BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

In the Matter of the Appeal Regarding Calculation of Final Compensation of: CRAIG F. WOODS, Respondent, and TAHOE-TRUCKEE SANITATION AGENCY, Respondent.	CASE NO. 8705 OAH NO. N-2010040719 **PRECEDENTIAL DECISION 12-01** **Effective: October 17, 2012**

PRECEDENTIAL DECISION

RESOLVED, that the Board of Administration of the California Public Employees' Retirement System, acting pursuant to Government Code Section 11425.60, hereby designates its final Decision concerning the final compensation determination of Craig F. Woods as a Precedential Decision of the Board.

* * * * *

I hereby certify that on October 17, 2012, 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
ANNE STAUSBOLL
CHIEF EXECUTIVE OFFICER

Dated: Oct 22, 2012 BY Original Signed
PETER H. MIXON
GENERAL COUNSEL

BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

In the Matter of the Appeal Regarding Calculation of Final Compensation of:	)	CASE NO. 8705 OAH NO. N-2010040719
CRAIG F. WOODS	)	DECISION
Respondent,	)	
and	)	
TAHOE-TRUCKEE SANITATION AGENCY	)	
Respondent.	)	

RESOLVED, that the Board of Administration of the California Public Employees' Retirement System hereby adopts as its own decision the Proposed Decision dated December 13, 2011, concerning the final compensation determination of Craig F. Woods; RESOLVED FURTHER that this Board decision shall be effective 30 days following mailing of the decision.

* * * * *

I hereby certify that on February 15, 2012, 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 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
ANNE STAUSBOLL
CHIEF EXECUTIVE OFFICER

Dated: BY Original Signed
DONNA RAMEL LUM
Deputy Executive Officer
Customer Services and Support

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

In the Matter of the Appeal Regarding Calculation of Final Compensation of: CRAIG F. WOODS, Respondent, and TAHOE-TRUCKEE SANITATION AGENCY, Respondent.	CalPERS Case No. 8705 OAH No. 2010040719

PROPOSED DECISION

This matter was heard before Administrative Law Judge Dian M. Vorters, State of California, Office of Administrative Hearings (OAH), on July 18, 2011, in Truckee and on September 30, 2011, in Sacramento, California.

Jeanlaurie Ainsworth, Senior Staff Counsel, represented the petitioner California Public Employees' Retirement System (CalPERS).

Tahir J. Naim,[1] Attorney at Law, represented Craig F. Woods. Craig Woods (respondent) was present.

The appearance of Stephen A. Kronick,[2] Attorney at Law, representing Tahoe-Truckee Sanitation Agency (TTSA) was previously waived.

Evidence was received and the record remained open for parties to submit written closing arguments. On October 24, 2011, OAH received CalPERS' Closing Brief and Declaration of Jeanlaurie Ainsworth in Support of Closing Brief, which were marked as Exhibits 33 and 34, respectively. On that same date, OAH received respondent's Closing Brief which was marked as Exhibit E. On November 14, 2011, OAH received CalPERS'

[1] Tahir J. Naim, Attorney at Law, P.O. Box 391293, Mountain View, California 94039.

[2] Stephen A. Kronick, Attorney at Law, Bartkiewicz, Kronick & Shanahan, 1011 22nd Street, Sacramento, California 95816-4907.

Closing Reply Brief which was marked as Exhibit 35, and respondent's Reply Brief which was marked as Exhibit F. The record closed on November 14, 2011.

ISSUE

Whether the automobile allowance and employer paid deferred compensation paid by TTSA to respondent, and reflected as an increase in respondent's hourly rate during his last year of employment, should be included in his final compensation for purposes of calculating his retirement allowance?

FACTUAL FINDINGS

1. The Statement of Issues was made and filed on April 30, 2010, by Lori McGartland, Chief of the Employer Services Division, California Public Employees' Retirement System, in her official capacity.

2. TTSA contracted with the CalPERS Board of Administration to participate as a public agency member pursuant to Government Code section 20460 et seq. The provisions for local public agencies contracting with CalPERS are set forth in the Public Employees' Retirement Law (PERL).

