

ATTACHMENT A

**RESPONDENT'S PETITION FOR RECONSIDERATION
AND RESPONDENT'S ARGUMENT**

SILVER, HADDEN, SILVER, WEXLER & LEVINE

A PROFESSIONAL LAW CORPORATION

STEPHEN H. SILVER
WILLIAM J. HADDEN
SUSAN SILVER
ROBERT M. WEXLER
RICHARD A. LEVINE
KEN YUWILER
ELIZABETH SILVER TOURGEMAN
HOWARD A. LIBERMAN
JACOB A. KALINSKI

1428 SECOND STREET
SANTA MONICA, CALIFORNIA 90401
MAILING ADDRESS
POST OFFICE BOX 2161
SANTA MONICA, CALIFORNIA 90407-2161
TELEPHONE (310) 393-1486
TELEPHONE (323) 870-0900
FACSIMILE (310) 395-5801

WORKERS' COMPENSATION
OF COUNSEL
STEVEN E. KAYE

May 31, 2013

Peter Mixon, General Counsel
California Public Employees' Retirement System
P.O. Box 942707
Sacramento, CA 94229-2707

Via Facsimile and Email
(916) 795-3659

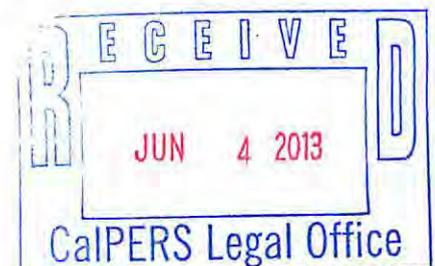
Re: In the Matter of the Calculation of Final Compensation of DANIEL CATALANO, NORMAN (ELDO) E. EVENSON, and Similarly Situated Non-Management Police Officers, Respondents, and CITY OF HUNTINGTON BEACH, Respondent
Case No. 9239

Dear Peter:

I just received for the first time by email from Elizabeth Yelland a copy of your letter to me dated May 17, 2013 regarding the above-captioned matter. It appears that the original letter was sent by overnight mail to a post office box and we have learned that a post office box will not accept overnight mail. For that reason, I never received your original letter until Ms. Yelland emailed me a copy a few minutes ago.

Accordingly, the date specified in your letter for submitting our Petition for Reconsideration has passed. Because of the fact that I never received your letter until this morning, I would hope that you would accept the Petition for Reconsideration that accompanies this letter, which is only two days beyond the date you specified. As your letter indicates, I am forwarding a copy by facsimile to Ms. Yelland.

Again, in light of the circumstances described above, and the fact the Petition is being submitted within the time limits allowed by Government Code Section 11521, I would hope that CalPERS would provide the affected retirees the opportunity to have the Petition for Reconsideration addressed by the Board at its June meeting.



SILVER, HADDEN, SILVER, WEXLER & LEVINE

Peter Mixon, General Counsel
May 31, 2013
Page 2

By the way, Ms. Yelland only emailed me a copy of your letter. I still have not actually seen the Board's formal Decision.

If you have any questions regarding the contents of this letter or if I can be of further assistance, please feel free to contact me.

Your prompt response to this request will be sincerely appreciated by the affected retirees and me.

Sincerely,

SILVER, HADDEN, SILVER, WEXLER & LEVINE


STEPHEN H. SILVER

cc: Huntington Beach Police Officers Assn.
Norman Evenson
Daniel Catalano
Elizabeth Yelland

SHS:llh

1 STEPHEN H. SILVER, SBN 038241
2 SILVER, HADDEN, SILVER, WEXLER & LEVINE
3 1428 Second Street, Suite 200
4 P.O. Box 2161
5 Santa Monica, CA 90407-2161
6 Telephone: (310) 393-1486
7 Facsimile: (310) 395-5801

8 Attorneys for DANIEL A. CATALANO
9 and NORMAN (ELDO) E. EVENSON

10 **BEFORE THE**
11 **BOARD OF ADMINISTRATION**
12 **CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM**

13 In the Matter of the Calculation of Final Compensation of:) Case No. 9329
14 DANIEL A. CATALANO and)
15 NORMAN (ELDO) E. EVENSON and) OAH No. 2011061387
16 Similarly Situated Non-Management)
17 Police Officers,) **RESPONDENTS' PETITION FOR**
18 Respondents,) **RECONSIDERATION**
19 and)
20 CITY OF HUNTINGTON BEACH,)
21 Respondent.)

22
23 **I. INTRODUCTION**

24 This Petition for Reconsideration is submitted on behalf of the named individual
25 Respondents and all similarly situated retirees who, pursuant to a Stipulation of the Parties,
26 were governed and bound by the outcome of this proceeding (hereinafter referred to as
27 "Petitioners"). That Stipulation is reflected in Factual Finding 6(A) of the Proposed Decision
28 and Paragraph II of the Amended Statement of Issues submitted by CalPERS. (Exh. 8.)

1 In submitting this Petition, Petitioners assume that the members of the Board of
2 Administration and its Independent Board Counsel have in their possession, or access to, the
3 transcript of the Administrative Hearing conducted on November 15, 2011, as well as all
4 exhibits received in evidence at the hearing. If this assumption is incorrect, please notify
5 counsel for Petitioners and those materials will be submitted to the Board for distribution.
6 Throughout this Petition, reference will be made to those administrative proceedings through
7 appropriate citations to the applicable transcript page and/or exhibit.

8 Petitioners strongly believe that it is critical for the members of the Board to be mindful
9 of their responsibilities as set forth in Article 16, Section 17 of the California Constitution, and
10 particularly Section 17(b) which reads as follows:

11 “(b) The members of the retirement board of a public pension or
12 retirement system shall discharge their duties with respect to the system
13 solely **in the interest of, and for the exclusive purposes of providing**
14 **benefits to, participants and their beneficiaries**, minimizing employer
15 contributions thereto, and defraying reasonable expenses of
16 administering the system. **A retirement board's duty to its**
17 **participants and their beneficiaries shall take precedence over any**
18 **other duty.**” (Emphasis added.)

19 The reason for this reference is that, as we will illustrate in a subsequent portion of this
20 Petition, representatives of CalPERS have continuously been making every effort to find some
21 way to reduce the retirement allowances of Petitioners by excluding from their final
22 compensation the Holiday Premium Pay that is at issue. The most recent, and perhaps most
23 significant, example of this apparent course of action is reflected in the Board’s Decision to
24 reject the Administrative Law Judge’s Proposed Decision and refer the case back to the Office
25 of Administrative Hearings to receive evidence on issues **totally unrelated to the subject**
26 **matter of these appeals**. This action took place **after** (1) a fair and impartial experienced
27 Administrative Law Judge clearly and succinctly decided in favor of Petitioners regarding the
28 **sole** issue presented to him: that the Holiday Premium Pay did constitute “compensation
earnable” within the meaning of the Public Employees Retirement Law (“PERL”) and (2) both
the Petitioners and CalPERS staff recommended that the Board adopt that Proposed Decision.

1 As we just related, the basis for the Petition is that the subject matter of the additional
2 evidence sought by the Board's Decision is well beyond the scope of the narrow issue
3 presented in these appeals and, therefore, completely irrelevant to this proceeding.

4 **II. THE SUBJECT MATTER OF THE EVIDENCE SOUGHT TO BE TAKEN ON**
5 **REMAND IS BEYOND THE SCOPE OF THE NARROW ISSUE PRESENTED**
6 **IN THESE APPEALS AND, THEREFORE, IS IRRELEVANT.**

7 The Amended Statement of Issues succinctly defines the narrow issue presented in these
8 appeals in paragraph IX, at page 8, liens 16-19 as follows:

9 "This appeal is limited to the issue of whether
10 respondents and similarly situated non-managerial peace officers
11 are entitled to have Holiday Premium Pay reported to CalPERS
12 as 'compensation earnable' for purposes of use in their final
13 compensation calculation."

14 This narrow scope is consistent with the original appeal letter sent to Petitioner Eldo
15 Evenson on January 26, 2009 (Exh. 1). That letter (on page 2 of Exhibit 2) identified the sole
16 basis for declining to regard the Holiday Premium Pay at issue as part of Mr. Evenson's final
17 compensation as follows:

18 "Holidays Worked pay [i.e. Holiday Premium Pay] is not considered
19 reportable compensation because it is considered overtime which is not
20 reportable per Government Code Section 20635, and it is not found in
21 the exclusive list of special compensation items enumerated under
22 California Code of Regulations ('CCR') Section 571."

23 After the attorney for Petitioners explained to CalPERS staff that this Holiday Premium
24 Pay was not overtime because it was additional pay for working regularly scheduled workdays
25 that happened to fall on holidays (Exh. 3), CalPERS staff acknowledged that this income was
26 not overtime. Nevertheless, CalPERS staff continued to decline to include this income in the
27 "final compensation" of the Petitioners for more than two years without providing any
28 explanation or basis for that action. It wasn't until about one week before the scheduled

1 administrative hearing that the staff attorney for CalPERS, Henry Crowle, informed
2 Petitioners' attorney that the basis that would be asserted at the Administrative Hearing to
3 support the position of CalPERS staff was that, because these individuals were also reporting
4 as pensionable income pay in lieu of holidays, the Holiday Premium Pay should not be
5 included because holiday pay could only be reported in one form.

6 This new basis for justifying the exclusion was, for the first time, set forth in the
7 Amended Statement of Issues dated the day before the administrative hearing and first
8 presented to Petitioners' counsel the day of that hearing. (See Exh. 8, ¶ IV.) The original
9 Statement of Issues (Exh. 8A) recites in Paragraph III the basis for the determination by
10 CalPERS staff that Holiday Premium Pay was not "compensation earnable" as being that it
11 was regarded as overtime.

12 At no time prior to the administrative hearing did CalPERS ever challenge the amount
13 of the Holiday Premium Pay. Likewise, in the Closing Brief submitted by the staff attorney for
14 CalPERS after the conclusion of the administrative hearing, he acknowledged that the only
15 issue presented in these proceedings is whether the Holiday Premium Pay must be regarded as
16 "pensionable income" irrespective of whether it is paid at half-time or time-and-a-half.

17 As the Amended Statement of Issues specifies in paragraph IX, the propriety of the
18 amount of the Holiday Premium Pay was not even remotely related to the scope of appeal
19 which was expressly limited to whether the Holiday Premium Pay, irrespective of its amount,
20 must be regarded as "compensation earnable." In fact, the original Statement of Issues also
21 clearly specifies in Paragraph IX that "[t]his appeal is limited to the issue of whether
22 respondents are entitled to have Holidays Worked pay [*i.e.*, Holiday Premium Pay] be
23 reportable for purposes of final compensation."

24 Interestingly, the subject of the amount of the Holiday Premium Pay was mentioned by
25 the Administrative Law Judge when he was struggling to identify the scope of the issue for him
26 to decide in light of the repeated efforts by the CalPERS witness to "scratch and claw" to find
27 any possible way to justify excluding this income from the final compensation of the
28 Petitioners. In that context, the Court stated, at p. 121, line 4: "THE QUARREL IS

1 WHETHER OR NOT PAY ON TOP OF THAT [*i.e.*, regular base pay for working on a
2 scheduled work day that is a holiday] **WHETHER IT'S HALF OF THAT AMOUNT OR**
3 **ONE AND ONE-HALF TIMES OF THAT AMOUNT OR ANY AMOUNT ON TOP OF**
4 [regular base pay for working that day] THAT [additional pay is] COMPENSABLE.”

5 (Emphasis added.) What is most revealing is that the attorney for CalPERS acknowledged the
6 correctness of the Administrative Law Judge's analysis by saying (at line 8 of page 121)
7 “THAT IS THE GIST OF THIS, YES.”

8 Accordingly, it is abundantly clear that the scope of the appeal, no matter how far one
9 would try to stretch it, could not possibly encompass any issue as to the propriety of the
10 amount of the Holiday Premium Pay that was reported. The only issue is whether the reported
11 amount should be treated as “compensation earnable.” If CalPERS now feels that there is
12 some basis for challenging the amount reported with respect to one or more of the Petitioners,
13 that new action must be commenced **independent** of and separate from the pending
14 proceeding.

15 The named Petitioners, Eldo Evenson and Daniel Catalano, have had this cloud
16 hanging over their heads and have had their pensions improperly reduced for approximately
17 four years. To exacerbate this hardship on them and the rest of these innocent retirees by
18 remanding the matter for the taking of irrelevant additional evidence would appear clearly to
19 be contrary to the Board's fiduciary duties as set forth in Article 16, Section 17 of the
20 California Constitution.

21 Finally, the only apparent basis for the subject matter of the remand appears in the
22 Administrative Law Judge's gratuitous Finding of Fact 20 on page 7 of his Decision wherein
23 he references the testimony of the PERS staff person who testified at the hearing. That Finding
24 clearly had no relationship to the issue presented in the proceeding and, even more
25 importantly, did not influence the outcome of the Proposed Decision.

26 Further, our review of the testimony of that witness, Mr. Gutierrez, does not reveal any
27 such calculation referenced in that Finding of Fact (*i.e.* that he believed Mr. Evenson “had been
28 paid 262% of regular pay for holidays worked”). Any such calculation that may have been

1 made or implied by Mr. Gutierrez is without any foundational support. **More importantly, as**
2 **emphasized above, even if true, it is totally unrelated to the issue presented in these**
3 **appeals.**

4 **III. CONCLUSION**

5 For all of the reasons set forth above, Petitioners strongly urge the Board to exercise its
6 fiduciary responsibility and put an end to this four-year reduction of entitled pension benefits
7 by following the recommendation of CalPERS staff and rendering a new Decision adopting the
8 Proposed Decision of the Administrative Law Judge.

9 Respectfully submitted,

10 SILVER, HADDEN, SILVER, WEXLER & LEVINE

11
12 Date: May 31, 2013

13 By



14 _____
15 STEPHEN H. SILVER,
16 Attorneys for Petitioners
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PROOF OF SERVICE

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STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 1428 Second Street, P.O. Box 2161, Santa Monica, California 90407-2161.

On May 31, 2013, I served the document(s) described as **RESPONDENTS' PETITION FOR RECONSIDERATION** on the parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as set forth below:

Elizabeth Yelland
Senior Staff Counsel
CalPERS
PO Box 942707
Sacramento, CA 94229-2707
Fax: (916) 795-3659

[By Mail] I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice, on the same day that correspondence is placed for collection and mailing, it would be deposited with the U.S. Postal Service with postage thereon fully prepaid at Santa Monica, California, in the ordinary course of business. I am aware than on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[By Facsimile Transmission] I caused the above-referenced document to be transmitted to the named person(s) via facsimile transmission to the fax number(s) set forth above from a fax machine at (310) 395-5801

Executed on May 31, 2013, at Santa Monica, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

LISA L. HILL _____


SIGNATURE

SILVER, HADDEN, SILVER, WEXLER & LEVINE

A PROFESSIONAL LAW CORPORATION

STEPHEN H. SILVER
WILLIAM J. HADDEN
SUSAN SILVER
ROBERT M. WEXLER
RICHARD A. LEVINE
KEN YUWILER
ELIZABETH SILVER TOURGEMAN
HOWARD A. LIBERMAN
JACOB A. KALINSKI

1428 SECOND STREET
SANTA MONICA, CALIFORNIA 90401
MAILING ADDRESS
POST OFFICE BOX 2161
SANTA MONICA, CALIFORNIA 90407-2161
TELEPHONE (310) 393-1486
TELEPHONE (323) 870-0900
FACSIMILE (310) 395-5801

WORKERS' COMPENSATION
OF COUNSEL
STEVEN E. KAYE

DATE: May 31, 2013 Fax: (916) 795-3659
Tel: (916) 795-3675

TO: Peter Mixon, General Counsel
Elizabeth Yelland, Senior Staff Counsel
California Public Employees Retirement System

FROM: Stephen H. Silver

Re: In the Matter of the Calculation of Final Compensation of DANIEL
CATALANO, NORMAN (ELDO) E. EVENSON, and Similarly Situated
Non-Management Police Officers, Respondents, and CITY OF
HUNTINGTON BEACH, Respondent
Case No. 9239

NUMBER OF PAGES: 10 (including this cover sheet)

DOCUMENT TRANSMITTED:

1. Letter of May 31, 2013, and
2. Petition for Reconsideration

**SHOULD ANY PROBLEM OCCUR DURING TRANSMISSION,
PLEASE CALL LISA L. HILL, (310) 393-1486.**

CLIENT: HBPOA BILLING NO: 190-4

TRANSMITTED BY: Lisa L. Hill

Original will follow by U.S. Mail

Copy will follow by:

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P. 1
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May 31 2013 11:25am

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A PROFESSIONAL LAW CORPORATION

STEPHEN H. SILVER
WILLIAM J. HADDEN
SUSAN SILVER
ROBERT M. WEXLER
RICHARD A. LEVINE
KEN YUWILER
ELIZABETH SILVER TOURGEMAN
HOWARD A. LIBERMAN
JACOB A. KALINSKI

1428 SECOND STREET
SANTA MONICA, CALIFORNIA 90401
MAILING ADDRESS
POST OFFICE BOX 2161
SANTA MONICA, CALIFORNIA 90407-2161
TELEPHONE (310) 393-1486
TELEPHONE (823) 870-0900
FACSIMILE (310) 395-5801

WORKERS' COMPENSATION
OF COUNSEL
STEVEN E. KAYE

DATE: May 31, 2013 Fax: (916) 795-3659
Tel: (916) 795-3675

TO: Peter Mixon, General Counsel
Elizabeth Yelland, Senior Staff Counsel
California Public Employees Retirement System

FROM: Stephen H. Silver

Re: In the Matter of the Calculation of Final Compensation of DANIEL
CATALANO, NORMAN (ELDO) E. EVENSON, and Similarly Situated
Non-Management Police Officers, Respondents, and CITY OF
HUNTINGTON BEACH, Respondent
Case No. 9239

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SILVER, HADDEN, SILVER, WEXLER & LEVINE

A PROFESSIONAL LAW CORPORATION

STEPHEN H. SILVER
WILLIAM J. HADDEN
SUSAN SILVER
ROBERT M. WEXLER
RICHARD A. LEVINE
KEN YUWILER
ELIZABETH SILVER TOURGEMAN
HOWARD A. LIBERMAN
JACOB A. KALINSKI

1428 SECOND STREET
SANTA MONICA, CALIFORNIA 90401
MAILING ADDRESS
POST OFFICE BOX 2161
SANTA MONICA, CALIFORNIA 90407-2161
TELEPHONE (310) 393-1486
TELEPHONE (323) 870-0900
FACSIMILE (310) 395-5801

WORKERS' COMPENSATION
OF COUNSEL
STEVEN E. KAYE

June 7, 2013

Sent via Facsimile

(916) 795-3972

CalPERS
Board of Administration
Attn Cheree Swedensky, Assistant to the Board
P.O. Box 942701
Sacramento CA 94229

Re: *In the Matter of the Calculation of Final Compensation of Daniel Catalano, Norman (ELDO) E. Evenson, and Similarly Situated Non-Management Police Officers, Respondents, and CITY of Huntington Beach, Respondent.*
Transcript of November 15, 2011 Hearing and Exhibits Thereto
Case No. 9329; OAH NO. 2011061387

Dear Ms. Swedensky:

We are transmitting herein by fax the Reporter's Transcript of the Administrative Hearing conducted on November 15, 2011 together with exhibits thereto in the above matter. The transcript and exhibits are in support of Respondents' Daniel A. Catalano and Norman E. Evenson, et al. Petition for Reconsideration in this case dated May 31, 2013.

Sincerely,
SILVER, HADDEN, SILVER, WEXLER &
LEVINE



RICHARD A. LEVINE

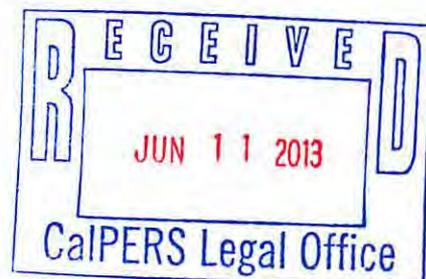
RAL:mrj

Enclosures

cc. Elizabeth Yelland (letter only)

Michele Carr (City of Huntington Beach (letter only))

01275-ltr



BEFORE THE
BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
STATE OF CALIFORNIA
JOSEPH DOUGLAS MONTOYA, ADMINISTRATIVE LAW JUDGE

IN THE MATTER OF THE CALCULATION OF)
FINAL COMPENSATION OF:)

RICHARD C. BRIGHT, ET AL.,)

RESPONDENTS.)

CASE NO.)
9329)
OAH NO.)
2011061387)

RECEIVED
DEC 29 2011
OFFICE OF ADMINISTRATIVE HEARING
LOS ANGELES

HEARING

TUESDAY, NOVEMBER 15, 2011

LOS ANGELES, CALIFORNIA

9:00 A.M.

TERESA RUSS
HEARING REPORTER

kna

Kelli Norden and Associates
Court Reporters
310.820.7755 phone 310.820.7955 fax
11726 San Vicente Boulevard Suite 205
Los Angeles, California 90049
kna@kellinorden.com www.kellinorden.com

HEARING

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BEFORE THE
BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
STATE OF CALIFORNIA
JOSEPH DOUGLAS MONTOYA, ADMINISTRATIVE LAW JUDGE

IN THE MATTER OF THE CALCULATION) CASE NO.
OF FINAL COMPENSATION OF:) 9329
) O.A.H. NO.
) 2011061387
RICHARD C. BRIGHT, DANIEL)
CATALANO AND NORMAN (ELDO) E.) AMENDED
EVENSON,) STATEMENT
) OF ISSUES
RESPONDENTS,)
)
AND)
)
CITY OF HUNTINGTON BEACH,)
)
RESPONDENT.)
_____)

TRANSCRIPT OF PROCEEDINGS, TAKEN AT
320 WEST FOURTH STREET, SIXTH FLOOR,
LOS ANGELES, CALIFORNIA, COMMENCING
AT 9:00 A.M., ON TUESDAY, NOVEMBER
15, 2011, HEARD BEFORE JOSEPH DOUGLAS
MONTOYA, ADMINISTRATIVE LAW JUDGE,
REPORTED BY TERESA RUSS, HEARING
REPORTER.

HEARING

1 APPEARANCES OF COUNSEL:

2

3 FOR THE DEPARTMENT:

4 CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

5 BY: HENRY W. CROWLE, ESQ.

6 LINCOLN PLAZA NORTH

7 400 Q STREET, ROOM N3340

8 SACRAMENTO, CALIFORNIA 94229-2707

9 916.795.0119

10 HENRY_CROWLE@CALPERS.CA.GOV

11

12 FOR THE RESPONDENTS:

13 SILVER, HADDEN, SILVER, WEXLER & LEVINE

14 BY: STEPHEN H. SILVER, ESQ.

15 1428 SECOND STREET, SUITE 200

16 SANTA MONICA, CALIFORNIA 90401

17 310.393.1486

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HEARING

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E X A M I N A T I O N S

WITNESS:	DX	CX	REDX	RECX
R. REINHART	29S	46C	58S	61C
A. GUTIERREZ	66C	95S	140C	

C = CROWLE
S = SILVER

HEARING

E X H I B I T S

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DEPARTMENT'S	MARKED FOR IDENTIFICATION	RECEIVED INEVIDENCE
1 - RETIREMENT APPLICATION	13	14
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3 - LETTER OF APPEAL	13	14
4 - RETIREMENT APPLICATION	13	14
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HEARING

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RESPONDENTS'	MARKED FOR IDENTIFICATION	RECEIVED IN EVIDENCE
AA - ORIGINAL STATEMENT OF ISSUES	15	15
A - LETTER FROM MS. MCGARTLAND	17	17
B - LETTER FROM C.A.L.P.E.R.S. LEGAL OFFICE	17	17
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HEARING

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LOS ANGELES, CALIFORNIA, TUESDAY

NOVEMBER 15, 2011

9:00 A.M.

THE COURT: ON THE RECORD IN THE MATTER THAT'S PENDING BEFORE THE BOARD OF ADMINISTRATION OF THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM AND SPECIFICALLY IN THE MATTER OF THE STATEMENT OF ISSUES AGAINST RICHARD C. BRIGHT, DANIEL CATALANO, AND NORMAN EVENSON, RESPONDENTS IN THE CITY OF HUNTINGTON BEACH.

THIS IS THE AGENCY'S CASE NUMBER 9329. IT'S THE OFFICE OF ADMINISTRATIVE HEARINGS CASE NUMBER 2011-06-1387.

I'M JOSEPH DOUGLAS MONTOYA, ADMINISTRATIVE LAW JUDGE, OFFICE OF ADMINISTRATIVE HEARINGS. I WAS ASSIGNED TO HEAR THIS CASE TODAY.

MAY I HAVE YOUR APPEARANCES, COUNSEL.

MR. SILVER: FOR THE RESPONDENTS, STEPHEN SILVER.

MR. CROWLE: AND FOR C.A.L.P.E.R.S., HENRY CROWLE, C-R-O-W-L-E.

THE COURT: OKAY.

MR. CROWLE: YOUR HONOR, IF I MIGHT --

THE COURT: YOU MIGHT.

MR. CROWLE: YOU REFERENCED THE STATEMENT OF

HEARING

1 ISSUES IN REGARDS TO THIS CASE. BY AGREEMENT, WE HAVE
2 AMENDED THAT BECAUSE OF A LIMITATION IN THE SCOPE OF TO
3 WHOM THIS IS GOING TO APPLY. IT HAS BEEN AGREED, AND IT
4 IS REFERENCED IN THE AMENDED STATEMENT OF ISSUES. THE
5 RESULTS OF THIS WILL ONLY BE APPLICABLE TO NONMANAGEMENT
6 LINE OFFICERS.

7 I'M SURE MR. SILVER MIGHT WANT TO EXPAND ON
8 THAT A LITTLE BIT, BUT THAT'S BASICALLY --

9 MR. SILVER: I CAN EXPAND --

10 THE COURT: HANG ON ONE SECOND. IS THAT THE
11 RIGHT NOMENCLATURE?

12 MR. SILVER: WELL, I CALL NONMANAGERS PEACE
13 OFFICERS WHO ARE COVERED BY THE APPLICABLE CONTRACTS,
14 BUT WHEN YOU'RE READY, I CAN EXPAND A LITTLE BIT.

15 THE COURT: IS THERE A DOCUMENT IN THIS
16 EXHIBIT BOOK FOR ME?

17 MR. CROWLE: YES, YOUR HONOR, AND THE AMENDED
18 STATEMENT OF ISSUES IS --

19 THE COURT: IT'S THE JURISDICTIONAL
20 DOCUMENT.

21 MR. CROWLE: -- IS EXHIBIT 8.

22 THE COURT: OKAY.

23 MR. SILVER: FOR THE RECORD, ALTHOUGH I READ
24 IT SORT OF SUPERFICIALLY, I DIDN'T SEE IT UNTIL THIS
25 MORNING, BUT IT LOOKS TO ME TO BE IN THAT RESPECT

HEARING

1 CONSISTENT WITH WHAT MR. CROWLE AND I DISCUSSED EARLIER
2 LAST WEEK.

3 THE COURT: OKAY. YOU'RE READY TO GO FORWARD
4 ON THE AMENDED STATEMENT OF ISSUES?

5 MR. SILVER: THAT'S CORRECT. BUT JUST SO YOU
6 UNDERSTAND, MR. BRIGHT IS A MANAGEMENT PEACE OFFICER, SO
7 HE IS NOT -- SEE HIS NAME OMITTED FROM THE AMENDED
8 STATEMENT OF ISSUES, AND WE HAVE AGREED THAT THE OUTCOME
9 OF THIS CASE WILL BE BINDING, NOT ONLY ON RETIREES
10 EVENSON, CATALANO, BUT ALL SIMILARLY SITUATED
11 NONMANAGEMENT PEACE OFFICERS, THE RANKS OF SERGEANT AND
12 BELOW IT, I GUESS IS THE MOST ACCURATE, OF THE
13 CITY OF HUNTINGTON BEACH.

14 THE COURT: SO YOU'VE TURNED THIS INTO SOME
15 SORT OF ADMINISTRATIVE CLASS ACTION?

16 MR. SILVER: SORT OF KIND OF, TO AVOID A
17 MULTIPLICITY OF APPEALS I'M SURE NOBODY WANTS.

18 THE COURT: IT'S GOOD WITH ME. DOES THAT
19 AFFECT WHAT MY ORDERS ARE GOING TO LOOK LIKE?

20 MR. SILVER: IT SHOULD NOT.

21 THE COURT: IT'S A SIDE AGREEMENT YOU FOLKS
22 HAVE?

23 MR. CROWLE: THAT'S CORRECT.

24 MR. SILVER: RIGHT.

25 MR. CROWLE: THESE TWO INDIVIDUALS ARE

1 EFFECTIVELY REPRESENTATIVES OF ALL SIMILARLY SITUATED

2 PEACE OFFICERS, AND IT WAS FELT TO BE THE MOST

3 EFFICIENTLY INSTEAD OF PARADING EACH ONE OF THE PEOPLE

4 THAT ARE THERE AND CREATE, YOU KNOW, A HEARING THAT

5 WOULD LAST EITHER SIX DAYS OR A BUNCH OF INDIVIDUAL

6 HEARINGS.

7 THIS WAS THE MOST EFFICIENT WAY TO HANDLE THE

8 SITUATION.

9 MR. SILVER: AS FAR, YOUR HONOR, I THINK, IF

10 YOU WOULD JUST ADDRESS YOUR ORDER TO RESPONDENTS, THAT'S

11 FINE.

12 THE COURT: YEAH. OKAY.

13 MR. CROWLE: AND AS A RESULT, YOUR HONOR,

14 WE'RE LOOKING AT PROBABLY JUST A HALF A DAY.

15 THE COURT: WELL, THAT WAS MY NEXT QUESTION,

16 BECAUSE IT SEEMS TO ME GOING THROUGH THIS STUFF, THAT

17 IT'S A LITTLE MORE OF A LEGAL DISPUTE THAN A FACTUAL

18 ONE. I ASSUME YOU ALL ARE GOING TO WANT TO PUT SOME

19 FACTS ON THE RECORD.

20 MR. CROWLE: RIGHT.

21 THE COURT: BUT IT'S TAKING ON THE FLAVOR OF

22 A DECLARATORY RELIEF CLASS ACTION IN "AMEND LAND."

23 MR. SILVER: UNFORTUNATELY, ANYHOW, WE HAVE

24 EXHAUSTED OUR ADMINISTRATIVE REALM.

25 THE COURT: I UNDERSTAND.

HEARING

1 MR. SILVER: THAT'S WHY WE'RE HERE.

2 THE COURT: THE WRINKLE IN ALL OF THIS IS
3 UNDER THE PROCEDURE ACT. THERE ARE TECHNICALLY A DEBT
4 RELIEF FORMAT AVAILABLE. YOU'VE DONE THE STANDARD DEAL
5 HERE, BUT I WILL COMMEND TO YOUR REVIEW AT SOME POINT.

6 THE PROCEDURE ACT, WHICH SOME OTHER VEHICLES
7 THAT YOU CAN USE TO RESOLVE DISPUTES INCLUDING
8 DECLARATORY RELIEF, EMERGENCY ACTIONS, INFORMAL ACTIONS
9 AS MUCH STUFF RECOGNIZING IN THE ACT, NOT THESE FORMAL
10 LITIGATION SECTIONS THAT WE'RE USED TO DEALING WITH THAT
11 STARTS AT 11500, SO BUT WHAT WE NEED TO DO NEXT?

12 GET SOME JURISDICTIONAL DOCUMENTS IN THE
13 RECORD, SO I CAN HEAR SOME OPENING STATEMENTS?

14 MR. SILVER: THAT'S FINE. I HAVE NO PROBLEM
15 WITH BOTH THE STATEMENT OF ISSUES AND THE AMENDED
16 STATEMENT OF ISSUES BEING RECEIVED.

17 THE COURT: ALL RIGHT. WHAT ELSE DO I -- IT
18 IS --

19 MR. CROWLE: THE OTHER IS FOUNDATIONAL,
20 LEADING UP TO THE FILING OF INITIAL STATEMENT OF ISSUES,
21 YOUR HONOR.

22 THE COURT: IT'S A PRACTICAL MATTER. IS
23 THERE GOING TO BE ANY DISPUTE ABOUT THE ADMISSIBILITY OF
24 THESE DOCUMENTS?

25 MR. SILVER: MAYBE WE SHOULD IDENTIFY THEM,

HEARING

1 BUT I DON'T THINK THERE WILL BE ANY DISPUTES. I HAVE
2 SOME ADDITIONAL ONES THAT ARE ALL, AGAIN, KIND OF
3 COMMUNICATIONS LEADING UP TO THIS HEARING.

4 THE COURT: I GOT A COUPLE OF BRIGHT GREEN
5 POST-ITS ON THE FIRST PAGE OF MY EXHIBIT 1. IS THAT
6 WHAT -- ARE YOU TRYING TO SEND ME NOTES OR WHAT?

7 MR. CROWLE: OOPS. DID I INADVERTENTLY GIVE
8 YOU MINE? I APOLOGIZE IF I DID.

9 THE COURT: YEAH, YOU MIGHT HAVE. I DIDN'T
10 WANT TO GET INTO YOUR WORK PRODUCT IF I GOT THE
11 WRONG VOLUME. IT SAYS ORIGINAL ON THIS.

12 MR. CROWLE: NO, ACTUALLY, THIS ONE MY
13 SECRETARY FORGOT TO TAKE THIS OFF BECAUSE WE -- THAT
14 APPLIED TO THE REDACTING OF SOCIAL SECURITY NUMBERS.
15 SORRY FOR THE INCONVENIENCE, JUDGE.

16 THE COURT: ALL RIGHT. IT'S NOT AN
17 CONVENIENCE TO ME. I JUST NEED TO SCRAPE IT OUT. ALL
18 RIGHT. SO HOW DO WE WANT TO START HERE, MR. CROWLE?
19 THE BALL IS IN YOUR COURT.

20 MR. CROWLE: WELL, AS, I THINK, MR. SILVER
21 AND I HAD DISCUSSED AT LEAST UP THROUGH THE
22 ADMINISTRATIVE ISSUES, ALL THE PRECEDING DOCUMENTS ARE
23 NOTHING OTHER THAN THE FOUNDATION LEADING UP TO THE --

24 THE COURT: THE FILING.

25 MR. CROWLE: EXACTLY.

HEARING

1 MR. SILVER: MAYBE WE SHOULD IDENTIFY THEM.

2 MR. CROWLE: SURE.

3 MR. SILVER: AND THEN I HAVE A COUPLE TO ADD
4 TO IT.

5 MR. CROWLE: ONE IS THE RETIREMENT
6 APPLICATION OF MR. EVENSON.

7 EXHIBIT 2 IS THE LETTER OF DETERMINATION
8 REGARDING HIS APPLICATION.

9 EXHIBIT 3 IS THE LETTER OF APPEAL REGARDING
10 MR. EVENSON FROM MR. SILVER.

11 EXHIBIT 4 IS THE RETIREMENT APPLICATION OF
12 MR. CATALANO.

13 EXHIBIT 5 IS C.A.L.P.E.R.S. DETERMINATION OF
14 THE APPLICATION.

15 EXHIBIT 6 IS THE LETTER OF APPEAL WITH
16 MR. CATALANO HIMSELF, DIRECTED TO C.A.L.P.E.R.S.,
17 IDENTIFYING MR. SILVER AS HIS REPRESENTATIVE.

18 7 IS THE REQUEST TO SET UP A HEARING.

19 AND EXHIBIT 8 IS THE AMENDED STATEMENT OF
20 ISSUES THAT HAS PREVIOUSLY BEEN DISCUSSED.

21 (DEPARTMENT'S EXHIBITS NUMBERS 1 - 8 WERE MARKED
22 FOR IDENTIFICATION.)

23 THE COURT: ANY OBJECTION TO MY RECEIVING
24 THOSE FIRST STATED EXHIBITS?

25 MR. SILVER: I HAVE NO OBJECTION. I HAVE A

HEARING

1 FEW MORE. JUST COMMUNICATIONS.

2 (DEPARTMENT'S EXHIBIT NUMBERS 1 - 8 WERE RECEIVED
3 IN EVIDENCE BY THE COURT.)

4 THE COURT: WELL, TELL YOU WHAT. WE MAY WANT
5 TO GET TO THOSE TECHNICALLY WHEN IT'S YOUR CASE.

6 MR. SILVER: THESE ARE ALL JURISDICTIONAL
7 ONES. THEY'RE NOT --

8 THE COURT: MR. CROWLE, ARE YOU AWARE OF
9 THESE DOCUMENTS?

10 MR. CROWLE: GENERALLY, YOUR HONOR, YES.

11 MR. SILVER: ALSO, I THINK, THE ORIGINAL
12 STATEMENT OF ISSUES CAN WE HAVE THAT MARKED AS
13 EXHIBIT 9.

14 THE COURT: HE'S GOT HIMSELF A 9 HERE ON THIS
15 LIST. WHY DON'T WE --

16 (DEPARTMENT'S EXHIBIT NUMBER 9 WAS MARKED FOR
17 IDENTIFICATION AND RECEIVED IN EVIDENCE BY
18 THE COURT.)

19 MR. SILVER: MAKE IT AA.

20 THE COURT: CALL THAT AA.

21 MR. SILVER: THAT'S FINE.

22 THE COURT: I'VE GOT MORE THAN ONE COPY HERE
23 IN MY FILE. MAYBE JUST CANNIBALIZING IT UNLESS YOU
24 FOLKS HAVE ONE YOU WANT ME TO TAKE.

25 MR. SILVER: NO, THAT'S FINE.

HEARING

1 THE COURT: ALL RIGHT. I THINK WE GOT ENOUGH
2 FOR EACH ONE OF THE INDIVIDUAL RESPONDENTS. ALL RIGHT.
3 I'LL JUST USE THIS ONE FROM THE O.A.H. FILE AND TREAT IT
4 AS AA.

5 MR. SILVER: I CAN GIVE YOU ANOTHER ONE.

6 THE COURT: THAT'S GOOD. NOW, MY FILE LOOKS
7 CLEANER. WE'LL SAVE PAPER.

8 (RESPONDENTS' EXHIBIT LETTER AA WAS MARKED
9 FOR IDENTIFICATION AND RECEIVED IN EVIDENCE
10 BY THE COURT.)

11 THE COURT: SO WE GOT 1 THROUGH AA ADMITTED.
12 AND YOUR DOCUMENT, SIR, DO YOU WANT ME TO
13 CONSIDER IT AS FOUNDATIONAL TO THE JURISDICTIONAL --

14 MR. SILVER: RIGHT. THE FIRST ONE IS THE
15 LETTER FROM A LORI MCGARTLAND, CHIEF EMPLOYER OF
16 SERVICES DIVISION C.A.L.P.E.R.S., DATED FEBRUARY 23RD,
17 2009, JUST RESPONDING TO -- I BELIEVE IT WAS EXHIBIT --
18 HOLD ON A MINUTE.

19 THE COURT: 3.

20 MR. SILVER: EXHIBIT 3.

21 MR. CROWLE: THIS IS ALREADY EXHIBIT 2.

22 MR. SILVER: NO, NO, THAT'S NOT EXHIBIT 2.
23 I'M TALKING ABOUT THIS LETTER. I GAVE YOU COPIES
24 BEFORE.

25 MR. CROWLE: EXCUSE ME. YOU DIDN'T MENTION

HEARING

1 THE DATE.

2 MR. SILVER: I'M SORRY. FEBRUARY 23RD.

3 THE COURT: FROM WHAT I CAN SEE FROM THE
4 FILE, YOU WROTE THE BOARD SAYING YOU SHOULD HAVE
5 RECONSIDERED ALL OF THIS, AND BY THE WAY, THIS IS MY
6 APPEAL; CORRECT?

