ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

The issue in this case is whether CalPERS is obliged to restore approximately four years of service credit which was double-posted to Michael Campbell's (respondent) retirement account in error.

Respondent was a long time employee of the City of Lancaster (the City) who elected to take early retirement on May 8, 2009. Prior to making his retirement election, respondent contacted CalPERS by letter, telephone and in person to determine his service credit. CalPERS performed estimates, and told respondent that he had earned just over 39 years of service credit.

After respondent retired, CalPERS staff began processing his retirement papers and found that he had mistakenly received two different double postings of service credit. The first was for 3.025 years of service credit for community property redeposit, which was mistakenly posted as 6.050 years. The second was for 0.7 years of service credit based on time he worked for the City before the City contracted with CalPERS, which was mistakenly posted as 1.4 years.

On June 12, 2009, CalPERS sent a letter to respondent which corrected the double posted 3.025 years of service. On July 6, 2009, CalPERS sent a second letter to respondent which corrected the double posted 0.7 years of service. The second letter also indicated that respondent owed an overpayment of $4,103.72, and gave him three options for repayment. Respondent appealed CalPERS' determination.

A hearing was held by the Office of Administrative Hearings on September 12, 2012. Respondent Campbell represented himself, and the City of Lancaster was represented by its Human Resources and Risk Management Director. Oral and documentary evidence was received, and the parties presented oral argument.

The so called "mistake statute," or Government Code section 20160, provides that corrections can be made under various conditions. Government Code section 20160(a)(3) provides that the correction cannot provide the party seeking correction with a status, right, or obligation not otherwise available to him.

After considering all the evidence, the Administrative Law Judge (ALJ) found that the governing statutes dictate that respondent is only entitled to the benefits and status of similarly situated retirees. Although CalPERS made the errors, and there were delays in finding the errors, nevertheless respondent is only entitled to the benefits allowed under the California Public Employees' Retirement Law (PERL) and no more.

The ALJ found that CalPERS is a statutory creation of the Legislature, with no authority other than that granted by those statutes. It has only the authority to pay benefits to a member when the statutes authorize it, and only in the amount authorized.

The ALJ then discussed the doctrine of estoppel, finding that estoppel cannot be used to enlarge CalPERS' authority, or to provide a benefit to a member which is not otherwise statutorily authorized. The ALJ found that respondent had met the four initial elements of estoppel. However, for the doctrine of estoppel to be applied to a government entity, respondent must also prove that the injustice which would result from a failure to uphold estoppel is of sufficient dimension to justify any effect upon public interest or policy which would result from the raising of an estoppel.

Relying primarily on the *Precedential Decision of Harvey Henderson*, the ALJ declined to apply estoppel in this case because it would effectively nullify a strong rule of policy adopted for the benefit of the public. The ALJ found that respondent was unable to overcome the sound public policy arguments raised by CalPERS. To give the respondent a double-posting of service credit would enlarge CalPERS' authority because it would grant a member's allowance in amounts in excess of the amount authorized by statute, would be detrimental to the public policy behind the PERL, would be adverse to the public interest, would violate CalPERS' primary obligation to protect the Public Employees' Retirement Fund (PERF) for the benefit of all beneficiaries, and would fail to minimize employers' costs. Moreover, to allow respondent a higher lifetime retirement allowance would result in an unfunded liability, which would pass to the employer in the form of increased contributions and higher future contribution rates to fund its miscellaneous members' accounts. Finally, to allow Respondent Campbell to retain the duplicate service credit would constitute a "windfall" to respondent, also known as unjust enrichment.

The ALJ reasoned that the key issue was whether respondent's benefit is higher or lower than those other retirees whose statutory retirement formula is exactly the same. For those retirees who retired exactly at respondent's age, with his length of service, and his final salary, the statutory retirement allowance is determined by one formula. It is that amount and no other. To allow respondent to have a higher allowance would be to treat him preferentially in violation of the mandate given to CalPERS by the Legislature. This, in and of itself, is against public policy. Those retirees who are similarly situated require identical treatment when implementing a statutory retirement allowance.

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

Because the Proposed Decision applies the law to the salient facts of this case, the risks of adopting the Proposed Decision are minimal. The member may file a Writ Petition in Superior Court seeking to overturn the Decision of the Board.

December 12, 2012.

for Marguerite D. Seabourn

Elizabeth Yelland
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