3. TTSA operates regional wastewater collection and treatment facilities for the Tahoe-Truckee region. Respondent was employed by TTSA for approximately 30 years, ending in May 2007, as an engineer and then General Manager. By virtue of this employment, respondent became a miscellaneous member of CalPERS subject to the provisions of the Government Code.

4. On or about February 21, 2007, CalPERS received respondent's Service Retirement Election Application (Application). Respondent retired for service effective May 16, 2007, and he has been receiving a retirement allowance since that date. Subsequent to that date, respondent and CalPERS staff engaged in numerous correspondence over CalPERS' exclusion of certain amounts paid directly to respondent by TTSA in addition to his monthly base pay. The additional payments consisted of a monthly car allowance of $800 and a $920 monthly allowance for his deferred compensation plan (PERS 457 program); a combined total of $1,720.00.

5. Respondent's employment as a General Manager for TTSA was pursuant to two employment contracts (Agreements). Respondent's first three-year Agreement with TTSA was effective from December 1 to November 30, 2004 (Agreement #1). Agreement #1 specified a salary of $10,000 per month, with cost of living adjustments. In addition, TTSA agreed to reimburse respondent for business expenses including travel, and to provide respondent with a "four-wheel drive vehicle for official business...or the Agency shall reimburse him for mileage ... if he chooses to use his own vehicle for official business.

Since the Employee is on call twenty-four (24) hours per day, seven (7) days per week, the Agency vehicle is available for Employee's use at all times."

6. Respondent's second Agreement with TTSA was effective from May 12, 2004 to January 15, 2007 (Agreement #2). The relevant terms of compensation are:

a. Paragraph four of Agreement #2 specified a base salary of $10,662 per month, with cost of living adjustments.

b. Paragraph five of Agreement #2 stated that in addition to salary, TTSA agreed to reimburse respondent for travel expenses including automobile insurance, pay him an $800 per month vehicle allowance, and allow him use of an "agency vehicle ... for work related purposes on an occasional basis."

c. Paragraph six of Agreement #2 stated that TTSA would pay respondent an additional $920 per month "for deposit in Employee's retirement fund, PERS 457 program, additional retirement service credit and/or similar retirement programs." This amount was also subject to cost of living adjustments.

7. At the November 8, 2006 TTSA Board Meeting, members discussed respondent's proposal to retire as General Manager effective January 15, 2007. The plan was that respondent would remain until May 4, 2007, as an advisor to the incoming General Manager. In his new advisory role he would continue to earn the same salary and benefits, including his car allowance, on a pro rata basis for number of days worked. Per the TTSA Board Meeting minutes, "[Respondent] said that he would like the Board to accept the offer that he has made in its entirety or he would be separating his employment on January 15, 2007." Director S. Lane Lewis asked respondent if his salary was $12,500 per month. Respondent responded that his salary was "set at $13,344.78 per month."[3] The board agreed to amend respondent's contract and make it "not retroactive, so that this new amended contract could provide whatever compensation that the Board desires to provide."

8. On December 13, 2006, TTSA made the first of two amendments to respondent's Agreement #2. Amendment No. 1 provided that respondent would remain an employee of TTSA in an advisory capacity to the new General Manager, from January 16, 2007 through May 4, 2007 (Transition Period). Regarding compensation, paragraph three stated:

> [Respondent] shall be paid at the hourly rate of $76.99. [Respondent] shall provide Employer with a record of hours worked each month. For

[3] In a letter dated May 21, 2007, written by Carlous Johnson to TTSA, Mr. Johnson provided that respondent's monthly base salary for the period July 2006 to May 2007 was $11,324.78. This figure included the yearly cost of living increases based on the Consumer Price Index as provided for in the Agreements. Adding this amount to the other named benefits amounts to $13,044.78. The additional $300 cited by respondent at the meeting was not explained at hearing.

> work days or portions thereof where [Respondent does not provide services to the Agency, [Respondent] shall be entitled to apply already accumulated vacation and sick leave in the amount of approximately 150 days, against such non-work days... [Respondent's] contributions to PERS shall be paid by Employer.

