galt Services Authority; RESOLVED FURTHER that this Board decision shall be effective 30 days following mailing of the decision.

* * * * *

I hereby certify that on May 15, 2008, the Board of Administration, California Public Employees' Retirement System, made and adopted the foregoing Resolution, and I certify further that the attached copy of the administrative law judge's Proposed

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[1] Corrected caption.

Decision is a true copy of the decision adopted by said Board of Administration in said matter.

BOARD OF ADMINISTRATION, CALIFORNIA
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

Dated: May 20, 2008, BY Original signed
KENNETH W. MARZION
INTERIM CHIEF EXECUTIVE OFFICER

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

In the Matter of the Statement of Issues Against: GALT SERVICES AUTHORITY, Respondent, and CITY OF GALT, Respondent.	Case No. 8287 OAH No. 2007080553

PROPOSED DECISION

This matter was heard before Karen J. Brandt, Administrative Law Judge, Office of Administrative Hearings, State of California, on December 5, 2007, in Sacramento, California.

S. Kingsley Macomber, Senior Staff Counsel, represented the California Public Employees' Retirement System (CalPERS).

Roger K. Crawford, Attorney at Law, represented the City of Galt (City) and the Galt Services Authority (GSA). (The City and GSA are collectively referred to as "respondents.")

Evidence was received on December 5, 2007. The record remained open for the parties to file post-hearing briefs to address questions asked by the Administrative Law Judge and to respond to issues raised by the parties during the hearing. On January 8, 2008, CalPERS filed its post-hearing brief, which was marked for identification as Exhibit 27, and respondents filed their post-hearing brief, which was marked for identification as Exhibit B. The record was closed and the matter was submitted for decision on January 8, 2008.

PUBLIC EMPLOYEES RETIREMENT SYSTEM
FILED January 31 20 08

ISSUES

The following issues are before the Board of Administration for determination:

1. Upon transfer to the GSA under the terms of the Joint Powers Agreement, described in Finding 5 below, and the Revised Operating Agreement, described in Finding 12 below, do the officers of the City who hold positions created or defined by statute or municipal code (City Manager, City Clerk and Finance Director) become employees of the GSA such that the GSA may contract with CalPERS to make these officers members of CalPERS?

2. Upon transfer to the GSA under the Joint Powers Agreement and Revised Operating Agreement, do City employees become GSA employees such that the GSA may contract with CalPERS to make these employees members of CalPERS?[1]

FACTUAL FINDINGS

1. The GSA is a public agency, established pursuant to the Joint Powers Agreement for the stated purpose of providing administrative, management, special and general services to the City. The City seeks to transfer employees to the GSA in order to provide the transferred employees with enhanced retirement benefits while, at the same time, avoiding the City's irrevocable prior participation in the federal Social Security Program. The GSA, as a public agency, has sought to contract with CalPERS to have its transferred employees become members of the system. CalPERS declined to contract with the GSA, contending that, under the common law employment test, the transferred employees will not become employees of the GSA but, instead, will remain employees of the City. The City and GSA appealed CalPERS's decision.

Stipulated Facts

The parties stipulated to the following facts:

2. The City is a general law city located in California and a "public agency" as defined by Government Code section 20056.

3. The Redevelopment Agency of the City of Galt (RDA) is a public government organization created by the City.

[1] The Statement of Issues also included two additional issues (Nos. 3 and 4 in Section XVI) relating to the Chief of Police and City Police Officers. As set forth in Finding 18, the parties stipulated that the City would not be transferring these positions to the GSA, so Issue Nos. 3 and 4 were no longer relevant and should be deleted. Pursuant to the stipulation of the parties, the Statement of Issues is amended to delete Issue Nos. 3 and 4 in Section XVI.

4. The current contract between the City and CalPERS, as amended effective January 1, 2006, provides retirement benefits under the "2% at 55" formula for miscellaneous members.

5. A Joint Powers Agreement creating the GSA was adopted by the City and the RDA on September 5, 2006. The purpose, powers, organization and other provisions governing the terms, organization and authority of the GSA are set forth in the Joint Powers Agreement.

