

**ATTACHMENT A**  
**THE PROPOSED DECISION**

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

In the Matter of the Calculation of Final  
Compensation of:

KATHLEEN IKARI,

Respondent,

and

CITY OF GARDENA,

Respondent.

Case No. 2010-1093

OAH No. 2011080975

**PROPOSED DECISION**

This matter was heard by Vincent Nafarrete, Administrative Law Judge of the Office of Administrative Hearings, in Orange on July 18, 2012. Complainant California Public Employees' Retirement System (CalPERS) was represented by Wesley E. Kennedy, Senior Staff Counsel. Respondents Kathleen Ikari and the City of Gardena were represented by Peter L. Wallin, Attorney at Law. Respondent Kathleen Ikari was present during the hearing.

Respondents' counsel presented the testimony of Mitchell G. Lansdell, City Manager of the City of Gardena, the testimony of respondent Kathleen Ikari, and documentary evidence. Complainant's counsel presented the testimony of CalPERS employees, Cherise Canning, Retirement Program Specialist, and David Clement, Actuary.

At the conclusion of the hearing, the parties requested that they be allowed to file written argument. The parties' request was granted and a briefing schedule set. On September 4, 2012, respondents filed City of Gardena's Closing Brief, which was marked as Exhibit AAA. On September 19, 2012, the Administrative Law Judge received the Closing Brief of complainant CalPERS, which was marked as Exhibit 1.

CALIFORNIA PUBLIC EMPLOYEES'  
RETIREMENT SYSTEM  
FILED Nov 30 2012  
Barbara Moseman

On October 9, 2012, the Administrative Law Judge issued a Post Hearing Order (Exh. 2), stating that, because many of the exhibits that had been marked for identification during the hearing were not moved or admitted into evidence, the Administrative Law Judge intended to admit the marked exhibits into evidence unless the parties filed written objections. The Post Hearing Order directed the parties to file written objections, if any, to the admission of any marked exhibits into evidence within five days of receipt of the Post Hearing Order. On October 24, 2012, counsel for respondents filed a letter, which was marked as Exhibit BBB, indicating that respondents had no objection to the admission into evidence of any exhibit that was marked during the hearing. No response was received from complainant's counsel.

Oral and documentary evidence having been received and written argument received, the Administrative Law Judge submitted this matter for decision on October 24, 2012, and finds as follows:

#### FACTUAL FINDINGS

1. On August 22, 2011, the Statement of Issues, Case No. 2010-1093, was made and filed by Darryl Watson in his official capacity as Division Chief, Customer Account Services Division, CalPERS Board of Administration.

2. For 17 years, from August 13, 1990, until September 28, 2007, Kathleen Ikari (respondent) was employed by respondent City of Gardena (City) as the Community Development Director. Prior to being hired by the City, respondent worked for the County of Los Angeles in its regional planning department for 20 years.

3. The Administrative Law Judge takes official notice of the facts in this paragraph that were set forth in the Statement of Issue. Respondent City is a public agency that contracts with CalPERS to provide retirement benefits to its eligible employees. The provisions of the City's contract with CalPERS are set forth in the California Public Employees' Retirement Law. CalPERS is a defined benefit plan. As a former employee of the City, respondent is a member of CalPERS. Benefits for CalPERS members are funded by member and employer contributions and by interest and other earnings from those contributions. The amount of a member's contribution is determined by applying a fixed percentage to the member's compensation. An employer's or public agency contribution is determined by applying a rate to its payroll. Using certain actuarial assumptions specified by law, CalPERS' Board of Administration sets the employer contribution rate on an annual basis. The amount of a member's service retirement allowance is calculated by applying a percentage figure which is based on the member's age at retirement, years of service, and final compensation. In calculating a member's service retirement allowance, CalPERS

staff may review that salary reported by the member's employer to ensure that only those items allowed under the California Public Employees' Retirement Law is included in the member's final compensation.

4. On or about September 19, 2007, respondent filed a Service Retirement Election Application with CalPERS. She retired on the basis of service on September 29, 2007. Her last day of employment with the City was September 28, 2007.