7 MR. SILVER: CORRECT.

8 THE COURT: SO THEN SHE'S WRITING BACK TO
9 YOU, MS. MCGARTLAND IS?

10 MR. SILVER: CORRECT.

11 THE COURT: WHEN I LABEL THIS, THIS IS A.

12 MR. SILVER: NOW, THERE'S B. I HAVE ANOTHER
13 LETTER FROM THE C.A.L.P.E.R.S. LEGAL OFFICE.

14 AGAIN, THESE ARE JUST KIND OF GIVE YOU AN IDEA
15 OF HOW THIS THING PROCEEDED, AND I THINK THE MOST
16 IMPORTANT THINGS ABOUT THESE ARE THE DATES FROM THE
17 C.A.L.P.E.R.S. LEGAL OFFICE COMMITTEE, JUST STATING THAT
18 THEY'VE RECEIVED THIS --

19 THE COURT: LETTER --

20 MR. SILVER: -- AND THE APPEAL AND THAT
21 THEY'RE PROCESSING IT.

22 THE COURT: WE'LL BE BACK IN THE FULLNESS OF
23 TIME?

24 MR. SILVER: WE'LL SEE.

25 THEN I WROTE A LETTER TO THE C.A.L.P.E.R.S.

HEARING

1 LEGAL OFFICE. I REALLY ADDRESSED TO WHOM IT MAY CONCERN
2 BECAUSE I REALLY DIDN'T KNOW WHOM THE CASE WAS ASSIGNED,
3 DATED APRIL 20TH, 2009.

4 THE COURT: THAT'S BEFORE YOU KNEW THAT
5 MR. CROWLE HAD LUCKED OUT; RIGHT?

6 MR. SILVER: RIGHT. THEN I GOT A LAST ONE.
7 JUST A LETTER, DATED JULY 13, 2009, FROM THE
8 C.A.L.P.E.R.S. LEGAL OFFICE, TELLING ME THAT THE MATTER
9 HAS BEEN ASSIGNED TO MR. CROWLE. THAT'S IT.

10 THE COURT: GOT ANY OBJECTION CONSIDERING A
11 THROUGH D AS PART OF THE, IF YOU WILL, THE
12 JURISDICTIONAL RUN UP IN THIS CASE?

13 MR. CROWLE: NO, YOUR HONOR.

14 (RESPONDENTS' EXHIBIT LETTERS A - D WERE MARKED
15 FOR IDENTIFICATION AND RECEIVED IN EVIDENCE BY
16 THE COURT.)

17 MR. SILVER: AND THEN, YOUR HONOR, THE ONLY
18 OTHER THING, AND I THINK MIGHT BE HELPFUL TO YOU, IS I
19 HAVE A PRINTOUT OF THE C.A.L.P.E.R.S. REGULATIONS THAT
20 DEFINE WHAT SPECIAL COMPENSATION.

21 DO YOU HAVE A PROBLEM?

22 THE COURT: I'D TAKE NOTICE OF THAT. I'LL BE
23 A LITTLE EASIER SINCE IT'S A COMPUTER RESEARCH.

24 MR. CROWLE: IT'S ALSO IN THE STATEMENT OF
25 ISSUES.

HEARING

1 MR. SILVER: MANY OF THEM ARE, BUT NOT ALL OF
2 THEM.

3 THE COURT: ALL RIGHT. I'LL MARK THIS AS
4 E --

5 MR. SILVER: I'M TAKING HIM AS OF HIS WORD,
6 YOUR HONOR.

7 COURT REPORTER: YOUR HONOR, YOU'RE MARKING
8 THAT AS --

9 THE COURT: E AS IN EDWARD.

10 (RESPONDENTS' EXHIBIT LETTER E WAS MARKED
11 FOR IDENTIFICATION AND RECEIVED IN EVIDENCE
12 BY THE COURT.)

13 MR. SILVER: THAT'S ALL THE FOUNDATIONAL
14 DOCUMENTS.

15 THE COURT: HANG ON FOR A SECOND HERE.

16 ALL RIGHT. WELL, AT THE BREAK, YOU WANT
17 MR. CROWLE TO CAREFULLY REVIEW EXHIBIT E TO MAKE SURE HE
18 DIDN'T --

19 MR. SILVER: I WOULDN'T KNOW HOW, FOR THE
20 RECORD.

21 MR. CROWLE: I HAVE FOUND HIM TO BE A
22 RELATIVELY HONORABLE PERSON.

23 THE COURT: I UNDERSTAND. I ONCE FOUND
24 MYSELF AS A YOUNG LAWYER DEALING WITH A LIMITED
25 PARTNERSHIP DISPUTE WHERE THERE WAS MORE THAN ONE

HEARING

1 VERSION OF THE DISSOLUTION CLAUSE, DEPENDING ON WHO
2 SHOWED UP WITH A COPY OF THE PARTNERSHIP AGREEMENT.

3 I KNEW WHO DRAFTED THAT, AND IT WASN'T ANY OF
4 THE PARTIES, BUT SOMEBODY WITH A LICENSE, AND OVER THE
5 YEARS JUST -- THEY TAKE THE ACTION AND PRODUCE IN PRIOR
6 DEPOSITIONS. VERY INTERESTING.

7 WE'VE GOT A THROUGH E, AND WE GOT 1 THROUGH
8 AA. WHERE DO WE NEED TO GO NEXT, MR. CROWLE?

9 MR. CROWLE: I'M NOT SURE IF WE NEED TO GO
10 FURTHER FROM MY PERSPECTIVE, JUDGE.

11 I THINK MR. SILVER HAS THE BURDEN OF PROOF,
12 INFORMATIONAL, I MEAN, UNDER NO DISPUTE AS AN EXAMPLE OF
13 MEMORANDUM OF UNDERSTANDING AS APPLICABLE TO THESE
14 PROCEEDINGS IS EXHIBIT 9.

15 MR. SILVER: WELL, I'M GOING TO HAVE A
16 WITNESS IDENTIFY THAT A LITTLE MORE.

17 MR. CROWLE: THAT'S WHAT I FIGURED.

18 THE COURT: WORK THROUGH THAT A LITTLE MORE.

19 SO YOU PUT THIS IN AND YOU ARE GOING TO
20 ESSENTIALLY STAND ON THE POSITION AS LAID OUT IN THE
21 STATEMENT OF ISSUES ABOUT WHY P.E.R.S. CAN'T PAY ALL THIS
22 MONEY OUT TO THESE RESPONDENTS?

23 MR. CROWLE: AND THE TESTIMONY OF THE
24 C.A.L.P.E.R.S. ANALYST IS GOING TO BE TESTIFYING
25 REGARDING THE APPLICATION.

HEARING

1 THE COURT: ALL RIGHT. WELL, WE'LL PUT HIM
2 ON FIRST --

3 MR. CROWLE: NO, NO. I THINK THEY HAVE THE
4 BURDEN OF PROOF. HE'S GOING TO BASICALLY BE SPEAKING TO
5 THE PROCESS AND THEN THEIR APPLICATION WITH WHAT THEY
6 FEEL IS THE APPROPRIATE APPLICATION.

7 THE COURT: IS THIS PROCEDURE ACCEPTABLE TO
8 YOU?

9 MR. SILVER: THAT'S FINE, YOUR HONOR. I
10 DON'T THINK IT'S GOING TO MATTER WHO HAS THE BURDEN.
11 THE FACTS ARE ALL GOING TO COME OUT. I DID TAKE THE
12 DUTY, YOUR HONOR, OF PREPARING THE TRIAL BRIEFS, WHICH I
13 WOULD URGE YOU TO LOOK AT.

14 IT WILL, BASICALLY, TELL YOU WHAT THE
15 EVIDENCE -- WHAT I THINK THE EVIDENCE, OR WHAT I THINK
16 OR WHAT I HOPE THE EVIDENCE WILL SHOW, AND IT MIGHT BE
17 HELPFUL IF YOU JUST TOOK A QUICK GLANCE AT IT. IT MIGHT
18 MAKE MORE SENSE OF WHAT YOU'RE GOING TO HEAR.

19 THE COURT: I'M GOING TO MARK IT AS F. I'M
20 SURE YOU'RE HOPING IT DOESN'T MEAN IT'S A FAIL. ALL
21 RIGHT.

22 (RESPONDENTS' EXHIBIT LETTER F WAS MARKED
23 FOR IDENTIFICATION AND RECEIVED IN EVIDENCE
24 BY THE COURT.)

25 MR. CROWLE: ORDINARILY, YOUR HONOR, I WOULD

HEARING

1 HAVE SUBMITTED ONE AS WELL, BUT I FELT THIS REALLY WAS
2 GOING TO BE A LEGAL ANALYSIS BASED UPON WHAT WAS PRESENT
3 AND WOULD EFFECTIVELY, AND -- I TALKED TO MR. SILVER
4 ABOUT THIS, AND THIS REALLY IS GOING TO BE THE
5 APPROPRIATE SUBJECT OF BRIEFING AFTER WE COMPLETE.

6 THE COURT: WELL, IN THAT IT WILL PROBABLY BE
7 HELPFUL AS WELL, AND WE'LL TALK ABOUT THAT A LITTLE
8 LATER ON.

9 MR. SILVER, ARE YOU READY TO PROCEED ON YOUR
10 SIDE OF THE CASE TO INCLUDE WHY THIS PAY ALL CALL SHOULD
11 BE CREDITED TO YOU FOLKS?

12 MR. SILVER: SURE. IF YOU DON'T MIND, I'D
13 LIKE TO MAKE A VERY BRIEF OPENING STATEMENT.

14 THE COURT: ALL RIGHT.

15 MR. SILVER: OR IF YOU'D RATHER READ THE
16 TRIAL BRIEF.

17 THE COURT: NO, YOU TELL ME RIGHT NOW.

18 MR. SILVER: ALL RIGHT. I'LL TELL YOU RIGHT
19 NOW.

20 THE COURT: NOW READ.

21 MR. SILVER: AND I'LL TRY TO BE VERY BRIEF.

22 THE PENSIONS OF HUNTINGTON BEACH POLICE
23 OFFICERS' PENSIONS ARE CALCULATED PROBABLY IN THE SAME
24 WAY YOURS ARE. THERE'S A PERCENTAGE OF WHAT'S CALLED
25 THEIR FINAL COMPENSATION, WHICH IS THE CASE OF

HEARING

1 HUNTINGTON BEACH POLICE OFFICERS WHAT I CALL PENSIONABLE
2 INCOME THAT THEY EARNED DURING THE 12-MONTH PERIOD THEY
3 SELECTED.

4 THE PERCENTAGE THAT THEY GET LIKE -- I'M SURE
5 YOURS IS -- IT'S A FUNCTION OF THEIR AGE AND LENGTH OF
6 SERVICE AT RETIREMENT. THE ISSUE IN THIS CASE IS
7 WHETHER AN ITEM OF PAY CALLED HOLIDAY PREMIUM PAY OR
8 WHAT WE'VE BEEN CALLING HOLIDAY PREMIUM PAY QUALIFIES AS
9 PENSIONABLE INCOME.

10 JUST SO TO ELIMINATE ONE POTENTIAL ADHERENT
11 THE CITY OF HUNTINGTON BEACH AND THE EMPLOYEES REGARDED
12 THIS AS PENSIONABLE INCOME FOR MANY, MANY, YEARS, THE
13 EVIDENCE WILL SHOW, AND RETIREMENT CONTRIBUTIONS WERE
14 PAID ON THIS INCOME AT ALL TIMES.

15 I DON'T THINK THERE'S ANY DISPUTE AS TO THAT,
16 AND THE REASON I MENTION THAT IS TO SHOW THAT THIS IS
17 NOT A CASE OF UNDER FUNDING OR SPIKING SOMEBODY'S
18 PENSION. THIS IS SIMPLY A CASE OF WHETHER AN ITEM OF
19 PAY THAT HAS BEEN FUNDED OVER THE YEARS DOES IN FACT
20 QUALIFY.

21 C.A.L.P.E.R.S. ORIGINALLY DENIED THIS PAY IN
22 2009 IN THE LETTER TO MR. EVENSON, AND THE BASIS FOR THE
23 DENIAL WAS A PRODUCT OF THE FACT THAT THE CONTRACT, IN
24 WHICH THIS BENEFIT WAS OCCURRED OR BENEFIT WAS LOCATED,
25 DID NOT ACCURATELY DESCRIBE THE TRUE NATURE OF THE

HEARING

1 BENEFIT, AND, I THINK, THIS IS IMPORTANT.

2 THE CONTRACT, BASICALLY, SAID THAT, IF
3 SOMEBODY WORKS ON A RECOGNIZED HOLIDAY, THAT INDIVIDUAL
4 WILL RECEIVE OVERTIME COMPENSATION AT THE RATE OF TIME
5 AND A HALF, AND THERE'S NO DISPUTE FROM OUR SIDE THAT
6 TRUE OVERTIME IS NOT PENSIONABLE INCOME.

7 HOWEVER, AS THE EVIDENCE WILL SHOW, THE
8 DESCRIPTION WAS MISLEADING. FIRST OF ALL, THIS PAY WAS
9 ONLY PROVIDED TO PEOPLE WHO WERE SCHEDULED TO WORK ON A
10 HOLIDAY, SO THERE'S NO PAY FOR WORKING ANY UNSCHEDULED
11 HOURS.

12 IF YOU LOOK AT THE AMENDED STATEMENT OF
13 ISSUES, THERE'S A DEFINITION OF OVERTIME ON PAGE 4,
14 WHICH, BASICALLY, SAYS THAT IT'S TIME THAT IS OUTSIDE OF
15 THE REGULARLY SCHEDULED HOURS.

16 THIS IS NOT PAID FOR TIME THAT IS OUTSIDE THE
17 REGULAR SCHEDULED HOURS. WHEN I FILED THE APPEAL, I
18 EXPLAINED TO C.A.L.P.E.R.S., AS YOU'LL SEE IN EXHIBIT 3,
19 THAT THE TRUE NATURE OF THIS BENEFIT THAT IT WAS REALLY
20 LIKE -- IT REALLY FALLS WITHIN TWO CATEGORIES EITHER OF
21 TWO CATEGORIES THAT ARE TREATED BY C.A.L.P.E.R.S.'S
22 PENSIONABLE INCOME.

23 IT WOULD QUALIFY AS IN OUR OPINION QUALIFIES
24 SHIFT DIFFERENTIAL, WHICH C.A.L.P.E.R.S. RECOGNIZES,
25 AND, ACTUALLY, IF YOU LOOK AT THE AMENDED STATEMENT OF

HEARING

1 ISSUES THAT'S DEFINED RIGHT AT THE BOTTOM OF PAGE 6 AS
2 COMPENSATION TO EMPLOYEES WERE ROUTINELY AND
3 CONSISTENTLY SCHEDULED TO WORK OTHER THAN A DAYTIME
4 SHIFT, AND IT'S CERTAINLY OUR POSITION THAT PEOPLE WHO
5 WORK A STANDARD DAYTIME SHIFT DON'T WORK ON HOLIDAYS.

6 SO THIS IS PAID FOR PEOPLE WHO ARE ROUTINELY
7 AND CONSISTENTLY SCHEDULED TO WORK OTHER THAN THAT
8 STANDARD DAYTIME SHIFT.

9 THIS ALSO QUALIFIES OR SATISFIES THE
10 DEFINITION OF HOLIDAY PAY, WHICH APPEARS AT THE TOP OF
11 PAGE 7 OF THE AMENDED STATEMENT OF ISSUES, AND THAT'S
12 DEFINED AS ADDITIONAL COMPENSATION FOR EMPLOYEES WHO ARE
13 NORMALLY REQUIRED TO WORK ON AN APPROVED HOLIDAY BECAUSE
14 THEY WORK IN POSITIONS THAT REQUIRE SCHEDULED STAFFING
15 WITHOUT REGARD TO HOLIDAYS, WHICH IS WHAT POLICE OFFICERS
16 DO.

17 AND THEN IT SAYS IF THESE EMPLOYEES ARE PAID
18 OVER AND ABOVE THEIR NORMAL MONTHLY RATE OF PAY FOR
19 APPROVED HOLIDAYS, THE ADDITIONAL COMPENSATION IS
20 HOLIDAY PAY AND REPORTABLE TO P.E.R.S.

21 THE EVIDENCE WILL SHOW THAT IN ADDITION TO
22 THIS HOLIDAY PAY, THE NONMANAGER PEACE OFFICERS OF
23 HUNTINGTON BEACH ALSO RECEIVED ANOTHER FORM OF PAY THAT
24 HAS BEEN RECORDED AS HOLIDAY PAY AND IS LEGITIMATELY
25 HOLIDAY PAY.

HEARING

1 BASICALLY, WHAT THEY RECEIVED WAS EFFECTIVELY
2 80 HOURS WORTH OF PAY EACH YEAR IN LIEU OF HOLIDAYS.
3 C.A.L.P.E.R.S., IN ITS ORIGINAL STATEMENT OF ISSUES,
4 APPEARED TO BE TAKING THE POSITION THAT THE REASON THIS
5 PAY WASN'T PENSIONABLE IS THAT IT WAS OVERTIME.

6 NOW, IN THE AMENDED STATEMENT OF ISSUES,
7 THEY'RE TAKING THE POSITION THAT IT'S NOT PENSIONABLE
8 BECAUSE "WE ALREADY GET HOLIDAY PAY," THE 80 HOURS WHICH
9 HAS BEEN REPORTED, AND C.A.L.P.E.R.S. IS NOT DISPUTING
10 AS HOLIDAY PAY.

11 IN RESPONSE TO THAT, OUR POSITION IS SIMPLE.
12 THERE'S NOTHING AT ALL IN THE PUBLIC
13 EMPLOYEES' RETIREMENT LAW OR ANY OF THE REGULATIONS
14 ADOPTED BY P.E.R.S. THAT SAYS YOU CAN'T GET HOLIDAY PAY
15 IN TWO FORMS.

16 SO AGAIN, TO SUMMARIZE OUR POSITION, IS THAT
17 THE PAY IN QUESTION, WHICH IS EXTRA PAY FOR PEOPLE WHO
18 ARE SCHEDULED TO WORK ON A HOLIDAY FOR THE INCONVENIENCE
19 OF HAVING TO WORK ON THANKSGIVING WHEN EVERYBODY ELSE IS
20 HOME WITH THEIR FAMILIES, THAT THAT IS EITHER SHIFT
21 DIFFERENTIAL AND/OR HOLIDAY PAY, AND I THINK THE EVIDENCE
22 WILL SUPPORT THAT.

23 SO WITH THAT, I'D LIKE TO CALL MY ONE AND
24 ONLY WITNESS, LIEUTENANT RUSSELL REINHART.

25 THE COURT: ALL RIGHT.

HEARING

1 MR. CROWLE: CAN I MAKE AN OPENING STATEMENT,
2 YOUR HONOR?

3 THE COURT: WOULD YOU LIKE TO AT THIS TIME?

4 MR. CROWLE: YES, I WOULD.

5 THE COURT: OKAY.

6 MR. CROWLE: WHAT WE HAVE HERE IS, I THINK,
7 IS ACTUALLY, FAIRLY AND SIMPLY, AS MR. SILVER ALLUDED
8 TO, IN THE FORMULA PAY, HOLIDAYS ARE ALREADY FACTORED
9 IN, AND SO WHAT IS HAPPENING HERE IS A COMPOUNDING OF
10 HOLIDAY PAY BY VIRTUE IF YOU GET TO WORK IT, WELL, THEN
11 YOU'RE -- YOU GET PAID AN ADDITIONAL TIME AND A HALF ON
12 TOP OF IT, AND YOU'RE ALREADY RECEIVING PAY FOR HOLIDAY
13 PAY.

14 AND SO THERE'S NOTHING IN THE P.E.R.L. THAT
15 I'M AWARE OF THAT SAYS YOU GET TO BE PAID TWICE FOR THE
16 SAME WORK AND HAVE IT BE ALLOWED FOR PURPOSES OF YOUR
17 PENSION.

18 AND SO WHAT WE HAVE HERE IS A COMPOUNDING OF
19 SOMETHING THAT THEY ARE ALREADY ENTITLED TO BY VIRTUE OF
20 THE ORIGINAL EQUATION FOR PURPOSES OF THEIR PAY. AND
21 LET'S FACE IT, THE PEACE OFFICERS ARE NOT FIVE DAYS A
22 WEEK, MONDAY THROUGH FRIDAY.

23 IT'S A DIFFERENT SITUATION, WHICH IS WHY THEY
24 HAVE THE HOLIDAY PAY INCLUDED IN THEIR TOTAL SALARY
25 BECAUSE IT IS ANTICIPATED THAT THEY'RE GOING TO BE

HEARING

1 WORKING ON A HOLIDAY FROM TIME TO TIME BECAUSE OF THE
2 REQUIREMENT THAT PEACE OFFICERS BE WORKING, AND IT'S
3 NECESSARY.

4 AND SO THE OVERTIME REFERENCE, I THINK, WAS
5 BASICALLY INJECTED BY VIRTUE BY THE WAY IT WAS
6 CLASSIFIED IN THE MEMORANDUM OF UNDERSTANDING WHERE THEY
7 GET COMPENSATED AT THE OVERTIME RATE FOR WORKING ON A
8 HOLIDAY, BUT THERE IS NOTHING -- AND MR. SILVER ALLUDED
9 TO TWO THINGS: INCONVENIENCE AND SHIFT DIFFERENTIAL.

10 WELL, FIRST OF ALL, THIS IS DEFINITELY NOT A
11 SHIFT DIFFERENTIAL SITUATION BECAUSE HOLIDAYS ARE NOT
12 REGULAR. THERE'RE SPORADIC. AND THE IDEA OF SHIFT
13 DIFFERENTIAL, LIKE NIGHTTIME DIFFERENTIAL, GRAVEYARD,
14 THOSE TYPES OF THINGS THAT WHERE YOUR OFFICER WORKS ON A
15 REGULAR BASIS.

16 THIS, HOLIDAYS, ARE NOT REGULAR. THEY VARY.

17 THE COURT: BUT IF ONCE OR TWICE A MONTH,
18 BECAUSE OF THE ABSENCE OF OTHER OFFICERS OR ONE OF THESE
19 FOLKS IN THE LINE ARE TOLD, "HEY, LOOK, YOU'RE GOING TO
20 HAVE TO PULL A GRAVEYARD SHIFT NEXT WEEK," YOU MEAN THEY
21 CAN'T GET SHIFT DIFFERENTIAL FOR THAT BECAUSE THEY
22 USUALLY DON'T WORK GRAVEYARDS?

23 OR WHAT IF ONCE A WEEK, YOU KNOW, YOU GET THAT
24 SPLIT SHIFT OR SOME OTHER DEAL LIKE THAT? HOW REGULAR
25 DOES IT HAVE TO BE AND HOW DO WE DEFINE THAT?

HEARING

1 MR. CROWLE: GOOD QUESTION. I DON'T KNOW HOW
2 TO ANSWER THAT RIGHT NOW.

3 THE COURT: AREN'T I LUCKY? I GUESS I WILL
4 HAVE TO FIGURE IT OUT FOR YOU ALL.

5 MR. CROWLE: BUT THE DISTINCTION BETWEEN WHAT
6 AND YOUR HONOR RAISED IS THAT HOLIDAY PAY IS ALREADY
7 FACTORED INTO EVERYONE'S REGULAR SALARY EVERY MONTH, AND
8 THE RECORDS WILL SHOW THAT HOLIDAY PAY IS ACCOUNTED FOR
9 ALL THE TIME, WHEREAS IF YOU HAPPEN TO WORK ON A HOLIDAY.

10 I MEAN, WE'RE NOT DENYING THE FACT IF THEY
11 WANT TO BE THAT GENEROUS TO PAY TIME AND A HALF FOR
12 WORKING A HOLIDAY, THAT'S GREAT, BUT THEY'RE ALREADY --
13 THE HOLIDAY IS ALREADY CONSIDERED IN THEIR BASE PAY.

14 SO HOW IS IT THAT YOU CAN THEN WORK IT AND
15 THEN HAVE THAT BE COMPENSABLE FOR PURPOSES OF PENSION
16 PAY? THAT'S A QUANTUM LEAP.

17 THE COURT: ALL RIGHT. WELL, I WISH I WOULD
18 HAVE GOTTEN ONE OF THOSE MEDICAL BOARD CASES OR SOME
19 MALPRACTICE.

20 ALL RIGHT. THEN WHO'S YOUR WITNESS,
21 MR. SILVER?

22 MR. SILVER: LIEUTENANT RUSSELL REINHART.

23 ///

24 ///

25 ///

HEARING

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RUSSELL REINHART,
CALLED AS A WITNESS AND SWORN IN BY
THE COURT, WAS EXAMINED AND
TESTIFIED AS FOLLOWS:

THE COURT: COME ON UP HERE, SIR. WILL YOU
RAISE YOUR RIGHT HAND, PLEASE.

YOU SOLEMNLY SWEAR THAT THE TESTIMONY YOU
GIVE HERE TODAY WILL BE THE TRUTH, THE WHOLE TRUTH, AND
NOTHING BUT THE TRUTH?

THE WITNESS: YES, I DO.

THE COURT: ALL RIGHT. PLEASE SPELL YOUR
NAME FOR THE RECORD.

THE WITNESS: RUSSELL REINHART,
R-E-I-N-H-A-R-T.

THE COURT: COUNSEL.

DIRECT EXAMINATION

BY MR. SILVER:

Q. LIEUTENANT REINHART, BY WHOM ARE YOU
CURRENTLY EMPLOYED?

A. THE CITY OF HUNTINGTON BEACH.

Q. AND WHAT IS YOUR CURRENT RANK?

A. I'M A LIEUTENANT.

Q. AND DO YOU HAVE A TITLE THAT GOES ALONG WITH

HEARING

1 THAT?

2 A. MY TITLE IS I'M A CHIEF EXECUTIVE OFFICER.

3 Q. AND HOW LONG HAVE YOU BEEN A LIEUTENANT WITH
4 THE CITY OF HUNTINGTON BEACH?

5 A. A LITTLE OVER THREE YEARS.

6 Q. AND WHAT OTHER RANKS DID YOU HOLD BEFORE YOU
7 BECAME A LIEUTENANT?

8 A. I WAS A POLICE SERGEANT FOR THREE YEARS PRIOR
9 TO THAT AND A POLICE OFFICER FOR 15 YEARS PRIOR TO
10 THAT.

11 Q. AND IN YOUR CURRENT POSITION, ARE YOU
12 CONSIDERED PART OF THE MANAGEMENT TEAM OF THE POLICE
13 DEPARTMENT?

14 A. YES, I AM.

15 Q. AS SUCH ARE YOU FAMILIAR WITH THE OPERATIONS
16 OF THE POLICE DEPARTMENT ON A DAY TO DAY BASIS?

17 A. YES, I AM.

18 Q. AND IN PARTICULAR, ARE YOU FAMILIAR WITH THE
19 STAFFING AND SCHEDULING OF LAW ENFORCEMENT OFFICERS IN
20 THE POLICE DEPARTMENT?

21 A. YES, I AM.

22 Q. NOW, IS IT NECESSARY IN THE POLICE DEPARTMENT
23 FOR RANK AND FILE OFFICERS, SOME RANK AND FILE OFFICERS,
24 TO BE ON DUTY 24 HOURS A DAY, SEVEN DAYS A WEEK, 365
25 DAYS A YEAR?

HEARING

1 A. YES. THAT'S A REQUIREMENT FOR PUBLIC
2 SAFETY.

3 Q. AND AS A RESULT, I ASSUME THAT ON RECOGNIZED
4 HOLIDAYS, SOME POLICE OFFICERS HAVE TO BE AT WORK; IS
5 THAT CORRECT?

6 A. CORRECT.

7 Q. AND, WELL, LET ME ASK YOU THIS: OF ALL OF
8 THE NONMANAGEMENT PEACE OFFICERS, LET'S SAY THE RANKS OF
9 SERGEANTS AND BELOW, ARE THEY ALL -- DO ANY OF THEM GET
10 A DAY OFF ON A HOLIDAY, OR ARE THEY ALL REQUIRED TO WORK
11 ON HOLIDAYS?

12 A. THE RANK OF SERGEANT AND BELOW, NOBODY GETS A
13 PAID HOLIDAY OFF.

14 Q. SO THEY ALL HAVE TO WORK IF THEIR REGULARLY
15 SCHEDULED DAY OFF FALLS ON A HOLIDAY?

16 A. CORRECT.

17 Q. AND IT WOULD BE FAIR ALSO TO SAY THAT SOME
18 INDIVIDUALS ARE CALLED IN TO WORK OVERTIME ON A HOLIDAY
19 AS WELL?

20 A. CORRECT.

21 Q. BEFORE YOU WERE PROMOTED TO THE RANK OF
22 LIEUTENANT, WERE YOU ON THE BOARD OF DIRECTORS OF THE
23 HUNTINGTON BEACH POLICE OFFICERS ASSOCIATION?

24 A. ACTUALLY, IT WAS BEFORE I CAME UNDER THE RANK
25 OF SERGEANT.

HEARING

1 Q. AND DURING WHAT TIME PERIOD WERE YOU ON THE
2 ASSOCIATION'S BOARD OF DIRECTORS?

3 A. FROM 1998 THROUGH MARCH OF 2005 WHEN I WAS
4 PROMOTED SERGEANT.

5 Q. AND DID YOU HOLD OFFICE IN THAT
6 ORGANIZATION?

7 A. YES, I DID.

8 Q. AND WHAT OFFICES DID YOU HOLD?

9 A. WHEN I WAS FIRST SELECTED, I WAS THE
10 TREASURER FOR ABOUT SIX MONTHS, AND THEN I BECAME THE
11 PRESIDENT, AND I REMAINED THE PRESIDENT OF THE
12 ASSOCIATION UNTIL I RESIGNED AND WAS PROMOTED SERGEANT.

13 Q. AND IN YOUR CAPACITY AS AN OFFICER AND
14 DIRECTOR OF THE POLICE OFFICERS ASSOCIATION, DO YOU
15 PERSONALLY ENGAGE IN SELECTIVE BARGAINING WITH THE CITY
16 OF HUNTINGTON BEACH?

17 A. YES, I DO.

18 Q. AND DURING WHAT TIME PERIODS DO YOU
19 PARTICIPATE IN THIS PROCESS?

20 A. DURING THE ENTIRE PROCESS I WAS ON THE BOARD
21 AND FOR A SHORT PERIOD I WAS OFF THE BOARD.

22 Q. NOW, I'M GOING TO SHOW YOU A DOCUMENT THAT
23 ACTUALLY IS NOT ONE OF THE EXHIBITS.

24 THE COURT: FROM THE BINDER?

25 MR. SILVER: NO. IT'S NOT IN THE BINDER.

HEARING

1 I'VE GIVEN MR. CROWLE A COPY, AND I'D LIKE TO OFFER THIS
2 AS OUR NEXT -- I GUESS IT WOULD BE EXHIBIT F.

3 THE COURT: NO, THAT'S YOUR BRIEF.

4 MR. SILVER: G. YOU'RE RIGHT.

5 (RESPONDENTS' EXHIBIT LETTER G WAS MARKED FOR
6 IDENTIFICATION.)

7 BY MR. SILVER:

8 Q. THIS IS A -- ACTUALLY, IT'S RESOLUTION
9 2005-11, WHICH APPROVES A MEMORANDUM OF UNDERSTANDING
10 BETWEEN THE HUNTINGTON BEACH POLICE OFFICERS ASSOCIATION
11 AND THE CITY OF HUNTINGTON BEACH, COVERING THE PERIOD
12 BETWEEN OCTOBER 1ST, 2003, AND MARCH 31ST, 2006.

13 MR. CROWLE: OBJECT ON THE GROUNDS OF
14 RELEVANCE. THERE'S A MEMO USED WHICH IS APPLICABLE TO
15 THE SITUATION IN QUESTION THAT PRECEDES THAT.

16 MR. SILVER: I THINK THAT THIS WILL EXPLAIN
17 THE NEXT LETTER. IT JUST REALLY -- JUST PROVIDES SOME
18 INFORMATION. IT'S NOT -- AS YOU'LL SEE, THERE'S NOTHING
19 IN THERE THAT WILL -- IT IS IDENTICAL TO THE 2006 M.O.U.,
20 THAT I JUST WANTED TO SHOW THE ORIGIN OF THE 2006 M.O.U.

21 THE COURT: I'LL RECEIVE IT.

22 HERE YOU GO, SIR. IT'S G.

23 (RESPONDENTS' EXHIBIT LETTER G WAS RECEIVED IN
24 EVIDENCE BY THE COURT.)

25 ///

HEARING

1 BY MR. SILVER:

2 Q. NOW, LIEUTENANT REINHART --

3 MR. SILVER: I HAVE AN EXTRA COPY FOR THE
4 WITNESS.

5 THE COURT: ALL RIGHT.

6 BY MR. SILVER:

7 Q. I'M GOING TO SHOW YOU A COPY OF THAT
8 EXHIBIT G AND ASK YOU IF YOU CAN IDENTIFY IN THAT
9 CONTRACT ANY PROVISION THAT RELATES TO HOW OFFICERS OR
10 PROVISION OR PROVISIONS WOULD RELATE TO HOW PEACE
11 OFFICERS GET COMPENSATED IF THEY ARE SCHEDULED TO WORK
12 ON A HOLIDAY.

13 A. YES. ON PAGE 8, IT SHOULD BE ARTICLE 7,
14 SUBSECTION H, H AS IN HOTEL, TALKS ABOUT HOLIDAY PAY
15 COMPENSATION.

16 Q. OKAY. AND IS THAT HOLIDAY PAY PROVIDED TO
17 ALL NONMANAGEMENT PEACE OFFICERS IRRESPECTIVE OF WHETHER
18 OR NOT THEY ACTUALLY WORK ON A HOLIDAY?

19 A. ONE IS, SECTION 1 IS, AND SECTION 2 IS NOT.

20 Q. AND IN SECTION 1, CAN YOU JUST DESCRIBE WHAT
21 THAT REPRESENTS.

22 A. SECTION 1 IS HOLIDAY PAY THAT ACCOUNTS FOR
23 THE FACT THAT THEY'RE EMPLOYEES THAT ARE REPRESENTED BY
24 THIS BARGAINING GROUP DO NOT GET HOLIDAYS OFF, AND ITS
25 PAY IN LIEU OF THERE'S TEN RECOGNIZED HOLIDAYS THEY'RE

HEARING

1 COMPENSATED AT EIGHT HOURS PER DAY FOR 80 HOURS DIVIDED
2 BY THE 26 PAY PERIOD OVER THE YEAR.

3 Q. AND JUST OUT OF CURIOSITY, DO THE RANK AND
4 FILE, THE NONMANAGEMENT PEACE OFFICERS, WORK EIGHT-HOUR
5 DAYS?

6 A. NO. NONE OF THEM WORK EIGHT-HOUR DAYS.

7 Q. WHAT SHIFTS OR WHAT HOUR SHIFTS DO THEY
8 WORK?

9 A. THERE'S TWO VARIATIONS. ONE WILL BE -- IT'S
10 CALLED THE FOUR-TEN SCHEDULE WHERE THEY WORK
11 FOUR-TEN-HOUR SHIFTS PER WEEK.

12 THE OTHER ONE IS BROKEN DOWN INTO AN 80-HOUR
13 PAY PERIOD OF TWO WEEKS, AND THEY WORK 11-HOURS-25-MINUTE
14 DAYS, THREE DAYS ONE WEEK, FOUR DAYS THE NEXT. THAT
15 TOTALS UP TO 80 HOURS IN THE TWO-WEEK PAY PERIOD.

16 Q. WHICH AVERAGES 40 HOURS A WEEK; CORRECT?

17 A. AVERAGES 40 HOURS A WEEK.

18 Q. SO WOULD IT BE FAIR TO SAY THAT THE 80 HOURS
19 OF HOLIDAY PAY REALLY DOESN'T REPRESENT FOR THESE
20 OFFICERS WHAT IS THE TRUE BENEFIT OR TRUE VALUE OF A
21 HOLIDAY?

22 MR. CROWLE: OBJECTION. THAT CALLS FOR
23 SPECULATION.

24 MR. SILVER: I DON'T BELIEVE HE CANNOT ANSWER
25 THAT.

HEARING

1 MR. CROWLE: WELL, SIMPLE ARITHMETIC.

2 THE COURT: I DON'T WANT TO SPECULATE ON
3 THIS. SAY THE QUESTION AGAIN.

4 MR. SILVER: CAN YOU READ IT BACK, PLEASE.

5 (THE RECORD WAS READ AS FOLLOWS:

6 Q. SO WOULD IT BE FAIR TO SAY THAT
7 THE 80 HOURS OF HOLIDAY PAY REALLY
8 DOESN'T REPRESENT FOR THESE OFFICERS
9 WHAT IS THE TRUE BENEFIT OR TRUE VALUE
10 OF A HOLIDAY?)

11 MR. CROWLE: WELL, AS THEY SAY, BEAUTY IS IN
12 THE EYES OF THE BEHOLDER, JUDGE, AND WHAT IS GOOD FOR
13 THE GOOSE IS NOT NECESSARILY GOOD FOR THE GANDER, SO
14 IT'S A RELEVANT SITUATION AS TO WHO THINKS IT'S
15 BENEFICIAL OR NOT.

16 AND SO I DON'T THINK HE CAN SPEAK FOR
17 EVERYBODY'S INTERPRETATION OF THAT. THAT'S WHY IT'S
18 SPECULATION.

19 THE COURT: YEAH, I TEND TO AGREE.

20 MR. SILVER: I'M GOING TO REPHRASE THE
21 QUESTION.

22 BY MR. SILVER:

23 Q. WOULD IT BE FAIR TO SAY THAT FOR THE
24 INDIVIDUALS YOU'VE DESCRIBED -- LET'S SAY SOMEBODY WHO
25 IS WORKING THE FOUR-TEN SCHEDULE -- IF THAT PERSON WERE

HEARING

1 TO RECEIVE TEN HOLIDAYS WITH PAY, HOW MANY HOURS WOULD
2 THAT PERSON BE GETTING?

3 A. I'M SORRY.

4 Q. IF AN INDIVIDUAL WHO WORKS A TEN-HOUR DAY
5 RECEIVES TEN HOLIDAYS, HOW MANY HOURS PER YEAR WOULD
6 THAT INDIVIDUAL BE GETTING FOR HOLIDAYS?

7 A. HE SHOULD BE GETTING 100 HOURS.

8 Q. UNDER THIS PROVISION YOU'VE JUST MENTIONED,
9 THAT ONLY PROVIDES SOME 80 HOURS A DAY; IS THAT CORRECT?

10 A. CORRECT.

11 Q. NOW, LET'S GO TO SUBDIVISION 2, WHICH IS THE
12 ITEM THAT'S AT ISSUE IN THIS CASE. CAN YOU EXPLAIN WHAT
13 THAT IS SUPPOSED TO REPRESENT THAT DAY.

14 A. WHEN IT WAS NEGOTIATED AND I WAS INVOLVED IN
15 THE NEGOTIATIONS OF THIS, THE DISCUSSION WAS THAT THE 80
16 HOURS DID NOT COMPENSATE FOR THE AMOUNT OF HOLIDAYS
17 WHICH REPRESENTED MEMBERS WHO HAD A POTENTIAL OF
18 WORKING.

19 THE DISCUSSION WAS TO CREATE A HOLIDAY PAY TO
20 COMPENSATE THOSE WHO WERE SCHEDULED TO WORK PART OF THE
21 NORMAL SHIFT ON A HOLIDAY AND PAY THEM AT A 50 PERCENT
22 PREMIUM RATE.

23 Q. SO WHEN IT TALKS ABOUT IN THAT SECTION ABOUT
24 GETTING THE OVERTIME RATE, THAT PAY ISN'T OVERTIME, IS
25 IT?

HEARING

1 A. NO, IT IS NOT OVERTIME.

2 Q. AND WOULD IT BE FAIR TO SAY THAT THE STRAIGHT
3 TIME PORTION OF IT IS JUST IRREGULAR PAY?

4 A. CORRECT.

5 Q. AND THEN THE HALF-TIME PORTION, WHAT DOES
6 THAT REPRESENT?

7 A. THAT'S PREMIUM PAID TO COMPENSATE FOR THEIR
8 WORKING ON THE HOLIDAY.

9 Q. DIRECTING YOUR ATTENTION TO -- I DON'T KNOW
10 IF YOU HAVE AN EXTRA COPY. I'LL SHOW YOU MINE. YEAH,
11 YOU HAVE AN EXTRA COPY. EXHIBIT -- HOLD ON. LET ME GET
12 THE RIGHT NUMBER. THIS WILL BE THE EXHIBIT 9.