6. The California Secretary of State acknowledged the filing of the GSA Joint Powers Agreement on September 26, 2006. The GSA was issued an Employer Identification Number by the IRS on October 2, 2006.

7. An Operating Agreement between the City and the GSA was adopted on October 17, 2006, wherein, among other things, the GSA agreed to provide certain administrative, management, special and general services to the City. Further, the GSA agreed to employ any and all individuals that were employed by the City and engaged to perform those services at the time those services were "transferred" to the GSA. Further details of the proposed relationship between the City and the GSA are set forth in the Operating Agreement.

8. Prior to entering into the Operating Agreement, the City met and conferred with the employee association representing its employees regarding the decision and effects of the Operating Agreement. The City also met with its unrepresented employees. This process resulted in a Memorandum of Understanding (MOU) with the represented employees that required the City, among other things, to ensure that the GSA would hire current bargaining unit employees to perform the services under the Operating Agreement without any loss or reduction of rights, benefits or seniority. The City entered into a similar agreement with its unrepresented employees. The terms affecting the transfer of employees to the GSA are set forth in the MOU and the City Agreement with Unrepresented Employees.

9. Implementation of the Operating Agreement was placed on hold pending CalPERS's approval of the GSA's request to enter into a contract for retirement benefits covering its employees.

10. The GSA initiated the process of contracting with CalPERS in October 2006. The scope of this request, as well as the nature of the benefits and the requested benefit formula, are set forth in Sections V and VI of the Statement of Issues.

11. On February 23, 2007, CalPERS notified the City (and the GSA) that it had determined that individuals to be employed by the GSA to perform the services under the Operating Agreement would remain subject to the control and direction of the City and, accordingly, under the applicable common law rules of employment, would remain City

employees and would not become GSA employees. CalPERS further concluded that, absent further supporting documentation, those individuals would remain subject to the contract already entered into between the City and CalPERS.

12. On March 12, 2007, the GSA and the City subsequently submitted a Revised Operating Agreement to CalPERS in an attempt to address the concerns CalPERS raised in its February 23, 2007 letter. The Revised Operating Agreement sets forth the proposed relationship between the City and the GSA and, for purposes of this matter, governs their contractual obligations to each other.

13. Under the Revised Operating Agreement, the GSA must hire City employees with no change in their wages, hours or terms of employment other than those recognized in the City's bargaining agreements, recognize existing City employee associations and assume the City's obligations under the City's existing bargaining agreements, and adopt and implement the City's existing personnel and employer-employee regulations and policies.

14. Under the Revised Operating Agreement, the City will continue in existence and carry out its municipal functions and duties as before. The following City employees will be transferred to the GSA under the Revised Operating Agreement: City Manager, City Clerk, City Finance Director, and all other permanent employees of the City except the City Treasurer, Chief of Police and all Police Officers who report to the Chief of Police. The Revised Operating Agreement neither prohibits nor obligates the GSA to change the personnel who will be provided to the City for carrying out its functions and duties.

15. The Revised Operating Agreement neither prohibits nor obligates the GSA to hire employees to manage and handle, among other things, its own internal operations. Further, the GSA is neither prohibited nor obligated to enter into a separate agreement to provide personnel and services to the RDA (or even a third agency).

16. All funds for GSA salaries, benefits and employee taxes will be provided by the City.

17. On April 25, 2007, CalPERS rejected the GSA's request to enter into a contract for retirement benefits. The GSA and the City filed a timely appeal on June 6, 2007.

18. Because the Chief of Police and Police Officers who report to the Chief of Police are not being transferred to the GSA and will remain employees of the City, the parties agreed that Issue Nos. 3 and 4 as set forth in Section XVI of the Statement of Issues do not need to be decided and are therefore moot. The parties stipulate that the Statement of Issues may be amended to delete Issue Nos. 3 and 4.

Additional Facts

The following additional facts were established through evidence presented at the hearing:

19. The contract that the GSA seeks to enter into with CalPERS would provide retirement benefits under a "2.7% at 55" formula for miscellaneous members.