5. (A) On October 12, 2007, CalPERS notified respondent that her Service Retirement Election Application had been processed and she would soon begin to receive a monthly retirement benefit. To calculate her retirement allowance, CalPERS prepared an Account Detail Information Sheet which showed that respondent worked for the City for 17.182 years and her final compensation was \$9,609.47 per month. Her final compensation was her highest average monthly pay rate for the last consecutive 12 or 36 months of employment, depending on her employer City's contract with CalPERS.

(B) On December 13, 2007, CalPERS sent a letter to respondent to confirm that it had received a check in the amount of \$57,029.66 from the City. CalPERS credited the check as payment towards the purchase by the City of two years of Additional Retirement Service Credit (ARSC) for respondent.

(C) On January 7, 2009, CalPERS notified respondent that it had received additional information regarding a change in her final compensation which caused an adjustment to her retirement allowance. As set forth in an Adjusted Account Detail Information Sheet, CalPERS determined that respondent's final compensation was \$8,856.90 per month. Based on the change in her final compensation, CalPERS further determined that respondent's monthly retirement allowance should be reduced by \$335.76 and that there was an overpayment of \$5,730.30. Subsequently, both respondent and the City filed requests for review of the CalPERS' determination to reduce her retirement allowance.

(D) On May 19, 2010, in response to follow-up inquiry by respondent, CalPERS advised respondent that it had reviewed her retirement account and determined that the adjustment made on January 7, 2010, was done in error. CalPERS explained that the error occurred when her average monthly final compensation was changed from a one-year average of \$9,609.47 to a three-year average of \$8,856.93. CalPERS indicated it had completed its adjustment by correcting her average monthly final compensation and increasing her service credit to 19.182 years to reflect her purchase of ARSC.

6. On September 24, 2010, CalPERS informed respondent and the City that it had recently completed another review of respondent's compensation as reported by the City and determined that certain compensation did not qualify for use

in her retirement benefit calculation. Specifically, the City indicated that, in September 2007, the City reported respondent had received a pay increase to \$9,956 per month as a retroactive adjustment that was effective from January 2007 through her retirement on September 29, 2007. CalPERS indicated this retroactive pay increase was a 15.76 percent increase of her previous base salary of \$8,600 from July 2006 through September 2007. Since this 15.76 percent pay increase was granted to respondent in the same month that she retired, CalPERS stated that it appeared to have been granted to respondent in connection with her separation from employment and constituted final settlement pay. CalPERS advised that it had recalculated respondent's retirement benefit by excluding the 15.76 percent increase in her salary from her final compensation and limiting her pay rate to \$8,600 per month. As a result, CalPERS indicated this adjustment resulted in a decrease in respondent's retirement benefit and an overpayment. CalPERS informed respondent and the City that they could appeal this decision.

7. (A) On October 11, 2010, Mitchell G. Lansdell in his capacity as the City Manager (City Manager) filed an appeal on behalf of the City of Gardena, contesting CalPERS' September 24, 2010 determination to reduce respondent's retirement allowance. The City Manager wrote that the 15.76 percent pay increase received by respondent was not final settlement pay but a step increase that was based on a pay schedule for the City's department heads that was adjusted in January 2007.

(B) On October 19, 2010, respondent also filed an appeal of the CalPERS' determination to reduce her retirement allowance based on its characterization of her 15.76 percent pay increase as final settlement pay. Respondent likewise asserted the salary increase was not part of a final settlement but a step increase for department heads of the City. This matter then ensued.

#### Community Development Department

8. (A) Respondent became the director of the City's Community Development Department (Department) in 1990. Eight years later, in or about 1998, the City began having serious financial difficulties. Two major projects of the City had failed, including a first-time homebuyers program. The City had a \$5.2 million deficit in its general fund and lacked money to pay its obligations. Over the next several years, the City reduced staff through attrition, restructured its loans with the banks to pay interest only, and sold bonds to pay off its debts. From January 2001 through June 2006, the City did not provide any cost of living increases to its employees or any merit or step increases to its department heads.

(B) By 2006, however, the City had improved its finances and had a surplus in its general fund. In July 2006, the City gave a 2.5 percent equity increase to its employees, the first salary increase in over five years. The City had also embarked on several special projects, including the remodeling of the council

chambers and city hall and the development of a specific plan for its new business area called the Artesia Corridor. The City Manager had also begun an assessment of the Department.

