

**ATTACHMENT B**  
**STAFF'S ARGUMENT**

## **STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION**

Respondent Nadine Levin (Respondent) was employed by Respondent City of Mountain View (City) as its Assistant City Manager when she service retired. Respondent also served as the Interim Employee Services Director for five months during the last year of her employment and received additional "short-term pay" for performing the additional duties. For many years, Respondent also received payments of an "auto allowance" as compensation for being required to use her personal vehicle for her work-related travel.

When Respondent filed her retirement application, CalPERS staff reviewed her payroll documents and determined that the "short-term pay" and "auto allowance" did not meet the requirements in the California Public Employees' Retirement Law (PERL) for "compensation earnable" which consists of "pay rate" and "special compensation" and excluded the two amounts from Respondent's retirement calculations. Respondent and the City appealed and a hearing was held on November 7, 2012.

At the hearing, Respondent and the City were present and represented by the City's counsel. They contended that the "auto allowance" was not actually compensation for the use of a private automobile, and that CalPERS had allowed it in the past. They also argued that the "short-term pay" was not compensation for performing additional duties of another position, and that it satisfied the definition of several items of "special compensation" allowed under the PERL.

CalPERS introduced evidence to show that the "auto allowance" was, in fact, an "auto allowance" and was identified as such in numerous City documents authorizing the payments. CalPERS also introduced evidence to show that the "short-term pay" that Respondent received was for performing additional duties of a second position.

In his Proposed Decision, the Administrative Law Judge (ALJ) found that there was no evidence to allow either payment to be included in Respondent's "compensation earnable." He found that neither payment met any of the definitions of "special compensation." The PERL specifically excludes "auto allowance" from being included and "short-term pay" is not an item of "special compensation" in the PERL. It is also excluded as "overtime" by the PERL. Furthermore, when the reasons and bases for the payments are analyzed, they do not fit into any category of "special compensation" allowed under the PERL. The ALJ also noted that Respondent and the City failed to establish any basis to apply equitable estoppel, laches, or a statute of limitations against CalPERS.

The ALJ concluded that CalPERS correctly excluded the "auto allowance" and "short-term pay" from the calculation of Respondent's retirement allowance and denied Respondent and the City's appeals.

The ALJ's Proposed Decision is consistent with the law and the facts. For the reasons stated above, staff argues that the Board should 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 or the employer may file a Writ Petition in Superior Court seeking to overturn the Decision of the Board.

March 20, 2013



---

CAROL A. MCCONNELL  
Senior Staff Attorney