20. The Joint Powers Agreement between the City and the RDA provides for the creation of the GSA as a joint powers authority under the Joint Exercise of Powers Act, Government Code section 6500 et seq. The agreement recites that the City and the RDA determined, among other things, that: (1) it was more efficient and cost-effective to provide certain management, administrative, special or general personnel services to the City and the RDA through a joint powers authority than by directly employing certain staff; (2) state law allows for a joint powers authority to provide such services; and (3) state law allows for certain functions of the City and the RDA to be provided by contract with the GSA. The agreement states that its purpose is to "jointly exercise" the common powers of the City and the RDA in the manner set forth in the agreement. Article III of the agreement provides:

> TRANSFER OF SERVICES
> ASSUMPTION OF RESPONSIBILITIES
>
> On or after the Effective date, City or [RDA] may contract with GSA for personnel services. City or [RDA] may transfer to GSA employees of City or [RDA] and GSA shall become their employer under such terms and conditions as determined by GSA. All applicable employment rules, regulations, MOU's or collective bargaining agreement[s], ordinances, and resolutions may be adopted and ratified by the Board for such employees. Any and all employment records shall become the property of GSA.

21. At its regular meeting on September 5, 2006, the Galt City Council adopted Resolution No. 2006-116 establishing the GSA. The August 25, 2006 Agenda Item for that resolution explained that the creation of the GSA was "the first step in the process to withdraw from Social Security, which would enable the City to offer enhanced benefits to its employees." The Agenda Item stated that, once the GSA had been established and staff had filed for recognition with state and federal authorities, the City "would then be in a position to complete the process of assigning employees to the [GSA] and withdrawing from Social Security." The Agenda Item described the GSA as "an alternate employer for the City of Galt as a means of withdrawing from Social Security."

22. The MOU that the City entered into in October 2006 with the City's represented employees provides that the parties had "fully met and conferred over the decision as well as the effects of a potential contracting out of all bargaining unit work, with the accompanying 'transfer' of bargaining unit employees" to the GSA. The parties agreed that "all bargaining unit employees are transferred to and become employees of the GSA without any loss of rights, benefits or seniority" except as provided in the MOU. Among other things, the MOU provided that employees "transferred to the GSA will agree not to participate in the Social Security retirement program. (This removes the current 6.2% employee contribution and the employees will retain 6.2% in their salary.) Instead, they will be entitled to the Level 4 1959 Survivor Benefits through CalPERS, with employees responsible for the employee cost. (Currently, this cost is estimated at $2.00 per month.)"

23. The City's unrepresented employees entered into a similar agreement with the City, entitled "Agreement with the City of Galt and the Unrepresented Employees, October 17, 2006, Establishment of an Alternate Employer." This agreement states, in relevant part, that it was "expressly understood that the unrepresented employees will support the effort to establish an alternate employer and to withdraw from participation in Social Security."

24. In addition to the provisions described in Findings 12-16 above, the Revised Operating Agreement also provides that the GSA agreed to "employ any and all individuals currently employed by City and engaged to perform services as set forth in 2(A)(i) above without any loss or reduction of rights, benefits or seniority or change in wages, hours and terms and conditions of employment, except as expressly set forth in any agreements or memorandum of understanding between City and the affected employees or their respective employee associations or as permitted by existing law or City rule, regulations, practice, procedure or policy." In addition, the agreement provides that the GSA will: (1) maintain the personnel records for these employees; (2) recognize all existing City bargaining units and assume all meet and confer obligations; (3) adopt all existing City rules, regulations, policies, practices and procedures covering personnel matters and employee-employer relations; (4) provide workers' compensation coverage for these employees; (5) arrange for its employees to participate in deferred compensation plans; (6) provide health and welfare benefit plans to its employees; (7) arrange for its employees to participate in a Flexible Benefit Plan; (8) prepare rules and regulations for its personnel administration; (9) provide all hiring, disciplinary, and general personnel administration for its employees; and (10) be responsible for the costs of all taxes; health and welfare benefits; vacation, sick, administrative and other types of leave; and other payments relating to its employees.