9. (A) From December 2005 through March 2006, the City Manager conducted an assessment of the Department to identify any significant issues that needed to be addressed in order to improve its operational efficiency and ability to serve the public. A Special Projects Administrator from the City Manager's Office was appointed to perform the assessment which consisted of interviewing City personnel and members of the public, administering a written survey, reviewing and analyzing case processing and plan check logs, attending meetings of the Planning and Environmental Quality Commission, and observing staff interactions with the public. The Special Projects Administrator then prepared a Final Report of the Assessment Results of the Community Development Department (Final Assessment Report).

(B) In the Final Assessment Report, the Special Projects Administrator identified six issues within the Department that contributed to the public perception that it was difficult to open or expand a business or to build a project in the City and made various recommendations for changes to the Department. The Special Projects Administrator opined that there was a clear need for significant changes within the Department to make the City more "business friendly." The six identified issues were as follows: the application review and plan approval process was too slow; filing requirements were more stringent than those for other cities and were unreasonable or impractical; the City's municipal code and the Department's policies were vague and unclear; the plan check process was too long and slow: the Planning Commission relied on subjective requirements not included in the municipal code and the Department staff accommodated the Planning Commission rather than exercise their professional knowledge and experience in guiding the commission; and there was a less-than-optimal work environment within the Department, which was marked by low morale and negativity, due to limited staff and heavy and unevenly distributed workloads.

(C) In assessing respondent as the Community Department Director, the Special Projects Administrator found that she had a management style to be very involved in the daily operations of the Department. She handled case files or plan checks, responded to public inquires at the counter, and reviewed all correspondence "no matter how minor." She reviewed and approved all projects and decided when projects were sent to outside consultants, what cases were scheduled for hearings, how to interpret the municipal code, and how staff wrote reports. The Special Projects Administrator found that the Department's application and plan check process and responses to public inquires were slowed by respondent's practice of handling and making all decisions herself and the absence of any other administrator who could make decisions. There was also "an uncooperative working relationship" between respondent and the two division managers as well as negative interpersonal

interactions among staff in the Department. The Special Projects Administrator recommended, in part, that respondent delegate more decision-making authority to two division managers and give them more responsibility and autonomy to manage their divisions and that a “teamwork” work model be implemented in the Department by training all staff to handle permits and by reorganizing and sharing work assignments.

10. (A) On June 13, 2006, City Manager Lansdell sent a Memorandum to the City Council summarizing the assessment of the Community Development Department. The City Manager reiterated the purpose of the assessment and told the City Council that the assessment revealed, in part, that the Department’s processes and requirements for reviewing and approving business and development plans were stringent and inflexible and resulted in delays in approvals of plans. He summarized the six issues identified by the assessment, including unreasonably lengthy processes for reviewing and approving applications and performing plan checks, subjective policies, and organizational and staff problems. The City Manager then recommended that significant changes be made to the Department to address these problems and to make the City a more “business friendly.”

(B) In his June 13, 2006 memorandum, the City Manager established an Action Plan and indicated that he would soon begin meeting with employees of the Department to review and implement the Action Plan. The City Manager’s Action Plan set forth changes or goals in the areas of processes, policies, and organization of the Department. In the area of processes, the City Manager proposed, in part, the development of a checklist to track the application review process. In the area of policies, he proposed, in part, the development of a “Fast Track” process for reviewing plans and the amendment of the City’s municipal code. In the area of organizational goals, the City Manager planned, in part, to change operations of the Department by assigning division managers to oversee daily operations in reviewing, checking, and approving plans. The City Manager indicated that, by giving the assignment of supervising daily operations of the Department to division managers, the Community Department Director, or respondent, would be able to focus on significant projects such as the Artesia Corridor Specific Plan and the implementation of the newly-adopted General Plan. Once the Action Plan was implemented, the City Manager stated he would reassign responsibilities.