9. On April 11, 2007, TTSA made the second of two amendments to respondent's Agreement #2. Amendment #2 sought to clarify items of respondent's compensation as follows:

> ...it always was the intention of the parties that for the duration of the Agreement, the pay set forth in said paragraphs 5 and 6 of the Agreement be a part of [respondent's] base pay, and consistent with such intention, [respondent] throughout the term of the Agreement, received one rate of pay in his regular paycheck, the amount of which represented the sum of the pay set forth in paragraphs 4, 5, and 6 of the Agreement.

Amendment #2 provided that Paragraph 4 of Agreement #2 (see Factual Finding 6), was "amended in full" to read as follows: "For services rendered by Employee during the period from January 16, 2007 to May 15, 2007, [respondent] shall be paid at the hourly rate of $76.99." Amendment #2 also provided that Paragraphs 5 and 6 of Agreement #2 were "hereby eliminated." Amendment #2 superseded Amendment #1 making it null and void.

10. The TTSA Board minutes for the April 11, 2007 meeting provide background information on the intent of the parties respecting respondent's compensation. Ms. Beal addressed this agenda item to the Board and provided that Amendment #2 was needed to "accurately reflect what was intended" in Amendment #1. That being that TTSA would pay respondent:

> [A]an hourly rate of $76.99, which was made up of three different pay components from the Employment Agreement. ...Ms. Beals said that [Amendment #1] did not delete references to two of the pay components (deferred compensation and car allowance). Therefore, [Amendment #2] states that TTSA will pay [respondent] the hourly rate which is the sum of the three pay components, plus deferred compensation and car allowance. Amendment No. 2 corrects this error and provides that [respondent] is paid only the hourly rate....

Hence, Amendment #2 sought to delete all references to two components of respondent's original compensation package: car allowance and deferred compensation, and to subsume these components into one rate of pay. Respondent also informed the Board that he wished to extend his last day of employment from May 4 to May 15, 2007.

CalPERS' Final Compensation Determination

11. Carlous Johnson is a Compensation Review Analyst at CalPERS. He has worked for CalPERS for over ten years and conducts training to staff and public agencies at educational forums. Mr. Johnson's duties include performing base compensation calculations and determining whether final compensation reported to CalPERS is accurate. When a final compensation calculation is denied, the Section Manager for the Review Unit must review and sign-off on the determinations. Mr. Johnson's supervisor in this unit was Marion Montez.

12. Mr. Johnson stated that in making final compensation determinations, the first thing he looks at are "publically available salary schedules" and any employment contracts in existence for the member. TTSA salary schedules included the management position of Chief Engineer/Assistant General Manager, but did not include respondent's position of General Manager. According to Mr. Johnson, it should have been. As such, Mr. Johnson needed to review respondent's employment contracts with TTSA. From Agreement #2 (employment term May 2004 to January 2007), Mr. Johnson determined that respondent's payrate was $10,662. Mr. Johnson stated that the monthly vehicle allowance of $800 and employer paid deferred compensation of $920 per month paid to respondent should never be included in payrate. Mr. Johnson explained that if the deferred compensation is "deducted from an employees salary" the law allows it to be reported. But, whereas here, it is paid "in addition to regular salary," then it is excluded.

13. Mr. Johnson sited Government Code section 20636 and California Code of Regulations, title 2, section 571, which together define payrate and special compensation (compensation earnable), and outline limitations to items that can be included by employers. He stated that CalPERS does not attempt to interpret members' intent, but looks to the language of any employment contract. Section 571 provides the exclusive list of nine criteria that all special compensation must meet.

14. Mr. Johnson stated that in reviewing Agreement #2, the vehicle allowance set forth in Paragraph 5 and employer paid deferred compensation set forth in Paragraph 6, did not meet the statutory definition of "payrate." These components were not paid to similarly situated members for work performed and rendered pursuant to a publicly available salary schedule. Also, neither component of respondent's compensation was considered "special compensation" pursuant to Section 571. Hence, CalPERS properly excluded these two components of compensation from respondent's final compensation earnable for purposes of calculating his retirement benefits.

15. Mr. Johnson also reviewed both amendments made to respondent's employment contract. He stated that the amendments were designed to convert car allowance and deferred compensation to payrate. He noted that the payrate of $76.99 equals the amount of the previous payrate plus car allowance plus deferred compensation. According to Mr. Johnson, this is prohibited under California Code of Regulations, title 2, section 570, which defines final settlement pay as a conversion of a non-reportable item into

a base pay rate. Car allowance and employer paid deferred compensation are considered by CalPERS to be "non-reportable" items of compensation.

