

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Kathleen Ikari (Respondent) was employed by the City of Gardena (City) as its Community Development Director until her resignation effective September 2007, and as such, was a miscellaneous member of CalPERS.

Contemporaneous with her retirement, Respondent and the City entered into a "Resignation and Settlement Agreement" whereby the City agreed to provide Respondent "severance benefits," including a 15.76% increase in salary retroactive to January 1, 2007. Following a review of the account, CalPERS informed Respondent and the City that the retroactive increase in salary constituted final settlement pay, and would not be included in the calculation of her pension benefits. The City and Respondent appealed.

A hearing was held on July 18, 2012, before an Administrative Law Judge (ALJ). Respondent and the City appeared and were represented by legal counsel. Evidence, including testimony by Respondent and the City Manager, was submitted. The testimony and related evidence demonstrated that within months prior to Respondent's retroactive increase in salary and subsequent separation from service, the City had undergone a restructuring of the Community Development Department. As a result, the daily control of the Department was shifted away from Respondent and she had been assigned to perform special projects. A few months following this restructuring, Respondent was approved for a three-step increase in pay retroactively and Respondent and the City entered into their Resignation and Settlement Agreement.

After submission of written closing argument, the ALJ issued a Proposed Decision on November 26, 2012, and concluded, based on a preponderance of the evidence, that the increase in Respondent's salary was made in anticipation of her separation from employment. As such, the increase was final settlement pay, and therefore, must be excluded from Respondent's final compensation and would not be used in the calculation of her CalPERS retirement benefit.

The Proposed Decision is consistent with the law and facts. For the reasons stated above, staff argues that the Board should adopt the Proposed Decision as its final decision in this matter.

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

February 21, 2013


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