11. Effective July 20, 2006, and pursuant to the Final Assessment Report, the City Manager implemented changes in the organization and operation of the Department to improve its efficiency and to enhance the delivery of services. As Community Development Director, respondent was directed that she would be responsible for “significant departmental projects” such as the implementation of the General Plan and the Artesia Business Corridor Specific Plan as well as for oversight of the changes to be made to the Department and its budget. In addition, respondent was informed that she would be responsible for the general oversight of the Department’s divisions: planning, building, and clerical and business licensing. The

planning administrator was appointed to manage the planning division, the plan check engineer was appointed to supervise the building division, and the office manager was directed to manage the clerical and business licensing staff.

12. Five months later, in a confidential personnel memorandum dated December 12, 2006, the City Manager advised the City Council that he made organizational changes to the Community Development Department in July 2006 to address the six key issues identified by the Final Assessment Report. The City Manager indicated the major change was assigning the responsibility for supervising professional areas or divisions to division managers and giving general oversight of the divisions to respondent as the Community Development Director. The City Manager stated the division managers were directed to address the issues identified in their divisions by the assessment. However, the City Manager related that the evaluation of the effectiveness of his organizational changes was “drastically affected” by the lack of communication between division managers and the Community Development Director. He advised the City Council that this lack of communication had “created an intolerable working environment for the entire staff of the Department” and had impacted the delivery of services to the public. The City Manager recommended additional changes be made within the next 30 days.

#### Respondent's Retirement

13. (A) Effective January 1, 2007, the City Council for City adopted a resolution establishing new or updated rates of compensation and benefits for all unrepresented management and confidential employees who were not covered under an approved memorandum of understanding, including department heads such as the Community Development Director. Under this resolution, the City Council established a new five-step salary scale for department heads. The new first step of the salary scale for department heads began at \$8,600 per month, which was fifth step under the old or existing salary scale. The monthly salary for the second through fifth steps under the new salary scale for department heads was \$9,030, \$9,482, \$9,956, and \$10,454 per month, respectively. Each step constituted a five percent increase in salary. Unlike rank and file employees who received merit salary increases on the anniversary dates of hire, departmental heads of the City administration received merit salary or salary step increases only at the will and determination of the City Manager.

(B) Pursuant to the January 1, 2007 resolution setting a new salary schedule for management employees, the transportation director received a salary adjustment or increase of five percent on January 14, 2007. The recreation director received a five percent salary adjustment or increase on April 8, 2007. The administrative services director, who was also the assistant city manager, received a five percent salary adjustment or increase on April 8, 2007.

(C) On January 1, 2007, respondent was earning a monthly salary of \$8,600 under the old or existing salary schedule for the Community Development Director. She was at the top of the old pay scale for departmental heads. Six months earlier, she had received a 2.5 percent "equity adjustment" which had raised her salary to \$8,600 per month. Pursuant to the City Council's January 1, 2007 resolution, respondent was placed at the first step of the new salary schedule for departmental heads; her salary remained at \$8,860 per month.

14. In early January 2007, after the City Council adopted the new salary schedule for unrepresented employees or managers, the City Manager purportedly told respondent in vague and general terms that she would receive a pay raise. The City Manager did not provide any specific information to respondent as to when or how much of a pay raise she might receive from the City. Subsequently, respondent did not obtain a merit or step increase under the new salary schedule in the first eight months of 2007.

15. (A) Six or seven months later, on June 30, 2007, respondent received an annual review of her performance as the Community Development Director. City Manager Lansdell prepared the Employee Performance Review and found respondent's performance for the past year had been "above average." Respondent was described, part, as a thoroughly knowledgeable and exceptional worker who had good judgment and made sound decisions. She was said to have been unusually resourceful, enthusiastic about her work, and encouraging of other employees.

(B) On June 30, 2007, the City Manager also gave an Annual Statement of Goals and Objectives to respondent. The City Manager wrote that respondent's goals for the "current fiscal year" were as follows: complete special projects, which were the remodeling of the council chambers and city hall and preparation of the Artesia Corridor Specific Plan; implement full staffing in the her department; make the procedural changes for her department set forth in the City Manager's June 2006 Action Plan; and implement the recently adopted General Plan for the City.