16. Mr. Johnson also noted that prior to the approval of the amended employment contracts, respondent had announced his intent to retire and serve in an advisory capacity. Mr. Johnson contends that the amended contracts had the effect of artificially inflating respondent's pay rate reported to CalPERS; a practice called "pension spiking." This practice involves giving large raises to members who are retiring and is prohibited.

17. Mr. Johnson submitted a copy of the CalPERS "Reportable Compensation" pamphlet which was disseminated to all member public agencies. The pamphlet lists specific "Items that are NOT reportable to CalPERS" which included "Employer payment to deferred compensation plans" and "Automobile allowance." (Emphasis in original.) CalPERS also periodically forwards Circular Letters that inform and clarify the law to all member agencies. Circular Letter (No. 200-090-03) was issued on March 21, 2003 and specifically states that automobile allowances are not part of "payrate."

18. By letter dated May 21, 2007, Mr. Johnson informed TTSA of CalPERS' final retirement benefits determination for respondent. TTSA was requested by CalPERS to "reverse the car allowance and deferred compensation out of our payroll system and report only the base pay for [respondent]." There was additional correspondence between the parties in October and November 2007. After meeting with respondent, Mr. Johnson, by letter dated October 9, 2007, put forth respondent's position to Ms. Montez. He stated that the TTSA Board would only agree to increase respondent's salary "in an indirect way" accomplished by way of the Amendments retroactive to May 12, 2004. Mr. Johnson's wording conflicts with the substance of the November 8, 2006 TTSA Board meeting minutes wherein the proposed amendments were described as "not retroactive." (Factual Finding 7.) By letter dated November 16, 2007, Ms. Montez provided that the PERL controlled and that CalPERS employees had no authority to grant exceptions to the law. Ms. Montez reiterated the relevant statutes and regulations governing respondent's case.

19. Respondent submitted at hearing a letter dated August 18, 2000, written by Lillian Winrow, a former CalPERS Retirement Specialist, in which she directed another agency, the Squaw Valley Public Service District, to include vehicle allowance in the employee's base payrate. Ms. Winrow testified at hearing that her advice at the time was erroneous. She had worked in the unit for 11 months and could not remember the specifics of her training. Ms. Montez's position that the PERL does not authorize individual employees to authorize exceptions to the law, applies to Ms. Winrow's erroneous advice in 2000. Additionally, numerous CalPERS Compensation Review Analysts testified at hearing that they had never advised any member nor could they find any instances where a member was advised to include vehicle allowance or employer paid deferred compensation as payrate. CalPERS' policy is consistent with the law and the erroneous advice of an individual employee does not control.

Limitations on Final Compensation

20. Respondent argued that Amendments #1 and #2 were meant to replace his prior employment Agreements and therefore, the original Agreements should not be considered. He asserted that the last reported "payrate" of $76.99 should stand alone. Mr. Johnson testified that if there were only a single contract, CalPERS would not have been able to determine that car allowance and deferred compensation had been subsumed into the rate. However, the Amendments were not the only documents that Mr. Johnson analyzed. The Amendments referenced Agreement #2 which governed respondent's term of employment from May 12, 2004 to January 15, 2007. Further, the TTSA meeting minutes make it clear that the intent of respondent and TTSA was to incorporate two disallowed components of respondent's compensation package into his final base pay.

21. Further, had the TTSA Board approved another stand-alone Agreement increasing respondent's final compensation for his last five months of employment through May 15, 2007, the increase would have been subject to the spiking provisions of Government Code section 20636, subdivision (e)(1). That section limits increases in compensation earnable during the final compensation period to employees who are not in a group or class to "the average increase in compensation earnable during the same period reported by the employer for all employees who are in the same membership classification." In respondent's case, the salary schedule for the "Management" class would have been available to limit any TTSA Board-approved increases in his final compensation.

22. Any other assertions put forth by respondents at the hearing and in closing briefs, and not addressed above are found to be without merit and are rejected.