13 MR. SILVER: IS IT OKAY IF I JUST SHOW HIM
14 THAT?

15 THE COURT: IS IT IN THE BOOK ALREADY?

16 MR. SILVER: IT'S IN THE BOOK. I DIDN'T
17 REALIZE HE HAD THE BOOK.

18 BY MR. SILVER:

19 Q. GO TO EXHIBIT 9. BEFORE WE GET THERE, LET ME
20 BACK UP AND TALK ABOUT EXHIBIT G.

21 WAS THERE ANY CHANGE WITH REGARD TO THAT
22 PARTICULAR PROVISION EITHER IN TERMS OF ITS CONTENTS OR
23 ITS LOCATION WHEN YOU NEGOTIATED THAT PARTICULAR
24 AGREEMENT?

25 A. DURING THE NEGOTIATIONS OF THIS, WHICH IS

HEARING

1 CALLED EXHIBIT G, DURING THE NEGOTIATION PROCESS, THERE
2 WAS DISCUSSIONS OF CLEARLY IDENTIFYING ALL COMPENSATIONS
3 THAT WERE CONSIDERED.

4 THE TERM WE USE IS P.E.R.S.-ABLE FOR FINAL
5 COMPENSATION THAT COULD BE COUNTED INTO THAT, AND THEY
6 WERE ALL BROKEN DOWN TO ARTICLE 7, WHICH THIS IS IN, AND
7 IT WAS DESIGNATED THAT THESE ARE ALL CONSIDERED P.E.R.S.
8 COMPENSATION.

9 Q. AND WHERE'S THAT DESIGNATION THAT THEY ALL
10 ARE PENSIONABLE INCOME? WHERE IS THAT LOCATED AT?

11 A. SUBSECTION M OF ARTICLE 7 ON PAGE 9 DISCUSSES
12 HOW IT WILL BE REPORTED TO P.E.R.S. AS A COMPENSATION
13 FOR PURPOSES OF CALCULATION.

14 Q. WHAT EXACTLY DOES SUBSECTION M SAY?

15 A. SUBSECTION M:

16 "AS REPORTING TO P.E.R.S. SUBJECT
17 TO STATE LAW AND REGULATIONS
18 COMPENSATION PAID AS A RESULT OF THIS
19 ARTICLE -- "

20 THE COURT: YOU GOT TO SLOW DOWN. PEOPLE WHO
21 READ ALWAYS SPEED UP. IT MAKES THEM CRAZY -- THE COURT
22 REPORTERS.

23 THE WITNESS: I APOLOGIZE.

24 SUBSECTION M:

25 "REPORTING TO P.E.R.S. SUBJECT TO

HEARING

1 STATE LAW AND REGULATIONS COMPENSATIONS
2 PAID AS A RESULT OF THIS ARTICLE SHALL
3 BE REPORTED TO P.E.R.S. AS SPECIAL
4 COMPENSATION."

5 BY MR. SILVER:

6 Q. NOW, DIRECTING YOUR ATTENTION TO EXHIBIT 9,
7 AND IN PARTICULAR, ARTICLE 7, WOULD IT BE FAIR TO SAY
8 THAT CONTRACT INCORPORATED THE SAME PROVISIONS THAT WERE
9 IN EXHIBIT G?

10 A. CORRECT.

11 Q. AND AGAIN, WERE YOU PARTY TO THOSE
12 NEGOTIATIONS FOR EXHIBIT 9?

13 A. YES, I WAS.

14 Q. WHEN YOU NEGOTIATED THE EXHIBIT G, THIS
15 PARTICULAR ITEM, WHAT WE CALL THE HOLIDAY PREMIUM PAY IN
16 SUBSECTION G(2), I THINK, IT IS, OF ARTICLE 7, SUBSECTION
17 2?

18 A. YES, G. IT'S H.

19 Q. I'M SORRY. H(2).

20 A. NUMBER 9 OF THE BOOK. IT'S G.

21 Q. IN SUBSECTION H(2) OF ARTICLE 7, WAS THAT A
22 NEWLY NEGOTIATED BENEFIT OR HAD THAT BENEFIT APPEARED IN
23 PREVIOUS COLLECTIVE BARGAINING AGREEMENT?

24 A. IT HAD EXISTED PREVIOUSLY FOR QUITE SOME
25 TIME.

HEARING

1 Q. AND TO YOUR KNOWLEDGE, WAS IT TREATED AS
2 PENSIONABLE INCOME PREVIOUS TO THIS EXHIBIT G?

3 MR. CROWLE: OBJECTION. BY WHOM?

4 MR. SILVER: I'M SORRY.

5 BY MR. SILVER:

6 Q. BY THE CITY AND THE ASSOCIATION.

7 A. THE CITY AND THE ASSOCIATION CONSIDERED
8 P.E.R.S.-ABLE COMPENSATION SINCE 1992.

9 Q. AND TO YOUR KNOWLEDGE, WERE RETIREMENT
10 CONTRIBUTIONS PAID ON THIS AMOUNT AT ALL TIMES BY THE
11 CITY AND THE EMPLOYEES?

12 MR. CROWLE: OBJECTION; CALLS FOR
13 SPECULATION, LACKS FOUNDATION. ALSO, THE BEST EVIDENCE
14 OF THAT WILL BE THE RECORDS.

15 THE COURT: WELL --

16 MR. SILVER: I'LL MAKE IT SIMPLER.

17 BY MR. SILVER:

18 Q. DO YOU HAVE ANY REASON TO BELIEVE THAT, SINCE
19 IT WAS REGARDED AS PENSIONABLE INCOME, RETIREMENT
20 CONTRIBUTIONS WERE NOT PAID ON THOSE AMOUNTS?

21 A. I HAVE NO REASON TO BELIEVE THAT THEY WERE
22 NOT.

23 Q. NOW, IF AN INDIVIDUAL WAS NOT SCHEDULED TO
24 WORK ON A HOLIDAY BUT WAS CALLED IN TO WORK, WOULD THAT
25 PERSON RECEIVE ANY OVERTIME COMPENSATION?

HEARING

1 A. THEY WOULD BE PAID AS OVERTIME.

2 Q. AND TO YOUR KNOWLEDGE WAS THAT OVERTIME
3 TREATED AS PENSIONABLE INCOME?

4 A. NO, IT IS NOT.

5 THE COURT: LET ME UNDERSTAND THIS. IF MY
6 SCHEDULE IS MONDAY THROUGH FRIDAY, DAY SHIFT, AND
7 CHRISTMAS FALLS ON A SUNDAY, WOULD YOU CALL ME AND SAY,
8 "JOE, YOU GOT TO PULL A SHIFT HERE ON SUNDAY"?

9 YOUR OCCUPIERS ARE GOING TO GO CRAZY ON
10 CHRISTMAS. I'M GOING TO GET PAID OVERTIME FOR THAT?

11 THE WITNESS: CORRECT.

12 THE COURT: AND THAT'S NOT CONSIDERED
13 P.E.R.S. INCOME?

14 THE WITNESS: CORRECT.

15 THE COURT: OKAY.

16 MR. SILVER: AND FOR THE RECORD, THAT'S NOT
17 AN ISSUE IN THIS CASE.

18 BY MR. SILVER:

19 Q. FOR CERTAIN DIVISIONS IN THE POLICE
20 DEPARTMENT, WOULD EMPLOYEES BID FOR SHIFTS BY
21 SENIORITY?

22 A. THAT'S IN THE UNIFORM CONTROL DIVISION. THEY
23 BID BY SENIORITY.

24 Q. AND WAS ONE OF THE REASONS FOR THIS HOLIDAY
25 PAY, THAT HOLIDAY PREMIUM PAY THAT WE'VE TALKED ABOUT, TO

HEARING

1 MOTIVATE MORE SENIOR OFFICERS TO HAVE INCENTIVE TO BID
2 FOR SHIFTS THAT INCLUDED HOLIDAYS?

3 A. CORRECT. THAT WAS PART OF THE AGREED-UPON
4 PURPOSE OF PUTTING THAT IN THE M.O.U.

5 Q. WAS THE GOAL TO MAINTAIN, I GUESS, SENIORITY
6 BALANCE ON SHIFTS?

7 A. YES. SO WE HAVE HAD A BALANCE OF SENIOR
8 OFFICERS AND JUNIOR OFFICERS ON SHIFTS. I COULD
9 ELABORATE A LITTLE ON THIS. CHRISTMAS WOULDN'T PROBABLY
10 BE THE BEST EXAMPLE, BUT 4TH OF JULY IS. IT'S A VERY
11 BUSY DAY.

12 LABOR DAY, WE NEED AS MANY EXPERIENCED
13 OFFICERS AS POSSIBLE WORKING UNIFORM ON THOSE DAYS WHO
14 WANT TO TAKE THOSE SHIFTS.

15 Q. AT SOME POINT AND TIME, DID YOU BECOME AWARE
16 THAT C.A.L.P.E.R.S. WAS DISALLOWING THIS HOLIDAY PREMIUM
17 PAY AS A PENSIONABLE INCOME?

18 A. YES, I DID.

19 Q. AND AT THE TIME THAT YOU BECAME AWARE, WERE
20 YOU A LIEUTENANT AND PART OF THE CITY'S MANAGEMENT TEAM
21 AT THAT TIME?

22 A. YES.

23 Q. AND HAD YOU EVER HAD ANY INCLINATION OR ANY
24 REASON AT ALL TO BELIEVE THAT THIS WAS NOT TO BE TREATED
25 AS PENSIONABLE INCOME UNTIL YOU LEARNED OF IT IN 2009?

HEARING

1 A. THAT'S CORRECT, AND IT'S THE FIRST I HEARD OF
2 IT AND THAT I KNEW ABOUT IT.

3 Q. NOW, DID YOU LATER BECOME AWARE OF EXHIBIT 10,
4 WHICH IS THE -- A SIDE LETTER ENTERED IN BETWEEN THE
5 HUNTINGTON BEACH POLICE OFFICERS ASSOCIATION IN THE CITY
6 OF HUNTINGTON BEACH, DATED MARCH 10TH, 2010?

7 (DEPARTMENT'S EXHIBIT NUMBER 10 WAS MARKED FOR
8 IDENTIFICATION.)

9 THE WITNESS: YES, I'M AWARE OF THAT DOCUMENT.
10 BY MR. SILVERS:

11 Q. YOU WEREN'T A PARTY TO THE NEGOTIATION OF
12 THAT AGREEMENT?

13 A. I WAS NOT A DIRECT PARTY TO THE
14 NEGOTIATIONS.

15 Q. NOW, IS YOUR UNDERSTANDING THAT A SIDE LETTER
16 IS ESSENTIALLY AN AMENDMENT TO A CONTRACT?

17 A. THAT IS CORRECT.

18 Q. KNOW, WAS THERE ANY MENTION IN THIS SIDE
19 LETTER OF THIS PARTICULAR HOLIDAY PREMIUM PAY?

20 A. YES, THERE IS.

21 Q. AND COULD YOU JUST TELL US WHAT PAGE OF THE
22 SIDE LETTER THAT REFERENCE IS.

23 A. PAGE 205 IN THE EXHIBIT IDENTIFIED AS ARTICLE
24 7, SPECIAL PAY, SUBSECTION G.

25 Q. WOULD THAT BE SUBSECTION 2 OF SUBSECTION G?

HEARING

1 A. PART OF IT IS G(2).

2 Q. AND WHAT IF ANY CHANGES WERE THERE IN THE WAY
3 THAT THIS BENEFIT WAS DESCRIBED BETWEEN THE SIDE LETTER
4 AND THE PREVIOUS M.O.U., WHICH WAS EXHIBIT 9?

5 A. IT CLARIFIED THE WORD "OVERTIME" WAS USED IN
6 THE PRIOR M.O.U.'S TO DESCRIBE THE RATE OF PAY AS
7 OPPOSED TO THE TYPE OF PAY.

8 THE TYPE OF PAY WAS NOT OVERTIME, BUT THE WORD
9 OF OVERTIME WAS USED TO DESCRIBE THE RATE THAT WE WOULD
10 BE PAID AT, AND THE SIDE LETTER CLARIFIED THAT, RATHER
11 THAN CALLING IT OVERTIME. IT'S A 50 PERCENT PREMIUM.

12 Q. NOW, IN YOUR CAPACITY AS A MEMBER OF THE
13 MANAGEMENT TEAM, ARE YOU AWARE OF ANY EMPLOYEES IN THE
14 CITY OF HUNTINGTON BEACH AND INCLUDING ITS POLICE
15 DEPARTMENT, WHO WORK WHICH YOU WOULD UNDERSTAND TO BE A
16 STANDARD DAYTIME SHIFT?

17 A. WITHIN THE CITY HALL AND PART OF THE
18 MANAGEMENT TEAM, THEY ARE PEOPLE WHO WORK STANDARD
19 DAYTIME SHIFT.

20 Q. AND WOULD YOU BE ONE OF THOSE PEOPLE NOW?

21 A. YES, I WOULD.

22 Q. AND CAN YOU DESCRIBE WHAT THAT SHIFT ENTAILS?

23 A. ESPECIALLY, YOU'RE WORKING DAYTIME HOURS AND
24 MONDAY THROUGH FRIDAY WITH WEEKENDS AND HOLIDAYS OFF.
25 ROUGH DESCRIPTION.

HEARING

1 Q. SO WOULD IT BE FAIR TO SAY THAT INDIVIDUALS
2 WHO WORK A STANDARD DAYTIME SHIFT DO NOT WORK
3 HOLIDAYS?

4 A. THAT'S MY DESCRIPTION OF IT.

5 Q. ARE THERE ANY EMPLOYEES IN THE RANKS OF
6 SERGEANTS AND BELOW PEACE OFFICERS OF THE CITY OF
7 HUNTINGTON BEACH IN THE RANK OF SERGEANTS AND BELOW WHO
8 WORK WHAT YOU'VE DESCRIBED AS A STANDARD DAYTIME
9 SHIFT?

10 A. NOT THAT I KNOW OF.

11 MR. SILVER: I HAVE NO FURTHER QUESTIONS.

12 THE COURT: COUNSEL.

13 MR. CROWLE: THANK YOU, YOUR HONOR.

14 CROSS-EXAMINATION

15 BY MR. CROWLE:

16 Q. YOU'VE INDICATE THAT YOUR LINE POLICE
17 OFFICERS, THEY DON'T WORK A STANDARD DAY SHIFT FIVE DAYS
18 A WEEK OR MONDAY THROUGH FRIDAY; CORRECT?
19

20 A. CORRECT.

21 Q. NOW, THOSE WHATEVER LAW ENFORCEMENT PERSONNEL
22 DO, THEY GET PAID FOR HOLIDAYS, DON'T THEY?

23 A. I'M SORRY.

24 Q. THE ONES THAT DO HAVE THE REGULAR SHIFT, THE
25 POLICE DEPARTMENT EMPLOYEES SUCH AS YOURSELF, DO YOU GET

HEARING

1 PAID FOR THE HOLIDAYS? DON'T YOU?

2 A. I GET THE DAY OFF WITH PAY.

3 Q. WITH PAY. OKAY.

4 THE COURT: THAT'S AS A LIEUTENANT?

5 THE WITNESS: CORRECT.

6 BY MR. CROWLE:

7 Q. MY POINT IS, THOUGH: YOU DO WORK A STANDARD
8 DAY SHIFT, GET PAID FOR HOLIDAYS, AND THEY GET THEM OFF?

9 A. IT CAN GET MORE COMPLICATED, BUT THE WAY
10 YOU'RE ASKING THE QUESTION IS CORRECT. THEY GET THE DAY
11 OFF WITH PAY.

12 Q. THIS SIDE LETTER AND THE REFERENCE AND THIS
13 IS EXHIBIT 10, PAGE 2. THIS IS ARTICLE 7, SUBSECTION G,
14 REGARDING HOLIDAYS. YOU SAID THAT YOU WERE NOT INVOLVED
15 IN THE CREATION OF THIS AMENDMENT.

16 A. I WAS NOT DIRECTLY INVOLVED IN THE
17 NEGOTIATION OF THIS DOCUMENT.

18 Q. AND THE PURPOSE OF IT WAS WAS THE FACT THAT
19 PREVIOUSLY IT WAS DESCRIBED AS OVERTIME AND THE RATE
20 THAT PEOPLE WHO WORKED A HOLIDAY RECEIVED TIME AND A
21 HALF FOR THAT WORK; IS THAT CORRECT?

22 A. CORRECT.

23 Q. ACCORDING TO THE ORIGINAL M.O.U., EXHIBIT 9?

24 A. CORRECT.

25 Q. NOW, IS THERE ANY DIFFERENCE IN PAY AS IT IS

HEARING

1 SET FORTH IN SUBSECTION G(2) AS FAR AS WHAT A PERSON
2 RECEIVES IF YOU COMPARE THE TWO FOR A LIKE HOLIDAY
3 WORKED?

4 A. NO. THERE'S NO DIFFERENCE IN THE
5 COMPENSATION THAT THE EMPLOYEES RECEIVE WHO WORKED
6 HOLIDAYS.

7 Q. ARE YOU AWARE OF IT BEING REPORTED ANY
8 DIFFERENTLY?

9 A. NO, I'M NOT AWARE OF IT BEING REPORTED ANY
10 DIFFERENTLY.

11 Q. NOW, THE SCHEDULES THAT ARE REFERENCED IN THE
12 M.O.U., THERE'S TWO DIFFERENT TYPES OF SCHEDULES; IS
13 THAT CORRECT? THERE'S THE --

14 A. ON NUMBER 9 IN THE EXHIBIT BOOK?

15 Q. YES. THANK YOU.

16 A. I BELIEVE PAGE 8.

17 Q. YES, UNDER "WORK SCHEDULE."

18 A. CORRECT.

19 Q. IT GOES ON TO PAGE 9, AND THERE'S THE TWO
20 SCHEDULES THAT YOU PREVIOUSLY REFERENCED IN YOUR
21 TESTIMONY WAS THE ARABIC NUMBER 2, ON PAGE 9, THE
22 FOUR-TEN SCHEDULE, AND THEN ARABIC 3, THE 7-11.5
23 SCHEDULE.

24 A. CORRECT.

25 Q. HOW DID THOSE TYPES OF SCHEDULES EVOLVE?

HEARING

1 A. THE FOUR-TEN SCHEDULE WAS CREATED ABOUT 25
2 YEARS AGO AND THAT'S WHEN THEY WENT AWAY FOR A STANDARD
3 FIVE-EIGHT SCHEDULE. IT WAS NEGOTIATED AS A BENEFIT TO
4 GET ONE MORE DAY OFF STILL WORKING 48 HOURS A WEEK.

5 THE SEVEN-ELEVEN SCHEDULE WAS CREATED ABOUT
6 TEN YEARS AGO. MAYBE 12 YEARS AGO. AND THAT WAS,
7 BASICALLY, NEGOTIATED AS A BENEFIT TO COMPETE WITH MOST
8 LAW ENFORCEMENT AGENCIES OR PATROL OFFICERS WHO WERE
9 GOING TO A THREE-TWELVE SCHEDULE. THIS WAS A --
10 BASICALLY, A MODIFICATION OF THAT.

11 Q. AND SO THIS WAS LOOKED UPON AS A BENEFIT TO
12 THE OFFICERS?

13 A. CORRECT.

14 Q. AND THERE WAS REALLY NO CONSIDERATION AS IT
15 RELATES TO THIS BENEFIT AS TO THE EFFECT ON HOLIDAYS,
16 WAS IT?

17 A. NO.

18 Q. NOW, I BELIEVE YOU INDICATED THAT IT WAS
19 UNDERSTOOD THAT THE M.O.U. IS SUBJECT TO THE RULES,
20 REGULATIONS, STATUTES, AND LAWS; SO THIS WASN'T
21 NECESSARILY THE BOTTOM LINE, FINAL DETERMINATION, OF
22 WHAT WAS GOING TO BE, IF YOU WILL, P.E.R.S.-ABLE; IS
23 THAT CORRECT?

24 MR. SILVER: I'M GOING TO OBJECT ON THE
25 GROUNDS IT'S SOMEWHAT CONFUSING. I THINK THAT IF THE

HEARING

1 QUESTION IS "ARE THEY INTENDED TO REGARD IT IN A CERTAIN
2 WAY" -- IF THAT'S WHAT THE QUESTION IS, THEN IT WOULD BE
3 UNDERSTANDABLE.

4 IF YOU'RE ASKING HIM WHETHER THE CITY AND THE
5 ASSOCIATION INTENDED TO PREEMPT THE LAW, WELL, WHICH ONE
6 IS IT, I GUESS IS WHAT I'M SAYING.

7 MR. CROWLE: IF THAT WAS CONSTRUED THAT WAY,
8 I APOLOGIZE, AND I'LL BE HAPPY TO REPHRASE THE QUESTION,
9 YOUR HONOR.

10 THE COURT: WHY DON'T YOU DO THAT.

11 MR. CROWLE: SURE.

12 BY MR. CROWLE:

13 Q. IF I UNDERSTOOD YOUR TESTIMONY CORRECTLY
14 EARLIER, IT WAS UNDERSTOOD THAT THE M.O.U. WAS GOING TO
15 BE SUBJECT TO RULES, REGULATIONS, AND LAWS AND SO THAT
16 THE M.O.U. WASN'T NECESSARILY THE BOTTOM LINE OF WHAT
17 REGARDLESS OF YOUR INTENTIONS OF WHAT YOU WERE GOING TO
18 RECEIVE AS FAR AS P.E.R.S.-ABLE INCOME; CORRECT?

19 A. CORRECT.

20 THE COURT: YOU, AS A POLICE OFFICER,
21 ASSOCIATION, AND THE CITY WERE GOING TO TREAT IT THAT
22 WAY, BUT THERE WAS AN UNDERSTANDING THAT THESE FOLKS AT
23 P.E.R.S. DON'T AGREE. I GUESS YOU MIGHT END UP AT
24 SOMEPLACE LIKE THIS; RIGHT?

25 THE WITNESS: I BELIEVE AT THE NEGOTIATION

HEARING

1 TABLE, EVERYBODY THOUGHT THAT THIS WAS P.E.R.S.
2 COMPENSATION. EVERYBODY BELIEVED THAT THEY UNDERSTOOD
3 THE REGULATIONS CLEARLY WHEN THIS WAS ALL DRAFTED BY
4 BOTH SIDES.

5 THE COURT: ALL RIGHT. WELL, GUESS IT'S UP
6 TO ME NOW TO FIGURE OUT WHETHER YOUR THOUGHTS WERE
7 CORRECT.
8 BY MR. CROWLE:

9 Q. OBVIOUSLY, THIS CONTRACT WAS PUT TOGETHER TO
10 MAXIMIZE THE BENEFITS AND INTERESTS OF THE OFFICERS;
11 CORRECT?

12 A. TO BE FAIR TO THE OFFICERS AND THE CITY.

13 Q. OF COURSE, IT WAS NEGOTIATED IN THE CONTRACT
14 AND THIS ULTIMATELY WAS THE END PRODUCT OF THOSE
15 NEGOTIATIONS.

16 A. CORRECT.

17 Q. NOW, IF ONE HAS A GIVEN SCHEDULE DURING THE
18 YEAR, CAN THAT SCHEDULE CHANGE? AS AN EXAMPLE, YOU'VE
19 GOT THE TWO DIFFERENT TYPES: THE FOUR-TEN AND THE
20 ELEVEN-FIVE. USING THOSE TWO AS EXAMPLES DURING A GIVEN
21 YEAR, DOES ONE SCHEDULE CHANGE, AND IF IT DOES, HOW IS
22 THAT DONE?

23 A. THERE'S SEVERAL WAYS IT CAN CHANGE. FOR THE
24 MOST PART, SCHEDULE IS PRETTY STAGNANT, AND THEY DON'T
25 CHANGE THAT OFTEN.

HEARING

1 PATROL OFFICERS, AS LONG AS THEY REMAIN IN
2 PATROL, THEY CONTINUE TO WORK THE SEVEN-ELEVEN SCHEDULE,
3 AND THREE TIMES A YEAR, THEY CAN BID SHIFTS BY
4 SENIORITY, WHICH IS, BASICALLY, FALLS UNDER SCHOOL
5 SCHEDULE -- SUMMER, FALL, AND THE SPRING.

6 BASED ON SENIORITY, IT DOESN'T VARY THAT
7 MUCH. EVERY FOUR MONTHS, IT STAYS PRETTY STAGNANT ON
8 WHAT IT IS.

9 THE OTHER WAY THE SCHEDULES CAN SWITCH FROM
10 GOING TO THE SEVEN-ELEVEN TO THE FOUR-TEN WOULD BE IF
11 SOMEBODY WAS TO SUCCESSFULLY COMPLETE -- COMPETE TO GET
12 AN ASSIGNMENT, SUCH AS DETECTIVES WHO WORK THE FOUR-TEN.

13 THEY WOULD THEN GO TO DETECTIVES, BUT THEN
14 AGAIN, THEY WILL STAY PRETTY STAGNANT. MOST DETECTIVES
15 ARE NOT CAREER POSITION UNTIL THEY PROMOTE TO HIGHER
16 RANKS, SO THOSE ARE THE WAYS THEY CAN CHANGE.

17 AND THE BIDDING IS THREE TIMES A YEAR FOR
18 SENIORITY BECAUSE SENIORITY IS NOT CONSTANTLY CHANGING.
19 IT DOESN'T MOVE THAT MANY PEOPLE AROUND.

20 Q. JUST OUT OF CURIOSITY, IS THERE A TYPE OF
21 SCHEDULE THAT IS MORE APPROPRIATE FOR AN OFFICER'S GIVEN
22 DUTIES AS AN EXAMPLE OF THE FOUR-TEN COMPARED TO THE
23 ELEVEN-FIVE?

24 IS THERE A TYPE OF DUTY THAT AN OFFICER WOULD
25 HAVE THAT WOULD MAKE HIM OR HER MORE EFFICIENT IN HIS OR

HEARING

1 HER GIVEN ROLE?

2 A. YES.

3 Q. AND WHAT MIGHT THAT BE?

4 A. THE SEVEN-ELEVEN IS MORE EFFICIENT, ACTUALLY,
5 FOR MANAGEMENT OF CREATING A 24/7 SCHEDULE. IT ACTUALLY
6 HELPS MANAGEMENT BY HAVING TWO SQUADS OF OFFICERS THAT
7 MIRROR EACH OTHER DURING THOSE P.E.R.C. PAY PERIOD, SO
8 IT'S A MORE EFFICIENT SCHEDULING SYSTEM.

9 IF YOU HAVE A FOUR-TEN SCHEDULE, WE WOULD
10 PATROL ENDED UP WITH MORE SHIFT OVERLAPS AND DUAL
11 COVERAGE WHICH WAS SOMETIME BURDENSOME ON THE
12 SCHEDULING.

13 SO IN UNIFORM PATROL, THE SEVEN-ELEVEN IS A
14 MORE EFFICIENT SCHEDULE FOR MANAGEMENT, PLUS IT'S A
15 BENEFIT TO THE OFFICERS WHO HAVE A SCHEDULE.

16 THE FOUR-TEN IS A MORE BENEFICIAL SCHEDULE
17 FOR ASSIGNMENTS SUCH AS DETECTIVES BECAUSE IT MIRRORS
18 MORE OF A DAYTIME WHEN THE COURTS ARE OPEN FOR APPEARING
19 IN COURT, PROVIDING EVIDENCE, TESTIMONY, ET CETERA.

20 Q. SURE. NOW, IF YOU TAKE A LOOK AT EXHIBIT 9,
21 PAGE 6, THOSE ARE THE LIST OF HOLIDAYS THAT OFFICERS
22 HAVE.

23 THE COURT: I'M SORRY. WHERE ARE WE?

24 MR. CROWLE: EXHIBIT 9, PAGE 6(G)(3).

25 ///

HEARING

1 BY MR. CROWLE:

2 Q. NOW, YOU'LL NOTE THAT THERE ARE CERTAIN DAYS
3 THAT ARE -- WE KNOW THE DAY OF THE WEEK IT'S GOING TO BE
4 ON BECAUSE OF THE WAY THE HOLIDAY IS DEFINED, AND BY
5 THAT, I MEAN, AS AN EXAMPLE MEMORIAL DAY THE LAST MONDAY
6 IN MAY, SO IT'S ALWAYS GOING TO BE ON A MONDAY.

7 A. RIGHT.

8 Q. IS THAT A FAIR STATEMENT?

9 A. YES.

10 Q. HOWEVER, JULY 4TH, WE DON'T KNOW WHAT DAY OF
11 THE WEEK JULY 4TH IS GOING TO BE, NOR DO WE KNOW, AS AN
12 EXAMPLE, WHEN CHRISTMAS DAY IS GOING TO BE. IT COULD BE
13 ANY DAY OF THE WEEK AS WELL, AND THE SAME APPLIES TO NEW
14 YEAR'S DAY?

15 A. AND VETERANS DAY.

16 Q. SURE.

17 A. BECAUSE THEY ARE THE ONES THAT ARE DATE
18 SPECIFIC, AS OPPOSED TO --

19 Q. CORRECT. AND SO YOU CAN NEVER DEPEND UPON
20 WHETHER OR NOT YOUR GIVEN SCHEDULE IS GOING TO APPLY TO
21 A GIVEN HOLIDAY AS LEAST AS FAR AS THE ONES THAT ARE
22 DATE DRIVEN, AS OPPOSED TO THE DAY-OF-THE-WEEK DRIVEN.

23 A. I THINK IT'S SAFE TO KNOW WHEN YOU'RE BIDDING
24 YOUR SHIFTS WHAT HOLIDAYS ARE FOLLOWING DURING THAT
25 PERIOD.

HEARING

1 Q. SURE. SO THE GUYS THAT ARE --

2 A. THEY'RE PRETTY SET DATES. THAT'S WHAT
3 I'M SAYING.

4 Q. RIGHT. SO BUT WHAT MY POINT IS, THE GUYS WITH
5 THE SENIORITY, IF THEY WANT TO HAVE HOLIDAYS, THEY'RE
6 GOING TO BID A SHIFT THAT IS GOING TO BE MORE BENEFICIAL
7 TO THEM, AND THEY'VE GOT THE ABILITY TO DO IT BECAUSE OF
8 THEIR SENIORITY.

9 A. CORRECT.

10 Q. AND THEN, BY THE SAME TOKEN, AS YOU POINTED
11 OUT EARLIER, YOU WANTED TO ENCOURAGE SENIOR OFFICERS TO
12 MAKE THEMSELVES AVAILABLE, AND, YOU KNOW, YOU MAKE IT
13 FINANCIALLY BENEFICIAL TO THEM TO BID DAYS THAT, AS YOU
14 POINTED OUT, JULY 4TH IS A HIGH DEMAND DAY BECAUSE OF ALL
15 THE REBEL ROUSERS.

16 AND LIKE JANUARY 1ST, AND THAT'S AMATEUR DRUNK
17 NIGHT. YOU WANT GUYS OUT THERE THAT KNOW WHAT THEY'RE
18 DOING TO BE ABLE TO MAKE THE FORCE BE MORE EFFICIENT.

19 A. YES, THAT'S CORRECT.

20 THE COURT: IS THAT A JANUARY 1ST AS OPPOSED
21 TO THE PROFESSIONAL DRINKING DAYS THAT OUR POLICE HAVE
22 TO DEAL WITH?

23 MR. CROWLE: PARDON ME FOR THAT JOCLAR SIDE,
24 JUDGE.

25 THE COURT: YES, I GET IT.

HEARING

1 BY MR. CROWLE:

2 Q. IF AN OFFICER IS, YOU KNOW -- WELL, DOWN THE
3 LINE, HE'S GETTING READY TO RETIRE NOW, ORDINARILY THAT
4 WOULD INDICATE THAT HE HAS, RELATIVELY SPEAKING ANYWAY,
5 HIGHER SENIORITY; IS THAT CORRECT?

6 A. THAT'S CORRECT.

7 Q. SO BECAUSE OF THAT, HE WOULD HAVE THE ABILITY
8 TO BID ON HIS SCHEDULE, TO MAXIMIZE THE NUMBER OF
9 HOLIDAYS THAT HE WORKED, TO TAKE ADVANTAGE OF THE RATE
10 OF PAY FOR WORKING ON A HOLIDAY; CORRECT?

11 MR. SILVER: SEE, NOW, I WOULD OBJECT.
12 THAT'S SPECULATIVE, AND REALLY, IT'S IRRELEVANT. UNLESS
13 THERE'S ANY EVIDENCE THAT'S WHAT HAPPENED IN THIS CASE,
14 IT'S REALLY IRRELEVANT.

15 THE COURT: I'LL ALLOW IT. WE'VE HAD A LOT
16 OF THIS SORT OF TESTIMONY.

17 THE WITNESS: I THINK IT'S FAIR TO SAY
18 SOMEBODY COULD BID TO TRY TO WORK ALL THE HOLIDAYS TO
19 INCREASE THEIR FORMULA COMPENSATION. THEY CAN ALSO BID
20 TO HAVE ALL THE HOLIDAYS OFF TO SPEND IT WITH
21 FAMILIES.

22 BY MR. CROWLE:

23 Q. FAIR ENOUGH. I DON'T DISAGREE WITH THAT.

24 WHEN AN OFFICER WORKS ON A HOLIDAY, YOU KNOW,
25 YOU'VE GOT THE FORMULA, IF YOU WILL, OF HOLIDAY PAY

HEARING

1 WHERE IT SAYS 126 OF THE TOTAL 80 HOLIDAY HOURS.

2 A. CORRECT.

3 Q. NOW, WHEN AN OFFICER WORKS ON A HOLIDAY, IS
4 THAT SUBTRACTED FROM THE 80 HOURS?

5 A. NO, IT'S NOT.

6 Q. SO POINT BEING HE'S GOING TO CONTINUE TO GET
7 THE BENEFIT OF THE FACTORING OF HOLIDAYS INTO HIS
8 PRIMARY SALARY, AND THEN HE'S GOING TO GET, IF YOU WILL,
9 THE PREMIUM TOUCH OF WORKING ON THE HOLIDAY AT THE RATE
10 OF PAY THE M.O.U. CALLS FOR?

11 A. CORRECT. CAN I CLARIFY ONE THING?

12 Q. SURE.

13 A. YOU GET BOTH OF THEM, BUT THEY'RE NOT
14 PYRAMIDED AS TO SPECIFIC THAT WAS DISCUSSED ALSO, BUT
15 NONE OF THESE BENEFITS WILL BE PYRAMIDED, SO THEY DO NOT
16 BILL ON TOP OF EACH OTHER. THAT'S IN SUBSECTION K ON
17 PAGE 7. THEY DON'T MULTIPLY EACH OTHER. YOU GET BOTH
18 OF THEM, BUT THEY DON'T MULTIPLY EACH OTHER.

19 Q. WELL, THEY'RE NOT SUPPOSED TO?

20 A. CORRECT.

21 Q. AND IF THAT HAS BEEN DONE, THAT IS CONTRARY
22 TO THE M.O.U.?

23 A. CORRECT.

24 MR. CROWLE: I HAVE NO MORE QUESTIONS WITH
25 THIS WITNESS, JUDGE.

HEARING

1 THE COURT: ANY REDIRECT?

2 MR. SILVER: JUST A FEW ON REDIRECT.

3

4

REDIRECT EXAMINATION

5

BY MR. SILVER:

6

Q. FIRST OF ALL, JUST FOR THE RECORD, ARE YOU
7 HERE BECAUSE OF A SUBPOENA?

8

A. YES, I'M UNDER SUBPOENA.

9

10

Q. AND THE SUBPOENA WAS SERVED BY MY OFFICE; IS
THAT CORRECT?

11

A. THAT'S CORRECT.

12

13

14

15

16

17

18

Q. NOW, WE TALKED A MOMENT AGO ABOUT PYRAMIDING.
IS WHAT YOU MEAN BY "PYRAMIDING" THAT WHEN CALCULATING
THE -- WE'LL CALL IT THE PREMIUM PAY UNDER SUBSECTION
G(2) FOR PEOPLE WHO ARE SCHEDULED TO WORK AND WORK ON A
HOLIDAY. IN CALCULATING THAT PAY, YOU DON'T USE AS PART
OF THE BASE THE HOLIDAY PAY UNDER G(1). IS THAT WHAT
YOU MEAN?

19

A. THAT IS CORRECT.

20

21

Q. IT'S NOT THAT YOU DON'T GET BOTH. IT'S JUST
THAT YOU DON'T COMPOUND THEM; IS THAT CORRECT?

22

23

24

25

A. AT THE NEGOTIATION TABLE, THE INTENT BY BOTH
PARTIES WAS NOT TO HAVE ONE ADDED AND USE THAT AS A
MULTIPLIER FOR THE NEXT ONE BECAUSE YOU CAN END UP --
FOR EXAMPLE, THE F.T.O. COMPENSATION IS PAID AT 25

HEARING

1 PERCENT PREMIUM.

2 WE STARTED PYRAMIDING THOSE WHICH MULTIPLYING
3 BY EACH OTHER YOU GET INTO KIND OF AN OUTRAGEOUS PAY
4 SCALE, SO IT WAS SPECIFICALLY TALKED ABOUT. YOU WOULD
5 GET EACH OF THEM YOU'RE ENTITLED TO, BUT ONE OF THEM ARE
6 PYRAMIDING ON TOP OF EACH OTHER.

7 Q. NOW, WHEN THE EXHIBIT 9 WAS ENTERED INTO, DID
8 THE HUNTINGTON BEACH POLICE OFFICERS ASSOCIATION
9 REPRESENTED IN ADDITION TO RANK AND FILE OR
10 NONMANAGEMENT PEACE OFFICERS SOME NONPEACE OFFICER
11 EMPLOYEES OF THE POLICE DEPARTMENT?

12 A. YES.

13 Q. AND IF I CAN DIRECT YOUR ATTENTION TO PAGE 5
14 OF THAT EXHIBIT, SUBSECTION D, NEAR THE TOP OF THE PAGE,
15 IT'S CALLED SHIFT DIFFERENTIAL, WHICH EMPLOYEES
16 REPRESENTED BY THE HUNTINGTON BEACH POLICE OFFICERS
17 ASSOCIATION WERE ELIGIBLE TO RECEIVE THAT SHIFT
18 DIFFERENTIAL?

19 A. THE DETENTION EMPLOYEES AND THE COMMUNICATION
20 OPERATORS.

21 Q. ARE THOSE SWORN PEACE OFFICERS?

22 A. NO, THEY ARE NOT.

23 MR. CROWLE: EXCUSE ME. WHAT EXHIBIT ARE WE
24 REFERRING TO?

25 MR. SILVER: I'M LOOKING AT EXHIBIT 9, PAGE

HEARING

1 5. IT'S RIGHT IN YOUR BOOK.

2 MR. CROWLE: I WAS JUST ASKING WHICH EXHIBIT.
3 THAT'S ALL.

4 THE COURT: IN THE BACK OF PAGE 5.

5 MR. CROWLE: THANK YOU, JUDGE, AND
6 MR. SILVER.

7 THE COURT: THIS IS SIMILAR TO THOSE NURSES
8 THAT I MENTIONED UNDER PAGE 7 ON THE PYRAMIDING CLAUSE;
9 RIGHT?

10 THE WITNESS: CORRECT.

11 BY MR. SILVER:

12 Q. WOULD THOSE INDIVIDUALS HAVE TO WORK, LET'S
13 SAY, A SWING OR GRAVEYARD SHIFT THE ENTIRE YEAR IN ORDER
14 TO GET THIS SHIFT DIFFERENTIAL?

15 A. NO. IT'S JUST WHEN THEY'RE ASSIGNED.

16 Q. AND DO THEY HAVE ROTATING SHIFTS AS WELL?

17 A. YES, THEY DO.

18 Q. SO THERE MAY BE SOME PARTS OF A YEAR WHERE
19 THEY WOULD GET THE SHIFT DIFFERENTIAL, AND THEN OTHER
20 PARTS WHERE THEY WOULDN'T; IS THAT CORRECT?