16. According to the testimony of the City Manager, as of June 30, 2007, respondent had not yet completed all of the special projects. The plans for the remodeling of the council chambers and city hall were done but construction was ongoing. The City Manager testified that the remodeling of the city council chambers was not completed until early August 2007. The Specific Plan for the 23-acre Artesia Corridor was going through a review or approval process. The update of the General Plan, which was to result in the rezoning of numerous parcels in the City, was complete. Respondent, on the other hand, testified that remodeling of the council chambers and city hall was finished, the Artesia Corridor Specific Plan had been prepared, and the update of the General Plan had been completed and was being implemented. Nevertheless, when he discussed respondent's Employee Performance Review with her in early July 2007, the City Manager did not offer or give her a raise or increase in salary.

17. (A) During the ensuing summer of 2007, and after receiving her performance evaluation, respondent began contemplating retirement. She was 61 years old. She testified that she had completed the special or major projects for the City. In addition, she thought about retirement because her cousin had passed away just one year after retiring. Respondent also considered retiring because of the criticisms of her department contained in the Final Assessment Report. She was hurt and perturbed by the criticisms.

(B) On or about June 28, 2007, respondent sent an email inquiry to CalPERS, asking what her benefits would be if she were to retire and if she were to resign from the employment with the City.

(C) On or about July 19, 2007, respondent sent another email inquiry to CalPERS. She asked whether she could use her unused sick leave to enhance her retirement allowance and whether she would be still be credited with ARSC, if purchased, in the event that she returned to full-time employment after retiring.

18. On an undetermined date in mid-August 2007, respondent told the City Manager that she had decided she was going to either resign or retire from her job as Community Development Director. While speaking with respondent about her decision to resign or retire on that date or soon thereafter, the City Manager raised the issue of a salary increase. The City Manager proposed giving a three-step salary increase to respondent. On or about August 15, 2007, a Personnel Action Form proposing a three-step or 15.76 percent salary increase for respondent from \$8,600 to \$9,956 per month was prepared, but it was not signed, executed, or processed.

19. On September 10, 2007, City Manager Lansdell approved a three-step increase in respondent's salary as Community Development Director from \$8,600 to \$9,956 per month. On September 10, 2007, the City Manager signed the Personnel Action Form that had been prepared one month earlier.

20. Three days later, on September 13, 2007, respondent and the City entered into a Resignation and Settlement Agreement wherein respondent agreed to resign from her position as Community Development Director effective at the close of business on September 28, 2007. In consideration for her resignation, respondent received, in part, as a severance benefit the contribution by the City to CalPERS of the sum of \$56,612.83 for the purchase of ARSC for her. In addition, the Resignation and Settlement Agreement provided that respondent could elect to retire from the City as long as she elected to retire on or before October 31, 2007. Furthermore, respondent agreed to release and discharge the City and its officers, directors, and employees from all actions, claims, and liabilities, including such actions, claims, and liabilities relating to her employment or her resignation from employment.

21. (A) On or about September 19, 2007, respondent submitted her Service Retirement Election Application to CalPERS, choosing to retire on the basis of service.

(B) On September 27, 2007, the City Manager signed a Personnel Action Form, acknowledging respondent's retirement from employment with the City on the basis of service, Respondent's retirement was to become effective at the close of business on September 28, 2007. Her salary was noted to be \$9,956 per month.

22. On October 3, 2007, the City Manager issued a Memorandum to the staff of the Community Development Department in which he announced that he would be serving as the interim director of the Department. The City Manager also announced that the Planning Administrator would be managing the Planning Division and the Plan Check Engineer would be functioning as the Building Official and supervising the building inspectors. The City Manager further announced that the City's budget contained the funding to hire a division manager of the permits and licensing division. The Administrative Assistant was appointed to coordinate the activities of the three divisions.

23. In or about October 2007, the City Manager appointed the Planning Administrator to be the Acting Community Development Director. The Planning Administrator was the acting director for approximately three months through December 2007. On a subsequent and undetermined date, the City hired a new Community Development Director.

24. (A) The City Manager testified that, prior to the adoption of the new salary schedule for unrepresented employees or managers on January 1, 2007, he asked the City Council to give salary increases to departmental heads or directors, including respondent, in order to bring their salaries on par with those of other municipalities. He further testified that, on or about January 1, 2007, he had a discussion with respondent about her salary increase in which he reviewed and set goals and tasks that she had to meet or complete in order to receive a salary increase for that year. The City Manager asserted that respondent had met these goals by June 30, 2007, and was entitled to the three-step salary increase in recognition of her achievements as Community Development Director.