The Revised Operating Agreement provides that the City will: (1) set up and maintain all the bank accounts, petty cash, daily reports, budgeting, investment and auditing set out in the Joint Powers Agreement creating the GSA; (2) prepare payroll checks for GSA employees until the GSA had made arrangements for the preparation and processing of its payroll; (3) provide the GSA with office space, and all equipment and supplies, at the City's expense; and (4) transfer to the GSA an amount necessary to reimburse the GSA for the salaries and benefits of the employees.

25. Audrey Daniels is the Human Resources Director of Foster City and an independent consultant in human resources. He was engaged by the City as an advisor to present, develop and initially draft the Joint Powers Agreement, the Operating Agreement, and the Revised Operating Agreement. As Mr. Daniels explained, while the City will transfer to the GSA certain personnel with specific job descriptions, under the Joint Powers Agreement and Revised Operating Agreement, the GSA is not required to maintain those personnel or job descriptions once those employees are employed by the GSA. Instead, like any other employer, the GSA may, in the future, make changes in its personnel and job classifications as it deems appropriate. In addition, while the GSA will initially assume the City's obligations to represented employees under the collective bargaining agreements in effect at the time of the transfer, the GSA, in the future, may bargain with the unions and make those changes in the collective bargaining agreements to which the parties agree. After the transfer, the GSA will maintain its own personnel records and may develop its own personnel policies. The GSA will provide the management, administrative, special and general personnel services to the City as described in the Revised Operating Agreement and the City has the right to insist that the end results of those services be correct. According to Mr. Daniels, the GSA will determine how the services for the City will be performed and which GSA employees will perform those services.

26. Under the Joint Powers Agreement and the Revised Operating Agreement, the City will transfer to the GSA employees currently occupying the positions of City Manager, City Clerk, Finance Director, and other City positions, and the GSA will provide services to the City utilizing these transferred employees. There was no evidence to indicate that the City would transfer any vested statutory or ordinance-defined positions to the GSA. Nor was there any evidence to show that the City Council would cede to the GSA any of the City Council's discretion over its municipal authority.

27. While the evidence did not establish that the City intended to transfer any of its positions or cede any of its municipal authority to the GSA, from the documents described in Finding 21, it appears that the sole purpose of the City Council in establishing the GSA was to create an "alternate employer" for the City's employees in order to avoid the City's irrevocable prior participation in the federal Social Security Program and increase the retirement benefits the transferred employees will receive through CalPERS. Although the Joint Powers Agreement and the Revised Operating Agreement state that the GSA may provide additional services to entities other than the City in the future, there was no indication in the City Council documents that the GSA is, in reality, expected to perform any services for agencies other than the City.

LEGAL CONCLUSIONS

1. The law governing CalPERS is set forth in the Public Employees' Retirement Law (PERL), Government Code section 20000 et seq. Government Code section 20022 defines a "contracting agency" to mean "any public agency that has elected to have all or part of its employees become members of this system and that has contracted with the board for that purpose." Government Code section 20028, subdivision (b), defines an "employee" to

mean "[a]ny person in the employ of any contracting agency." Under Government Code section 20460, a "public agency may participate in and make all or part of its employees members of [CalPERS] by contract entered into between" the public agency's governing body and the Board pursuant to the PERL. Under Government Code section 20461, the Board may "refuse to contract with ... any public agency for any benefit provisions that are not specifically authorized by [the PERL] and that the [Board] determines would adversely affect the administration of" CalPERS.

2. Pursuant to Government Code section 20125,[2] the Board determines who are employees and is the sole judge of the conditions under which persons may be admitted to and continue to receive benefits under CalPERS. As the California Supreme Court held in *Metropolitan Water District v. Superior Court* (2004) 32 Cal.4th 491, 509 (*Cargill*), when determining whether individuals are employees of a public agency, CalPERS must apply the common law test for employment.