21 A. CORRECT.

22 Q. DEPENDING UPON WHAT THEIR SHIFT ASSIGNMENT
23 WAS?

24 A. THE SAME CONCEPT OF BIDDING BY SENIORITY.

25 Q. TO YOUR KNOWLEDGE, HAS THAT SHIFT

HEARING

1 DIFFERENTIAL PAY BEEN TREATED AS PENSIONABLE INCOME BY
2 THE CITY?

3 A. YES, IT HAS BEEN.

4 Q. AND IT'S BEEN REPORTED TO P.E.R.S. TO YOUR
5 KNOWLEDGE?

6 A. YES, IT HAS BEEN.

7 MR. SILVER: I HAVE NO FURTHER QUESTIONS.

8 MR. CROWLE: I HAVE ONE OR TWO OTHER
9 QUESTIONS, JUDGE. EXCUSE ME.

10

11

RE-CROSS-EXAMINATION

12 BY MR. CROWLE:

13 Q. REFERRING TO THE SHIFT DIFFERENTIAL THAT IS
14 INDICATED, AS YOU DISCUSSED, BY EXHIBIT 9 ON PAGE 5,
15 SUBSECTION D, WAS THAT MEANT TO CONFORM TO THE SHIFT
16 DIFFERENTIAL DEFINITION IN REGULATION 571?

17 A. YES.

18 Q. AND WOULD YOU AGREE THAT YOU WOULD NEED TO
19 DEFER TO THE REGULATION IF THERE WAS AN INCONSISTENCY?

20 A. YES.

21 MR. CROWLE: THAT'S ALL I HAVE.

22 THE COURT: LET ME SEE IF I CAN FIGURE OUT
23 HOW THINGS WORK AS PRACTICAL. SO I JOIN THE POLICE
24 DEPARTMENT THERE IN HUNTINGTON BEACH. I'M A LINE PATROL
25 OFFICER, AND I'M GOING TO GET PAID FOR THESE TEN

HEARING

1 HOLIDAYS IN LITTLE TINY INCREMENTS EVERY COUPLE OF
2 WEEKS; RIGHT?

3 THE WITNESS: YES. IT'S BASICALLY THE TEN
4 RECOGNIZED HOLIDAYS AT EIGHT HOURS A DAY. WHEN THIS
5 SPECTRUM WAS CREATED A LONG TIME AGO, EVERYBODY WORKED
6 EIGHT HOURS A DAY. THAT'S WHERE THAT CAME FROM.

7 YOU MULTIPLY THAT BY YOUR HOURLY RATE, GET A
8 DOLLAR AMOUNT DIVIDED BY YOUR 26 PAY PERIODS IN A YEAR,
9 AND GET A SMALL AMOUNT FROM EACH PAYCHECK THROUGHOUT THE
10 YEAR.

11 THE COURT: SO AS A PRACTICAL MATTER, IF I WAS
12 MAKING A 100 BUCKS A DAY, THAT'S A THOUSAND BUCKS. I
13 GET 126 OF A THOUSAND DOLLARS EVERY COUPLE OF WEEKS?

14 THE WITNESS: CORRECT.

15 THE COURT: OR 40 BUCKS. WHATEVER THAT WORKS
16 OUT TO BE. NOW, I GET THAT MONEY WHETHER I WORK NEW
17 YEAR'S DAY OR NOT; RIGHT?

18 THE WITNESS: CORRECT.

19 THE COURT: IF I ONLY WORK THREE HOLIDAYS
20 THAT YEAR BY DINT OF CIRCUMSTANCE, I STILL GET THE OTHER
21 700 BUCKS?

22 THE WITNESS: THAT 126 PAY YOU GET REGARDLESS
23 OF WHAT SHIFT YOU'RE ON, WHAT HOLIDAYS YOU WORK OR DO
24 NOT WORK.

25 THE COURT: NOW, I WORK ALL THESE HOLIDAYS.

HEARING

1 I'VE BEEN PAID MY \$1,000. REMEMBER, MY FORMULA TREATED
2 AS 100 BUCKS BECAUSE IT'S EASIER TO MULTIPLY THAT.

3 NOW, ON TOP OF THAT, I'M PAID THIS OVERTIME
4 MONEY. SO ASIDE FROM THE 1,000 BUCKS THAT'S BEEN DOLED
5 OUT TO ME ALL YEAR, WHAT ELSE AM I GOING TO GET THERE IN
6 MY PAYCHECK FROM WORKING THOSE TEN DAYS A YEAR?

7 THE WITNESS: YOU WOULD GET 50 PERCENT
8 PREMIUM FOR THE HOURS WORKED ON THE HOLIDAYS.

9 THE COURT: SO STAY WITH MY
10 TRYING-TO-KEEP-IT-SIMPLE FORMULA, THERE'S GOING TO BE
11 ANOTHER 500 BUCKS IN MY PAY FOR THAT YEAR IF I WORKED ALL
12 TEN OF THEM?

13 THE WITNESS: CORRECT.

14 THE COURT: AND, LIKEWISE, IF I WORK FIVE OF
15 THEM, I'M GOING TO GET \$250 EXTRA DOLLARS A YEAR?

16 THE WITNESS: CORRECT. IF YOU WORKED ON A --

17 THE COURT: JUST 1,000 BUCKS?

18 THE WITNESS: CORRECT.

19 THE COURT: SPREAD OUT OVER 26 PAY PERIODS.

20 ANY MORE QUESTIONS FOR THE WITNESS?

21 MR. CROWLE: NO, YOUR HONOR.

22 THE COURT: THANK YOU, SIR.

23 THE WITNESS: CAN I LEAVE THIS EXHIBIT G
24 HERE?

25 THE COURT: YOU SHOULD ACTUALLY HAND IT OVER

HEARING

1 SO I DON'T LOSE IT.

2 MR. SILVER: HE CAN GIVE IT TO ME.

3 MR. CROWLE: WE'LL LEAVE IT UP IN CASE

4 MR. GUTIERREZ REFERS TO IT.

5 THE COURT: NOW, THIS WITNESS CAN BE EXCUSED?

6 MR. CROWLE: YES, YOUR HONOR.

7 MR. SILVER: YES, YOUR HONOR.

8 THE COURT: YOU'RE WELCOME TO HANG AROUND AND
9 WATCH THIS EXCITING PROCEDURE IF YOU LIKE, SIR, BUT
10 OTHERWISE, YOU'RE EXCUSED.

11 THE WITNESS: I'M GOING TO STAY AROUND
12 BECAUSE I DON'T HAVE A CARPOOL PARTNER UNTIL THIS
13 HEARING IS OVER.

14 THE COURT: I SEE. WELL. OKAY. IF YOU GET
15 BORED, THERE'S A LITTLE COFFEE SHOP DOWNSTAIRS.

16 ALL RIGHT. WHAT'S UP NEXT?

17 MR. SILVER: WE HAVE NO FURTHER WITNESSES.

18 THE COURT: ALL RIGHT. WHAT ABOUT YOU?

19 MR. CROWLE: BEFORE MR. GUTIERREZ, WOULD IT BE
20 APPROPRIATE FOR A SHORT BREAK NOW?

21 THE COURT: IT WOULD BE BECAUSE MY REPORTER'S
22 FINGERS ARE GOING TO FALL OFF, AND THAT'LL BE BAD. ALL
23 RIGHT. LET'S TAKE ABOUT TEN MINUTES.

24 (WHEREUPON, A RECESS WAS HELD
25 FROM 10:30 A.M. TO 10:40 A.M.)

HEARING

1 THE COURT: BACK ON THE RECORD. GOT
2 SOMEBODY ELSE TO PUT IN THE HOT SEAT; RIGHT?

3 MR. CROWLE: YES, SIR.
4

5 ANGEL GUTIERREZ,
6 CALLED AS A WITNESS AND SWORN IN BY
7 THE COURT, WAS EXAMINED AND
8 TESTIFIED AS FOLLOWS:
9

10 THE COURT: COME ON UP HERE, SIR. WILL YOU
11 RAISE YOUR RIGHT HAND, PLEASE.

12 DO YOU SOLEMNLY SWEAR THAT THE TESTIMONY YOU
13 GIVE HERE TODAY WILL BE THE TRUTH, THE WHOLE TRUTH, AND
14 NOTHING BUT THE TRUTH?

15 THE WITNESS: YES.

16 THE COURT: CAN YOU TELL US YOUR NAME AND
17 SPELL IT, PLEASE.

18 THE WITNESS: MY NAME IS ANGEL GUTIERREZ.
19 THAT'S A-N-G-E-L, G-U-T-I-E-R-R-E-Z.

20 THE COURT: G-U-T-I-E --

21 THE WITNESS: R-R-E-Z.

22 THE COURT: TWO R'S, E-Z-Z. ALL RIGHT.
23 COUNSEL.

24 MR. CROWLE: THANK YOU, YOUR HONOR.

25 ///

HEARING

DIRECT EXAMINATION

1
2 BY MR. CROWLE:

3 Q. MR. GUTIERREZ, BY WHOM ARE YOU EMPLOYED?

4 A. C.A.L.P.E.R.S.

5 Q. AND WHAT POSITION DO YOU HOLD WITH THEM?

6 A. I'M A RETIREMENT PROGRAM SPECIALIST 2.

7 Q. AND HOW LONG HAVE YOU WORKED FOR

8 C.A.L.P.E.R.S.

9 A. I WORKED FOR C.A.L.P.E.R.S. FOR 12 YEARS.

10 Q. AND CAN YOU BRIEFLY DESCRIBE YOUR EMPLOYMENT
11 HISTORY WITH C.A.L.P.E.R.S.

12 A. I'VE BEEN IN COMP REVIEW FOR -- COMPENSATION
13 REVIEW, IN THE UNIT WHICH WOULD BE CURRENTLY, FOR ABOUT
14 SIX YEARS. PRIOR TO THAT, I WAS IN THE PAYROLL
15 ADJUSTMENTS AND REPORTING SECTION FOR A COUPLE OF YEARS.

16 AND PRIOR TO THAT, I WAS IN THE MEMBER
17 ELECTIONS UNIT IN OUR MEMBER SERVICES DIVISION FOR A
18 COUPLE OF YEARS, AND I WAS IN BENEFITS SERVICES DIVISION
19 PRIOR TO THAT.

20 Q. AND AS A PART OF YOUR CURRENT DUTIES, WERE
21 YOU ASSIGNED TO WORK ON THE FINAL COMPENSATION REGARDING
22 MESSRS. CATALANO AND EVENSON?

23 A. YES. I HAVE REVIEWED THE CASE PRIOR TO
24 TODAY.

25 Q. AND WERE YOU ASSIGNED TO REPRESENT

HEARING

1 C.A.L.P.E.R.S. BY YOUR SUPERIORS IN THIS CASE?

2 A. THAT'S CORRECT.

3 Q. NOW, THE FUNCTION HERE IS TO DETERMINE THE
4 APPROPRIATE FINAL COMPENSATION FOR MESSRS. EVENSON AND
5 CATALANO; IS THAT CORRECT?

6 A. THAT IS CORRECT.

7 Q. CAN YOU TELL US WHAT GOES INTO THE ANALYSIS
8 OF THE PAY OF AN INDIVIDUAL FOR PURPOSES OF MAKING A
9 DETERMINATION OF WHAT IS APPROPRIATE FILE COMPENSATION
10 FOR PURPOSES OF RETIREMENT?

11 A. YES. THERE'S TWO PARTS OF COMPENSATION
12 EARNABLE.

13 PURSUANT TO GOVERNMENT CODE SECTION 20630,
14 IDENTIFIES COMPENSATION, AND IN THAT SECTION, IT
15 IDENTIFIES WHAT IS REPORTABLE TO C.A.L.P.E.R.S. IS
16 CONSIDERED COMPENSATION EARNABLE, AND THAT'S BROKEN DOWN
17 INTO TWO PARTS IN GOVERNMENT CODE SECTION 20636 AS PAY
18 RATE, WHICH IS THE NORMAL MONTHLY BASE RATE OF PAY FOR
19 ALL MEMBERS SIMILARLY SITUATED IN THE SAME GROUP AND
20 CLASS PURSUANT TO APPROPRIATELY AVAILABLE SALARY
21 SCHEDULE.

22 AND IN ADDITION TO PAY RATE, SPECIAL
23 COMPENSATION IS ALSO A PART OF COMPENSATION EARNABLE.

24 Q. NOW, COMPENSATION EARNABLE. WHAT EXACTLY IS
25 THAT? YOU HAVE THE CALIFORNIA PUBLIC EMPLOYEES'

HEARING

1 RETIREMENT LAW BOOK IN FRONT OF YOU. WHAT SECTION IS
2 THAT IN,

3 A. THAT'S GOVERNMENT CODE SECTION 20636,
4 IDENTIFIES COMPENSATION EARNABLE AND DEFINES PAY RATE
5 AND SPECIAL COMPENSATION.

6 SPECIAL COMPENSATION IS IDENTIFIED AS ANY PAY
7 FOR WORK PERFORMED, AND IT'S FURTHER DELINEATED IN THE
8 CALIFORNIA CODE OF REGULATIONS SECTION 571(A), WHICH IS
9 AN EXCLUSIVE LIST THAT MUST BE CONTAINED IN THE LIST OF
10 SPECIAL COMPENSATION ITEMS AND CALIFORNIA CODE
11 REGULATIONS SECTION 571(A).

12 THE COURT: WHAT TITLE IS THAT?

13 THE WITNESS: TITLE. LET ME SEE.

14 THE COURT: IT'S PROBABLY IN THIS EXHIBIT
15 THAT COUNSEL GAVE TO ME. IF I END UP HAVING TO CITE THE
16 TITLE, NO USE IN DIGGING AROUND.

17 MR. SILVER: IT'S TITLE 2, DIVISION 1,
18 CHAPTER 2.

19 THE COURT: TITLE 2.

20 MR. SILVER: SUBCHAPTER 1, ARTICLE 4.

21 THE COURT: FOLKS FROM THE CITY DEPARTMENT OF
22 SOCIAL SERVICES COME IN, AND THEY'LL START TALKING ABOUT
23 THE REGS, AND I'LL HAVE TO KNOW THAT THEY MEAN TITLE 22
24 IF IT DOESN'T GET MENTIONED.

25 ALL RIGHT. SO 571(A), YOU SAY IT HAS AN

HEARING

1 EXCLUSIVE LIST?

2 THE WITNESS: RIGHT. AND ALSO, IT MUST ADHERE
3 TO THE CRITERIA, NINE CRITERIA, IN 571(B).
4 BY MR. CROWLE:

5 Q. AND WHAT ARE THOSE NINE CRITERIA?

6 A. THE NINE CRITERIA --

7 MR. SILVER: EXCUSE ME. THE DOCUMENT SPEAKS
8 FOR ITSELF. WE DON'T NEED HIM TO READ THE WHOLE LINE.

9 THE COURT: WELL, IF HE'S GOING TO, HE SHOULD
10 DO IT SLOWLY FOR OUR REPORTER.

11 MR. CROWLE: OKAY.

12 THE COURT: I'LL OVERRULE THE OBJECTION. IS
13 THERE A WAY TO SUMMARIZE THEM?

14 MR. SILVER: I'LL STIPULATE, YOUR HONOR. IF
15 YOU LOOK AT EXHIBIT A AT PAGE 7, LINE 17, THROUGH --
16 ACTUALLY, THROUGH PAGE 9, LINE 5, THAT LISTS THEM ALL,
17 AND IT WILL BE A LOT EASIER TO LOOK AT THAT.

18 THE COURT: EXHIBIT A, PAGE 7?

19 MR. SILVER: YES. STARTING AT LINE 17.

20 THE COURT: ALL RIGHT. YOU HAVE IT? FIRST
21 ONE BEING CONTAINED A WRITTEN LABOR AGREEMENT; RIGHT?

22 THE WITNESS: YES.

23 THE COURT: SO WE GOT THOSE HERE IN
24 EXHIBIT A.

25 THE WITNESS: OKAY.

HEARING

1 THE COURT: THAT WAY I GOT THEM IN FRONT OF
2 ME.

3 MR. CROWLE: IT'S EXHIBIT 9, YOUR HONOR.
4 FINE.

5 BY MR. CROWLE:

6 Q. CAN YOU EXPLAIN THE PROCESS THAT YOU GO
7 THROUGH TO MAKE A DETERMINATION OF THE PROPRIETY OF A
8 CLAIM FOR FINAL COMP THAT IS MADE?

9 A. YES. THE CASES ARE IDENTIFIED TO US BY OUR
10 BENEFITS SERVICES DIVISION, AND WE REVIEWED THE REPORTED
11 PAYROLL, AND IF THERE'S ANYTHING THAT NEEDS TO BE
12 VERIFIED IF THERE'S A SPECIAL COMPENSATION OR A PAY
13 RAISE THAT NEEDS TO BE VERIFIED, WE CONTACT THE EMPLOYER
14 AND ASK FOR THE VERIFYING INFORMATION.

15 SOMETIMES IT'S ALREADY LISTED IN THEIR WEB
16 PAGE. THEY HAVE IT PUBLICLY AVAILABLE. HOUR SCHEDULES
17 POSTED ONLINE AND ALL OF THEIR M.O.U.'S, WHICH DETAIL
18 THESE SPECIAL COMPENSATION ITEMS THAT ARE BEING PAID
19 AND HOW THEY'RE PAID, THE AMOUNTS AND WHO THEY ARE
20 AVAILABLE TO.

21 AND SO WE GET THAT INFORMATION AND DETERMINE
22 IF IT IS REPORTED CORRECTLY TO C.A.L.P.E.R.S.

23 Q. HOW DO YOU MAKE A DETERMINATION OF WHETHER OR
24 NOT SOMETHING HAS BEEN REPORTED CORRECTLY?

25 A. IT HAS TO BE REPORTED, AND IT HAS TO BE IN

HEARING

1 COMPLIANCE WITH THE LAW WITH COMPENSATION EARNABLE
2 WITH GOVERNMENT CODE SECTION 20630, GOVERNMENT CODE
3 SECTION 20636, CALIFORNIA CODE OF REGULATIONS SECTION
4 571(A) AND (B).

5 Q. WHAT ROLE DOES THE MEMORANDUM OF
6 UNDERSTANDING, SOMETHING THAT WE HAVE REFERRED TO AS AN
7 M.O.U., PLAY IN THE DETERMINATION?

8 A. THE M.O.U., IT SATISFIES THE FIRST CRITERIA IN
9 507(B), WHICH IT MUST BE CONTAINED IN LABOR POLICY OR
10 AGREEMENT. IT'S THE AGREEMENT BETWEEN THE CITY AND THE
11 EMPLOYEE, AND SO WE USE THAT TO IDENTIFY THE REPORTED
12 SPECIAL COMPS AMOUNTS AND VERIFY THAT THEY WERE REPORTED
13 CORRECTLY.

14 Q. NOW, DO YOU -- DOES THE -- STRIKE THAT.
15 DOES THE M.O.U. DICTATE TO YOU WHAT IS TO BE
16 CONSIDERED FOR FINAL COMPENSATION?

17 A. NO. THE M.O.U. IS NOT BINDING ON P.E.R.S.
18 SOMETIMES AGENCIES WILL PUT IN THE LANGUAGE OR GRAMMAR
19 IN THE M.O.U. THAT THIS ITEM OF PAY IS TO BE REPORTED TO
20 C.A.L.P.E.R.S.

21 HOWEVER, THAT DOES NOT MAKE IT REPORTABLE TO
22 C.A.L.P.E.R.S. IT HAS TO MEET ALL OF THE LAWS AND
23 REGULATIONS CONTAINED IN THE P.E.R.L. --

24 Q. THE WHAT? I'M SORRY.

25 A. THE PUBLIC EMPLOYEES' RETIREMENT LAW.

HEARING

1 Q. WHEN YOU SAY "REPORTABLE," MERELY BECAUSE
2 SOMETHING IS REPORTED DOESN'T MEAN THAT IT IS
3 REPORTABLE; IS THAT CORRECT?

4 A. RIGHT. I SHOULDN'T SAY "REPORTABLE." I
5 SHOULD SAY THAT IT COMPLIES WITH THE LAWS, AND IT IS
6 DEFINED AS COMPENSATION EARNABLE, AS DEFINED BY THE
7 P.E.R.L.

8 Q. "P.E.R.L." MEANING?

9 A. PUBLIC EMPLOYEES' RETIREMENT LAW.

10 Q. THANK YOU.

11 SO YOU LOOKED TO THE M.O.U. TO SEE IF A
12 PARTICULAR TYPE OF PAY IS EVEN REFERENCED BECAUSE, IF IT
13 ISN'T REFERENCED, IT'S NOT GOING TO BE CONSIDERED AT
14 ALL; IS THAT CORRECT?

15 A. RIGHT.

16 Q. AND SO AT LEAST THAT GIVES YOU A START. YOU
17 TAKE A LOOK AT THE MEMORANDUM OF UNDERSTANDING AND IF
18 THERE'S A REFERENCE -- AND WHAT WE'RE FOCUSING ON HERE
19 TODAY IS HOLIDAYS AND THE PAY RELATIVE TO HOLIDAYS,
20 WHETHER OR NOT THAT IS GOING TO BE CONSIDERED FOR
21 PURPOSES OF RETIREMENT; CORRECT?

22 A. CORRECT.

23 Q. AND SO IN THIS PARTICULAR INSTANCE, WE HAVE --
24 TAKING A LOOK AT EXHIBIT 9 ON PAGE 6, FIRST OFF, WE HAVE
25 G(1) HOLIDAY PAY. NOW, THAT WOULD INDICATE THAT EVERY

HEARING

1 OFFICER IS GOING TO BE GIVEN CREDIT FOR HOLIDAY PAY
2 BASED UPON THE FORMULA OF TAKING THE NUMBER OF HOLIDAYS
3 AND SPREADING IT OUT OVER THE YEAR ON A 126 BASIS;
4 CORRECT?

5 A. CORRECT.

6 Q. SO THAT WOULD MEAN THAT EVERY OFFICER IS --
7 WHETHER HE WORKS IT OR NOT, IS GETTING PAID FOR A HOLIDAY
8 DURING THAT YEAR, AND THOSE HOLIDAYS ARE LISTED IN G(3),
9 A THROUGH J; CORRECT?

10 A. CORRECT.

11 Q. NOW, IF AN OFFICER HAPPENS TO WORK ON A GIVEN
12 HOLIDAY, THAT APPEARS TO BE COVERED BY G(2); IS THAT
13 CORRECT?

14 MR. SILVER: EXCUSE ME. I'M GOING TO OBJECT.
15 IT'S REALLY NOT AN ACCURATE QUESTION. THE APPROPRIATE
16 QUESTION WOULD BE: IF THE OFFICER WORKS ON A DAY THAT IS
17 A REGULARLY SCHEDULED DAY, THAT IS A HOLIDAY.

18 MR. CROWLE: FAIR ENOUGH. I'LL ACCEPT THAT
19 CLARIFICATION. THANK YOU.

20 BY MR. CROWLE:

21 Q. WITH THAT CLARIFICATION IN MIND,
22 MR. GUTIERREZ, CAN YOU ANSWER THE QUESTION?

23 A. I'M SORRY. WHAT WAS THE QUESTION?

24 Q. AS MR. SILVER CLARIFIED, IF AN OFFICER WORKS
25 ON A HOLIDAY AND IT'S REGULARLY SCHEDULED, IS IT COVERED

HEARING

1 BY -- IS THAT A PERIOD THAT TO BE COVERED BY G(2)?

2 A. WELL, I WOULD SAY NO BECAUSE IT DOESN'T SAY.
3 IT DOESN'T SPECIFY IF IT'S A REGULARLY SCHEDULED DAY OR
4 NOT.

5 MR. SILVER: I'M GOING TO MOVE TO STRIKE.
6 THIS WITNESS ISN'T COMPETENT TO CONSTRUE THE M.O.U.
7 IT'S JUST THE WAY HE READS IT. HE READS IT RELEVANT.
8 WE ALREADY HAD TESTIMONY BY SOMEBODY WHO NEGOTIATED THE
9 M.O.U. HOW THIS WITNESS READS IT IS REALLY OF NO
10 CONSEQUENCE.

11 THE COURT: WELL, THIS WITNESS HAS BEEN
12 READING IT FOR THE BOARD AND TELLING THEM NOT TO GIVE
13 YOU FOLKS CREDIT, SO SOMEBODY ON THE BOARD GOT TO READ
14 THESE M.O.U.'S TO SEE IF IT FALLS WITHIN THE STATUTES
15 AND REGS. I'LL ALLOW HIM TO GIVE ME HIS OPINION ON
16 THIS.

17 ONLY I GOT TO READ IT AND DECIDE WHETHER IT
18 FALLS IN THE STATUTES AND REGS, BUT IF COUNSEL WANTS TO
19 TRY TO HELP STRAIGHTEN IT OUT WITH THIS WITNESS, I'LL
20 ALLOW HIM, BUT THIS REVIEW LIEUTENANT REINHART DID --

21 MR. SILVER: OH, IT'S A DIFFERENCE.
22 LIEUTENANT REINHART NEGOTIATED THIS. HE WAS A PARTY TO
23 IT.

24 THE COURT: RIGHT. SO HE CAN TELL ME WHAT
25 THE CITY AND POLICE OFFICERS ASSOCIATION THOUGHT ABOUT.

HEARING

1 HE CAN'T TELL ME WHAT P.E.R.S. MIGHT THINK ABOUT IT,
2 WOULD THINK ABOUT IT, OR DID THINK ABOUT IT.

3 MR. SILVER: WELL, AGAIN, WITHOUT BELABORING
4 THE POINT, IT REALLY DOESN'T MATTER WHAT P.E.R.S. THINKS
5 THE PARTIES INTENDED. IT'S WHAT THE PARTIES INTENDED,
6 AND HOW P.E.R.S. INTERPRETS THAT AS BEING IN COMPLIANCE
7 AND NONCOMPLIANCE WITH THE LAW THAT MATTERS.

8 MR. CROWLE: WELL, THAT ISN'T CORRECT EITHER
9 BECAUSE THE INTENTION OF THE PARTIES HAS NOTHING OF THE
10 CITY AND THE EMPLOYEES THAT BARGAINED IT. WELL, THAT
11 INTENTION DOESN'T REALLY MATTER. IT'S, RATHER, THAT IT
12 COMPLIES WITH THE LAW.

13 MR. SILVER: THE INTENTION IS TO WHAT THE
14 BENEFIT MEANS, AND WHAT IT'S SUPPOSED TO ACCOMPLISH IS
15 UP TO THE PARTIES. WHETHER IT COMPLIES WITH THE LAW IS
16 EVENTUALLY FOR THE COURTS TO DECIDE.

17 THE COURT: WELL, I'M GOING TO ALLOW HIM TO
18 DO AN ANALYSIS FROM HIS POINT OF VIEW OF IT, A FELLOW
19 WHO WORKS AT P.E.R.S. AT ANALYZING THINGS.

20 BY MR. CROWLE:

21 Q. WELL, LET ME ASK YOU THIS, MR. GUTIERREZ:
22 DOES REGULARLY SCHEDULED WORKDAY -- IS THAT REFERENCED IN
23 HOLIDAY WORKED?

24 A. NO, IT IS NOT.

25 Q. THAT TERM?

HEARING

1 A. NO, IT IS NOT.

2 Q. SO THAT WOULD BE OF SOME SIGNIFICANCE TO YOU,
3 WOULDN'T IT?

4 A. YES.

5 Q. AND IT IS SIGNIFICANT IN TERMS OF THE WORDS
6 SAY WHAT THEY SAY, AND SO YOU'VE BASED YOUR
7 INTERPRETATION BASED UPON WHAT IS THERE AND ITS
8 COMPLIANCE WITH THE LAW AND THE REGULATIONS; CORRECT?

9 A. CORRECT.

10 Q. WHAT IS THE TERM "FINAL COMP"? THAT'S A TERM
11 OF ART RELATIVE TO WHAT WE'RE TALKING ABOUT; IS THAT
12 CORRECT?

13 A. THE TERM OF --

14 Q. "ART." MEANING FINAL COMP.

15 A. FINAL COMPENSATION?

16 Q. YES.

17 A. IS A -- IT'S THE HIGHEST 12 CONSECUTIVE
18 MONTHS PAY, THE CALCULATION FOR -- IT'S ONE OF THE
19 FACTORS TO CALCULATE RETIREMENT.

20 Q. AND WHAT ARE THE OTHER FACTORS THAT GO INTO
21 DETERMINING RETIREMENT?

22 A. SERVICE CREDIT AND THE FORMULA -- WELL, IT'S
23 THE YEAR OF SERVICE AND AGE THAT -- AT RETIREMENT, AND
24 ALSO THE BENEFIT FORMULA.

25 Q. AND SO A PERSON'S LAST 12 MONTHS OF PAY THAT

HEARING

1 IS P.E.R.S.-ABLE IS VERY SIGNIFICANT IN TERMS OF WHAT
2 THAT PERSON IS GOING TO RECEIVE AS A PENSION FOR
3 WHATEVER PLAN HE OR SHE CHOOSES; CORRECT?

4 A. THAT'S CORRECT.

5 Q. WHAT DOES THE TERM -- I'VE HEARD THIS USED IN
6 A NUMBER OF OCCASIONS -- "P.E.R.S.-ABLE" MEAN?

7 A. "P.E.R.S.-ABLE," I GUESS, CAN BE ANOTHER
8 TERM FOR COMPENSATION EARNABLE. COMPENSATION EARNABLE
9 IS DEFINED IN THE LAW AS BEING PAY THAT WILL BE USED TO
10 CALCULATE RETIREMENT BENEFITS.

11 Q. AND THAT LEAVES US TO THE USE OF THE
12 REGULATION 571 LIST OF DIFFERENT TYPES OF PAY THAT ONE
13 WOULD RECEIVE AND WHETHER OR NOT IT QUALIFIES FOR
14 PURPOSES OF BEING P.E.R.S.-ABLE AND UTILIZED IN THE
15 EQUATION OF DETERMINING FINAL COMP; IS THAT CORRECT?

16 A. THAT'S CORRECT.

17 Q. AS AN EXAMPLE, OVERTIME PAY IS NOT TO BE
18 INCLUDED; CORRECT?

19 A. THAT'S CORRECT.

20 Q. AND THEN SHIFT DIFFERENTIAL IS?

21 A. SHIFT DIFFERENTIAL IS AN ITEM CONTAINED IN
22 THE EXCLUSIVE LIST OF BETTER COMPENSATION ITEMS IN
23 CALIFORNIA CODE OF REGULATIONS SECTION 571.

24 Q. AND SHIFT DIFFERENTIAL HAS A SPECIFIC
25 MEANING, DOES IT NOT?

HEARING

1 A. YES, IT DOES.

2 Q. AND THAT'S WHETHER OR NOT IT IS USED BY
3 SOMEBODY ELSE, HOW THEY INTERPRET IT. THIS IS THE
4 GUIDELINE BY WHICH YOU MAKE A DETERMINATION OF WHETHER
5 OR NOT SHIFT DIFFERENTIAL IS APPLICABLE FOR PURPOSES OF
6 FINAL COMPENSATION; CORRECT?

7 A. CORRECT.

8 Q. NOW, SHIFT DIFFERENTIAL IS DEFINED AS WHAT?

9 MR. CROWLE: I THINK IT'S IMPORTANT MERELY
10 BECAUSE -- I'LL TAKE JUDICIAL NOTICE OF IT TOO, BUT I'D
11 LIKE TO HAVE IT READ INTO THE RECORD, YOUR HONOR, IF YOU
12 DON'T MIND.

13 BY MR. CROWLE:

14 Q. CAN YOU REFER TO THE SHIFT DIFFERENTIAL
15 DEFINITION WHICH IS INVOLVED IN SUBSECTION 4, AND IT IS
16 IN ALPHABETICAL ORDER. GO TO SHIFT DIFFERENTIAL. COULD
17 YOU READ THAT INTO THE RECORD, PLEASE.

18 THE COURT: HANG ON ONE SECOND SO I CAN FIND
19 IT.

20 MR. SILVER: FOR THE RECORD, YOUR HONOR, IT'S
21 IN EXHIBIT 8 ON THE BOTTOM OF PAGE 6.

22 THE COURT: SEE, I'M LOOKING AT 4 HERE, AND
23 YOU'RE AT EXHIBIT E.

24 MR. SILVER: E, IT WOULD BE -- I CAN TELL YOU
25 EXACTLY. IT'S ON PAGE -- HANG ON FOR A SECOND. I

HEARING

1 BELIEVE IT'S ON PAGE 8 RIGHT IN THE MIDDLE.

2 MR. CROWLE: WHICH EXHIBIT?

3 MR. SILVER: E.

4 THE COURT: HIS E.

5 MR. SILVER: RIGHT IN THE MIDDLE OF PAGE 8,
6 YOUR HONOR.

7 THE COURT: TECHNICALLY, WE'RE IN TITLE 2,
8 SECTION 571, SUBDIVISION A(4), AND THE MANY PARAGRAPHS
9 SET FORTH THEREAFTER OR THEREIN ARE NOT INDIVIDUALLY
10 ENUMERATED.

11 BY MR. CROWLE:

12 Q. COULD YOU, PLEASE, READ THAT INTO THE RECORD,
13 MR. GUTIERREZ.

14 A. YES. "SHIFT DIFFERENTIAL":

15 "COMPENSATION TO EMPLOYEES WHO ARE
16 ROUTINELY AND CONSISTENTLY SCHEDULED TO
17 WORK OTHER THAN A STANDARD DAYTIME
18 SHIFT. EXAMPLE: GRAVEYARD SHIFT,
19 SWING SHIFT, SHIFT CHANGE, ROTATING
20 SHIFTS, WEEK SHIFTS, OR WEEKENDS."

21 Q. SO THIS IS A REGULARLY ASSIGNED --

22 A. YES.

23 Q. -- SHIFT. THAT DOESN'T MEAN TO SAY THAT A
24 PERSON WHO WORKED A -- WAS CALLED IN AND WORKED AT
25 NIGHT, LET'S SAY, SO HE HAD NIGHTTIME DIFFERENTIAL. HE

HEARING

1 WOULDNT BE DISALLOWED THE PAY HE RECEIVED, BUT WOULD BE
2 GIVEN CREDIT AS NIGHTTIME DIFFERENTIAL FOR P.E.R.S.-ABLE
3 PAY?

4 A. WELL, IF HE WAS CALLED IN, AND IT WAS
5 OVERTIME, THEN IT WOULDNT BE REPORTED AS
6 C.A.L.P.E.R.S., NO.

7 Q. I'D LIKE TO REFER YOU TO EXHIBITS 12 AND 14,
8 AND THOSE ARE THE BREAKDOWNS OF PAY FOR MR. CATALANO AND
9 MR. EVENSON. THESE ARE NOT EXHAUSTED LISTS, BUT,
10 THEREFORE, FOR REFERENCE PURPOSES.

11 (DEPARTMENT'S EXHIBITS NUMBERS 12 AND 14 WERE
12 MARKED FOR IDENTIFICATION.)

13 BY MR. CROWLE:

14 Q. DO THESE SHOW THAT BOTH OF THEM WERE PAID FOR
15 HOLIDAY PAY?

16 A. YES.

17 Q. AS SET FORTH IN THE M.O.U.?

18 A. THE HOLIDAY PAY, YES.

19 MR. SILVER: I'M SORRY. WHICH EXHIBITS ARE
20 YOU TALKING ABOUT?

21 THE COURT: 12 AND 14.

22 MR. SILVER: THEY LOOK DIFFERENT.

23 BY MR. CROWLE:

24 Q. IF YOU TAKE A LOOK IN THE COLUMN, LET'S TAKE
25 MR. CATALANO'S EXHIBIT 12, AND THERE'S A COLUMN THERE.

HEARING

1 IT SAYS REGULAR P.T.T., TAKEN VACATION, ET CETERA,
2 ET CETERA, AND YOU GO DOWN, AND THERE IS A REFERENCE TO
3 HOLIDAY; IS THAT CORRECT?

4 A. YES.

5 Q. AND ACROSS FROM THAT, THERE'S A FIGURE OF
6 125.94.

7 A. THAT'S CORRECT.

8 Q. AND WHAT IS YOUR UNDERSTANDING THAT THAT
9 125.94 REPRESENTS?

10 A. IT REPRESENTS 126 OF 80 HOURS.

11 Q. AND IS IT CONSISTENT THROUGHOUT MR. CATALANO
12 AND IF YOU REFER TO MR. EVENSON, HIS PAY REFERENCES THAT
13 THE HOLIDAY PAY IS EACH AND EVERY PAY PERIOD?

14 A. IT IS REPORTED TO EACH AND EVERY PAY PERIOD,
15 YES.

16 Q. NOW, IF YOU TAKE A LOOK AT THE FIRST PAGE OF
17 EXHIBIT 12. AGAIN, ABOVE THE REFERENCE TO "HOLIDAY,"
18 THERE'S "HOLIDAY PREMIUM."

19 A. THAT'S CORRECT.

20 Q. YOU SEE THAT?

21 A. YES.

22 Q. AND ACROSS FROM THAT, THERE'S A ZERO WITH A
23 LINE THROUGH IT. WOULD THAT INDICATE THAT THERE WAS NO
24 HOLIDAY WORKED DURING THIS TIME FRAME?

25 A. THERE'S NO HOLIDAY PREMIUM REPORTED OR PAID

HEARING

1 TO THIS INDIVIDUAL, YES.

2 Q. AND ONE WOULD EXPECT IF YOU WORKED, YOU'D BE
3 PAID; RIGHT?

4 A. CORRECT.

5 Q. LET'S GO TO THE NEXT PAGE.

6 AGAIN MR. CATALANO --

7 THE COURT: THIS IS EXHIBIT 12, PAGE 2?

8 MR. CROWLE: YES, YOUR HONOR. EXCUSE ME.

9 BY MR. CROWLE:

10 Q. YOU TAKE A LOOK AT THE HOLIDAY PREMIUM
11 REFERENCED, AND LOOK ACROSS FROM THAT. IT WOULD INDICATE
12 THAT MR. CATALANO DID WORK ON A HOLIDAY; CORRECT?

13 A. THAT'S CORRECT.

14 Q. AND HE WAS CORRESPONDINGLY PAID FOR THAT
15 HOLIDAY?

16 A. YES.

17 Q. AND THE SAME WOULD HOLD TRUE IF YOU LOOKED AT
18 MR. EVENSON'S PAY RECORDS. IN FACT, ON THE FIRST PAGE
19 OF HIS AND ON THE TOP OF IT, IT HAS 01-SLASH-07-SLASH-3.
20 THERE'S A REFERENCE OPPOSITE 7(P) SAYING "HOLIDAY
21 PREMIUM" --

22 A. YEAH.

23 Q. -- AND MR. EVENSON WAS PAID FOR AT A HOLIDAY
24 PREMIUM RATE FOR WORKING ON THAT PARTICULAR 11.4, TWO
25 HOURS; CORRECT?

HEARING

1 A. CORRECT. IT ALSO SHOWS THE HOURLY RATE OF
2 WHICH THE HOLIDAY PREMIUM PAY IS CALCULATED.

3 Q. AND THEN THE TOTAL AMOUNT AND THAT WOULD BE A
4 MULTIPLYING FACTOR OF 11.4, TWO TIMES 30, 2.5?

5 A. THAT'S CORRECT.

6 Q. SO THIS WOULD INDICATE THAT HOLIDAYS WORKED,
7 ISN'T EVERY PAY PERIOD? WHEREAS HOLIDAY PAY, THEY
8 RECEIVE EVERY SINGLE PAY PERIOD?

9 A. YES.

10 Q. HAVE YOU HAD AN OPPORTUNITY TO COMPARE
11 HUNTINGTON BEACH WITH OTHER MUNICIPALITIES THAT HAVE
12 POLICE FORCES, AND DO THEY HAVE THIS TYPE OF SYSTEM
13 APPLICABLE TO HOLIDAY PAY?