(B) The City Manager's testimony was not persuasive, for it was not supported by the weight of the evidence. He did not prepare an Annual Statement of Goals and Objectives for respondent in January 2007; rather, he prepared the Annual Statement of Goals and Objectives on June 30, 2007, in connection with the annual performance evaluation. He did not give respondent a salary increase in January 2007 or after preparing or discussing her June 30, 2007 performance evaluation in early July 2007. The City Manager, in fact, testified he discussed a salary increase with respondent at the same time she revealed to him that she had decided to resign or retire from employment with the City.

25. In testifying at the hearing, respondent admitted that her department was considered to be problematic after issuance of the Final Assessment Report in 2006. She realized that the problems with the Department had to be resolved and it would be difficult for the City Manager to give her a salary increase as the head of a beleaguered department. The division managers in the Department were contentious and not cooperative and she was not that hopeful of solving the problems in the Department. Moreover, respondent admitted that, from late 2004 through the summer of 2007, she was so busy with the many projects of the City that it did not occur to her to discuss a pay raise with the City Manager. Respondent believed, however, that she completed her projects for the City and left the City in a better position when she retired in September 2007.

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Based on the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

#### LEGAL CONCLUSIONS

1. Grounds do not exist to grant respondents' appeals pursuant to Government Code section 201340 and California Code of Regulations, title 2, sections 555 – 555.4, in that the preponderance of the evidence established that CalPERS correctly determined the retroactive 15.76 percent salary increase that was approved for respondent in the last month of her employment constituted final settlement pay which should be excluded from compensation earnable and her final compensation used for the calculation of her service retirement allowance, based on Factual Findings 1 – 25 above.

2. 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 the factors of years of service, a percentage figure based on the age on the date of retirement, and final compensation. (Gov. Code, §§ 20037, 21350, 21352, and 21354; *City of Sacramento v. Public Employees Retirement System* (1991) 229 Cal.App.3d 1470, 1479.)

Compensation means 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. (Gov. Code, § 20630.) Final compensation for a local miscellaneous member, such as respondent, is based on the highest average

compensation earnable over a consecutive 12-month period. (Gov. Code, §§ 20037 and 20042.) Compensation shall be reported in accordance with section 20636 and shall not exceed compensation earnable. (Gov. Code, § 20630, subs. (a) & (b).)

Compensation earnable by a member means a member's payrate and special compensation. (Gov. Code, § 20636, subd. (a).) Payrate for a member who is a group or class of employment, such as respondent, is defined as 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 pursuant to publicly available pay schedule. (Gov. Code, § 20636, subd. (b)(1).) A group or class of employment means a number employees considered together because they share similarities in job duties, work location, collective bargaining unit, or other work related grouping. One employee may not be considered a group or class. (Gov. Code, § 20636, subd. (e)(1).)

Special compensation of a member includes a payment received for special skills, knowledge, abilities, work assignment, workdays or hours, other work conditions. (Gov. Code, § 20636, subd. (c)(1)). Special compensation shall be limited to that which 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. (Gov. Code, § 20636, subd. (c)(2).) Special compensation shall be for services rendered during normal working hours and, when reported to the CalPERS Board of Administration, the employer shall identify the pay period in which the special compensation was earned. (Gov. Code, § 20636, subd. (c)(3).) Special compensation does not include final settlement pay. (Gov. Code, § 20636, subd. (c)(7).)

Final settlement pay means pay or cash conversions of employee benefits that are in excess of compensation earnable, that are granted or awarded to a member in connection with, or in anticipation of, a separation from employment. (Gov. Code, § 20636, subd. (f).) Final settlement pay is excluded from payroll reporting to CalPERS, in either payrate or compensation earnable. (Cal. Code Regs., tit. 2, § 570.) Final settlement pay may consist of severance pay, may be based on accruals over a period of prior service. It is generally, but not always, paid during the period of final compensation. It may be paid in either lump sum or periodic payments and may take the form of a bonus, retroactive adjustment to payrate, conversion of special compensation to payrate, or any other method of payroll reported to CalPERS. (Cal. Code Regs., tit. 2, § 570.)