In *Cargill*, the Metropolitan Water District (MWD) contracted with several private labor suppliers to provide MWD with workers, classified as "consultants" or "agency temporary employees." MWD did not enroll these workers in CalPERS's retirement plans or provide them with benefits specified in the MWD Administrative Code. The workers alleged that MWD had the full right of control over the manner and means by which they provided services, and the labor suppliers merely provided MWD with payroll services. The court found that, if these allegations were proven, the workers would be MWD employees under the common law employment test and MWD would be required to enroll them in CalPERS.

3. In *Cargill*, the court held that the PERL requires contracting public agencies to enroll in CalPERS all common law employees.[3] CalPERS argues that the common law employment test, which the *Cargill* court used to ensure that MWD's employees would obtain pension benefits, should be applied in this matter to deny enrollment in CalPERS to GSA's claimed employees. CalPERS's argument is persuasive. Although the court in *Cargill* used the common law employment test to *provide* CalPERS pension benefits to MWD's common law employees, CalPERS may use that same test to *deny* pension benefits to any persons who are not common law employees of the GSA.

4. In *Tieberg v. Unemployment Insurance Appeals Board* (1970) 2 Cal.3d 943, 949 (quoting from *Empire Star Mines Co. v. Cal. Emp. Com.* (1946) 28 Cal.2d 33, 43-44), the California Supreme Court explained the common law test for employment as follows:

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[2] Government Code section 20125 provides:

> The board shall determine who are employees and is the sole judge of the conditions under which persons may be admitted to and continue to receive benefits under this system.

[3] Contracting public agencies may exclude employees under specific statutory or contractual provisions not relevant to this matter.

> In determining whether one who performs services for another is an employee or an independent contractor, the most important factor is the right to control the manner and means of accomplishing the result desired. If the employer has the authority to exercise complete control, whether or not that right is exercised with respect to all details, an employer-employee relationship exists. Strong evidence in support of an employment relationship is the right to discharge at will, without cause. [Citations.] Other factors to be taken into consideration are (a) whether or not the one performing services is engaged in a distinct occupation or business; (b) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the principal or by a specialist without supervision; (c) the skill required in the particular occupation; (d) whether the principal or the workman supplies the instrumentalities, tools, and the place of work for the person doing the work; (e) the length of time for which the services are to be performed; (f) the method of payment, whether by the time or by the job; (g) whether or not the work is a part of the regular business of the principal; and (h) whether or not the parties believe they are creating the relationship of employer-employee. (Rest., Agency, § 220; Cal.Ann., § 220.)

The court also recognized two additional factors: the extent of control, and whether the principal is or is not in business. (*Id.* at p. 950.)

5. In arguing that the City, and not the GSA, will remain the common law employer of the transferred employees, CalPERS cites to cases decided by federal courts under section 401, subdivision (a) of the Internal Revenue Code (IRC § 401(a)) involving professional employment organizations (PEO's), which "lease" management personnel, consultants and licensed professionals (such as attorneys, accountant, dentists and engineers) to businesses (recipients). For a pension plan to qualify under IRC § 401(a) and retain its tax-exempt status, an employer's retirement plan must be for the "exclusive benefit" of the employer's employees and their beneficiaries. In order to preserve its tax-qualified status under IRS § 401(a), CalPERS must ensure that its contracts with public agencies provide retirement benefits only to the agencies' common law employees.

6. In *Professional & Executive Leasing, Inc. v. Commissioner Internal Revenue Service* (9th Cir. 1988) 862 F.2d 751, Professional & Executive Leasing, Inc. (PEL), a PEO, filed a petition for declaratory relief seeking a determination that its retirement plans met the requirements of IRC § 401(a). PEL entered into employment contracts with the workers covered under PEL's retirement plans. PEL also entered into leases with the recipients to which PEL leased the workers. PEL prepared the workers' paychecks, withheld Federal and state income taxes, and paid Social Security and Federal unemployment taxes for each worker. PEL also paid worker's compensation premiums and state unemployment insurance premiums for the workers.