14 A. NOT -- THEY -- I HAVE -- YOU KNOW, REVIEWED
15 OTHER CITIES, AND USUALLY THEY WILL HAVE HOLIDAY PAY.
16 THEY WILL HAVE THE ALLOTMENT FOR THE HOURS, AND THEY
17 WILL REPORT THAT TO C.A.L.P.E.R.S.

18 MR. SILVER: EXCUSE ME. I'D LIKE TO MOVE TO
19 STRIKE THIS. THERE'S NO FOUNDATION. WE DON'T KNOW WHAT
20 AGENCIES HE LOOKED AT.

21 I CAN STATE MYSELF THAT I REPRESENT AN AWFUL
22 LOT OF POLICE UNIONS THROUGHOUT THE STATE, AND MOST OF
23 THEM DO WHAT HUNTINGTON BEACH DOES. THEY MAY NOT HAVE
24 CALLED IT THE SAME THING.

25 SO I DON'T KNOW WHAT THIS WITNESS IS TALKING

HEARING

1 ABOUT. THERE'S NO FOUNDATION.

2 THE COURT: LAY A FOUNDATION. IT CAN BE
3 SHORED UP, MR. CROWLE.

4 MR. CROWLE: I'LL LET IT GO WITH THAT,
5 YOUR HONOR.

6 BY MR. CROWLE:

7 Q. IN ANALYZING THE REQUEST OR EFFORT TO HAVE
8 INCLUDED IN FINAL COMP HOLIDAY WORK PAY, WHAT WAS THE
9 DETERMINATION OF C.A.L.P.E.R.S. IN THAT REGARD?

10 A. I'M SORRY. CAN YOU RESTATE THE QUESTION?

11 Q. THERE'S AN EFFORT, IS THERE NOT, TO INCLUDE
12 HOLIDAY WORK PAY AS THIS PREMIUM, HOLIDAY PREMIUM PAY,
13 TO BE INCLUDED IN FINAL COMP; IS THAT CORRECT?

14 A. THE EFFORT ON THE CITY'S PART TO INCLUDE
15 IT IN --

16 Q. ON BEHALF OF THESE PEOPLE WHO ARE MAKING
17 THEIR -- APPLYING FOR RETIREMENT. THEY'RE SEEKING TO
18 HAVE INCLUDED AS PART OF THEIR FINAL COMPENSATION;
19 CORRECT?

20 A. YES.

21 Q. AND YOU MADE A DETERMINATION. C.A.L.P.E.R.S.
22 HAS MADE A DETERMINATION THAT IT DOESN'T APPLY; IS THAT
23 CORRECT?

24 A. THAT'S CORRECT.

25 Q. AND WHAT IS THE REASON OR REASONS FOR THAT?

HEARING

1 A. THE REASONS ARE THAT IT DOES NOT QUALIFY AS
2 REPORTABLE COMPENSATION BASED ON THE LAW. BASED ON
3 20636 AND BASED ON THE FACT THAT IT'S NOT REPORTABLE
4 BECAUSE IT'S LIKE A COMPOUNDING OF THE PAY. IT'S NOT
5 REPORTED PURSUANT TO THEIR MEMORANDUM OF UNDERSTANDING.

6 IT'S NOT SHIFT DIFFERENTIAL. IT'S NOT
7 HOLIDAY PAY BECAUSE THEY ALREADY REPORT HOLIDAY PAY.

8 Q. LET'S TAKE THIS. YOU MADE SEVERAL REFERENCES
9 AS TO WHY. LET'S TAKE THEM ONE AT A TIME AND EXPLAIN
10 WHY THAT IS THE CASE. SO IF YOU CAN TAKE IT FROM THE
11 TOP WHY IT DOESN'T QUALIFY AND BE SPECIFIC AS TO WHY IT
12 DOESN'T QUALIFY FOR THAT GIVEN REASON.

13 I BELIEVE YOUR FIRST ONE WAS IT DOESN'T
14 QUALIFY UNDER THE LAW, AND, I BELIEVE, YOU REFERENCED
15 20636.

16 MR. SILVER: JUST FOR THE RECORD, CAN WE JUST
17 SAY, INSTEAD OF ASKING WHY IT DOESN'T QUALIFY, WHY
18 C.A.L.P.E.R.S. CONSIDER THAT IT DOESN'T QUALIFY?

19 THE COURT: I'M TAKING IT THAT WAY. THIS IS
20 THEIR CONTENTION.

21 MR. SILVER: I JUST WANT TO MAKE IT CLEAR FOR
22 THE RECORD, YOUR HONOR.

23 THE COURT: AND THIS IS BACK THERE IN THE
24 QUIET OF HIS OFFICE IN SACRAMENTO WITH PILES OF PAPER
25 AND COMPUTER SCREENS AROUND HIM, AND HE LOOKED THIS OVER

HEARING

1 AND SAID, "THIS DOESN'T PASS MUSTARD," AND NOW HE'S HERE
2 TO EXPLAIN WHY.

3 I'M NOT SAYING I'M BUYING IT. I'M JUST
4 SAYING I'M GOING TO LET HIM TELL ME WHY.

5 SO YOUR FIRST POINT.

6 THE WITNESS: MY FIRST POINT IS THAT IT
7 DOESN'T QUALIFY AS SHIFT DIFFERENTIAL. IT DOESN'T MEET
8 THE DEFINITION OF SHIFT DIFFERENTIAL IN THE CALIFORNIA
9 CODE OF REGULATIONS SECTION 571(A).

10 BY MR. CROWLE:

11 Q. AND WHY DOES IT NOT?

12 A. BECAUSE IT'S NOT -- IT'S NOT SHIFT
13 DIFFERENTIAL. IT'S NOT A -- IT'S NOT -- IT'S NOT A
14 REGULARLY SCHEDULED SHIFT THAT THEY WORK. IT'S NOT --
15 SHIFT DIFFERENTIAL IS GRAVEYARD SHIFT. IT'S, YOU KNOW,
16 IT'S SHIFT CHANGE. IT'S A SHIFT CHANGE. I'M SORRY.
17 SHIFT DIFFERENTIAL IS ON THE DAY, NOT DEPENDING ON THE
18 HOLIDAY.

19 Q. LET ME ASK YOU THIS: IN THE DEFINITION, IT
20 INDICATES EMPLOYEES WHO ARE ROUTINELY AND CONSISTENTLY
21 SCHEDULED.

22 A. RIGHT.

23 Q. NOW, WE'VE HEARD HERE TODAY THAT PEOPLE CAN
24 BID ON HOLIDAYS BASED UPON SENIORITY. SO IS THAT
25 SOMETHING THAT IS ROUTINELY TAKEN?

HEARING

1 MR. SILVER: CAN YOU ASK A MORE LEADING
2 QUESTION THAN THAT? I MEAN, WHO'S TESTIFYING HERE?

3 THE COURT: WELL --

4 MR. SILVER: OBJECTION.

5 THE COURT: LET'S TRY NOT TO LEAD OUR
6 WITNESS.

7 BY MR. CROWLE:

8 Q. IN THE DEFINITION TERM, ROUTINE IS USED. HOW
9 IS IT THAT WHAT IS BEING CLAIMED HERE NOT ROUTINE?

10 A. IT'S NOT PART OF THEIR NORMAL WORK SCHEDULE.
11 IT HAS TO BE ASSIGNED, AND IT'S NOT ROUTINE. IT'S NOT
12 CONSISTENT THAT THEY WORK HOLIDAYS.

13 Q. WELL, YOU ANSWERED MY NEXT QUESTION. IT'S
14 NOT CONSISTENT; CORRECT?

15 A. THAT'S CORRECT.

16 Q. WHY IS IT NOT CONSISTENT?

17 A. BECAUSE IT'S BASED ON THE HOLIDAYS WHICH ARE
18 NOT CONSISTENT.

19 Q. AND THE EXAMPLES REFERENCED DIFFERENT SHIFTS;
20 IS THAT CORRECT?

21 A. YES. SHIFTS.

22 Q. AND IS THERE ANYTHING ASSOCIATED WITH SHIFT
23 INVOLVING A HOLIDAY?

24 A. NO.

25 Q. THERE ARE OTHER BASES UPON WHICH YOU SAID

HEARING

1 THAT THIS DIDN'T APPLY FOR PURPOSES OF FINAL
2 COMPENSATION.

3 A. ANOTHER --

4 Q. WHAT'S YOUR NEXT POINT?

5 A. THAT IT DOESN'T APPLY. IT'S NOT EVEN
6 REPORTED PURSUANT TO THE M.O.U.

7 Q. HOW SO?

8 A. WELL, YOU CAN SEE THAT THE HOURLY RATE HERE
9 THAT THEY'RE CALCULATING THE PREMIUM PAY BASED ON IS NOT
10 HALF TIME. IT'S NOT ONE AND A HALF TIMES AND THEN
11 CALCULATED BY THE HOURS. THERE'S A SEPARATE OTHER
12 CALCULATION THAT THEY'RE DOING IN ORDER TO CALCULATE
13 THIS HOLIDAY PREMIUM.

14 Q. AND WHERE IS THAT REFLECTED?

15 A. THAT WAS REFLECTED IN -- IT WAS REFLECTED IN
16 EXHIBIT 12 ON THE SECOND PAGE.

17 Q. AND SPECIFICALLY WHERE IS THAT?

18 A. WHERE IT SAYS HOLIDAY PREMIUM, IT HAS THE
19 RATE AT WHICH THEY'RE CALCULATED IN THE PAY, AND AGAIN
20 YOU CAN SEE IT ON SECTION 14, EXHIBIT 14, PAGE 1 WHERE
21 IT SAYS HOLIDAY PREMIUM, AND IT SHOWS THE RATE OF PAY
22 FOR THAT PARTICULAR ITEM.

23 Q. ANY OTHER BASES UPON WHICH THIS DOESN'T
24 QUALIFY FOR PURPOSES OF FINAL COMPENSATION?

25 A. IT'S NOT PART OF THEIR BASE PAY. IT'S NOT

HEARING

1 HISTORICALLY CONSISTENT. THEY CAN BID ON IT, AND IT CAN
2 BE -- THERE'S NO CONSISTENCY WITH THE REPORTING AS
3 OPPOSED TO THE HOLIDAY PAY THAT THEY ARE REPORTING IS
4 CONSISTENTLY THROUGHOUT THEIR CAREER.

5 AND THEN WHEN THEY GO TO RETIRE, THEIR
6 CALCULATION IS BASED ON A FACTOR OR THE PAY THAT IS
7 CONSISTENT AND, THEREFORE, IT'S NOT OVER AND ABOVE OUR
8 ACTUAL ASSUMPTIONS.

9 Q. NOW, IT WAS INDICATED IN OPENING STATEMENT
10 THAT THE FUNCTION OF THIS WAS TO PAY THE OFFICERS FOR
11 THEIR INCONVENIENCE. ARE YOU FAMILIAR WITH THE TERM
12 "INCONVENIENCE PAY" AS BEING DEFINED IN ANY REGULATION OR
13 STATUTE?

14 A. IT'S NOT CONTAINED IN THE REGULATIONS AS
15 BEING A REPORTABLE ITEM SPECIAL COMPENSATION, NO.

16 Q. AND IF ONE BIDS ON A HOLIDAY, DOES THAT SEEM
17 LIKE AN INCONVENIENCE, IF YOU'RE BIDDING ON A HOLIDAY, TO
18 GET PAID FOR IT BECAUSE YOU'RE GOING TO GET PREMIUM
19 PAY?

20 A. NO.

21 Q. I'D LIKE YOU TO TAKE A LOOK AT EXHIBIT 10,
22 WHICH IS THE SIDE LETTER. GO TO PAGE 2, ARTICLE 7,
23 SUBSECTION G, "HOLIDAYS," AND ARABIC 2, "HOLIDAYS
24 WORKED."

25 DOES THIS APPEAR TO BE AN EFFORT TO MODIFY

HEARING

1 HOLIDAYS WORKED, COMPARED TO THE ORIGINAL M.O.U.?

2 A. YES.

3 Q. NOW, IS SHIFT DIFFERENTIAL REFERENCED IN THE
4 ORIGINAL HOLIDAYS WORK, WHICH IS EXHIBIT 9 ON PAGE
5 6(G)(2)?

6 A. IS IT THE -- I'M SORRY.

7 Q. WE HAVE HOLIDAYS WORKED --

8 MR. SILVER: WE'LL STIPULATE. WE'LL
9 STIPULATE LIEUTENANT REINHART HAS ALREADY TESTIFIED THAT
10 THEY DIDN'T CHANGE THE SUBSTANCE OF THE BENEFIT. THEY
11 JUST CHANGED THE WAY IT WAS DESCRIBED, AND THIS WITNESS
12 WASN'T ANY PARTY TO ANY OF THESE CONTRACTS.

13 I DON'T KNOW HOW HE CAN COMPETENTLY TESTIFY
14 AS TO THIS, AND IT SAYS WHAT IT SAYS, AND LIEUTENANT
15 REINHART EXPLAINED IT: THERE WAS NO CHANGE IN THE
16 SUBSTANCE, JUST A CHANGE IN THE WAY IT WAS DESCRIBED.

17 MR. CROWLE: WHAT'S THE FUNCTION OF
18 C.A.L.P.E.R.S.? TO APPLY A CONTRACT TO THE GIVEN
19 SITUATION, WHETHER OR NOT IT COMPORTS WITH THE LAW. SO
20 REGARDLESS OF YOUR INVOLVEMENT WITH THE NEGOTIATION AND
21 THE ENTERING INTO THE CONTRACT, C.A.L.P.E.R.S. IS NOT A
22 PARTY OF THAT CONTRACT.

23 MR. SILVER: I UNDERSTAND. IF YOU JUST ASK
24 HIM WHETHER HE THINKS THIS LANGUAGE SATISFIES THE LAW,
25 THAT'S AS RELEVANT AS IT IS. THAT'S FINE. BUT YOU'RE

HEARING

1 ASKING HIM WHETHER THIS CONTRACT -- THE MEANING OF THIS
2 IS DIFFERENT THAN THE PREVIOUS CONTRACT. HE'S NOT
3 COMPETENT TO TESTIFY TO THAT.

4 THE COURT: WELL, I SUPPOSE HOW HE READS IT
5 IS WHAT HE CAN TESTIFY TO.

6 DO YOU UNDERSTAND THE QUESTION?

7 (NO AUDIBLE RESPONSE BY THE WITNESS.)

8 THE COURT: AFTER ALL THIS GOING ON?

9 THE WITNESS: YES.

10 THE COURT: YOU CAN ANSWER IT.

11 THE WITNESS: YES. IT IS THE SAME HOLIDAYS
12 WORKED.

13 BY MR. CROWLE:

14 Q. IS SHIFT DIFFERENTIAL REFERENCED IN THE
15 ORIGINAL M.O.U. IN THE CONTEXT OF HOLIDAYS WORKED,
16 THOUGH?

17 A. NO.

18 Q. THE REFERENCE IN EXHIBIT 10, PAGE 2, IT SAYS
19 "HOLIDAY SHIFT DIFFERENTIAL PAY." DOES HOLIDAY SHIFT
20 DIFFERENTIAL PAY, IN THE CONTEXT OF HOLIDAYS IN THIS
21 PARTICULAR SIDE LETTER, CONFORM TO WHAT SHIFT
22 DIFFERENTIAL IS IN REGULATION 571?

23 MR. SILVER: CAN I JUST HAVE A CONTINUING
24 OBJECTION NOW?

25 THE COURT: YOU CAN.

HEARING

1 MR. SILVER: BECAUSE THIS CALLS FOR A LEGAL
2 CONCLUSION.

3 THE WITNESS: NO, IT IS NOT.
4 BY MR. CROWLE:

5 Q. NOW, YOU HAVE PEOPLE WHO WORK HOLIDAYS, AND
6 THEN PEOPLE WHO DON'T. ARE THEY IN THE SAME CATEGORY AS
7 ONE ANOTHER? AND THE BASIC QUESTION IS --

8 MR. SILVER: I DON'T UNDERSTAND THE QUESTION.
9 I DON'T KNOW IF YOU DO, BUT I DON'T.

10 THE COURT: IT'S MORE GENERAL.

11 MR. SILVER: WHAT IS THE "SAME CATEGORY?"
12 I'M TRYING NOT TO OBJECT, BUT --

13 BY MR. CROWLE:

14 Q. IF YOU HAVE PEOPLE THAT WORK HOLIDAYS AND
15 THEN IN ONE GROUP AND YOU HAVE PEOPLE THAT DON'T, ARE
16 THEY IN THE SAME CATEGORY AS ONE ANOTHER?

17 MR. SILVER: YOU MEAN CATEGORY FOR WHAT
18 PURPOSE?

19 THE COURT: I THINK THAT'S A LEGITIMATE
20 QUESTION.

21 BY MR. CROWLE:

22 Q. IN ORDER --

23 A. I WOULD SAY THAT THEY WOULD NOT BE CONSIDERED
24 IN THE SAME GROUP AS OTHERS.

25 Q. AND IS THERE ANY SIGNIFICANCE OF THEIR NOT

HEARING

1 BEING IN THE SAME GROUP OF PURPOSES OF FINAL COMPENSABLE
2 PAY?

3 A. YES. BECAUSE THEN THEY ARE GETTING TWO
4 SEPARATE BENEFITS.

5 Q. HOW SO?

6 A. WELL, PEOPLE WHO AREN'T WORKING THE HOLIDAY
7 ARE GETTING LESS OF A BENEFIT TO C.A.L.P.E.R.S. FOR
8 C.A.L.P.E.R.S. RETIREMENT THAN THE PEOPLE THAT ARE
9 WORKING THE HOLIDAYS.

10 Q. SO THE PEOPLE WHO HAVE SENIORITY ARE ABLE TO
11 BID ON THAT. THERE IS NOT AN EQUAL RELATIONSHIP TO ONE
12 ANOTHER; CORRECT?

13 A. THAT'S CORRECT.

14 Q. ARE YOU AWARE WITH C.A.L.P.E.R.S. BOARD
15 HAVING AFFIRMABLY DETERMINED THAT THE PAY AN OFFICER
16 RECEIVES FOR WORKING A HOLIDAY WHEN A HOLIDAY PAY IS
17 ALREADY COMPLETED OR THAT THEY'RE GIVEN CREDIT FOR ON A
18 PRORATED BASIS?

19 IS THAT SPECIAL COMPENSATION? IS THAT
20 DETERMINATION MADE BY THE BOARD?

21 A. THAT THEY CAN GET ADDITIONAL PAY?

22 MR. SILVER: EXCUSE ME. AGAIN, THE QUESTION
23 HASN'T BEEN MADE AWARE OF. HAS IT BEEN MADE IN THE
24 REGULATION? HAS IT BEEN MADE IN ANYTHING THAT'S BEEN
25 COMMUNICATED TO THE MEMBERS OF C.A.L.P.E.R.S., OR IS IT

HEARING

1 JUST SOMETHING THAT WAS MADE ON A SPUR OF THE MOMENT?
2 DIFFERENT DAY?

3 I THINK WE NEED TO BE MORE SPECIFIC.
4 BY MR. CROWLE:

5 Q. HAS THE BOARD MADE SUCH A DETERMINATION?

6 A. I'M NOT AWARE OF ANY.

7 Q. GIVEN THE MIND THAT THE BOARD HAS THE
8 AUTHORITY TO MAKE SUCH A DETERMINATION.

9 A. FINE.

10 Q. HOW WOULD YOU CLASSIFY OR DEFINE AN EFFORT TO
11 HAVE HOLIDAYS WORKED EQUATE TO FINAL COMPENSATION WHEN
12 THEY'RE ALREADY RECEIVING CREDIT FOR HOLIDAY PAY?

13 A. IT'S ACTUALLY LIKE THEY'RE DOUBLE DIPPING.

14 Q. WHAT DO YOU MEAN BY THAT?

15 A. THEY'RE GETTING TWO DIFFERENT PAYS FOR THE
16 SAME WORK.

17 Q. SO IN OTHER WORDS, THEY'RE ALREADY GETTING
18 PAID FOR THE HOLIDAY, AND THEN AGAIN, THEY'RE GETTING
19 PAID AGAIN?

20 A. RIGHT.

21 Q. YOU'RE NOT SAYING THEY SHOULDN'T GET PAID FOR
22 THAT, BUT IT SHOULDN'T GO INTO THE EQUATION FOR PURPOSES
23 OF FINAL COMPENSATION; CORRECT?

24 A. THAT'S CORRECT.

25 Q. MUCH THE SAME AS OVERTIME?

HEARING

1 A. CORRECT.

2 Q. COULD THIS BE CONSIDERED A FORM OF SPIKING?

3 A. IT CAN, BECAUSE THEY CAN BID TO HAVE ALL
4 THEIR -- TO WORK ALL THEIR HOLIDAYS IN THEIR FINAL YEAR
5 AND THEN HAVE THAT -- THEY WON'T BE REPORTING THAT SAME
6 AMOUNT THROUGHOUT THEIR ENTIRE CAREER, AND THEN AT THE
7 END, THEY CAN WORK ALL OF THEIR HOLIDAYS AND GET THAT
8 CALCULATED INTO THEIR RETIREMENT.

9 MR. CROWLE: THAT'S ALL THE QUESTIONS I HAVE
10 AT THIS TIME.

11

12

CROSS-EXAMINATION

13

BY MR. SILVER:

14

Q. MR. GUTIERREZ, WHEN DID YOU FIRST BECOME
15 INVOLVED IN THIS PARTICULAR REVIEW?

16

A. ABOUT A COUPLE OF MONTHS AGO.

17

Q. AND SO THAT YOU WERE NOT A PARTICIPANT TO THE
18 ORIGINAL DECISION TO DENY THE CREATION OF THIS HOLIDAY
19 PAY AS A PENSIONABLE INCOME?

20

A. THAT'S CORRECT.

21

Q. AND ISN'T IT TRUE THAT THE ORIGINAL
22 DETERMINATION TO DISALLOW THIS PENSIONABLE INCOME WAS
23 BECAUSE OF REGARDING THIS OVERTIME?

24

A. I THINK THEY MAY HAVE BEEN ONE OF THE FACTORS
25 TO DETERMINE THAT.

HEARING

1 Q. LET ME DIRECT YOUR ATTENTION TO EXHIBIT 2.
2 WHY DON'T YOU TAKE A LOOK AT THAT AND PARTICULARLY TO
3 THE SECOND PAGE, THIRD PARAGRAPH. JUST READ IT TO
4 YOURSELF.

5 DOES THAT HELP REFRESH YOUR RECOLLECTION AS TO
6 WHETHER THE REAL REASON OR THE INITIAL REASON FOR DENYING
7 IT WAS BECAUSE IT WAS REGARDED AS OVERTIME?

8 A. TECHNICALLY, WHEN WE SEE A HOLIDAY PREMIUM
9 PAY, IT IS OVERTIME. THAT'S WHY IT'S NOT REPORTED TO
10 C.A.L.P.E.R.S. THERE'S OTHER AGENCIES THAT HAVE AN
11 OVERTIME, HOLIDAY OVERTIME PAY, THAT'S -- IS NOT
12 REPORTED TO C.A.L.P.E.R.S.

13 Q. RIGHT. SO C.A.L.P.E.R.S. -- AND I WOULD SAY
14 CORRECTLY, C.A.L.P.E.R.S. ASSUMED IT WAS OVERTIME. AND
15 IF THAT ASSUMPTION WAS CORRECT, IT WOULD BE APPROPRIATE
16 TO DISALLOW IT; IS THAT RIGHT?

17 MR. CROWLE: OBJECTION; ARGUMENTATIVE.

18 THE COURT: OVERRULED.

19 THE WITNESS: IT'S PAID AT THE OVERTIME RATE,
20 AND IT CERTAINLY LOOKS LIKE OVERTIME.

21 BY MR. SILVER:

22 Q. SO IT IS NOW YOUR POSITION THAT AFTER HAVING
23 LEARNED MORE ABOUT IT, IT IS STILL C.A.L.P.E.R.S.'S
24 POSITION THAT THIS PAY IS OVERTIME?

25 A. WELL, IT'S NOT PART OF THEIR NORMAL BASE PAY,

HEARING

1 SO IT'S OVER AND ABOVE WHAT THEIR NORMAL BASE PAY IS.

2 Q. SINCE YOU'RE SUCH AN EXPERT ON
3 C.A.L.P.E.R.S., LET'S LOOK AT GOVERNMENT CODE SECTION
4 20635, WHICH IS REFERENCED THERE, AND TELL ME WHAT
5 OVERTIME IS DEFINED AS.

6 A. WOULD YOU LIKE ME TO READ IT?

7 Q. YOU TELL ME IN YOUR OWN WORDS.

8 A. OVERTIME IS ANYTHING OVER AND ABOVE THE
9 NORMAL FULL-TIME BASE PAY. IT'S ALSO FOR, WHEN THEY ARE
10 CURRENTLY WORKING IN TWO POSITIONS, TWO OF WHICH IS
11 CONSIDERED FULL TIME, ONE OF THEM IS CONSIDERED
12 OVERTIME, IT IS NOT REPORTED TO C.A.L.P.E.R.S.

13 Q. LET ME TAKE THIS ONE BY ONE.

14 YOU SAY THAT ANY PAY THAT IS ABOVE THEIR
15 NORMAL BASE PAY. DOES THAT INCLUDE LIKE SPECIAL PAYS,
16 LIKE NIGHT DIFFERENTIAL OR EDUCATIONAL INCENTIVE? IS
17 THAT WHAT YOU MEAN?

18 A. NO, I MEAN --

19 Q. DON'T YOU REALLY MEAN PAY FOR WORKING HOURS
20 ABOVE THOSE NORMALLY WORKED BY EMPLOYEES, INCENTIVE FOR
21 CLASS? ISN'T THAT REALLY WHAT OVERTIME IS?

22 A. IT'S OVER AND ABOVE THEIR NORMAL WORK
23 SCHEDULE, YES.

24 Q. SO IT'S PAY FOR WORKING HOURS THAT ARE
25 OUTSIDE THEIR NORMAL WORK SCHEDULE; RIGHT?

HEARING

1 A. THAT'S CORRECT.

2 Q. SO IF THIS HOLIDAY PAY WAS PAID FOR HOURS
3 THAT THEY WERE REGULARLY SCHEDULED TO WORK, THAT
4 WOULDN'T BE OVERTIME, WOULD IT?

5 A. WELL, IT'S PAID AT THE OVERTIME RATE, AND
6 IT'S OVER AND ABOVE THAT THEIR NORMAL PAY IS.

7 Q. YOU'RE NOT ANSWERING MY QUESTION.

8 IF THE PAY WAS FOR REGULARLY SCHEDULED --

9 MR. CROWLE: NO, YOU DON'T LIKE THE ANSWER.

10 MR. SILVER: NO, THAT'S NOT TRUE.

11 THE COURT: CAREFUL.

12 MR. SILVER: I WANT AN ANSWER TO MY QUESTION.

13 NOT --

14 THE COURT: HEY.

15 MR. SILVER: I APOLOGIZE.

16 THE COURT: REALLY. YOU NEED TO TAKE AN EVEN
17 STRAIN. BOTH OF YOU. YOU START TO SLIP INTO ARGUING
18 WITH EACH OTHER. YOU GRAY HAIRS KNOW BETTER
19 THAN THAT.

20 NOW, TAKE A DEEP BREATH AND GET YOURSELVES
21 BACK ON TASK HERE.

22 BY MR. SILVER:

23 Q. IF THE PAY IS FOR HOURS THAT ARE REGULARLY
24 SCHEDULED THAT ARE PART OF THE EMPLOYEE'S REGULARLY WORK
25 SCHEDULE, IS THAT OVERTIME?

HEARING

1 A. IN THIS CASE, IT'S OVERTIME BECAUSE IT'S PAID
2 AT THE OVERTIME RATE, AND IT'S OVER AND ABOVE THEIR
3 NORMAL WORK SCHEDULE, SO ABOVE THEIR NORMAL PAY.

4 Q. ISN'T IT TRUE THAT THERE'S SOME OVERTIME THAT
5 IS PAID AT A RATE ABOVE THE EMPLOYEE'S NORMAL WORK
6 SCHEDULE THAT IS REGARDED AS PENSIONABLE INCOME?

7 A. THERE'S F.L.S.A.

8 Q. WELL, I'M TALKING ABOUT PAY THAT IS ABOVE THE
9 EMPLOYEE'S NORMAL RATE. LET'S SAY PAID AT TIME AND A
10 HALF. FOR WHATEVER REASON, ISN'T SOME PAID AS -- PAID AT
11 TIME AND A HALF REGARDED AS PENSIONABLE INCOME?

12 A. F.L.S.A. IS REPORTABLE TO C.A.L.P.E.R.S.

13 Q. AND BY "F.L.S.A.," YOU MEAN PAID UNDER THE
14 FAIR LABOR STANDARDS ACT MUST BE PAID AT TIME AND A HALF,
15 BUT IT'S STILL PAY FOR HOURS THAT ARE PART OF THE
16 EMPLOYEE'S REGULAR SCHEDULE THAT IS PENSIONABLE; IS THAT
17 RIGHT?

18 A. IT'S PREMIUM PAY FOR PAY DURING THEIR NORMAL
19 WORK SCHEDULE. THEY ARE REQUIRED TO WORK OVER AND ABOVE
20 THE FAIR LABOR STANDARDS ACT THAT REQUIRES THEM TO BE
21 PAID A PREMIUM AMOUNT.

22 Q. SO PREMIUM PAY FOR HOURS THAT IS PART OF THE
23 NORMAL WORK SCHEDULE IS PENSIONABLE INCOME?

24 A. F.L.S.A. IS A PENSIONABLE INCOME.

25 Q. NOW, WHEN YOU REVIEWED THIS MATTER, DID YOU

HEARING

1 HAVE AN OPPORTUNITY TO REVIEW EXHIBIT C? I MEAN 3.

2 EXCUSE ME. EXHIBIT 3.

3 A. EXHIBIT 3. I BRIEFLY DID REVIEW THIS.

4 Q. JUST BRIEFLY.

5 A. I SEE THAT YOU ARE CALLING IT OR TRYING TO
6 CHANGE IT FROM HOLIDAY PAY TO SHIFT PAY.

7 Q. FORGETTING ABOUT WHAT YOU THINK I'M TRYING TO
8 DO IN THAT LETTER, IS IT TRUE THAT LETTER EXPLAINED THAT
9 THE PAY WAS FOR REGULARLY SCHEDULED HOURS?

10 MR. CROWLE: OBJECTION. THAT'S YOUR
11 INTERPRETATION. ARGUMENTATIVE.

12 BY MR. SILVER:

13 Q. DID YOU INTERPRET IT THAT WAY?

14 THE COURT: I'LL ALLOW THAT.

15 THE WITNESS: CAN I HAVE A SECOND TO REVIEW
16 IT?

17 BY MR. SILVER:

18 Q. TAKE AS MUCH TIME AS YOU WANT.

19 A. I THINK IT SHOWS THAT YOU ARE TRYING -- OR
20 CALLING -- THIS LETTER IS STATING THAT IT IS -- IT
21 SHOULD BE SHIFT DIFFERENTIAL.

22 Q. THAT WASN'T MY QUESTION.

23 MY QUESTION IS: DOES THE LETTER EXPLAIN --
24 DID YOU UNDERSTAND THE TYPICAL LETTER IS EXPLAINING THAT
25 THIS PAY WAS FOR HOURS THAT ARE PART OF THE EMPLOYEE'S

HEARING

1 REGULAR SCHEDULE?

2 A. TO ME IT SEEMS LIKE IT'S MORE OF THE FACT
3 THAT IT'S SHIFT DIFFERENTIAL.

4 Q. FORGETTING ABOUT WHAT IT'S CALLED, MY
5 QUESTION WAS: DID THE LETTER INDICATE TO YOU THAT THIS
6 PAY WAS FOR REGULARLY SCHEDULED HOURS OR FOR HOURS IN
7 EXCESS OF REGULAR SCHEDULE? WHICH ONE OF THE TWO?

8 MR. CROWLE: AGAIN, OBJECTION ON THE BASIS
9 THAT THIS IS MR. SILVER'S INTERPRETATION, AS OPPOSED TO
10 WHAT IT IS.

11 MR. SILVER: I'M JUST ASKING HIM HOW HE
12 INTERPRETED THIS LETTER. SIMPLE QUESTION.

13 THE COURT: I'LL ALLOW IT. I DON'T KNOW IF
14 IT WILL GET ME ANYWHERE, BUT I'LL ALLOW IT.

15 THE WITNESS: IT DOES APPEAR THAT YOU HAVE
16 USED THE WORD "REGULARLY SCHEDULED," AND IT SEEMS THAT
17 YOU ARE SAYING THAT THE TIME IS FOR -- THEY'RE NOT
18 WORKING BEYOND THE INDIVIDUAL'S REGULARLY WORK SCHEDULE.
19 BY MR. SILVER:

20 Q. DID YOU TAKE THAT FACTOR INTO ACCOUNT IN YOUR
21 DETERMINATION THAT THIS IS NOT PENSIONABLE INCOME?

22 A. I THINK IT'S TAKEN INTO ACCOUNT, YES.

23 Q. NOW, YOU SAID THAT THE ITEMS LISTED IN
24 REGULATION 571(A) WERE AN EXCLUSIVE LIST; IS THAT
25 CORRECT?

HEARING

1 A. THAT'S CORRECT.

2 Q. WELL, WHAT IF THERE'S AN ITEM OF PAY THAT IS
3 PROVIDED THAT IS IDENTICAL TO ONE OF THE ITEMS THAT IS
4 LISTED IN SUBSECTION A, BUT IT HAS A DIFFERENT TITLE,
5 BUT OTHER THAN THAT, IT'S EXACTLY THE SAME? WOULD YOU
6 EXCLUDE IT BECAUSE IT DIDN'T HAVE ONE OF THE TITLES THAT
7 WAS IDENTIFIED IN SUBSECTION A?

8 A. NO. WE DON'T GO JUST BY THE TITLE. WE GO BY
9 THE MEANING.

10 Q. SO YOU LOOK AT THE SUBSTANCE OF THE
11 BENEFIT?

12 A. YES.

13 Q. AND IF THE SUBSTANCE OF THE BENEFIT MATCHES
14 THE NINE CRITERIA THAT ARE IN SUBSECTION B AND ARE
15 SUBSTANTIALLY SIMILAR TO AN ITEM OR ITEMS OF PAY IN
16 SUBSECTION A, YOU WOULD ALLOW IT?

17 A. IT HAS TO ADHERE TO ALL OF THE LAWS THAT
18 GOVERN COMPENSATION EARNABLE AND COMPENSATION, NOT JUST
19 571(A) OR 571(B).

20 Q. BUT IT DID ADHERE TO ALL OF THE LAWS. JUST
21 BECAUSE IT HAD A DIFFERENT TITLE THAN SOMETHING THAT WAS
22 LISTED IN SUBSECTION A, WOULDN'T --

23 A. GENERALLY SPEAKING, WE DON'T JUST SAY, "OKAY.
24 WELL, WE HAVE SHIFT DIFF AND WE DIDN'T FINISH THE WORK,
25 AND THEN SO THAT'S NOT REPORTABLE." THAT'S NOT WHAT WE

HEARING

1 DO.

2 Q. SO YOU LOOK AT THE SUBSTANCE; CORRECT?

3 A. YES.

4 Q. NOW, WE TALKED ABOUT THE PUBLIC EMPLOYEES'
5 RETIREMENT LAW. AGAIN, MAYBE, THE EASIEST WAY IS IF YOU
6 CAN LOOK AT EXHIBIT 8. LET'S START WITH THE PUBLIC
7 EMPLOYEES' RETIREMENT LAW. LET'S GO TO PAGE 5, AND THIS
8 IS SECTION 20636, SUBPARAGRAPH SMALL C, SUBPARAGRAPH 1.

9 COULD YOU JUST READ THAT TO YOURSELF.

10 A. JUST ONE?

11 Q. JUST ONE RIGHT NOW.

12 SO WOULD IT BE FAIR TO SAY IF SOMEBODY IS
13 GETTING EXTRA PAY BECAUSE OF A WORK ASSIGNMENT OR
14 WORKDAYS OR HOURS, THAT WOULD BE IN COMPLIANCE WITH
15 SUBSECTION 1?

16 A. THAT WOULD BE NOT, NOT COMPLETELY IN
17 COMPLIANCE WITH THE LAW BECAUSE, AS IT SAYS IN 2:

18 "SPECIAL COMPENSATION PAY IS
19 LIMITED."

20 AND IT FURTHER STATES THAT THE BOARD -- AND
21 STATES:

22 "THE BOARD SHALL PROMULGATE
23 REGULATIONS THAT ARE MORE SPECIFICALLY
24 AND EXCLUSIVELY WHAT CONSTITUTES
25 SPECIAL COMPENSATION."

HEARING

1 Q. NO. I UNDERSTAND THAT. I'M JUST TALKING
2 ABOUT THAT THAT WOULD SATISFY AT LEAST THE INITIAL
3 THRESHOLD OF SUBSECTION 1; IS THAT CORRECT?

4 A. WE DON'T TAKE THEM JUST BY ONE --

5 THE COURT: WOULD YOU QUIT ARGUING WITH THIS
6 MAN AND JUST ANSWER YES OR NOT. EVERY TIME HE ASKS YOU
7 SOMETHING, YOU WANT TO TELL HIM HOW YOU READ THIS STUFF,
8 AND IT'S STARTING TO DRAG DOWN OUR RECORD.

9 THE WITNESS: I'M SORRY.

10 THE COURT: IF HE SAYS -- PUTS IT TO YOU AS A
11 YES/NO, "NO" IS YOUR ANSWER. "NO" IS YOUR ANSWER.

12 THE WITNESS: THANK YOU, YOUR HONOR.

13 BY MR. SILVER:

14 Q. LET'S TALK ABOUT THE DEFINITION OF SHIFT
15 DIFFERENTIAL FOR A MOMENT THAT APPEARS IN THE
16 C.A.L.P.E.R.S. REGULATION.

17 IF AN INDIVIDUAL ONLY RECEIVED, LET'S SAY,
18 NIGHT SHIFT DIFFERENTIAL FOR PART OF HIS OR HER CAREER,
19 WOULD THAT CAUSE IT TO BE DISQUALIFIED AS SPECIAL
20 COMPENSATION OR FINAL COMPENSATION?

21 MR. CROWLE: OBJECTION; INCOMPLETE
22 HYPOTHETICAL.

23 THE COURT: OVERRULED.

24 THE WITNESS: IT DEPENDS ON HOW LONG THEY DID
25 RECEIVE IT.

HEARING

1 BY MR. SILVER:

2 Q. LET'S SUPPOSE THEY RECEIVED IT ONLY IN THE
3 LAST THREE YEARS OF THEIR EMPLOYMENT.

4 A. THAT WOULD SUGGEST NOT TO BE HISTORICALLY
5 CONSISTENT.

6 Q. SO NOT ALL NIGHT DIFFERENTIAL, THEN, IS
7 PENSIONABLE, ACCORDING TO YOUR INTERPRETATION; IS THAT
8 CORRECT?

9 A. THAT'S CORRECT. IT'S NOT IF IT DOESN'T GO TO
10 THE NINE CRITERIA.

11 Q. SO WHERE DO YOU DRAW THE LINE? HOW MANY
12 YEARS WOULD SOMEBODY HAVE TO RECEIVE IT BEFORE IT WOULD
13 BE REGARDED AS PENSIONABLE?

14 A. I MEAN, THAT WOULD HAVE TO BE ON A
15 CASE-BY--CASE BASIS.

16 Q. WELL, WHAT CRITERIA DO YOU USE TO HELP YOU
17 DECIDE ON A CASE-BY-CASE BASIS? FIVE YEARS? THREE
18 YEARS? SEVEN YEARS?

19 A. USUALLY, ABOUT. I THINK IT'S USUALLY -- IT
20 DOES HAVE TO BE -- WE LOOK AT A LOT OF DIFFERENT
21 FACTORS. WE LOOK AT DIFFERENT FACTORS TO MAKE THAT
22 DETERMINATION.

