ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

The issue in this case concerns payment of "Holiday Premium Pay" to the City of Huntington Beach rank and file police officers. In calculating the final compensation of Respondents Daniel Catalano, Norman (Eldo) E. Evenson, and Similarly Situated Non-Management Police Officers, CalPERS denied the inclusion of Holiday Premium Pay. Respondents appealed this determination and the matter was heard by the Office of Administrative Hearings on November 15, 2011. A Proposed Decision was issued on March 15, 2013, granting the appeal and allowing the inclusion of Holiday Premium Pay in the calculation of the final compensation. Although Catalano and Evenson were the only two rank and file police officers with cases argued at hearing, by stipulation, the holding in this case will apply to all similarly situated non-management police officers employed by the City of Huntington Beach.

The police officers are paid pursuant to a Memorandum of Understanding (MOU). Under the MOU, they are entitled to 10 paid holidays per year (Christmas, Thanksgiving, etc.). They are paid for these holidays whether or not they work them. If a police officer works a paid holiday, the officer will receive additional compensation on top of the holiday pay. When working a holiday, the officer is paid his regular pay, plus paid holiday, plus Holiday Premium Pay.

CalPERS allows the officers to claim regular pay plus paid holiday pay as part of compensation earnable. CalPERS denied the additional Holiday Premium Pay as overtime (which by statute is not reportable to CalPERS as compensation earnable). The police officers appealed. They contend that the Holiday Premium Pay is intended to provide incentive for the officers to work on holidays, since the City has to staff police officers 24/7 regardless of holidays. The incentive works because senior officers will bid on holiday shifts, because they receive 50% extra pay for those hours. The City likes this arrangement because it wants senior officers to be available on holidays.

CalPERS argued that the officers were "double dipping" for working on a holiday, because they received their pay, plus the holiday pay whether they worked or not. If they actually worked the holiday, the officers received an additional Holiday Premium Pay added on top, resulting in "double dipping." CalPERS argued that the senior officers could bid on shifts available on holidays and weekends during their last years of employment, which resulted in improperly spiking their pensions. CalPERS also argued that auditing the calculations of the officers' final compensation was nearly impossible because the City did not comply with requests for information.

After hearing and post-hearing briefing, the Administrative Law Judge (ALJ) concluded that Respondents' appeal should be granted. The ALJ found that Holiday Premium Pay is reportable to CalPERS as "Holiday Pay" within the meaning of California Code of Regulations section 571(a)(5) because: (1) it is additional compensation above the compensation paid every employee for the 10 holidays when not worked; (2) it is paid to officers who are normally required to work on an approved holiday because they work in positions that require staffing without regard to holidays; and (3) it is over and

above their normal monthly pay for approved holidays, thus is plainly additional compensation. The ALJ also found no evidence of pension spiking.

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

Because the appeal has been granted, the risks of adopting the Proposed Decision are minimal. The members will not file a Writ Petition in Superior Court seeking to overturn the Decision of the Board.

May 15, 2013

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