The court in *Professional & Executive Leasing, Inc.* determined that PEL's retirement plan did not qualify under IRC § 401(a) because it included non-employees and, therefore, was not exclusively for the benefit of employees. In reaching its decision, the court applied a employment test very similar to the common law employment test enunciated in *Tieberg*. The court found that PEL's control over the workers was not sufficient to establish an employment relationship even under the lower standard applicable to professionals. In addition, that court found that, although the contracts PEL entered into appeared to give PEL control over its workers, PEL's right to control was, at best, "illusory."

The court relied upon the following factors in reaching its conclusion: Almost all workers had a prior equity or ownership interest in the recipient to which they were assigned. PEL had the right to reassign workers to a different recipient, but it never exercised that right. PEL had no reason to reassign or fire a worker unless a recipient complained, an unlikely scenario because most workers had some control over the recipient to which they were leased. Similarly, PEL's control over the workers' salaries was illusory, because any change required approval by either the recipient or the worker. PEL did not conduct any screening of the workers except to verify their licenses to practice. The recipients: (1) provided the equipment, tools and office space for the workers; (2) furnished the workers with malpractice insurance; and (3) along with the workers, controlled the details of how and when the work was to be performed. (See also *United States v. Garami* (1995) 184 B.R. 834.)

7. CalPERS argues that, while these PEO cases involved private entities and professional employees, their reasoning is applicable to the public agency officers and employees in this case. CalPERS's argument is persuasive.

Under the terms of the Joint Powers Agreement and Revised Operating Agreement, the GSA must accept all the identified City officers and employees. The GSA is initially bound by the City's labor agreements and personnel rules and policies. While respondents asserted that the GSA could meet and confer with the union to change these agreements, rules and policies in the future, there appears to be little reason to do so because the City is the GSA's only client. Although the Joint Powers Agreement and the Revised Operating Agreement state that the GSA may provide additional services to entities other than the City in the future, there was no indication in the City Council documents that the GSA is, in reality, expected to perform any services for agencies other than the City.

The City will set up and maintain all the bank accounts, petty cash, daily reports, budgeting, investment and auditing for the GSA; prepare payroll checks for GSA employees until the GSA makes arrangements for the preparation and processing of its payroll; and provide the GSA with office space, equipment and supplies at the City's expense. While respondents emphasized that the GSA will just be providing services to the City, the Revised Operating Agreement provides that City will reimburse the GSA for the salaries and benefits of the employees, instead of paying for the value of the services it receives.

Even though the Revised Operating Agreement may allow the GSA to determine the duties and responsibilities of its personnel, all of its actions are subject to City approval. While the Joint Powers Agreement and Revised Operating Agreement ostensibly grant the GSA the authority to change personnel policies, take over the payroll function, and discipline the transferred personnel, the GSA has little incentive to assume these employer responsibilities once it has achieved what appears to be its sole purpose for existing: acting as the City's "alternate employer" so that the City may avoid its Social Security obligations and increase CalPERS retirement benefits for its transferred employees. (Findings 21 and 27.)

In sum, although the Joint Powers Agreement and Revised Operating Agreement appear to give the GSA control over the transferred officers and employees, the GSA's right of control is, at best, illusory.

8. CalPERS refused to contract with the GSA based upon its determination that, under the common law employment test, the transferred officers and employees would not, in reality, become the officers and employees of the GSA but, instead, would remain the officers and employees of the City. In making this determination, CalPERS properly exercised the authority granted under Government Code section 20125 and applied the test set forth in *Cargill*. Respondents failed to meet their burden of proving, by a preponderance of the evidence, that CalPERS's determination was incorrect.[4]

ORDER

CalPERS's refusal to contract with the Galt Services Authority is AFFIRMED. Respondents' appeal is DENIED.

DATED: January 29, 2008

Original signed

KAREN J. BRANDT
Administrative Law Judge
Office of Administrative Hearings

[4] Given this conclusion, there is no need to address CalPERS's additional arguments regarding whether the City may contract out for the positions of City Manager, City Clerk or Finance Director; whether, under the Joint Powers Agreement and the Revised Operating Agreement, the City would be delegating any non-delegable authority to the GSA; or whether the City's efforts to withdraw from Social Security were prudent.