23 GENERALLY, WE LIKE TO SEE, YOU KNOW,
24 HISTORICALLY CONSISTENT, CONSISTENCY. AND SO, I MEAN,
25 WE DON'T HAVE A HARD LINE LIKE WHERE YOU --

HEARING

1 THE COURT: LET ME STOP YOU THERE, SIR.

2 MR. SILVER: WELL --

3 THE COURT: HANG ON.

4 IS LACK OF HISTORICAL CONSISTENCY BEEN SERVING
5 AS A GROUNDS NOT TO TREAT THIS INCOME AS P.E.R.S.-ABLE IN
6 THIS CASE? IS ANYONE SAYING THAT THESE TWO RESPONDENTS
7 THAT I'VE GOT CANNOT HAVE THIS RETIREMENT BENEFIT BECAUSE
8 IT WASN'T HISTORICALLY CONSISTENT WITH PRIOR PAYMENTS FOR
9 THE JOB CLASSIFICATION?

10 MR. SILVER: I WAS ACTUALLY GETTING THERE,
11 YOUR HONOR.

12 THE COURT: WELL, WHY GET TO SOMETHING THAT'S
13 NOT AN ISSUE AT ALL?

14 MR. SILVER: WELL, BECAUSE I CANNOT ANSWER
15 THAT BECAUSE THIS WITNESS HAS TESTIFIED ABOUT 20
16 DIFFERENT THINGS AND I'M TRYING TO ADDRESS EACH THING
17 HE'S TESTIFIED TO ON DIRECT EXAMINATION.

18 BY MR. SILVER:

19 Q. WHY DON'T YOU ANSWER HIS HONOR'S QUESTION.

20 THE COURT: WELL, NO, IT'S REALLY A FUNCTION
21 IN THE PLEADINGS.

22 MR. SILVER: CLEARLY, IT'S NOT IN THE
23 PLEADINGS.

24 THE COURT: IS THAT THE GROUNDS HERE?

25 MR. CROWLE: IS WHAT THE GROUND, YOUR HONOR?

HEARING

1 THE COURT: THAT SOMEHOW ONE OF THESE
2 POLICEMEN WAS DRAWING THIS PAY AND IT'S NOT HISTORICALLY
3 CONSISTENT?

4 MR. CROWLE: LIKELY, WE CAN ASK MR. --

5 THE COURT: WELL, NO, WHY WAS THIS DENIED?

6 MR. CROWLE: IT WAS DENIED BECAUSE IT DIDN'T
7 QUALIFY FOR FINAL COMP.

8 THE COURT: WHY DIDN'T IT QUALIFY FOR FINAL
9 COMP? AREN'T WE LAYING THAT OUT HERE?

10 MR. CROWLE: THESE ARE THE LEGAL CRITERIA FOR
11 THE DETERMINATION THAT THE CLAIMANTS HAVE THE BURDEN OF
12 PROVING THAT THEY COMPLY.

13 MR. SILVER: YOUR HONOR, WHERE I WAS GETTING
14 TO IS THE NUMBERS AND THE CONTRACTING AGENCIES ARE NOT
15 PUT ON NOTICE ABOUT MANY OF THE THINGS THAT THIS WITNESS
16 INDICATES HAVE BEEN CONSIDERED. NOBODY WHO WAS TRYING
17 TO COMPLY WITH THE LAW CAN READ THE MIND OF
18 MR. GUTIERREZ.

19 SECOND OF ALL, AS YOUR HONOR POINTED OUT, THE
20 STATEMENT OF ISSUES ONLY DENIES IF -- WELL, THE ORIGINAL
21 STATEMENT OF ISSUES DENIED IT BECAUSE IT WAS OVERTIME.
22 THE AMENDED STATEMENT OF ISSUES, IF YOU READ THE
23 STATEMENT OF ISSUES, THAT'S THE ONLY REASON IT WAS
24 DENIED AND THE SECOND AND IN THE AMENDED --

25 MR. CROWLE: THAT'S THE LETTER OF

HEARING

1 DETERMINATION --

2 MR. SILVER: NO, NO, NO. I'M LOOKING AT
3 EXHIBIT AA --

4 THE COURT: CAREFUL, BOYS. YOU'RE
5 INTERRUPTING.

6 MR. SILVER: EXHIBIT AA, YOUR HONOR. THE
7 ONLY REFERENCE IN EXHIBIT AA TO BASE THIS FOR DENIAL IS
8 THAT IT WAS OVERTIME. AS SOON AS I FIND IT, I WILL --
9 HERE. IT'S RIGHT HERE ON PAGE --

10 THE COURT: TWO

11 MR. SILVER: PAGE 2, LINE 23, YOUR HONOR.

12 THE COURT: QUOTE:

13 "C.A.L.P.E.R.S. REJECTED THE
14 HOLIDAYS PREMIUM PAY AT SPECIAL
15 COMPENSATION ON THE BASIS THAT IT IS
16 CONSIDERED OVERTIME AND, THEREFORE,
17 DOES NOT CONSTITUTE REPORTABLE
18 COMPENSATION PURSUANT TO
19 GOVERNMENT CODE SECTION 20635."

20 AND THAT'S CLOSE QUOTE AND THAT PLEADING WENT
21 ON TO QUOTE ALL THESE STATUTES AND REGULATIONS VERBATIM
22 WHETHER OR NOT CLEARLY LEAVING OUT SOME THINGS, AND IT
23 SAYS THESE FOLKS THAT FILED APPEALS AND THE APPEALS --
24 ONE OF THE ISSUES IS WHETHER THEY'RE ENTITLED TO HAVE
25 HOLIDAY WORK PAY BE REPORTABLE FOR PURPOSES OF FINAL

HEARING

1 COMPENSATION.

2 MR. CROWLE: THERE. THAT'S THE ISSUE.

3 THE COURT: WELL, HERE'S THE PROBLEM HERE.
4 NOW, I'VE GOT THIS NOSE OF WAX WHERE A WHOLE BUNCH OF
5 ISSUES ARE CROPPING UP OUT OF HERE. NOW, WE'RE GOING TO
6 GET INTO THIS HISTORIC PAY ISSUE, AND THESE FOLKS,
7 MAYBE, HAVE TO BRING IN YEARS OF PAY RECORDS.

8 MR. SILVER: AGAIN I DON'T -- I THINK I CAN
9 SHOW --

10 THE COURT: BY THE WAY, I DON'T SEE YEARS OF
11 PAY RECORDS IN THIS EXHIBIT BINDER, SO WHY SHOULD I
12 BELIEVE THAT HISTORICAL CONSISTENCY HAD ANYTHING TO DO
13 WITH WHY THIS WAS DENIED OR WHY THIS IS MORPHED INTO THE
14 AMENDED STATEMENT OF ISSUES?

15 THERE'S NOTHING IN HERE TO SHOW THAT. WE ARE
16 TALKING ABOUT SOME NOTICE ISSUES, NOT TO JUST THESE
17 FOLKS, BUT TO YOURS TRULY.

18 HERE I THOUGHT I HAD A NICE SIMPLE CASE ABOUT
19 WHETHER THIS EXTRA PAY YOU GET WHEN YOU ACTUALLY WORK A
20 HOLIDAY WAS THE ISSUE, AND NOW I'M GOING TO START HEARING
21 ABOUT SPIKING AND HISTORICAL CONSISTENCY, AND SHOVING THE
22 BURDEN ONTO THEM COULD MEAN A LAUNDRY LIST OF THINGS AND
23 SOME REGULATIONS.

24 I DON'T EVEN KNOW IF THEY HAVE THE TOOLS TO
25 DO THAT. THAT WAS THE PROBLEM, MR. CROWLE, ABOUT JUST

HEARING

1 WHAT I'M SUPPOSED TO DO WITH THIS CASE, BECAUSE YOU ALL
2 HAVE DUMPED THIS IN MY LAP AND DEPRIVED ME OF THE TOOLS
3 TO FIGURE OUT WHETHER THIS IS -- DEPRIVED ME OF THE
4 TOOLS TO FIGURE OUT WHAT I'M DOING HERE.

5 AND THIS IS MY FAULT. YOU SEE, I SHOULD HAVE
6 MADE YOU PUT THIS CASE ON FIRST. THIS BUSINESS OF BURDEN
7 OF PROOF AND THIS IS A STATEMENT OF ISSUES. THIS IS WHY
8 NORMALLY MY COLLEAGUES AND I EVEN LET STATEMENT OF
9 ISSUES -- MAKE THE AGENCY MAKE ITS CASE: "THIS IS WHY
10 WE'RE DENYING IT, THE LICENSE, YOUR HONOR. THIS IS WHY
11 WE'RE DENYING THE BENEFIT."

12 MR. SILVER: YOUR HONOR, I THINK I CAN
13 EXPEDITE THIS AND --

14 THE COURT: NO, YOU CAN'T. IF THEY'RE GOING
15 TO TAKE THE POSITION THAT YOU HAVE TO GO THROUGH AND
16 APPROVE ALL THIS STUFF, I MEAN ALL THESE NINE
17 REQUIREMENTS AND ALL THIS OTHER BUSINESS, BECAUSE THAT'S
18 WHAT MR. GUTIERREZ IS GETTING INTO, HISTORICAL
19 CONSISTENCY --

20 MR. SILVER: I THINK I CAN --

21 THE COURT: -- WITH RESPECT TO SPIKING.

22 MR. SILVER: IF YOU GIVE ME JUST A FEW
23 MINUTES --

24 THE COURT: JUST HANG ON A SECOND.

25 IT'S NOT LIKE IT HASN'T CROSSED MY ANECDOTIC

HEARING

1 MIND. ON THE BEAT, COP WORKS FOR 28 YEARS AND NEVER
2 WORKS A HOLIDAY IN HIS LIFE AND THE LAST COUPLE YEARS
3 POSES IN A FEW HOLIDAYS -- AND I GOT SOME QUESTIONS ABOUT
4 THIS PAY RATE BECAUSE I DON'T SEE THAT .5 PERCENT BEING
5 ADDED -- I'M SORRY -- THAT 50 PERCENT BEING ADDED FROM
6 THE HYPOTHETICAL I WENT THROUGH WITH THE LIEUTENANT
7 HERE.

8 MR. SILVER: I DON'T KNOW WHERE THESE
9 DOCUMENTS CAME FROM. I'VE NEVER SEEN THEM BEFORE TODAY,
10 AND GOD ONLY KNOWS HOW COMPUTER -- IF YOU'VE EVER TRIED
11 TO LOOK AT SOMEBODY'S PAY STUB, YOUR HONOR, YOU KNOW
12 THAT DOCUMENTS LIKE THIS THAT ARE GENERATED BY COMPUTERS
13 DON'T NECESSARILY ACCURATELY REFLECT WHAT HAPPENS.

14 THE COURT: WELL, I'LL TELL YOU WHAT. I GOT
15 PAGE 1 HERE OF EXHIBIT 12 SAYS THAT THIS FELLOW'S PAID
16 RATE OF 40.930 IS REGULAR PAY, AND THEN THERE'S THIS
17 HOLIDAY PREMIUM ZERO, AND THEN THE NEXT TIME IT'S 11.42
18 TIMES 44.310.

19 NOW, WHAT I UNDERSTOOD FROM LIEUTENANT
20 REINHART, HE'S ALREADY RECEIVED PART OF THAT MONEY.

21 LOOKING AT NUMBER 14, IT'S A MORE STARK
22 ILLUSTRATION. WHY? BECAUSE HIS REGULAR PAY IS -- LET'S
23 JUST LOOK AT PAGE 2 -- REGULAR PAY IS 80 HOURS, 36.5.
24 GROSS PAY IS 2900 FOR THIS PAY PERIOD. NOW, WE GOT
25 HOLIDAY PREMIUM OF EIGHT HOURS AT 33.50.

HEARING

1 THE WAY I UNDERSTOOD IT, THE HOLIDAY PREMIUM
2 WOULD BE EIGHT TIMES OF HALF OF 36.5.

3 MR. SILVER: I HAVE NO IDEA. I'VE NEVER SEEN
4 THAT --

5 THE COURT: BECAUSE YOU THOUGHT 120 --

6 MR. CROWLE: THIS IS DATA THAT WE GOT FROM
7 YOUR CLIENT.

8 MR. SILVER: NOT FROM MY CLIENT. YOU GOT IT
9 FROM THE CITY OF HUNTINGTON BEACH. THAT'S NOT MY
10 CLIENT.

11 THE COURT: THEY ARE ONE OF THE RESPONDENTS
12 IN THIS CASE, EVEN THOUGH THEY ARE NOT HERE.

13 MR. SILVER: AGAIN, ALL I CAN TELL YOU IS THAT
14 LIEUTENANT REINHART, I THINK, IS THE BEST PERSON TO
15 EXPLAIN HOW IT WAS DONE, AND I WOULD TRUST HIS TESTIMONY
16 OVER COMPUTER PRINTOUT ANY DAY.

17 THE COURT: NO, HE KNOWS HOW IT'S SUPPOSED TO
18 BE DONE. IT'S AN INDICATION HERE THAT MAYBE IT WASN'T
19 DONE THE WAY HE THINKS IT WAS SUPPOSED TO BE DONE.

20 MR. SILVER: WELL, IF THAT'S THE ISSUE IN THE
21 CASE, IF, FOR EXAMPLE, THEY MISCALCULATED THE AMOUNT OF
22 THE PREMIUM PAY, OKAY, LET'S JUST SAY THAT.

23 INSTEAD OF GIVING IT HALF TIME, THEY GAVE IT
24 THREE QUARTERS, JUST TO USE AN EXAMPLE. WELL, THAT'S
25 FINE. IF THERE WAS AN ARITHMETIC MISTAKE, THEN THAT'S

HEARING

1 WHAT WE SHOULD BE ADDRESSING.

2 WE PROBABLY WOULDN'T BE HERE IF WE WERE ONLY
3 TALKING ABOUT AN ARITHMETIC MISTAKE. WE'RE TALKING
4 ABOUT A CONCEPTIONAL ISSUE.

5 AS I SAY, IF, IN FACT, THERE WAS AN ARITHMETIC
6 MISTAKE, IF SOMEBODY -- IT'S THE FIRST I'VE HEARD OF IT
7 TODAY. IF SOMEBODY WANTS TO CLAIM THAT, THEN THAT'S
8 FINE. WE CAN WORK WITH THAT.

9 THE COURT: WELL, LET ME TELL YOU SOMETHING.
10 WHEN I GO TO WRITE THIS THING AND I'M SITTING IN MY
11 OFFICE, BEAT IN HALF, TRYING TO GET TO THE BOTTOM OF
12 THIS, THEN THAT KIND OF THING COMES UP, IT'S GOING TO
13 GET ME PAUSED.

14 I THOUGHT THE ISSUE I WAS GOING TO HAVE TO
15 DECIDE IN THIS CASE IS WHETHER OR NOT THIS PAY FOR
16 ACTUALLY PULLING A SHIFT ON A HOLIDAY IS COMPENSABLE.

17 MR. SILVER: AS FAR AS I'M CONCERNED, THAT IS
18 THE ISSUE.

19 THE COURT: AND GETTING INTO THIS STUFF ABOUT
20 HISTORICAL, CONCEPTIONAL, AND SPIKING, I DIDN'T
21 UNDERSTAND THAT WAS GOING TO BE THE ISSUE IN THIS
22 CASE.

23 MR. CROWLE: IT'S NOT THE ISSUE, YOUR HONOR.
24 ALL THOSE ARE FACTORS AS INDICATED BY THE CODE TO
25 WHETHER OR NOT IT QUALIFIES.

HEARING

1 MR. SILVER: BUT THOSE FACTORS WERE RELIED ON
2 BY YOU, THOUGH.

3 THE COURT: BUT THE ISSUE WHETHER THOSE
4 FACTORS IS SOMETHING I GOT TO DEAL WITH, OR AM I JUST
5 DEALING WITH THAT ONE ISSUE? NOW, I CAN DEAL WITH THAT
6 ONE ISSUE, BUT MY CONCERN IS IT'S NOT GOING TO BUY PEACE
7 NOR TIME AMONG YOU FOLKS, AND I SURE HATE TO HAVE A
8 MULTIPLICITY OF PROCEEDINGS.

9 IN FACT, YOU ALL WERE GOING TO STIPULATE TO
10 THAT THAT I COULD BIND IN THE WHOLE ASSOCIATION.

11 NOW, IF THE WHOLE ASSOCIATION THOUGHT THEY
12 WERE JUST PUTTING EVERYTHING ON BLACK 38, IF YOU WILL,
13 THE ROULETTE WHEEL OF JUDGE MONTOYA ON THE ISSUE OF
14 WHETHER OR NOT THIS EXTRA PAY FOR ACTUALLY WORKING A
15 HOLIDAY SHIFT IS COMPENSABLE IN THE EYES OF P.E.R.S.,
16 THAT'S ONE THING.

17 IF THEY THINK THAT'S WHERE ALL THOSE OTHER
18 FELLOWS WHOSE PEOPLES' NAMES ARE ON THOSE DOCUMENTS,
19 THAT'S WHAT THEY AUTHORIZED MR. SILVER HERE TO DO.
20 THAT'S ONE THING.

21 NOW, IT'S ANOTHER IF THEY'RE ALL GOING TO
22 AUTHORIZE THIS ALL BE DECIDED THAT SOMEHOW -- IN FACT, I
23 DON'T KNOW HOW I CAN BIND THESE PEOPLE ON HISTORICAL
24 CONSISTENCY, FOR EXAMPLE, BECAUSE THAT WOULD BE A
25 CASE-BY-CASE BASIS. MAYBE SO.

HEARING

1 SOME PULL THESE HOLIDAY SHIFTS FOR 30 YEARS.
2 LIKE A GOOD SOLDIER. MAYBE SOME OTHER GUY SPENDS TIME
3 WITH HIS FAMILY, BUT THEN WOKE UP TO THE FACT, "HEY,
4 MIGHT BUMP UP MY PAY A FEW 1,000 BUCKS THE LAST COUPLE
5 YEARS. MY PENSION IS GOING TO GO UP. I GET IT."

6 MR. SILVER: WELL, YOUR HONOR, I CAN ONLY
7 TELL YOU THIS, AND THIS IS WHERE I WAS LEADING TO IN MY
8 CROSS-EXAMINATION:

9 THAT IN ALL OF THE COMMUNICATIONS I'VE HAD
10 WITH C.A.L.P.E.R.S. SINCE FEBRUARY OF 2009, NOBODY HAS
11 EVER CLAIMED THAT THERE'S BEEN SPIKING. NOBODY HAS EVER
12 CLAIMED THAT THIS IS NOT HISTORICALLY CONSISTENT.

13 THE ONLY TWO THINGS I'VE EVER HEARD ARE, ONE,
14 IT'S OVERTIME; AND TWO, WHICH I HEARD JUST ABOUT A WEEK
15 AGO FROM MR. CROWLE, IS THAT THESE DOUBLE DIPPING FOR
16 HOLIDAY PAY. THOSE ARE THE ONLY TWO REASONS THAT I'VE
17 EVER HEARD BEFORE TODAY.

18 AND I THINK WHAT'S HAPPENING IS MR. GUTIERREZ
19 IS SITTING HERE TODAY, TRYING TO COME UP WITH ANY
20 EXPLANATION HE CAN TO GET THE RESULT HE WANTS. AND,
21 UNFORTUNATELY, HE WAS ABLE TO GET ALL THIS STUFF IN ON
22 DIRECT EXAMINATION.

23 THE COURT: WELL, HE'S PAID TO PROTECT THE
24 FUNDS, SO I'M NOT GOING TO PUT TOO MUCH ON HIS MOTIVE
25 THERE.

HEARING

1 I TELL YOU WHAT WE'RE GOING TO DO. WE'RE
2 GOING TO TAKE A BREAK. WE'RE GOING TO COME BACK HERE AT
3 1:30. I'M GOING TO GIVE IT SOME THOUGHT ABOUT HOW I'M
4 GOING TO DEAL WITH THIS MESS.

5 (WHEREUPON, A LUNCHEON RECESS WAS
6 HELD FROM 12:13 P.M. TO 1:30 P.M.)

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HEARING

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LOS ANGELES, CALIFORNIA, TUESDAY

NOVEMBER 15, 2011

1:30 P.M.

THE COURT: BACK ON THE RECORD.

I'M PROBABLY GOING TO HAVE TO TAKE A CALL IN THE NEXT HALF HOUR FOR ABOUT FIVE MINUTES. SOMETHING CAME UP OVER THE LUNCH HOUR.

WHERE ARE WE ON THE ISSUES IN THIS CASE? IT'S YOUR CONTENTION THEY HAVE TO COME IN HERE AND SHOW HOW THIS COMPLIES WITH EVERY SUBSECTION OF THAT REGULATION IN THE STATUTE?

MR. CROWLE: PERHAPS, TECHNICALLY, YES.

THE COURT: AND WHERE DID THE BOARD EVER TELL THEM THAT THERE'S SOMETHING THAT ASIDE FROM THIS OVERTIME CLAIM THAT WAS IN THE ORIGINAL LETTER? FOR THAT MATTER, WHERE IS THERE ADEQUATE NOTICE IN THE AMENDED PLEADING?

THEY'LL TELL ANYBODY THIS. I MEAN, THIS PLEADING THAT WAS AMENDED YESTERDAY.

WHEN I STARTED REALLY GETTING INTO THIS THIS MORNING, I THOUGHT THE ISSUE WAS GOING TO BE IS THIS PAY THAT'S AVAILABLE UNDER SECTION 7 OR WHATEVER IT IS THAT M.O.U., COMPENSABLE, P.E.R.S.-ABLE NOMENCLATURE WE'VE USED, AND NOW SUDDENLY, IT SEEMS TO BE I'VE GOT A THEORY

HEARING

1 TO GET INTO WHETHER ALL NINE OF THESE THINGS ARE SET OUT
2 IN THAT ONE PART OF THE REGULATION, FOR EXAMPLE, ON
3 THAT.

4 MR. CROWLE: WELL, IF I UNDERSTAND THE
5 QUESTION THAT WAS POSED TO MR. GUTIERREZ, WHAT WAS NOT
6 SPECIFICALLY AS TO THIS PARTICULAR CASE, BUT WHAT ARE
7 THE FACTORS THAT ARE TAKEN INTO CONSIDERATION FOR
8 PURPOSES OF MAKING A DETERMINATION OR WHETHER OR NOT
9 SOMEONE IS ENTITLED.

10 SO IT WAS IN THE GENERIC SENSE, AND
11 MR. GUTIERREZ -- AND CORRECT ME IF I'M WRONG --
12 MR. GUTIERREZ, TO MY UNDERSTANDING, WAS -- HE WAS
13 RESPONDING TO THAT PARTICULAR QUESTION.

14 THE COURT: GET YOUR TWO CENTS' WORTH.

15 MR. SILVER: I AGREE WITH YOU. THE ISSUE IN
16 THIS CASE IS VERY STRAIGHTFORWARD AND SIMPLE. IS THE
17 COMPENSATION THAT'S AT ISSUE P.E.R.S.-ABLE AND THE -- IT
18 WAS REPORTED BY THE CITY AS IF IT WERE P.E.R.S.-ABLE,
19 CONTRIBUTIONS WERE PAID, AND THEN AFTER THESE INDIVIDUALS
20 RETIRED, P.E.R.S. SAID THAT IT'S NOT.

21 AND THE REASON THEY GAVE WAS OVERTIME, THEN,
22 AS I SAID, I THINK EARLIER MR. CROWLE DID TELL ME ABOUT
23 A WEEK AGO THAT THE -- BECAUSE I ASKED HIM. I SAID,
24 "WELL, YOU KNOW, IT'S NOT OVERTIME. SO WHAT IS THE
25 REASON? WHY ARE THEY DENYING IT?"

HEARING

1 AND HIS ANSWER WAS, "IT'S EFFECTIVELY," AND
2 I'M PARAPHRASING THIS, "THAT IT'S GETTING PAID TWICE FOR
3 HOLIDAYS."

4 AND THAT'S WHAT I CAME HERE PREPARED TO
5 ADDRESS AND THAT'S THE ONLY ISSUE I THINK THAT'S BEFORE
6 US.

7 THE COURT: WELL, I'M LOOKING HERE AT
8 PARAGRAPH 104 IN THE AMENDED PLEADINGS, PAGE 3, LINE 10:

9 "RESPONDENT CITY NOT ONLY
10 REPORTED AS SPECIAL COMPENSATION
11 HOLIDAY PAY; IT ALSO REPORTED SPECIAL
12 COMPENSATION IDENTIFIED AS HOLIDAY
13 PREMIUM PAY FOR HOLIDAYS WORKED.
14 C.A.L.P.E.R.S. REJECTED THE HOLIDAYS
15 PREMIUM PAY AS SPECIAL COMPENSATION
16 SUCH IT DOES NOT CONSTITUTE REPORTABLE
17 COMPENSATION PURSUANT TO GOVERNMENT
18 SECTION 20635. ADDITIONALLY, THE CITY,
19 PURSUANT TO THE MEMORANDUM OF
20 UNDERSTAND, RESOLUTION 2006-109, HOURLY
21 REPORTS HOLIDAY PAY EACH BIWEEKLY PAY
22 PERIOD."

23 THAT'S THE END OF THE QUOTE THERE. I'M
24 STATING THAT PARAGRAPH. I'M READING THAT LAST LINE AS
25 HAVING TO DO WITH THIS "YOU'VE ALREADY BEEN PAID"

HEARING

1 ARGUMENT THAT I HAVEN'T --

2 MR. CROWLE: AND I DON'T THINK THAT'S
3 ANYTHING THAT REALLY HASN'T ALREADY BEEN UNDERSTOOD AND
4 TO BE AN ISSUE THAT YOU JUST READ, YOUR HONOR.

5 MR. SILVER: NO, BUT THE ABSENCE OF ANYTHING
6 ELSE, THAT'S IMPORTANT. I AGREE. IF THAT'S THE ISSUE,
7 WE'RE PREPARED TO GO. WE ONLY WAITED ALMOST THREE YEARS
8 FOR THIS AND --

9 MR. CROWLE: THEN THERE IS ALSO AS HAVE BEEN
10 INDICATED AND AS MR. SILVER IN HIS RESPONSE LETTER AS
11 REFERENCED IT AS DIFFERENTIAL PAY, SHIFT DIFFERENTIAL,
12 AND THAT IS SOMETHING THAT WE HAVE UNDERSTOOD TO BE AN
13 ISSUE AS TO WHETHER OR NOT IT QUALIFIES FOR THAT.

14 MR. SILVER: WELL, AGAIN, AS I SAID IN MY
15 OPENING STATEMENT, IT'S EITHER SHIFT DIFFERENTIAL OR
16 HOLIDAY PAY AND/OR HOLIDAY PAY. THAT'S SIMPLE AS
17 THAT.

18 THE COURT: LET ME BACK UP FOR ONE SECOND.
19 IS IT THE BOARD'S POSITION THAT THE PAYMENT FOR THE TEN
20 HOLIDAYS AND THE 26 INCREMENTS, I.E., WITH FICTIONAL
21 \$1,000 THAT I BROUGHT UP WITH THE LIEUTENANT? IS IT THE
22 BOARD'S POSITION THAT'S NOT COMPENSABLE?

23 MR. CROWLE: NO.

24 THE COURT: WHETHER THEY WORK IT OR NOT,
25 THAT'S A COMPENSABLE PAY?

HEARING

1 MR. CROWLE: THAT IS CORRECT.

2 THE COURT: OKAY.

3 MR. CROWLE: WE HAVE NO QUARREL ON THAT.

4 THE COURT: THE QUARREL IS WHETHER OR NOT PAY
5 ON TOP OF THAT WHETHER IT'S HALF OF THAT AMOUNT OR ONE
6 AND A HALF TIMES OF THAT AMOUNT OR ANY AMOUNT ON TOP OF
7 THAT'S COMPENSABLE.

8 MR. CROWLE: THAT IS THE GIST OF THIS, YES.

9 THE COURT: NOW, LET'S GET OUR ISSUES
10 NARROWED BACK AGAIN. HAVE A LITTLE LESS CONVERSATION
11 ABOUT GENERICS BECAUSE I DON'T THINK IT'S GOING TO HELP
12 THE ANALYSIS.

13 MR. SILVER: I WILL TRY TO AVOID
14 CROSS-EXAMINING MR. GUTIERREZ ON THINGS THAT GO BEYOND
15 THOSE PARTICULAR ISSUES. OKAY.

16 THE COURT: ALL RIGHT. HE GETS INTO A LITTLE
17 BIT. I DON'T KNOW HOW MUCH YOU HAVE TO GET INTO IT,
18 AND I GUESS IT'S MAYBE BECAUSE I HAVE PEACE OFFICERS
19 HERE, AND THE EXAMPLE COMES IN MY MIND.

20 I HAVE OTHER AGENCIES. THEIR INVESTIGATOR
21 COMES IN HERE AND SAYS, "I INVESTIGATED THIS MATTER AND I
22 FOUND THAT THE RESPONDENT LOOKED BAD."

23 IT COULD BE THE CONTRACTORS' BOARD. IT COULD
24 BE THE DEPARTMENT OF SOCIAL SERVICES. IT COULD BE THE
25 NURSING BOARD. IN A SENSE, THEIR OPINION OF WHETHER OR

HEARING

1 NOT THE PERSON BROKE THE RULES IS COMPLETELY IRRELEVANT.

2 IT DOES MAKE A RECORD THAT THEY HAD SOME
3 PROBABLE CAUSE FOR GETTING US HERE, BUT IN THE END, IT'S
4 NOW UP TO ME TO FIGURE OUT WHETHER, IN FACT, THE GUY
5 DIDN'T WIRE THE HOUSE RIGHT OR WHETHER OR NOT THE NURSE
6 GAVE THE WRONG DOSE AND SHOULD HAVE GIVEN THE RIGHT DOSE
7 OR ANY OTHER THING.

8 MR. SILVER: THAT'S EXACTLY THE WAY WE WERE
9 PROCEEDING, YOUR HONOR.

10 THE COURT: AND MAYBE THAT'S BECAUSE THIS --
11 IT'S BACK WHERE I STARTED. I THOUGHT A LITTLE BIT I HAD
12 MORE OF A DECLARATORY RELIEF ACTION BECAUSE IT'S VERY
13 MUCH OF A CONSTRUCTION ISSUE. YOU FOLKS HAD SENT US A
14 FAX THAT I'VE GOT TO HAVE TO DO THE CONSTRUCTING, THEN
15 LET'S CONCENTRATE ON GETTING THOSE OUT OF MR. GUTIERREZ
16 HERE.

17 I TAKE MR. CROWLE'S POINT TO SOME EXTENT THE
18 FACTS ADDUCED THROUGH LIEUTENANT REINHART MAY OR MAY NOT
19 HELP TO DO THAT MUCH CONSTRUCTING AS WELL. I'LL SOON
20 HAVE TO FIGURE THAT OUT BECAUSE IT COULD BE, YOU KNOW,
21 TOOK TO YOUR POINT THAT WE THINK WHAT THE CITY AND THE
22 PARTIES THINK IS NOT NECESSARILY BINDING ON US.

23 IT MAY HAVE SOME EFFECT, BUT -- AND MAY BE
24 USEFUL IN SOME ANALYSIS, OR I HAVE TO THINK THAT THROUGH
25 A LITTLE BIT, BUT OKAY. FINE. THEY CAN'T REWRITE THE

HEARING

1 P.E.R.L., WHAT YOU'RE CALLING IT, BUT ON THE OTHER HAND,
2 THERE MAY BE SOME USEFUL INFORMATION IN THERE TELLS ME
3 WHAT THIS COMPENSATION IS FOR AND WHY IT EXISTS AND WHY
4 ITS MORE KOSHER THAN NOT.

5 MR. SILVER: AGAIN, JUST TO MAKE IT REAL CLEAR
6 FROM OUR PERSPECTIVE, WHAT I TRIED TO ELICIT FROM THE
7 TESTIMONY FROM LIEUTENANT REINHART WAS NOT HIS OPINION
8 ABOUT WHETHER THIS SATISFIES THE LAW AND THE
9 REGULATIONS. IT WAS SIMPLY TO IDENTIFY EXACTLY WHAT THE
10 NATURE OF THIS PAY IS.

11 THAT'S ALL, AND I THINK THAT LIEUTENANT
12 REINHART AND THE POLICE ASSOCIATION AND THE CITY ARE THE
13 BEST ONES TO IDENTIFY WHAT THE NATURE OF THE PAY IS, AND
14 THEN IT'S UP TO YOU, NOT P.E.R.S., NOT US, OR ANYBODY
15 ELSE --

16 THE COURT: NOW, REMEMBER, I'VE GOT TO WRITE
17 A PROPOSED DECISION BACK TO THE BOARD.

18 MR. SILVER: WELL, I UNDERSTAND, BUT AT LEAST
19 UP TO THIS STAGE, YOU CAN DECIDE WHETHER OR NOT THAT PAY
20 QUALIFIES AS PENSIONABLE INCOME.

21 THE COURT: ALL RIGHT. WELL, WITH ALL THAT
22 IN MIND, WHAT ELSE DO YOU WANT TO ASK MR. GUTIERREZ?

23 MR. SILVER: WELL, JUST A FEW QUESTIONS.

24 THE COURT: SO WE CAN GET HIM OFF THE HOOK.

25 MR. SILVER: I WILL TRY TO BE QUICK.

HEARING

1 BY MR. SILVER:

2 Q. MR. GUTIERREZ, YOU ALLUDED BEFORE TO THE FACT
3 THAT THERE WAS SOME CONCERN OVER THE FACT THAT
4 MESSRS. EVENSON AND CATALANO ONLY GOT THE HOLIDAY PAY ON
5 SOME PAY PERIODS.

6 I'D SAY THE HOLIDAY PREMIUM PAY. IF THE
7 OTHER HOLIDAY PAY, THE 80 HOURS, IF THAT HAD BEEN PAID
8 QUARTERLY OR SEMIANNUALLY, WOULD P.E.R.S. HAVE
9 DISALLOWED IT BECAUSE IT WASN'T PAID ON EVERY PAY
10 PERIOD?

11 A. NO.

12 Q. NOW --

13 A. WELL, I'D LIKE TO JUST EXPLAIN A LITTLE BIT,
14 BUT BECAUSE ON THE M.O.U. IT SAYS THAT IT SHOULD BE PAID
15 EVERY PAY PERIOD.

16 Q. I UNDERSTAND THAT. MY QUESTION WASN'T WHAT
17 THE M.O.U. SAID. I SAID IF.

18 A. WELL, RIGHT, BECAUSE PAYMENTS ARE ON US, TOO.

19 Q. ANYWAY, MY NEXT QUESTION, MR. GUTIERREZ, IF
20 YOU CAN JUST PLEASE ANSWER THE QUESTION.

21 A. I DID. I WAS JUST TRYING TO EXPLAIN A LITTLE
22 BIT MORE.

23 Q. IF YOU COULD REFER TO THE DEFINITION OF SHIFT
24 DIFFERENTIAL, DO YOU HAVE THAT IN FRONT OF YOU?

25 A. YES.

HEARING

1 Q. THE REGULATION. NOW, CERTAIN EXAMPLES WERE
2 GIVEN; IS THAT CORRECT?

3 A. YES.

4 Q. AND THOSE EXAMPLES WERE INTENDED TO BE
5 ALL-INCLUSIVE, WERE THEY? THEY ARE JUST EXAMPLES?

6 A. THEY ARE EXAMPLES. THEY ARE EXEMPTS. I
7 THINK THAT'S WHERE IT STARTS OFF.

8 Q. AND JUST LOOKING AT SOME OF THESE EXAMPLES,
9 DO YOU KNOW WHAT A ROTATING SHIFT IS?

10 A. IT COULD MEAN -- ROTATING SHIFT, I BELIEVE,
11 IT IS A SHIFT WHERE THE HOURS ARE NOT SPECIFICALLY SET,
12 AND THEY HAVE TO ROTATE DIFFERENT SHIFTS, DIFFERENT
13 HOURLY SHIFTS.

14 Q. SO PEOPLE WOULD BE WORKING DIFFERENT HOURS,
15 DIFFERENT WEEKS. I'D SAY DIFFERENT MONTHS; IS THAT
16 RIGHT?

17 A. DIFFERENT. DIFFERENT. THAT'S POSSIBLE.

18 Q. AND THAT WOULD BE REGARDING THIS PENSIONABLE
19 INCOME?

20 A. JUST BECAUSE IT SAYS ROTATING, I MEAN, IT'S
21 NOT -- THEY ARE KIND OF GETTING BACK TO --

22 Q. THAT IS ONE OF THE EXAMPLES --

23 THE COURT: HEY, YOU'RE TALKING OVER EACH
24 OTHER. STOP IT.

25 ///

HEARING

1 BY MR. SILVER:

2 Q. THAT IS ONE OF THE EXAMPLES THAT WAS USED TO
3 DEFINE SHIFT DIFFERENTIAL PAY; CORRECT?

4 A. THAT IS THE LANGUAGE USED.

5 Q. SURE. NOW, HAS C.A.L.P.E.R.S. EVER
6 PROMULGATED A DEFINITION OF WHAT IS A STANDARD
7 DAYTIME -- I USE THE WORD "QUOTES" BECAUSE THAT'S WHAT IT
8 SAYS IN THE REGULATION SHIFT.

9 TO YOUR KNOWLEDGE, HAVE THEY EVER DEFINED THAT
10 IN ANY KIND OF PROMULGATION?

11 A. I'M NOT AWARE OF ANY OFFICIAL DOCUMENTS
12 STATING WHAT EXACTLY THE HOURS ARE FOR DAYTIME SHIFT. I
13 JUST ASSUME THAT IT'S 9:00 TO 5:00 IS ALL.

14 Q. YOU SAY 9:00 TO 5:00 DURING THE WEEK NOW; IS
15 THAT CORRECT?

16 A. CORRECT.

17 Q. DO YOU WORK A STANDARD DAYTIME SHIFT?

18 A. YES, I DO.

19 Q. DO YOU WORK ON THANKSGIVING DAY?

20 A. I DO NOT WORK ON THANKSGIVING DAY ON MY
21 NORMAL SHIFT, NO.

22 Q. C.A.L.P.E.R.S. IS NOW AT LEAST TAKING THE
23 POSITION THAT IT'S INAPPROPRIATE TO RECEIVE TWO FORMS OF
24 HOLIDAY PAY. IS THAT A FAIR STATEMENT OF YOUR
25 POSITION?

HEARING

1 A. IN THIS CASE, YES. I WOULD AGREE, YES.

2 Q. WHERE IS IT? AGAIN WHERE IS IT WRITTEN,
3 PROMULGATED, OR ANYWHERE THAT SAYS YOU CAN'T GET AN ITEM
4 THAT C.A.L.P.E.R.S. IDENTIFIES AS PENSIONABLE INCOME IN
5 TWO FORMS AND TWO COMPONENTS? IS IT WRITTEN ANYWHERE
6 THAT SAYS YOU CAN'T DO THAT?

7 A. THERE'S A REFERENCE TO A MATTER OF -- HOLD
8 ON. OKAY. BEAR WITH ME FOR A SECOND. NO. THERE'S
9 NOTHING IN THE LAW THAT SAYS THAT IT HAS TO BE ONLY ONE
10 FORM OF PAYMENT.