In general, compensation earnable is not determined merely by establishing the cash remuneration received by a member but is exactly defined to include and exclude various employment benefits and items of pay. (*Oden v. Board of Administration, supra.*) Compensation earnable is not based on individual efforts but on the average monthly compensation based on an average time put in by similarly situated members in the same group or class of employment and at the same

rate of pay. (*City of Sacramento v. California Public Employees' Retirement System* (1991) 299 Cal.App.3d 1470, 1479.) The scope of compensation is critical because CalPERS is funded by employer and employee contributions calculated as a percentage of the employee's compensation. (*Hudson v. Board of Administration*(1997) 59 Cal.App.4th 1310, 1316.) Compensation reported to CalPERS for use as final compensation which is in excess of compensation earnable, particularly over a short duration of time prior to retirement, will have the effect of distorting the funding process established by the legislative scheme (and create a potential for underfunding). (*Hudson v. Board of Administration, supra*, at pp. 1330 – 1331; *City of Sacramento v. California Public Employees' Retirement System, supra*, at 1487.)

3. It is well-settled that the trier of fact may accept part of the testimony of a witness and reject another part even though the latter contradicts the part accepted. (*Stevens v. Parke Davis & Co.* (1973) 9 Cal.3d 51, 67.) The trier of fact may also “reject part of the testimony of a witness, though not directly contradicted, and combine the accepted portions with bits of testimony or inferences from the testimony of other witnesses thus weaving a cloth of truth out of selected material.” (*Id.*, at 67-68, quoting from *Nevarov v. Caldwell* (1958) 161 Cal. App.2d 762, 777.)

4. Discussion—In these appeals, the preponderance of the evidence demonstrated that respondent worked as the Community Development Director for the City of Gardena for 17 years, the latter half of which were lean years because the City faced financial difficulties. For several years, respondent did not receive any merit or salary increases, except for a 2.5 percent equity adjustment in July 2006. That year, the City Manager authorized an assessment of the Community Development Department, which was very critical, in part, of respondent's management of the Department. The City Manager began instituting changes to the Department, which included giving more authority and autonomy to division managers. In December 2006, the City Manager lamented to the City Council that his changes were hampered by the lack of communication between respondent and her division managers. In January 2007, after the City Council approved a new salary schedule for department heads, respondent did not receive a salary increase from the City Manager and remained at the bottom of the new salary schedule.

In July 2007, after discussing her performance evaluation with the City Manager and not receiving a salary increase again, respondent began contemplating retirement. In August 2007, she gave notice of her resignation or retirement. Only then did the City Manager agree in September 2007 to give her the 15.76 percent salary increase that was made retroactive to the start of the year. At the same time, respondent and the City entered into a Resignation and Settlement Agreement under which the City agreed to purchase ARSC for her. Respondent then retired on the basis of service on September 29, 2007.

As such, the circumstances of respondent's last year of employment and the timing of the retroactive salary increase have a strong tendency in reason to show that the City Manager was not altogether pleased with respondent's management of her department, was reluctant to give her a salary increase, and then finally agreed to give her a 15.76 percent retroactive salary increase when respondent made it known that she was going to resign or retire. The retroactive salary increase was thus granted to respondent in connection with or anticipation of her separation from employment with the City and thus constituted final settlement pay within the meaning of Government Code section 20636, subdivision (f), and California Code of Regulations, title 2, section 570. The retroactive salary increase was properly excluded from the respondent's final compensation as Community Development Director and the calculation of her service retirement allowance.

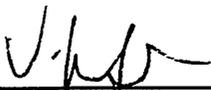
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Wherefore, the following Order is hereby made:

**ORDER**

1. The appeals of respondent Kathleen Ikari and the City of Gardena are denied, based on the Conclusions of Law 1 – 4 above, jointly.
2. The Statement of Issues, Case No. 2010-1003, and the determination of the California Public Employees' Retirement System to reduce respondent Kathleen Ikari's final compensation and her service retirement benefits by excluding as final settlement pay the retroactive 15.76 percent salary increase that she received prior to her retirement, is sustained.

Dated: November 26, 2012

  
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Vincent Nafarrete  
Administrative Law Judge  
Office of Administrative Hearings