LEGAL CONCLUSIONS

Applicable Statutes and Regulations

1. CalPERS is a "prefunded, defined benefit" retirement plan. (*Oden v. Board of Administration* (1994) 23 Cal.App.4th 194, 198). The formula for determining a member's retirement benefit takes into account: (1) years of service; (2) a percentage figure based on the age on the date of retirement; and (3) "final compensation" (Gov. Code, §§ 20037, 21350, 21352, 21354; *City of Sacramento v. Public Employees Retirement System* (1991) 229 Cal.App.3d 1470, 1479.)

2. Government Code section 20630 defines "compensation" as the remuneration paid out of funds controlled by the employer in payment for the member's services performed during normal working hours or for time during which the member is excused from work because of holidays, sick leave, industrial disability leave, vacation, compensatory time off, and leave of absence. Compensation shall be reported in accordance with section 20636 and shall not exceed compensation earnable, as defined in section 20636. (Gov. Code, § 20630, subds. (a) & (b).)

3. "Compensation earnable" is composed of (1) pay rate, and (2) special compensation, as defined in Government Code section 20636.

4. "Pay rate" means the normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours. "Pay rate" for a member who is not in a group or class, means the monthly rate of pay or base pay of the member, paid in cash and pursuant to publicly available schedules, for services rendered on a full-time basis during normal working hours, subject to the limitations of paragraph (2) of subdivision (e). (Gov. Code, § 20636, subd. (b)(1).)

5. "Special compensation" of a member includes a payment received for special skills, knowledge, abilities, work assignment, workdays or hours, or other work conditions." (Gov. Code, § 20636, subd. (c)(1).)

"Special compensation shall be limited to that which is received by a member pursuant to a labor policy or agreement or as otherwise required by state or federal law, to similarly situated members of a group or class of employment that is in addition to payrate. If an individual is not part of a group or class, special compensation shall be limited to that which the board determines is received by similarly situated members in the closest related group or class that is in addition to payrate, subject to the limitations of paragraph (2) of subdivision (e)." (Gov. Code, § 20636, subd. (c)(2).)

"Special compensation shall be for services rendered during normal working hours and, when reported to the board, the employer shall identify the pay period in which the special compensation was earned." (Gov. Code, § 20636, subd. (c)(3).)

6. "The board shall promulgate regulations that delineate more specifically and exclusively what constitutes 'special compensation' as used in this section. A uniform allowance, the monetary value of employer-provided uniforms, holiday pay, and premium pay for hours worked within the normally scheduled or regular working hours that are in excess of the statutory maximum workweek or work period applicable to the employee . . . shall be included as special compensation and appropriately defined in those regulations." (Gov. Code, § 20636, subd. (c)(6).)

7. Special compensation does not include: "(A) Final settlement pay, (B) Payments made for additional services rendered outside of normal working hours, whether paid in lump sum or otherwise, or (C) Other payments the board has not affirmatively determined to be special compensation." (Gov. Code, § 20636, subd. (c)(7).)

8. A "group or class of employment" means a number of employees considered together because they share similarities in job duties, work location, collective bargaining unit, or other logical work related grouping. One employee may not be considered a group or class. (Gov. Code, § 20636, subd. (e)(1).)

"Increases in compensation earnable granted to an employee who is not in a group or class shall be limited during the final compensation period applicable to the employees, as well as the two years immediately preceding the final compensation period, to the average increase in compensation earnable during the same period reported by the employer for all employees who are in the same membership classification..." (Gov. Code, § 20636, subd. (e)(2).)

9. California Code of Regulations, title 2, section 570 defines "Final Settlement Pay" to mean any pay or cash conversions of employer benefits in excess of compensation earnable, that are granted or awarded to a member in connection with or in anticipation of a separation from employment. Final settlement pay is excluded from payroll reporting to CalPERS, in either pay rate or compensable earnable. (Gov. Code, § 20636, subd. (f).)