11 Q. LET'S TAKE A LOOK AT -- GO TO PAGE 3 OF THIS
12 C.A.L.P.E.R.S. REGULATIONS EXHIBIT --

13 THE COURT: YOUR EXHIBIT E.
14 BY MR. SILVER:

15 Q. EXHIBIT E AND TAKE EDUCATION PAY AND GO TO
16 THE SECTION THAT SAYS "EDUCATIONAL INCENTIVE."

17 THE COURT: DO YOU HAVE -- HE DOESN'T HAVE
18 THAT.

19 MR. SILVER: OH, I'M SORRY. LET ME GIVE
20 YOU --

21 MR. CROWLE: WELL, HE CAN LOOK IT UP IN --
22 HE'S GOT THE P.E.R.L. ONE. IT'S IN HERE.

23 MR. SILVER: IT'S --

24 THE COURT: 571.

25 ///

HEARING

1 BY MR. SILVER:

2 Q. 571(A) PARENTHESES (2). THAT'S THE FOURTH
3 ITEM. THIRD ITEM. I'M SORRY.

4 A. EDUCATIONAL INCENTIVE?

5 Q. YEAH. SO WOULD IT BE FAIR TO SAY THAT IF AN
6 EMPLOYER WANTED TO MOTIVATE EMPLOYEES TO ATTAIN A
7 CERTAIN LEVEL OF ACHIEVEMENT, AND THEY PAID A BONUS,
8 LET'S SAY, FOR OBTAINING A PARTICULAR DEGREE, WOULD THAT
9 FALL WITHIN YOUR UNDERSTANDING OF THE DEFINITION OF
10 "EDUCATION INCENTIVE"?

11 A. AGAIN, IT WOULD HAVE TO ADHERE TO ALL THE
12 APPLICABLE LAWS AND UNDER P.E.R.S., BUT IF THEY PAID
13 EDUCATIONAL INCENTIVE FOR HAVING A DEGREE, THAT IS
14 REPORTABLE TO P.E.R.S., YES.

15 Q. SO LET'S SAY THE CITY OF HUNTINGTON BEACH,
16 FOR EXAMPLE, PAID A 5 PERCENT OF YOUR INCOME BONUS IF
17 YOU ATTAINED AN ASSOCIATE OF ARTS DEGREE, AND LET'S SAY
18 THAT THE CITY OF HUNTINGTON BEACH PAID AN ADDITIONAL 2
19 1/5 PERCENT BONUS IF YOU OBTAINED A BACHELORS DEGREE, AND
20 SOMEBODY WAS GETTING BOTH BONUS AND ALL OTHER THE THINGS
21 EQUAL, WOULD THOSE ITEMS OF PAY BE PENSIONABLE?

22 A. THERE HAVE BEEN INSTANCES WHERE THERE WERE
23 EMPLOYEES REPORTED EDUCATION INCENTIVES FOR HAVING LIKE
24 AN A.A. AND ALSO FOR HAVING A MASTER'S DEGREE.

25 Q. GOOD. AND BOTH WOULD BE PENSIONABLE?

HEARING

1 A. BOTH ARE COMPENSABLE AND PENSIONABLE, YES.

2 Q. LET'S TAKE ANOTHER EXAMPLE WHERE THERE ARE
3 TWO COMPONENTS OF THE SAME ITEM. LET'S TAKE ONE NEAR
4 AND DEAR TO OUR HEARTS. LET'S SUPPOSE AN EMPLOYER WAS
5 PAYING A NIGHT DIFFERENTIAL TO EMPLOYEES WHO WORKED
6 DURING THE NIGHT WHATEVER THAT WAS.

7 AND LET'S SAY THAT AN EMPLOYER WHO WAS ALSO
8 PAYING A WEEKEND DIFFERENTIAL, WHICH SEEMS TO BE ONE OF
9 THE EXAMPLES THERE. BOTH OF THOSE ITEMS OF PAY AND
10 AGAIN ALL THESE THINGS EQUAL WOULD BE PENSIONABLE;
11 RIGHT.

12 A. I BELIEVE SO.

13 Q. SO WHAT IF AN EMPLOYEE WAS SCHEDULED TO WORK
14 NIGHTS AND WEEKENDS AND GOT BOTH FORMS OF SHIFT
15 DIFFERENTIAL, WOULD BOTH OF THOSE INCENTIVES BE
16 PENSIONABLE?

17 A. IT WOULD DEPEND ON THE -- WHETHER OR NOT
18 IT'S -- IT DOES COMPLY WITH ALL OF THE LAWS, BUT I
19 DON'T, YOU KNOW, SEE ANY PROBLEM WITH THAT.

20 Q. SO AGAIN THERE'S ANOTHER EXAMPLE OF HOW ONE
21 ITEM OF PAY CAN COME INTO DIFFERENT FORMS, AND MAYBE I'M
22 GOING BEYOND WHERE I NEED TO GO. YOU DID MENTION SOME
23 CONCERNS ABOUT SPIKING. JUST LET ME ASK YOU ONE
24 QUESTION.

25 IF SOMEBODY IS LEGITIMATELY PROMOTED, IT'S

HEARING

1 NOT A PHONY TRANSACTION. IT'S A LEGITIMATE PROMOTION
2 THAT SOMEBODY EARNED DURING HIS -- LET'S SAY HIS LAST
3 YEAR OF EMPLOYMENT, AND HE RECEIVES A SIGNIFICANTLY
4 LARGER PAY THAN HE HAD IN THE PREVIOUS YEAR.

5 WOULD THAT EXTRA PAY BE DISALLOWED, ALL OTHER
6 THE THINGS EQUAL?

7 A. AS LONG AS THERE'S A LEGAL AND, LIKE YOU
8 SAID, LEGITIMATE C.A.L.P.E.R.S. PROMOTION, AND HE'S
9 BEING REPORTED PURSUANT TO A PUBLIC INDIVIDUAL SALARY
10 SCHEDULE, THEN YES, IT WOULD BE COMPENSATION EARNABLE.

11 THE COURT: OF THE FUGITIVE OFFICER PREMIUM.

12 MR. SILVER: I HOPE YOU'RE LISTENING TO THIS
13 TESTIMONY INSTEAD OF HAVING FUN READING ALL THOSE
14 REGULATIONS.

15 THE COURT: I AM. I AM, AND HE SAID THAT OF
16 GOOD FAITH PROMOTION COULD BE COMPENSABLE ALL OTHER
17 THINGS BEING EQUAL.

18 MR. SILVER: IF IT'S IN THE LAST YEAR.

19 THE COURT: YEAH.

20 BY MR. SILVER:

21 Q. LET ME SHOW YOU A DOCUMENT. I'M GOING TO
22 OFFER THIS.

23 MR. SILVER: ACTUALLY, MR. CROWLE PROVIDED IT
24 TO ME SO YOU SHOULD HAVE A COPY. IT'S A PUBLIC AGENCY
25 AUDIT OF THE CITY OF HUNTINGTON BEACH CONDUCTED BY

HEARING

1 C.A.L.P.E.R.S. WE HAVE THIS -- I GUESS THIS WOULD BE
2 EXHIBIT H.

3 THE COURT: IT SHOULD BE H.

4 MR. SILVER: I'M GOING TO OFFER THIS TO YOU
5 AS EXHIBIT H.

6 (RESPONDENTS' EXHIBIT LETTER H WAS MARKED FOR
7 IDENTIFICATION.)

8 BY MR. SILVER:

9 Q. AND THEN I'M GOING TO SHOW YOU A COPY. LET
10 ME SHOW YOU A COPY, MR. GUTIERREZ, AND HAVE YOU TAKE A
11 LOOK AT THAT.

12 MR. CROWLE: WHEN SHOULD I MAKE MY OBJECTION,
13 YOUR HONOR?

14 THE COURT: WELL, WHAT IS IT --

15 MR. SILVER: I'M ONLY OFFERING IT FOR
16 IDENTIFICATION RIGHT NOW.

17 THE COURT: ALL RIGHT. MAYBE IT'S GOING TO
18 REFRESH THIS WITNESS'S MEMORY IN SOME WAY. I DON'T KNOW
19 WHAT HE'S GOING TO DO WITH IT, BUT WE'LL SEE.

20 BY MR. SILVER:

21 Q. ANYWAY, MR. GUTIERREZ, DOES C.A.L.P.E.R.S.
22 HAVE A SECTION THAT AUDIT THE REPORTING ACTIVITIES OF
23 CONTRACTING AGENCIES LIKE HUNTINGTON BEACH?

24 A. YES.

25 Q. AND DO THEY PERIODICALLY CONDUCT AUDITS?

HEARING

1 A. YES.

2 Q. AND IS ONE OF THEIR FUNCTIONS IN CONDUCTING
3 AN AUDIT IS TO ASCERTAIN IF THERE ARE ITEMS OF PAY THAT
4 HAVE BEEN REPORTED AS PENSIONABLE INCOME THAT SHOULDN'T
5 HAVE BEEN REPORTED?

6 A. THEY MAKE RECOMMENDATIONS TO THE PROGRAM
7 AREAS, YES.

8 Q. AND DIRECTING YOUR ATTENTION TO THIS EXHIBIT
9 H FOR IDENTIFICATION AND, PLEASE, LOOK AT IT CAREFULLY,
10 DO YOU SEE ANYTHING IN EXHIBIT H THAT WOULD INDICATE
11 CONCERNS EXPRESSED BY THE AUDITOR THAT THE CITY OF
12 HUNTINGTON BEACH WAS IMPROPERLY REPORTING CERTAIN FORMS
13 OF COMPENSATION?

14 MR. CROWLE: OBJECTION. THIS DOCUMENT, IN ANY
15 ANALYSIS REGARDING IT, IS IRRELEVANT. FIRST OF ALL, IT
16 APPLIES TO A DIFFERENT M.O.U. IT ALSO APPLIES TO
17 MANAGEMENT AND NOT LINE OFFICERS; SO THEREFORE, IT IS
18 IRRELEVANT AS FAR AS THE ISSUES IN THIS CASE ARE
19 CONCERNED WHETHER OR NOT ANALYSIS CAME OUT OF THAT.

20 THE COURT: WELL, WHAT ABOUT THOSE ISSUES
21 THAT MR. CROWLE IS RAISING HERE? IT SAYS HERE THE SCOPE
22 OF THE AUDIT WAS FOR THE FISCAL YEAR '02-'03.

23 MR. SILVER: WELL, MR. REINHART HAS ALREADY
24 TESTIFIED THAT WITHOUT CONTRADICTION THAT THIS ITEM OF
25 PAY ALBEIT IN A DIFFERENT SECTION THE LOCATION HAS BEEN

HEARING

1 IN PREVIOUS M.O.U.'S FOR MANY YEARS BEFORE 2003, AND I
2 HAVE --

3 THE COURT: WHAT ABOUT THE OTHER ISSUES HE'S
4 RAISED?

5 MR. SILVER: I DON'T SEE WHERE THIS AUDIT IS
6 CONFINED ONLY TO MANAGEMENT. MAYBE I MISSED THAT, BUT I
7 DON'T SEE -- I ASSUME THAT MY READING OF THIS IS THAT
8 THE CITY -- THAT ALL OF THE CITY'S PAYROLL REPORTING
9 PRACTICES WERE EXAMINED, AND THIS IS A -- I MEAN, I
10 DON'T -- MAYBE I'M MISSING SOMETHING, BUT I DON'T SEE
11 ANYTHING IN HERE THAT SAYS WE ONLY LOOKED AT HOW THE
12 CITY'S REPORTING COMPENSATION FOR CERTAIN OF ITS
13 EMPLOYEES.

14 THE COURT: YOU HAVE A THIRD POINT,
15 MR. CROWLE?

16 MR. CROWLE: PAGE 5, HOLIDAY PAY, REPORTED
17 HOLIDAY PAY FOR SAFETY EMPLOYEES EXCEPT POLICE
18 LIEUTENANTS AND CAPTAINS. AND SO THAT, TO ME, IS NOT
19 LINE OFFICERS --

20 MR. SILVER: BUT --

21 MR. CROWLE: -- AND ALSO WOULD BE --

22 THE COURT: WAIT. HANG ON A SECOND. LET ME
23 SEE WHAT WE'VE GOT HERE.

24 MR. SILVER: EXCUSE ME. JUST TO CLARIFY, WHAT
25 YOU'RE SEEING ON PAGES 4 AND FOLLOWING ARE NOT -- ARE

HEARING

1 JUST PROBLEMS THAT C.A.L.P.E.R.S. NOTED. IT DOESN'T SAY
2 THAT WE ONLY LOOKED AT THESE PARTICULAR CATEGORIES. ALL
3 THESE ITEMS STARTING ON PAGE 4 JUST TELL YOU WHAT ARE
4 THE FOLLOWING CONCERNS THAT THE AUDIT DISCLOSED.

5 AND IF THEY DON'T MENTION RANK AND FILE
6 OFFICERS, THE CLEAR IMPLICATION, WHICH I THINK WE'RE
7 GOING TO TRY TO SHOW, IS THAT THEY DIDN'T LOCATE ANY
8 CONCERNS REGARDING NONMANAGEMENT PEACE OFFICERS, AND
9 CERTAINLY NOT IF THEY DIDN'T LOCATE CONCERNS REGARDING
10 HOLIDAY PAY.

11 THE COURT: WELL, IT SAYS HERE THAT THE CITY
12 DID NOT CORRECTLY REPORT HOLIDAY COMPENSATION TO
13 C.A.L.P.E.R.S.

14 MR. SILVER: BUT NOT IN THIS REGARD, IF YOU
15 READ THE WHOLE THING. THAT'S WHAT'S INTERESTING.
16 YOU'RE RIGHT. IT DID SAY IT, BUT NOT --

17 THE COURT: THAT'S THE FIRST SENTENCE.

18 MR. SILVER: NOT FOR THIS REASON. IF YOU
19 READ THE ENTIRE PART, YOU'LL SEE THAT IT HAS NOTHING TO
20 DO WITH THE SUBJECT MATTER OF THIS PARTICULAR HEARING.

21 THE COURT: NO DOUBT IT WOULD BE VERY HELPFUL
22 FOR ME. WELL, IT SAYS THAT THE CITY REPORTED HOLIDAY
23 PAY FOR SAFETY EMPLOYEES EXCEPT FOR POLICE LIEUTENANTS
24 AND CAPTAINS. IT SAYS THAT'S WHAT THEY REPORTED. IN
25 OTHER WORDS, THE INFERENCE THERE IS THAT THEY REPORTED

HEARING

1 SERGEANTS AND PATROL OFFICERS. THE CITY'S POLICE --

2 MR. SILVER: THE PROBLEM -- I'M SORRY.

3 THE COURT: IT SAYS:

4 "THE CITY'S POLICE LIEUTENANT'S
5 CAPTAIN'S HOLIDAY PAY," WHICH IS CODED
6 AS, QUOTE, "TYPE 91 H.O.-HYPHEN-L.T-
7 AMPERSAND-C.A.P.T.," QUOTES, "AND THE
8 CITY'S PAYROLL RECORD WAS NOT REPORTED
9 TO C.A.L.P.E.R.S.'S COMPENSATION. IN
10 ADDITION, THE POLICE SERGEANT RECEIVED
11 HOLIDAY PAY IN SUM AMOUNT WHICH WAS NOT
12 REPORTED."

13 IT SAYS HOLIDAY PAY IS REPORTABLE SPECIAL
14 COMPENSATION, BLAH, BLAH.

15 MR. SILVER: THAT'S MY WHOLE POINT, YOUR
16 HONOR. THIS AUDIT, WHICH IS SUPPOSED TO DETECT
17 IMPROPRIETIES, ONLY DETECTED THESE TWO UNRELATED
18 IMPROPRIETIES AND DID NOT PASS ANY JUDGMENT OR GIVE
19 ANYBODY ANY INDICATION THAT THERE WAS ANYTHING WRONG IN
20 THE HOLIDAY PAY THAT'S AT ISSUE IN THIS CASE.

21 AND I THINK THAT'S VERY IMPORTANT BECAUSE THE
22 CITY, OBVIOUSLY, AND THE OFFICERS RELIED UPON THAT.

23 THE COURT: WELL, NO. I GOT NO INFORMATION
24 THAT ANYBODY RELIED ON THIS AUDIT, THE CITY OR THE
25 POLICE ASSOCIATION. I'M CONCERNED ABOUT THE AGE OF THIS

HEARING

1 AUDIT REPORT.

2 MR. SILVER: WELL, I THINK WHAT'S IMPORTANT
3 IS THAT I THINK IT'S IMPLIED ADMISSION BY C.A.L.P.E.R.S.
4 THAT BY NOT CALLING THIS TO THE ATTENTION OF THE CITY AS
5 BEING IMPROPER THAT C.A.L.P.E.R.S. IS CONDONING IT. I
6 DON'T KNOW WHAT OTHER CONCLUSION YOU CAN DRAW FROM THE
7 CONTENTS OF THIS AUDIT.

8 THE COURT: I'M INCLINED TO SUSTAIN OBJECTION
9 AS TO -- I DON'T THINK THERE'S A LOT HERE I CAN RELY ON.

10 MR. SILVER: WELL, IF I CAN ASK THE
11 WITNESS -- FIRST I ALL, I HAVEN'T OFFERED IT INTO
12 EVIDENCE, AND SECOND OF ALL, I'D LIKE AT LEAST TO TRY TO
13 LAY A FOUNDATION TO MR. GUTIERREZ.

14 THE COURT: WELL, WHAT'S MR. GUTIERREZ GOING
15 TO KNOW ABOUT THIS EIGHT YEAR OLD AUDIT?

16 MR. SILVER: WELL, HE'S GOING TO KNOW WHAT AN
17 AUDIT IS SUPPOSED TO ACCOMPLISH, AND, I THINK, I WOULD
18 HOPE MR. GUTIERREZ WOULD TELL US THAT, AND I THINK HE
19 HAS ALREADY TOLD US THAT, ACTUALLY, THAT THE AUDIT IS
20 SUPPOSED TO PUT THE EMPLOYER ON NOTICE OF IMPROPER
21 REPORTING PRACTICES, AND I STRONGLY DISAGREE WITH YOUR
22 HONOR.

23 IF THE CITY COMES OUT AND TELLS US, "HEY,
24 WE'VE EXAMINED ALL YOUR PAYROLL REPORTING, AND THE ONLY
25 THING WRONG WITH HOLIDAYS ARE THOSE TWO UNRELATED

HEARING

1 THINGS." THAT SENDS A CLEAR MESSAGE TO ME THAT ALL THE
2 OTHER REPORTING THAT YOU'RE DOING REGARDING HOLIDAYS IS
3 VALID, AND THIS WAS IN 2003, AND EVERYBODY CONTINUED TO
4 REPORT IT AS PENSIONABLE INCOME.

5 I DON'T SEE HOW YOU -- HOW THAT CANNOT -- I
6 CAN'T THINK OF ANYTHING MORE RELEVANT.

7 THE COURT: WELL, LAST YEAR'S AUDIT WOULD BE
8 MORE RELEVANT.

9 MR. SILVER: WELL, THEY DON'T DO AN AUDIT
10 EVERY YEAR. THIS IS THE MOST RECENT AUDIT BEFORE THIS
11 ISSUE BECAME ALIVE. THIS IS THE MOST RECENT AUDIT
12 BEFORE 2009. I MEAN, THIS COMPENSATION WAS BEING
13 PAID -- WE HAVE EVIDENCE, UNCONTRADICTED EVIDENCE, THIS
14 COMPENSATION WAS BEING PAID IN 2003.

15 IT WAS BEING REPORTED IN 2003, AND THIS IS
16 THE MOST RECENT AUDIT BEFORE THIS, BEFORE THESE AMOUNTS
17 WERE DISALLOWED.

18 THE COURT: IT SAYS HERE ON PAGE 2 OF
19 EXHIBIT H THAT:

20 "THE AUDIT PERIOD WAS LIMITED TO
21 THE EXAMINATION OF THE RECORDS AND
22 PROCESSES FROM APRIL 1, 2000, THROUGH
23 JUNE 30, 2003."

24 NOW, EXHIBIT G PERTAINS TO AN M.O.U. FOR THE
25 PERIOD OF OCTOBER 1, 2003, TO MARCH 31, 2006.

HEARING

1 MR. SILVER: RIGHT. BUT MR. REINHART,
2 LIEUTENANT REINHART, TESTIFIED THAT THAT BENEFIT WAS IN
3 PREVIOUS M.O.U.'S AND WAS SIMPLY THE ONLY CHANGE THAT
4 WAS MADE WAS THE LOCATION IN 2003, AND IN FACT, I CAN --
5 I DO HAVE A COPY OF AN EARLIER M.O.U. THAT CONTAINS THIS
6 PROVISION, IF THAT'S WHAT YOUR HONOR IS CONCERNED ABOUT,
7 WHICH I CAN HAVE MR. REINHART, LIEUTENANT REINHART,
8 IDENTIFY.

9 I THINK I'M GOING TO HAVE TO DO THAT.

10 THE COURT: IT WAS IMPLICIT IN THIS CASE THAT
11 PRIOR TO THIS DISPUTE, THERE HADN'T BEEN ANY DISPUTE;
12 RIGHT?

13 COURT REPORTER: I'M SORRY. I DIDN'T HEAR
14 YOU.

15 THE COURT: MR. CROWLE.

16 MR. CROWLE: I BEG YOUR PARDON. I WAS
17 NODDING IN AGREEMENT.

18 THE COURT: HE GAVE ME THE HIGH SIGN THERE.

19 MR. CROWLE: I APOLOGIZE, JUDGE.

20 THE COURT: I SHOULD HAVE PICKED IT UP.

21 I DON'T THINK MR. GUTIERREZ CAN TELL ME
22 ANYTHING ABOUT THIS AUDIT. HOW ARE YOU GOING TO LAY A
23 FOUNDATION? IT'S NOT HIS AUDIT.

24 MR. SILVER: WELL, THAT'S FINE, BUT I THINK
25 THAT -- I DON'T THINK MR. CROWLE, SINCE HE GAVE IT TO

HEARING

1 ME, I DON'T THINK HE'S GOING TO OBJECT.

2 MR. CROWLE: OH, COME ON. WHEN YOU
3 REQUESTED IT AS A COURTESY TO YOU, I SAID, "YES, I WILL
4 SEE IF I CAN FIND IT AND GIVE IT TO YOU." IN FACT, YOU
5 PREMISED THE REQUEST HAS NOTHING TO DO WITH WHETHER IT'S
6 RELEVANT OR ADMISSIBLE.

7 MR. SILVER: I'M NOT ASKING YOU TO WAIVE YOUR
8 RIGHT TO OBJECT TO RELEVANCY. ALL I'M ASKING YOU IS TO
9 ACKNOWLEDGE THAT IT'S AUTHENTIC.

10 THE COURT: AUTHENTICITY IS THE LEAST OF IT.
11 WHAT CAN THE WITNESS TELL ME ABOUT THIS DOCUMENT?

12 MR. SILVER: WELL, THEN I'LL JUST OFFER THE
13 DOCUMENT -- ALL I WANTED HIM TO DO IS EXPLAIN WHAT AN
14 AUDIT IS SUPPOSED TO DO, AND I THINK HE'S ALREADY DONE
15 THAT.

16 THE COURT: THEN LET'S MOVE ON TO SOMETHING
17 ELSE.

18 MR. SILVER: I HAVE NO FURTHER QUESTIONS.

19 THE COURT: YOU GOT ANY REDIRECT?

20 MR. CROWLE: I HAVE ONE THING, JUDGE, AND GOD
21 IS MY JUDGE. THAT'S JUST ONE THING. I FAILED TO
22 IDENTIFY EXHIBIT 15.

23 THE COURT: I'VE ONLY GOT -- LET ME SEE. I
24 DON'T EVEN HAVE 11, 13 OR 15. I'VE GOT 12 AND 14 THAT
25 HAVE BEEN TALKED ABOUT.

HEARING

1 MR. CROWLE: THAT'S TRUE TOO. WELL, LET'S
2 START WITH 15 ANYWAY.

3 (DEPARTMENT'S EXHIBIT NUMBER 15 WAS MARKED
4 FOR IDENTIFICATION.)

5
6 REDIRECT EXAMINATION

7 BY MR. CROWLE:

8 Q. MR. GUTIERREZ, EXHIBIT 15, YOU HAVE IN FRONT
9 OF YOU.

10 A. YES.

11 Q. WHAT IS THAT?

12 A. THIS WAS A BREAKDOWN IN ORDER TO CALCULATE
13 HOW THE HOLIDAY PREMIUM PAY, HOLIDAY PREMIUM OVERTIME
14 PAY RATE, WAS CALCULATED.

15 WE ACTUALLY HAD TO BACK INTO IT, AND THIS IS
16 HOW -- THIS IS WHAT WE WERE TOLD BY THE CITY OF
17 HUNTINGTON BEACH WHAT THE FORMULA WAS. AND ON THE
18 SECOND -- UNDERNEATH THE GRAPH, THE FIRST LITTLE
19 PARAGRAPH, IT SAYS:

20 "FORMULA GIVEN TO C.A.L.P.E.R.S. TO
21 REACH."

22 THAT WAS THE FORMULA WE WERE GIVEN ON HOW
23 THEY'RE CALCULATING IS HOLIDAY PREMIUM OVERTIME, AND SO
24 IT'S HOURLY RATE TIMES NORMAL HOURLY PAY RATE TIMES THE
25 HOURS WORKED, PLUS SPECIAL PAY TIMES ONE AND A HALF

HEARING

1 DIVIDED BY THE HOUR WORKED MINUS THE HOURLY PAY RATE, AND
2 THAT WOULD BE EQUAL TO OVERTIME PAY RATE.

3 Q. OR THE RATE THAT WAS PAID FOR HOLIDAY PREMIUM
4 PAY?

5 A. RIGHT. THAT'S HOW WE WERE ABLE TO COME UP
6 WITH THE AMOUNTS THAT WERE NOTED AND THE -- ON THE PAY
7 SCHEDULES OR THE PAY BREAKDOWNS AND WHAT WAS IDENTIFIED
8 TO US BY THE CITY AS BEING THE REPORTED HOLIDAY PREMIUM
9 AMOUNTS.

10 Q. AND THOSE ARE EXHIBITS 12 AND 14 OF
11 MR. EVENSON AND MR. CATALANO?

12 A. CORRECT.

13 Q. AND THEN EXHIBITS 11 AND 13, THAT'S JUST A
14 COMPILATION OF THE PAYROLL DETAIL REGARDING THOSE TWO
15 GENTLEMEN?

16 A. YES. THE PRINTED PAYROLL THAT WAS REPORTED
17 TO C.A.L.P.E.R.S. FOR THOSE INDIVIDUALS.

18 Q. THAT'S JUST FOR GENERAL REFERENCE AND
19 BACKGROUND?

20 A. RIGHT.

21 (DEPARTMENT'S EXHIBIT NUMBERS 11 AND 13 WERE
22 MARKED FOR IDENTIFICATION.)

23 MR. CROWLE: I HAVE NOTHING FURTHER, JUDGE.

24 THE COURT: WHEN DID YOU GENERATE EXHIBIT 15?

25 THE WITNESS: HOW DO WE GENERATE?

HEARING

1 THE COURT: NO. WHEN?

2 THE WITNESS: WHEN DID WE GENERATE THIS? WE
3 GENERATED IT LAST WEEK. WE GENERATED THIS PARTICULAR
4 DOCUMENT. WE ALREADY HAD THE RATE THAT WAS GIVEN TO US
5 AND ALL THE INFORMATION THAT WAS CALCULATED HERE -- THE
6 HOURLY RATES, THE HOURS WORKED, THEIR BASE PAY.

7 BUT WHAT WE WEREN'T ABLE TO FIGURE OUT IS
8 WHAT SPECIAL PAY THEY WERE INCLUDING IN THE PAY RATE,
9 AND SO WE HAD TO BREAK IT DOWN.

10 SO IT'S MOTORPAY, HOLIDAY PAY, LONGEVITY PAY,
11 ADVANCED POST PAY, AND EDUCATIONAL PAY ARE ALL INCLUDED
12 IN THE CALCULATED RATE FOR HOLIDAY PREMIUM PAY.

13 THE COURT: IN FACT, SOME OF THOSE ARE FROM
14 THAT LAUNDRY LIST OF SPECIALIZED PAY THAT ARE
15 RECOGNIZED; RIGHT?

16 THE WITNESS: YES.

17 THE COURT: LIKE MOTORPAY. THAT'S THE ONE I
18 SAW IN THERE; RIGHT?

19 THE WITNESS: RIGHT.

20 THE COURT: SOMETHING ABOUT POST LOST -- I
21 THINK I SAW POST CERTIFIED.

22 THE WITNESS: THAT'S CORRECT. POLICE
23 OFFICERS AND THEIR TRAINING.

24 THE COURT: P.E.R.S. DON'T RECOGNIZE THAT
25 AS --

HEARING

1 THE WITNESS: REPORTABLE, YES.

2 THE COURT: EXACTLY. IT EXPLAINS WHY THE
3 REGULARLY HOURLY RATE OF PAY FOR ONE OF THESE POLICEMEN
4 IS A LITTLE HIGHER THAN THE OTHERS; RIGHT?

5 THE WITNESS: RIGHT. AND THE DIFFERENCE IN
6 THE -- BY PREMIUM RATE IS WHAT'S STATED IN THE M.O.U.
7 BUT, YEAH.

8 THE COURT: IS THERE GOING TO BE ANY
9 OBJECTION TO 11, 13, AND 15?

10 (DEPARTMENT'S EXHIBIT NUMBERS 11, 13, AND 15
11 WERE RECEIVED IN EVIDENCE BY THE COURT.)

12 MR. SILVER: YES. THERE'S NO FOUNDATION.
13 THEY WERE ALL PREPARED BY THE CITY, AND WE HAVEN'T HAD
14 ANY EVIDENCE FROM ANY CITY REPRESENTATIVE TO
15 AUTHENTICATE THIS TO EXPLAIN WHAT THESE DOCUMENTS MEAN.
16 I DON'T UNDERSTAND WHAT THEY MEAN, AND I'M PROBABLY MORE
17 FAMILIAR WITH ALL THIS STUFF THAN MOST PEOPLE.

18 AGAIN, THIS IS NO FOUNDATION. I THINK THEY'RE
19 REALLY IRRELEVANT TO OUR CASE BECAUSE THE ONLY ISSUE
20 BEFORE -- I THINK, YOUR HONOR, WE'VE DECIDED THAT
21 WHETHER THIS PAY IS PENSIONABLE, AND THESE DOCUMENTS
22 HAVE NO RELATIONSHIP TO THAT ISSUE.

23 MR. CROWLE: WELL, I WOULD TAKE ISSUE WITH
24 THAT, JUDGE, AND FOR NO OTHER REASON, EXHIBITS 12 AND
25 14, SPECIFICALLY, SHOW THAT HOLIDAY PAY IS A SEPARATE

HEARING

1 CONSIDERATION AND IS CONSISTENTLY PAID EVERY -- YOU
2 KNOW, IT'S IN THE M.O.U. AND INDICATED.

3 THIS IS JUST ILLUSTRATIVE TO THAT, THEN IT
4 ALSO REFLECTS WHEN AND HOW MUCH WAS PAID FOR HOLIDAY
5 PREMIUM PAY, AND IT SHOWS THAT THAT WAS SPORADIC.

6 IT'S DEPENDENT UPON THE HOLIDAYS, NUMBER ONE,
7 AND WHEN THEY OCCUR; AND NUMBER TWO, WHETHER OR NOT THE
8 PARTICULAR OFFICER HAD THE ABILITY TO BID, BASED UPON HIS
9 SENIORITY, TO PARTICIPATE IN THE HOLIDAY PAY.

10 MR. SILVER: AND ALL THAT'S IRRELEVANT.

11 THE COURT: IN OTHER WORDS, WE SHOULD BE
12 SURPRISED IF ANY POLICE OFFICER IN THIS POLICE
13 DEPARTMENT GOT PAID A HOLIDAY PREMIUM FOR THE MONTH OF
14 JUNE BECAUSE THERE'S NO JUNE HOLIDAY.

15 MR. CROWLE: I WOULD AGREE WITH THAT.

16 THE COURT: WE SHOULDN'T BE SURPRISED IF
17 THERE ARE SOME IN DECEMBER OR NOVEMBER.

18 MR. CROWLE: ABSOLUTELY. AND IT'S CONSISTENT
19 WITH THE M.O.U. AND THE LIST OF -- AND THAT'S WHY I WENT
20 OVER WITH THE LIEUTENANT IN REGARDS TO THE DIFFERENCE
21 BETWEEN HOLIDAYS THAT ARE ON A GIVEN DAY AND ONES THAT
22 AREN'T, AND HOW THEY CAN DIFFER IN TERMS OF WHETHER OR
23 NOT IT'S PART OF SOMEONE'S REGULAR SCHEDULE.

24 AND HE ALSO REAFFIRMED THE PURPOSE OF IT WAS
25 TO BE AN INCENTIVE FOR SENIOR OFFICERS TO PARTICIPATE IN

HEARING

1 HOLIDAY SITUATIONS.

2 THE COURT: WITH ALL OF THESE DOCUMENTS, I
3 DON'T KNOW IF I'M GOING TO DO MUCH WITH THEM BECAUSE I'M
4 DISINCLINED TO BE FOOLING AROUND WITH SOME PEOPLE'S
5 NUMBERS.

6 IT MAY PROVIDE SOME INSIGHT INTO HOW THIS
7 WORKS, IS WHY I KEPT, BY THE WAY, MY HYPOTHETICAL TO THE
8 LIEUTENANT TO \$100 A DAY, BECAUSE THAT'S SOMETHING MY
9 ADULT BRAIN CAN DEAL WITH.

10 MR. CROWLE: WE HAVE NOTHING FURTHER,
11 JUDGE.

12 THE COURT: ALL RIGHT.

13 MR. SILVER: YOUR HONOR, THE ONLY OTHER THING
14 I HAVE -- WHICH I DON'T KNOW IF MR. CROWLE WANTS TO JUST
15 ALLOW ME TO INTRODUCE IT INTO EVIDENCE OR NOT.

16 I JUST WOULD OFFER THE -- JUST TO MAKE SURE
17 THERE'S NO MISSING LINK, I OFFER THE 1990 THROUGH '93
18 M.O.U., WHICH DOES PROVIDE FOR HOLIDAY PAY, ALTHOUGH IN A
19 DIFFERENT LOCATION.

20 IF NECESSARY, I'LL CALL LIEUTENANT REINHART
21 TO AUTHENTICATE IT, BUT IF MR. CROWLE DOESN'T NEED THAT,
22 I'LL JUST OFFER THAT.

23 MR. CROWLE: I HAVE NO PROBLEM.

24 MR. SILVER: LET ME GIVE EVERYBODY A COPY.

25 MR. CROWLE: AND THE DOCUMENT SPEAKS FOR

HEARING

1 ITSELF, AND I'LL TAKE MR. SILVER'S WORD THAT THE
2 LIEUTENANT --

3 THE COURT: HIS OFFER OF PROOF.

4 MR. SILVER: BEAR WITH ME FOR A MOMENT. I'M
5 TRYING TO MAKE SURE I GOT THE RIGHT -- I'VE GOT SO MANY
6 CONTRACTS HERE.

7 MR. CROWLE: AND THIS WILL BE EXHIBIT I?

8 THE COURT: YES.

9 (RESPONDENTS' EXHIBIT LETTER I WAS MARKED FOR
10 IDENTIFICATION.)

11 THE COURT: WITH THAT IN MIND, I WILL RECEIVE
12 I -- I'M SORRY. H PLUS THIS AUDIT. I FRANKLY DON'T
13 KNOW HOW MUCH I CAN DO WITH IT. IT GETS INTO A WHOLE
14 LOT OF OTHER ISSUES LIKE RISK AND MITIGATION
15 TABLES THAT AREN'T GOING TO DO ME ANY GOOD.

16 IT'S PROBABLY THAT IT TENDS TO CORROBORATE
17 THAT HAS NO PRIOR DISPUTE WITH THIS.

18 (RESPONDENTS' EXHIBIT LETTERS H AND I WERE
19 RECEIVED IN EVIDENCE BY THE COURT.)

20 MR. CROWLE, YOU MENTIONED THE NOTION OF SOME
21 KIND OF POST-HEARING BRIEFING, SO I ASSUME YOU WOULD
22 LIKE TO FILE SOMETHING.

23 MR. CROWLE: YES, I WOULD, YOUR HONOR, IN
24 LIEU OF THE FINAL ARGUMENT.

25 THE COURT: YEAH, I'M THINKING, SINCE THE

HEARING

1 RESPONDENTS FILED A BRIEF, I'LL LET YOU FILE SOMETHING
2 TO GIVE THEM A PERIOD OF TIME TO RESPOND.

3 WHAT WORKS FOR YOUR CALENDAR FOR GETTING
4 SOMETHING OUT? YES, I KNOW YOU'VE GOT OTHER CASES TO
5 WORK ON, NO DOUBT, AND OF COURSE, THIS IS A SLIGHTLY
6 UNUSUAL ONE. IF ONLY THESE POLICEMEN --

7 MR. CROWLE: AND WE HAVE THE THANKSGIVING
8 HOLIDAY.

9 THE COURT: YEAH, IF ONLY THESE POLICE
10 OFFICERS WERE CLAIMING THEIR BACHELORS, IT MIGHT BE
11 SIMPLER.

12 MR. CROWLE: I THINK YOU'RE RIGHT, JUDGE. I
13 WOULD AGREE WITH THAT. I PROBABLY WOULD BE MORE
14 COMFORTABLE WITH IT MYSELF.

15 THE COURT: HERE'S OUR CALENDAR HERE. I KNOW
16 THE RESPONDENTS WOULD LIKE TO KNOW WHERE THEY STAND ONE
17 WAY OR THE OTHER, BUT, YOU KNOW, WITH THANKSGIVING UPON
18 US, AND THE DISTRACTION THAT PORTENDS FOR BUSINESS, SOME
19 OF THOSE POLICEMEN WON'T BE GETTING PAID TO WORK THAT DAY
20 AND BE WONDERING, IS IT GOING TO CONTRIBUTE TO THEIR
21 RETIREMENT OR NOT, BUT THEY'LL BE GIVING THE PEOPLE
22 SERVICE, SO NO DOUBT, THAT ALSO WILL BE A TONE OF A
23 REWARD.

24 MR. CROWLE: I'VE GOT TWO HEARINGS BETWEEN
25 THEN AND AUGUST. WOULD YOUR HONOR BE UNCOMFORTABLE WITH

HEARING

1 THE 8TH?

2 THE COURT: THE 8TH OF DECEMBER?

3 MR. CROWLE: YES, SIR.

4 THE COURT: THAT'S FINE. MAKE IT THE 9TH, IF
5 YOU WANT.

6 MR. CROWLE: ALL RIGHT. I'LL TAKE IT.

7 THE COURT: DECEMBER 9 FOR COMPLAINANT'S
8 BRIEF.

9 WHEN WOULD YOU LIKE TO FILE SOME KIND OF
10 RESPONSE, MR. SILVER?

11 MR. SILVER: I WANT TO GO OVER MY CALENDAR TO
12 SEE IF THERE'S ANY OBSTRUCTION DURING THAT TIME. ALL I
13 REALLY WILL NEED, I THINK, IS A WEEK.

14 THE COURT: WELL, WHY DON'T YOU FILE ON THE
15 16TH, THEN.

16 MR. SILVER: OKAY.

17 THE COURT: THEN I'LL FILE THIS BY FAX. YOU
18 GOT OUR FAX NUMBER? YOU PROBABLY DO.

19 MR. CROWLE: YES.

20 THE COURT: IT'S 576-7244.

21 MR. SILVER: JUST AS LONG AS I'VE GOT IT FOR
22 SURE --

23 THE COURT: 213-576-7244. IF I GET THESE
24 BRIEFS IN AND WANT TO HAVE COLLOQUY WITH THE LAWYERS,
25 CAN I HAVE YOUR STIPULATION THAT WE WILL HAVE SOME KIND

HEARING

1 OF FURTHER PROCEEDING TELEPHONICALLY, WHICH WILL MAKE
2 EVERYTHING EASIER FOR EVERYONE?

3 MR. CROWLE: I HAVE NO PROBLEM WITH THAT AT
4 ALL, YOUR HONOR.

5 MR. SILVER: FINE.

6 THE COURT: I ASSUME YOU HAVE TO TRAVEL ALL
7 THE WAY DOWN HERE FROM SACRAMENTO.

8 MR. CROWLE: THANK YOU, JUDGE.

9 THE COURT: I MAY OR MAY NOT. IF I DO, I'LL
10 HAVE A CLERK GET IN TOUCH WITH YOU AND FIND A TIME THAT
11 WORKS FOR BOTH OF YOU, SO THAT I CAN QUERY YOU ABOUT THE
12 QUESTIONS THE BRIEFS HAVE RAISED IF THEY DO.