10. California Code of Regulations, title 2, section 571 exclusively identifies and defines special compensation items for members employed by contracting agency that must be reported to CalPERS if they are contained in a written labor policy or agreement. (Cal. Code Regs., tit. 2, § 571, subd. (a).) The Board has determined that all items of special compensation listed in subsection (a) are:

(1) Contained in a written labor policy or agreement;

(2) Available to all members in the group or class;

(3) Part of normally required duties;

(4) Performed during normal hours of employment;

(5) Paid periodically as earned;

(6) Historically consistent with prior payments for the job classification;

(7) Not paid exclusively in the final compensation period;

(8) Not final settlement pay; and

(9) Not creating an unfunded liability over and above PERS' actuarial assumptions.

(Cal. Code Regs., tit. 2, § 571, subd. (b).)

(c) "Only items listed in subsection (a) have been affirmatively determined to be special compensation. All items of special compensation reported to PERS will be subject to review for continued conformity with all of the standards listed in subsection (b)." (Cal. Code Regs., tit. 2, § 571, subd. (c).)

(d) "If an item of special compensation is not listed in subsection (a), or is out of compliance with any of the standards in subsection (b) as reported for an individual, then it shall not be used to calculate final compensation for that individual." (Cal. Code Regs., tit. 2, § 571, subd. (d).)

Legal Cause

11. An applicant for retirement benefits has the burden of proof to establish a right to the entitlement, absent a statutory provision to the contrary. (*Greatorex v. Board of Administration* (1979) 91 Cal.App.3d 54, 57.)

12. Respondent did not meet his burden to establish that compensation he received for automobile allowance and employer paid deferred compensation are properly included as compensable earnable for the purpose of calculating his retirement benefits. Respondent's pay for these two components is specifically excluded by the PERL. (Gov. Code, § 20636, subd. (g)(4)(E) & (I).)

Legal Analysis

13. Respondent's last six years of employment as General Manager/Chief Engineer for TTSA was defined by the terms of two employment contracts. The second contract term spanned from May 12, 2004 to January 15, 2007. Two months before the end of the contract term respondent made known his intent to retire. At the November 8, 2006 TTSA Board meeting, members negotiated the terms of his departure. Respondent would stay from January 15, 2007 through May 4, 2007,[4] in an advisory capacity to the new General Manager and TTSA Board. TTSA agreed to amend respondent's contract. Whereas respondent's prior Agreements separated his base salary, car allowance, and other benefits, the Amendments combined into one "hourly rate," his base salary, $800 per month automobile allowance, and $920 per month employer paid deferred compensation payment. This constitutes "final settlement pay" and is an impermissible salary increase under the PERL. (Gov. Code, § 20636, subd. (e)(1) & (f); Cal. Code Regs., tit. 2, § 570.) The restructuring of components of compensation does not alter the nature of the pay. The law does not respect form over substance. (Civ. Code, § 3528; *Dept. Veterans Affairs v. Superior Court* (1999) 67 Cal.App.4th 743, 758.)

14. Case law supports a finding that the benefits at issue here are not a part of compensation earnable for purposes of calculating retirement benefits. "An employee's compensation is not simply the cash remuneration received, but is exactingly defined to include or exclude various employment benefits and items of pay." (*Oden v. Bd. of Admin. Of the Public Employees' Retirement System* (1994) 23 Cal.App.4th 194, 198.) "Employer-paid member contributions were authorized to reduce employees' income tax liability, they were not meant to increase retirement awards." (*Id.* at p. 209.)

[4] The Amendment #2 extended respondent's last day to May 15, 2007.

Conclusion

15. CalPERS correctly determined that respondent's compensation earnable for purposes of calculating his retirement benefits cannot include amounts previously paid to respondent as an automobile allowance and employer paid deferred compensation. The form and wording of Amendments #1 and #2, do not alter the nature of the inflated "hourly rate" reported to CalPERS during respondent's final five months of service. CalPERS adjustment to respondent's final compensable earnable is supported by the PERL. (Gov. Code, § 20636; Cal. Code Regs., tit. 2, §§ 571, 570.)

ORDER

The appeal of respondent Craig Woods and respondent Tahoe-Truckee Sanitation Agency to include automobile allowance and employer paid deferred compensation into respondent Woods' compensable earnable, as reflected in his increased hourly rate, for purposes of calculation his final service retirement allowance is DENIED.

DATED: December 13, 2011

Original Signed

DIAN M. VORTERS
Administrative Law Judge
Office of Administrative Hearings