13 OTHERWISE, I'LL TREAT IT AS SUBMITTED ON THE
14 16TH AND GET A DECISION OUT, HOPEFULLY, ON TIME. IT'S
15 BEEN A LITTLE ISSUE LATELY.

16 I DON'T KNOW WHAT I'M GOING TO DO WITH THIS
17 MESS, AND I DON'T MEAN TO LAY SOMETHING ON YOU FOLKS
18 HERE. THIS IS NOT THE USUAL CASE. I RECOGNIZE THAT
19 THERE'S A SOME SIGNIFICANT STATUTORY AND REGULATORY
20 CONSTRUCTION AHEAD OF ME.

21 I RECOGNIZE THAT THERE'S BEEN SOME PRACTICE,
22 IF YOU WILL, BY THE CITY AND THE ASSOCIATION HERE KNOWN
23 AS THE SYSTEMS POSITION THAT EVEN THAT MAY NOT JUSTIFY
24 CONTINUED CREDIT IN THIS CASE, AND IT'S DIFFERENT THAN
25 MOST OF THE CASES I GET WITH P.E.R.S., SO I'LL MUDDLE MY

HEARING

1 WAY THROUGH THIS WITH THE BEST I CAN WITH THE HELP OF
2 THE BRIEFS. ALL RIGHT.

3 THE COURT: WE'RE OFF THE RECORD.

4 MR. CROWLE: THANK YOU, JUDGE.

5 MR. SILVER: THANK YOU, YOUR HONOR.

6

7

(WHEREUPON, AT THE HOUR OF

8

2:25 P.M., THE PROCEEDINGS

9

WERE CONCLUDED.)

10

-000-

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25

HEARING

1 STATE OF CALIFORNIA)
2 COUNTY OF LOS ANGELES)SS
3)

4 I, TERESA RUSS, HEARING REPORTER, HEREBY
5 CERTIFY:

6 THE FOREGOING PROCEEDINGS WERE TAKEN BEFORE ME
7 AT THE TIME AND PLACE THEREIN SET FORTH;

8 THE PROCEEDINGS WERE RECORDED STENOGRAPHICALLY
9 BY ME AND WERE THEREAFTER TRANSCRIBED;

10 THE FOREGOING TRANSCRIPT IS A TRUE AND CORRECT
11 TRANSCRIPT OF MY SHORTHAND NOTES SO TAKEN;

12 I FURTHER CERTIFY THAT I AM NEITHER COUNSEL
13 FOR NOR RELATED TO ANY PARTY TO SAID ACTION, NOR IN ANY
14 WAY INTERESTED IN THE OUTCOME THEREOF.

15 IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED
16 MY NAME THIS 1ST DAY OF DECEMBER, 2011.

17
18
19
20
21
22
23
24
25



CALPERS' EXHIBITS

Daniel A. Catalano, and Norman (Eldo) E. Evenson
 Agency Case No. 9329
 OAH Case No. L-2011061387

EXHIBIT		I.D.	EVID.
JURISDICTIONAL DOCUMENTS			
1	Retirement Application of Norman (Eldo) E. Evenson, dated September 16, 2008		✓
2	Letter of Determination from CalPERS/ERSD to Eldo Evenson Regarding Portion of Special Compensation of Claimed Final Compensation for Retirement Allowance, dated January 26, 2009		✓
3	Letter of Appeal from Stephen Silver on behalf of Eldo Evenson dated February 13, 2009		✓
4	Retirement Application of Daniel A. Catalano, dated August 26, 2009		✓
5	Letter of Determination from CalPERS/ERSD to Daniel A. Catalano Regarding Portion of Special Compensation of Claimed Final Compensation dated September 25, 2009		✓
6	Letter of Appeal from Daniel A. Catalano dated October 22, 2009		✓
7	Request To Set Hearing, dated May 27, 2011		✓
8	Amended Statement of Issues dated November 14, 2011		
9	Memorandum of Understanding between Huntington Beach Police Officers' Association and City of Huntington Beach dated May 1, 2006 for the Term April 1, 2006 Through March 31, 2010, Resolution No. 2006-19		
10	Side Letter of Agreement between Huntington Beach Police Officers' Association and the City of Huntington Beach dated March 10, 2010, Resolution No. 2010-13 Amending Memorandum of Understanding dated May 1, 2006, Resolution No. 2006-19		
OTHER			
11	Payroll Detail Information 2004-2010 of Daniel A. Catalano		
12	Miscellaneous Pay Records(breakdown) of Daniel A. Catalano		
13	Payroll Detail Information 2004-2009 of Norman (Eldo) E. Emerson		
14	Miscellaneous Pay Records (breakdown) of Norman (Eldo) E. Emerson		
15	Holiday Premium Pay Overtime Payrate		



Disability Retirement Election Application

888 CalPERS (or 888-225-7377) • TTY for Speech and Hearing Impaired (916) 795-3240



Employer Information

Check if this is an employer-originated application
Employer must fill out and sign Section 12 on the last page of this application

Application Type

- Disability Retirement
- Service Pending Disability Retirement
- Industrial Disability Retirement
- Service Pending Industrial Disability Retirement

Section 1

Information About You

Please provide your name as it appears on the Social Security card

ELDO N.E. EVENSON JR.
Name of Member (First Name Middle Initial Last Name) Social Security Number

Address

Display all dates in this order month/day/year

City State ZIP Country

11-26-1957 Male Female
Birthdate (mm/dd/yyyy) Gender Home Phone Work Phone

Section 2

Retirement Information

Please do not abbreviate your employer or position

~~08-13-2008~~ 09-20-2008
Retirement Date (mm/dd/yyyy)

Do not list Social Security, military or railroad retirement as a California public retirement system

CITY OF HUNTINGTON BEACH MOTOR OFFICER
Employer Position Title

Do you have any final compensation period higher than the last consecutive 12 or 36 months?
 No Yes, from 09-01-2006 to 8-31-2007
Beginning Date (mm/dd/yyyy) Ending Date (mm/dd/yyyy)

Are you a member of a California public retirement system other than CalPERS? No Yes, provide

Name of System

Date of Retirement (mm/dd/yyyy) Beginning Service Credit Date (mm/dd/yyyy) Ending Service Credit Date (mm/dd/yyyy)

Section 3

Workers' Compensation Information

Local safety members should not complete Sections 3 & 4

Workers Compensation Carrier

Name of Adjuster Phone Number

Address

City State ZIP

Claim Number(s) Relating to Alleged Disability Date of Injury (mm/dd/yyyy)

Put your name and Social Security number at the top of every page

ELDO N.E. EVENSON
Your Name

Social Security Number

Section 4

Please complete all the questions below. If you need additional space, attach separate sheets and be sure to include your name and Social Security number on all sheets

Disability Information

What is your specific disability, when and how did it occur?

What is the complete name and address of your treating physician(s)?

Name of Treating Physician Medical Record Number

Address

City State ZIP ()
Phone Number

What are your limitations/preclusions due to your injury or illness?

How has your injury or illness affected your ability to perform your job?

Are you currently working in any capacity (full-time, part-time, or modified work)? If yes, please explain

Other information you would like to provide

Did a third party cause your injury? No Yes (if yes, CalPERS has a potential "right of subrogation")

Put your name and Social Security number at the top of every page

ELDON A. E. EVENSON JR
Your Name

Social Security Number

Section 5

Select Your Retirement Payment Option and Beneficiary

Select only one payment option Option 1, Option 2, Option 2W, Option 3, Option 3W, the Unmodified Allowance Option, or one of the Option 4 types

By filling out this section, you are electing your Retirement Payment Option and designating your beneficiary. Once you select a payment option, you cannot change to another option. Along with your option selection, you must complete at least one of the beneficiary designations in Sections 5a-5d. If you choose the Unmodified Allowance Option, you do not need to specify a beneficiary. Please see pages 18 to 22 for more information on this section.

- Option 1 - To complete this option choice, you must also fill out Section 5d, *Balance of Contributions Beneficiary(ies)*
- Option 2 - To complete this option choice, you must also fill out Section 5a, *Individual Lifetime Beneficiary*
- Option 2W - To complete this option choice, you must also fill out Section 5a, *Individual Lifetime Beneficiary*
- Option 3 - To complete this option choice, you must also fill out Section 5a, *Individual Lifetime Beneficiary*
- Option 3W - To complete this option choice, you must also fill out Section 5a, *Individual Lifetime Beneficiary*
- Unmodified Allowance Option - If you select this option there is no return of your member contributions and no monthly benefits payable upon your death - except the Survivor Continuance benefit, if applicable. There is no beneficiary designation for this option.

These options apply to Option 4 Individual Lifetime Beneficiary only

- Option 4, Individual Lifetime Beneficiary - If you select this option you must also select one of the following Individual Lifetime Beneficiary options below
 - Option 2W & Option 1 Combined - To complete this option choice, you must also fill out Section 5a *Individual Lifetime Beneficiary* and Section 5d *Balance of Contributions Beneficiary(ies)*
 - Option 3W & Option 1 Combined - To complete this option choice, you must also fill out Section 5a *Individual Lifetime Beneficiary* and Section 5d *Balance of Contributions Beneficiary(ies)*
 - Specific Dollar Amount to Beneficiary \$ _____ - To complete this option choice, you must also fill out Section 5a *Individual Lifetime Beneficiary* Dollars
 - Specific Percentage to Beneficiary _____ % - To complete this option choice, you must also fill out Section 5a *Individual Lifetime Beneficiary* Percent
 - Reduced Allowance for Fixed Period of Time _____ through _____
Percent or Dollars Date (mm/yyyy)
 - Reduced Allowance upon death of retiree or beneficiary \$ _____ reduction amount
Dollars

If you are naming a beneficiary under this option, you must also fill out Section 5a, *Individual Lifetime Beneficiary*

This option applies to Option 4 Multiple Lifetime Beneficiaries only

- Option 4, Multiple Lifetime Beneficiaries - To complete this option choice, you must also fill out Section 5b *Option 4 Multiple Lifetime Beneficiaries*

These options apply to Option 4, Court Ordered Community Property only

- Option 4, Court Ordered Community Property - If you select this option, you must also complete Section 5c, *Court Ordered C P Beneficiary* and select one of the following Court Ordered Option 4 Community Property options
 - Option 4/Unmodified - There is no additional beneficiary designation for this option
 - Option 4/1 - To complete this option choice, you must also fill out Section 5d, *Balance of Contributions Beneficiary(ies)*
 - Option 4/2W - To complete this option, you must also fill out Section 5a, *Individual Lifetime Beneficiary*
 - Option 4/3W - To complete this option, you must also fill out Section 5a, *Individual Lifetime Beneficiary*

Put your name and Social Security number at the top of every page

LUO M. E. EVENSON JR
Your Name

Social Security Number

Section 5a

Option 2, 2W, 3, 3W or 4 Individual Lifetime Beneficiary

Designate one beneficiary and provide all of that person's information including full name

Complete this section only if you chose either Option 2, 2W, 3, 3W or Option 4 Individual Lifetime Beneficiary or Option 4/2W or 4/3W Court Ordered Community Property

WYNN A. EVENSON
Name (First Name Middle Initial Last Name)

Social Security Number

11-30-1953
Birthdate (mm/dd/yyyy)

Male Female
Gender

WIFE
Relationship to You

Address

City State ZIP Country

Section 5b

Option 4 Multiple Lifetime Beneficiaries

If you want your beneficiaries to receive an equal share of your benefits, do not specify a dollar or percentage of benefit

Complete this section only if you selected Option 4 Multiple Lifetime Beneficiaries

Name (First Name Middle Initial Last Name) Social Security Number

Male Female
Birthdate (mm/dd/yyyy) Gender Relationship to You Dollar/Percent of Benefit

Address

City State ZIP Country

Name (First Name Middle Initial Last Name) Social Security Number

Male Female
Birthdate (mm/dd/yyyy) Gender Relationship to You Dollar/Percent of Benefit

Address

City State ZIP Country

Name (First Name Middle Initial Last Name) Social Security Number

Male Female
Birthdate (mm/dd/yyyy) Gender Relationship to You Dollar/Percent of Benefit

Address

City State ZIP Country

Section 5c

Court Ordered Option 4 Community Property Beneficiary

List only the Option 4 beneficiary that is required by your court order

Complete this section only if you selected Option 4 Court Ordered Community Property

Name (First Name Middle Initial Last Name) Social Security Number

Male Female
Birthdate (mm/dd/yyyy) Gender Relationship to You

Address

City State ZIP Country

Put your name and Social Security number at the top of every page

ELD N. E. EVENSON
Your Name

Social Security Number

Section 5d

Designate up to three beneficiaries here if you want to designate more than three beneficiaries See page 23 for information on completing the Lump Sum Beneficiary Designation form

Option 1 Balance of Contributions Beneficiary(ies)

Complete this section only if you selected Option 1, Option 4-2W/1 or 3W/1 combined You may change this beneficiary(ies) at any time This designation automatically revokes when there is a change in your marital status, domestic partnership status, or when there is a birth or adoption of a child For detailed information and instructions please refer to pages 23 and 24 of this booklet

Name (First Name Middle Initial Last Name) Social Security Number
Birthdate (mm/dd/yyyy) Gender Male Female Relationship to You
Address
City State ZIP Country

Name (First Name Middle Initial Last Name) Social Security Number
Birthdate (mm/dd/yyyy) Gender Male Female Relationship to You
Address
City State ZIP Country

Name (First Name Middle Initial Last Name) Social Security Number
Birthdate (mm/dd/yyyy) Gender Male Female Relationship to You
Address
City State ZIP Country

Section 6

Retired Death Benefit

All Applicants must complete this section

This section designates the person who will receive your lump sum Retired Death Benefit You may change this beneficiary(ies) at any time This designation automatically revokes when there is a change in your marital status, domestic partnership status, or when there is a birth or adoption of a child For detailed information and instructions please refer to page 24 of this booklet

Designate your beneficiary to receive your lump sum Retired Death Benefit

WYNN A. EVENSON Social Security Number
11-30-1953 Gender Male Female Relationship to You WIFE
Address
City State ZIP Country

Section 6 continues on page 6

Put your name and Social Security number at the top of every page

WLO N. E. EVENSON
Your Name Social Security Number

Section 6, continued

Retired Death Benefit

All Applicants must complete this section

~~WLO N. E. EVENSON~~
Name (First Name Middle Initial Last Name) Social Security Number

Designate your beneficiary to receive your lump sum Retired Death Benefit

Male Female
Birthdate (mm/dd/yyyy) Gender Relationship to You

Address

City State ZIP Country

Name (First Name Middle Initial Last Name) Social Security Number

Male Female
Birthdate (mm/dd/yyyy) Gender Relationship to You

Address

City State ZIP Country

Section 7

Survivor Continuance

Please answer all five questions and complete the information in each section where you answered "Yes"

Please see pages 24 and 25 for more information on this section

1 Will you be married on, and at least one year prior to, your retirement date? No Yes, provide

Name of Spouse (First Name Middle Initial Last Name) Social Security Number

Male Female
Birthdate (mm/dd/yyyy) Gender Date of Marriage

2 Will you be registered with the California Secretary of State as being in a domestic partnership on and at least one year prior to your retirement date? No Yes, provide

Name of Domestic Partner (First Name Middle Initial Last Name) Social Security Number

Male Female
Birthdate (mm/dd/yyyy) Gender Date of Registered Partnership (mm/dd/yyyy)

3 Do you have any natural or adopted children under age 18 who have never been married? No Yes, provide

Name of Child (First Name Middle Initial Last Name) Social Security Number Birthdate (mm/dd/yyyy)

Name of Child (First Name Middle Initial Last Name) Social Security Number Birthdate (mm/dd/yyyy)

4 Do you have any children who have never been married and were disabled prior to their 18th birthday and who are still disabled? No Yes, provide

Name of Child (First Name Middle Initial Last Name) Social Security Number Birthdate (mm/dd/yyyy)

Name of Child (First Name Middle Initial Last Name) Social Security Number Birthdate (mm/dd/yyyy)

5 Are your parents dependent upon you for one-half of their support? No Yes, provide

Name of Parent (First Name Middle Initial Last Name) Social Security Number Birthdate (mm/dd/yyyy)

Name of Parent (First Name Middle Initial Last Name) Social Security Number Birthdate (mm/dd/yyyy)

Put your name and Social Security number at the top of every page

ELOD N.J.E. EVENSON JR

Your Name

Social Security Number

Section 8

Last Day on Payroll

Please enter the last day you received compensation

09-19-2008

Last Day on Payroll (mm/dd/yyyy)

Section 9

Employer Certification (For service pending applications only)

Please see page 25 for more information on this section

Have your employer complete this section

Do not detach from application

This certification is not required if you were separated from employment more than four months ago

Employee's Last Day on Payroll (mm/dd/yyyy) _____ Employee's Separation Date (mm/dd/yyyy) _____

Balance of unused sick leave hours on employee's date of separation _____ - 8 = _____
Hours Days

Balance of educational leave hours on employee's date of separation _____ - 8 = _____
Hours Days

By signing below, you hereby certify, under the penalty of perjury, that the above information is true, complete, and correct to the best of your knowledge. Any changes to this information must be submitted on an Amended Employer Certification form

Signature of Employer _____ Print Name (First Name Middle Initial Last Name) _____

Position Title of Employer _____ Phone Number of Employer _____ Date (mm/dd/yyyy) _____

Section 10

Tax Withholding Election

Federal Income Tax information Please see page 26 for more information on this section

Do not complete for industrial disability retirement

Please choose one only

- Do not withhold federal income tax
- Withhold federal income tax in the amount of \$ _____ per month
Dollars
- Withhold federal income tax based on the tax tables for
 - A married individual with _____ tax withholding exemptions
Number
 - A single individual with _____ tax withholding exemptions
Number

In addition to the amount withheld based on the tax tables, withhold \$ _____ per month
Dollars

State Income Tax information Please see page 26 for more information on this section

State withholding is optional for out-of-state residents

- Do not withhold State of California income tax
- Withhold State of California income tax in the amount of \$ _____ per month
Dollars
- Withhold State of California income tax based on the tax tables for
 - A married individual with _____ tax withholding exemptions
Number
 - A single individual with _____ tax withholding exemptions
Number

In addition to the amount withheld based on the tax tables, withhold \$ _____ per month
Dollars

- Withhold State of California income tax in the amount of 10 percent of the federal income tax withholding amount

Put your name and Social Security number at the top of every page

LUO N.E. EVENSON
Your Name

Social Security Number

Section 11

Member Signature and Notary

This section must be completed or your application will be returned

I certify, under the penalty of perjury, that the information submitted hereon is true and correct to the best of my knowledge. I understand that to cancel this application I must notify CalPERS before the mailing of my first full monthly retirement allowance check

If your spouse's or domestic partner's signature is not available, see page 30 for instructions on completing the Justification for Absence of Signature form

I understand that if I am married or in a registered domestic partnership, but do not name my spouse or partner as beneficiary, they may still be entitled to a community property share of the Option 1 lump sum return of contributions benefit OR a share of the monthly option death benefit allowance. Their community property interest is 50 percent of the benefit based on the contributions or service credit earned for the period of CalPERS service during which we were married or in a registered partnership. My non-spouse or non-partner designated beneficiary will receive the portion of the lump sum Option 1 benefit or monthly option allowance that is not payable to my spouse or domestic partner. I understand that my spouse or domestic partner will have the right to disclaim entitlement to their community property interest in the death benefit at the time the benefit becomes payable, if they so desire.

See page 26 for more information on this section

Your signature and your spouse's or domestic partner's signature must be notarized by a notary public or witnessed by a CalPERS representative

Are you legally married or do you have a legal domestic partner? Yes No

If yes, your spouse or domestic partner must sign this election

If no, please indicate Never Married/or in Partnership Divorced/Annulled or Termination Widowed of Domestic Partnership

[Signature] _____ Date (mm/dd/yyyy) 09-16-2008
Signature of Member
[Signature] _____ Date (mm/dd/yyyy) 9/16/2008
Signature of Spouse or Domestic Partner

State of California, County of _____ On _____ before me,

_____ personally appeared _____
name and title of the officer

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal or authorized CalPERS representative signature

[Signature] _____ Position Title RPSA Date (mm/dd/yyyy) 09/16/08
Signature of Notary or CalPERS Representative
Steve Lieb _____
Print Name CalPERS Office (if applicable)

If this is an employer originated application, employer must fill out Section 12

Section 12

Employer-Originated Applications

To be completed if the employer is submitting the application on behalf of the member

Signature of Employer

Print Name of Employer

Position Title of Employer

Phone Number

Date (mm/dd/yyyy)

Mail to:

CalPERS Benefit Services Division • PO Box 942711, Sacramento, California 94229-2711



Employer Services Division
P.O. Box 942709
Sacramento, CA 94229-2709
Telecommunications Device for the Deaf - (916) 795-3240
888 CalPERS (or **888-225-7377**) FAX (916) 795-4166

January 26, 2009

Mr. Eldo Evenson

Dear Mr. Evenson:

Recently you applied to the California Public Employees' Retirement System (CalPERS) for retirement as an employee of the City of Huntington Beach (City). In the process of reviewing compensation reported on your behalf by your employer, unidentified amounts of special compensation were noted. Based upon information received from the City, CalPERS has determined that some of the special compensation has been reported in error and will not be used in the calculation of your retirement allowance.

In accordance with the Police Officer's Association Memoranda of Understanding (MOU), the City reported for all members special compensation identified as Holiday Pay on a bi-weekly basis for a total of eighty (80) earned hours during the year; per the California Code of Regulations (CCR) 571, this is reportable compensation.

However, the City also reported \$1659.82 in special compensation identified as Holiday Premium Pay for the identified final compensation period of December 30, 2006 to December 29, 2007.

The Police Officer's Association Memoranda of Understandings (MOU) provided by the City of Huntington Beach states:

Article VII – Special Pay, (G) Holiday (2) Holidays Worked

"Holidays Worked - Employees who work on a recognized City holiday shall be compensated at their overtime rate for time actually worked from 12:00 A.M. through 11:59 P.M.

This special pay is reported when a member has worked on a recognized City holiday. The Holiday Premium pay is calculated per the formula below and reported to CalPERS for each service period when worked. The amounts used in the calculations are from the previous reported bi-weekly service period.

The formula used to calculate the Holiday Premium Overtime Payrate is:

$$((\text{Hourly Pay Rate} \times \text{Hours Worked} + \text{Special Pays}) \times 1.5) / \text{Hours Worked} - \text{Hourly Pay Rate} = \text{Holiday Premium Overtime Payrate}$$

Holidays Worked pay is not considered reportable compensation because it is considered overtime which is not reportable per Government Code 20635, and it is not found in the exclusive list of special compensation items as enumerated under California Code of Regulations (CCR) 571.

You have the right to appeal the decision referred to in this letter if you desire to do so, by filing a written appeal with CalPERS, in Sacramento, within **thirty days of the date of the mailing of this letter**, in accordance with Government Code section 20134 and sections 555-555.4, Title 2, California Code of Regulations. An appeal, if filed, should set forth the factual basis and legal authorities for such appeal. A copy of the applicable statute and Code of Regulations sections are included for your reference. If you file an appeal, the Legal Office will contact you and handle all requests for information.

Your appeal will be set for hearing with the Office of Administrative Hearings (OAH). The assigned CalPERS attorney will contact you to coordinate a hearing date. Depending on the current caseload of the OAH and the assigned attorney, the hearing date may be set several months after the case is opened. The OAH will typically offer its earliest available hearing date that meets the schedule of both parties.

If you choose not to be represented by an attorney, the assigned CalPERS lawyer will be in direct communication with you during the appeal process. If you do hire an attorney, please let CalPERS know immediately so our attorney can work directly with him or her.

Attached is an informational brochure on the General Procedures for Administrative Hearings.

After the hearing is completed, the Administrative Law Judge will issue a Proposed Decision in approximately 30 days. The CalPERS Board of Administration will then make a determination whether to accept or reject that Proposed Decision. If the Board rejects the Proposed Decision, they will hold a Full Board Hearing in order to review the entire hearing record again before finalizing their decision.

Your appeal should be mailed to the following address:

Lori McGartland, Division Chief
Employer Services Division
P.O. Box 942709
Sacramento, CA 94229-2709

Mr. Eldo Evenson

-3-

January 26, 2009

By copy of this letter, we ask the City to reverse the Holiday Premium Pay that has been reported as special compensation. Upon completion of the reversal, CalPERS will credit the City with any contributions paid on this item. Additionally, the City is asked to stop reporting any future reporting of the Holiday Premium Pay to CalPERS.

If you have any questions or concerns regarding this matter, please contact me at (888) CalPERS (225-7377).

Sincerely,

Marion Montez

Marion Montez, Section Manager
Compensation & Employer Review Units

Enclosure

cc: City of Huntington Beach
Lori McGartland

§555. Action of Executive Officer.

The Executive Officer is hereby authorized to act: on any application for refund of contributions, crediting of service, correction of records, retirement for disability or service, and death benefits and allowances; and to fix and authorize the payment of any refund, allowance or benefit to which such applicant may be found to be entitled; to cause medical examination of retired persons; and to reinstate such persons from retirement upon his determination that disability does not exist. The Executive Officer may refer the question of an applicant's entitlement to any refund, allowance or benefit or of his reinstatement from retirement to a hearing officer for hearing.

The Executive Officer is hereby authorized and empowered to delegate to his subordinates authority to take any such action on his behalf.

NOTE

Authority cited for Article 2: Section 20120, Government Code. Reference: Sections 20107 and 20133, Government Code.

HISTORY

1. New Article 2 (§§ 555 through 555.4) filed 8-10-64; effective thirtieth day thereafter (Register 64, No. 17).
2. Amendment filed 2-26-75; effective thirtieth day thereafter (Register 75, No. 9).

§555.1. Right of Appeal.

Any applicant dissatisfied with the action of the Executive Officer on his application, other than his referral of the matter for hearing, may appeal such action to the Board by filing a written notice of such appeal at the offices of the Board within thirty days of the date of the mailing to him by the Executive Officer, at his most recent address of record, of notice of the action and right of appeal. An appeal shall contain a statement of the facts and the law forming the basis for appeal. Upon a satisfactory showing of good cause, the Executive Officer may grant additional time not to exceed 30 days, within which to file such appeal.

HISTORY

1. Amendment filed 4-28-76; effective thirtieth day thereafter (Register 76, No. 18).

§555.2. Statement of Issues.

Any applicant filing an appeal shall be entitled to a hearing, and upon the filing of an appeal in accordance with these rules, or upon the Executive Officer's referral of any question for hearing, the Executive Officer shall execute a statement of issues. Such action of the Executive Officer shall not preclude the Board from recalling the proceedings for its review or hearing.

§555.3. Accusation.

Any member whose retirement for disability has been requested by his employer shall be entitled to a hearing. The Executive Officer, upon determination that a member shall be retired for disability on such application, shall file an accusation and serve a copy thereof on the member and his employer.

§555.4. Hearings.

All hearings shall be conducted in accordance with the provisions of Chapter 5, Part 1, Division 3, Title 2 of the Government Code. Each case shall be heard by the hearing officer alone. All proposed decisions of hearing officers shall be referred to the Board. The Executive Officer is hereby authorized and empowered to take, in the name and on behalf of the Board, any action which the Board is authorized or directed by law to take with respect to procedural and jurisdictional matters in connection with any case in which a statement of issues or accusation has been filed.

SILVER, HADDEN, SILVER, WEXLER & LEVINE
A PROFESSIONAL LAW CORPORATION

STEPHEN H. SILVER
WILLIAM J. HADDEN
SUSAN SILVER
ROBERT M. WEXLER
RICHARD A. LEVINE
KEN YUWILER
ELIZABETH SILVER TOURGEMAN
HOWARD A. LIBERMAN
MICHAEL D. SCHWARTZ
MICHAEL SIMIDJIAN

1428 SECOND STREET
SANTA MONICA, CALIFORNIA 90401
MAILING ADDRESS
POST OFFICE BOX 2161
SANTA MONICA, CALIFORNIA 90407-2161
TELEPHONE (310) 393-1486
TELEPHONE (323) 870-0900
FACSIMILE (310) 395-5801

WORKER'S COMPENSATION
OF COUNSEL
STEVEN E. KAYE

February 13, 2009

SENT VIA FAX ON FEBRUARY 13, 2009 TO (916) 795-4166
ORIGINAL SENT VIA FIRST CLASS MAIL

Lori McGartland, Division Chief
CalPERS
Employer Services Division
P.O. Box 942709
Sacramento, CA 94229-2709

Re: **SHIFT DIFFERENTIAL PAY FOR HUNTINGTON BEACH POLICE OFFICERS INCLUDING RETIREES RICHARD C. BRIGHT AND ELDO EVENSON WHOSE REGULAR WORK SCHEDULE REQUIRES THEM TO WORK ON A HOLIDAY**

Dear Ms. McGartland:

I am writing in response to the letters from Marion Montez, Section Manager, Compensation & Employer Review Units of CalPERS, to the Director of Human Resources of the City of Huntington Beach dated January 27, 2009 wherein it was asserted that what was identified as "Holiday Premium Pay" afforded to retired Huntington Beach peace officers Richard C. Bright and Eldo Evenson was not properly reportable as special compensation, and, therefore, could not be included in the final compensation of those individuals. It appears that the conclusion was based upon the fact that CalPERS regarded this extra pay as overtime which, as was correctly noted, does not fit the definition of pensionable income. The letters also concluded that this premium pay is not found in the list of special compensation items set forth in California Code of Regulations §571.

It appears that the initial analysis was based upon a misunderstanding of the nature of this additional pay. Even though at first glance the pay may have sounded like premium overtime compensation, it was not provided for working beyond the individuals' regular work schedule. Instead, it represents a form of shift differential paid to individuals whose regular schedule requires them to work at undesirable times, i.e., holidays, when other workers are on a paid leave of absence enjoying the time with their families and friends.

Under these conditions, this premium pay fits the definition of "shift differential", which is one of the "special assignment pay" items identified in Section 571(a)(4) of the CalPERS Regulations. That definition reads as follows: "Compensation to employees who are routinely

SILVER, HADDEN, SILVER, WEXLER & LEVINE

Lori McGartland, Division Chief
CalPERS
Employer Services Division
February 13, 2009
Page 2

Regulations. That definition reads as follows: "**Compensation to employees who are routinely and consistently scheduled to work other than a standard 'daytime' shift, e.g., graveyard shift, swing shift, shift change, rotating shift, split shift or weekends.**" (emphasis added) Because of the unique nature of a law enforcement agency which requires that there be sworn peace officers on duty at all times, including holidays when the vast majority of other employees are afforded time off with pay, these individuals performing essential services are "routinely and consistently" scheduled to work other than a standard shift on those holidays. In other words, the standard shift allows for time off on holidays and these individuals are scheduled to work on those days. As in the case with shift differential pay for working weekends, the purpose of the premium pay is to compensate the employees for the inconvenience and hardship endured by not being able to celebrate holidays in the manner experienced by the vast majority of the work force.

Accordingly, I urge that you reconsider the position advocated in the letters to the City of Huntington Beach and treat this inconvenience pay as shift differential pay so that it will be appropriately regarded as compensation earnable and final compensation. In the event you do not choose to alter the position of CalPERS, please regard this letter as an administrative appeal of that determination in accordance with Government Code Section 20134 and Sections 555-555.4 of the California Code of Regulations. In that case, please cause the matter to proceed to a hearing before an Administrative Law Judge as quickly as possible.

If you have any further questions regarding this subject matter, please feel free to contact me.

Sincerely,


STEPHEN H. SILVER

SHS:rlg

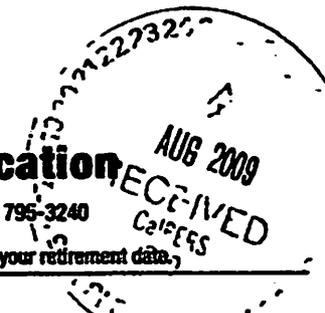
cc: Huntington Beach Police Officers' Association (*via email and U.S. Mail*)
Richard C. Bright
Eldo Evenson
Jennifer McGrath, City Attorney, City of Huntington Beach
Michelle Carr, Human Resources Director, City of Huntington Beach
Ken Marzion, Chief, Actuarial and Employer Services Division, CalPERS (*via fax & U.S. Mail*)
Peter Mixon, Chief Counsel, CalPERS (*via fax & U.S. Mail*)
Marion Montez



Service Retirement Election Application

(888) CalPERS (or 888-225-7377) - TTY for Speech and Hearing Impaired (916) 795-3240

Please do not mail or deliver your application to CalPERS more than 90 days before your retirement date.



Section 1

Please provide your name as it appears on your Social Security card

Please display all dates in this order month/day/year

Information About You

DANIEL A. CATALANO

Name (First Name Middle Initial Last Name)

Social Security Number

Address

City

State

ZIP

Country USA

Birth Date (mm/dd/yyyy) 01/09/1956

Gender Male Female

Home Phone

Work Phone

Section 2

Please do not abbreviate your employer or position

The Temporary Annuity benefit for which you are eligible is based on your CalPERS membership date.

Information About Your Retirement

Please refer to the detailed instructions in this booklet.

Retirement Date (mm/dd/yyyy) 11/06/2009

(11/06/2009)

Employer CITY OF HUNTINGTON BEACH

Position Title POLICE OFFICER

Temporary Annuity - If you select this benefit, you must also fill out Section 3d, Option 1 Balance of Contributions and/or Temporary Annuity Balance beneficiary(ies)

To provide for an additional Temporary Annuity Allowance, you elect to reduce your monthly allowance for life No Yes

If you first became a member on January 1, 2002, or later, you elect to receive Temporary Annuity until age _____ in the amount of \$ _____ Dollars (62 to 70)

The amount of your Temporary Annuity cannot exceed the estimated amount of your Social Security benefit at the age designated in this election

or

If you first became a member prior to January 1, 2002, you elect to receive Temporary Annuity until age _____ in the amount of \$ _____ Dollars per month (50% or whole age 60 to 68)

Final Compensation Period

Do you have any final compensation period higher than the last consecutive 12 or 36 months?

No Yes, from _____ Beginning Date (mm/dd/yyyy) to _____ Ending Date (mm/dd/yyyy)

Do not list Social Security, military or railroad retirement as a California public retirement system

Other California Public Retirement Systems

Are you a member of a California public retirement system other than CalPERS? No Yes, provide

Name of System

Retirement Date (mm/dd/yyyy)

Beginning Service Credit Date (mm/dd/yyyy)

Ending Service Credit Date (mm/dd/yyyy)

RECEIVED CALPERS
2009 AUG 27 PM 4:19
DDC - 3

Put your name and Social Security number at the top of every page

DANIEL ANTHONY CATALANO

Your Name

Social Security Number

Section 3

Select Your Retirement Payment Option and Beneficiary

By filling out this section, you are electing your Retirement Payment Option and designating your beneficiary. Once you select a payment option, you cannot change to another option. Along with your option selection, you must complete at least one of the beneficiary designations in Sections 3a-3d. If you choose the Unmodified Allowance Option, you do not need to specify a beneficiary. Please refer to the detailed instructions in this booklet for more information.

Select only one payment option: Option 1, Option 2, Option 2W, Option 3, Option 3W, the Unmodified Allowance Option, or one of the Option 4 types.

- Option 1 - To complete this option choice, you must also fill out Section 3d, *Balance of Contributions Beneficiary*
- Option 2 - To complete this option choice, you must also fill out Section 3a, *Individual Lifetime Beneficiary*
- Option 2W - To complete this option choice, you must also fill out Section 3a, *Individual Lifetime Beneficiary*
- Option 3 - To complete this option choice, you must also fill out Section 3a, *Individual Lifetime Beneficiary*
- Option 3W - To complete this option choice, you must also fill out Section 3a, *Individual Lifetime Beneficiary*
- Unmodified Allowance Option - If you select this option, there is no return of your member contributions and no monthly benefits payable upon your death - except the Survivor Continuance Benefit, if applicable. There is no beneficiary designation for this option.

These options apply to Option 4 Individual Lifetime Beneficiary only.

- Option 4, Individual Lifetime Beneficiary - If you select this option, you must also select one of the following Individual Lifetime Beneficiary options below:
 - Option 2W & Option 1 Combined - To complete this option choice, you must also fill out Section 3a *Individual Lifetime Beneficiary* and Section 3d *Balance of Contributions Beneficiary*
 - Option 3W & Option 1 Combined - To complete this option choice, you must also fill out Section 3a *Individual Lifetime Beneficiary* and Section 3d *Balance of Contributions Beneficiary*
 - Specific Dollar Amount to Beneficiary \$ _____ Dollars - To complete this option choice, you must also fill out Section 3a *Individual Lifetime Beneficiary*
 - Specific Percentage to Beneficiary _____ % - To complete this option choice, you must also fill out Section 3a *Individual Lifetime Beneficiary*
 - Reduced Allowance for Fixed Period of Time _____ through _____
Percent or Dollars Date (month/year)
 - Reduced Allowance upon death of retiree or beneficiary \$ _____ reduction amount
Dollars
If you are naming a beneficiary under this option, you must also fill out Section 3a, *Individual Lifetime Beneficiary*

This option applies to Option 4 Multiple Lifetime Beneficiaries only.

- Option 4, Multiple Lifetime Beneficiaries - To complete this option choice, you must also fill out Section 3b *Multiple Lifetime Beneficiaries*

These options apply to Option 4, Court Ordered Community Property only.

- Option 4, Court Ordered Community Property - If you select this option, you must also complete section 3c, *Court Ordered CP Beneficiary* and select one of the following Court Ordered Community Property options:
 - Option 4/Unmodified - There is no additional beneficiary designation for this option
 - Option 4/1 - To complete this option choice, you must also fill out Section 3d, *Balance of Contributions Beneficiary*
 - Option 4/2W - To complete this option, you must also fill out Section 3a *Individual Lifetime Beneficiary*
 - Option 4/3W - To complete this option, you must also fill out Section 3a, *Individual Lifetime Beneficiary*

Put your name and Social Security number at the top of every page

DANIEL ANTHONY CATALANO
Your Name Social Security Number

Section 3a

Designate one beneficiary and provide all of that person's information including full name

Option 2, 2W, 3, 3W or 4 Individual Lifetime Beneficiary

Complete this section only if you chose either Option 2, 2W, 3, 3W or Option 4 Individual Lifetime Beneficiary or Option 4/2W or 4/3W Court Ordered Community Property

LESLIE M CATALANO
Name (First Name Middle Initial Last Name) Social Security Number

02/22/1958 Male Female : WIFE
Birth Date (mm/dd/yyyy) Gender Relationship to You

Address

City State ZIP Country

Section 3b

If you want your beneficiaries to receive an equal share of your benefits, do not specify a dollar or percentage of benefit.

Option 4 Multiple Lifetime Beneficiaries

Complete this section only if you selected Option 4 Multiple Lifetime Beneficiaries

Name (First Name Middle Initial Last Name) Social Security Number

Male Female
Birth Date (mm/dd/yyyy) Gender Relationship to You Dollar/Percent of Benefit

Address

City State ZIP Country

Name (First Name Middle Initial Last Name) Social Security Number

Male Female
Birth Date (mm/dd/yyyy) Gender Relationship to You Dollar/Percent of Benefit

Address

City State ZIP Country

Name (First Name Middle Initial Last Name) Social Security Number

Male Female
Birth Date (mm/dd/yyyy) Gender Relationship to You Dollar/Percent of Benefit

Address

City State ZIP Country

Section 3c

List only the Option 4 beneficiary that is required by your court order

Court Ordered Option 4 Community Property Beneficiary

Complete this section only if you selected Option 4 Court Ordered Community Property

Name (First Name Middle Initial Last Name) Social Security Number

Male Female
Birth Date (mm/dd/yyyy) Gender Relationship to You

Address

City State ZIP Country

Put your name and Social Security number at the top of every page

DANIEL ANTHONY CATALANO

Your Name

Social Security Number

Section 3d

Designate up to 3 beneficiaries here. If you want to designate more than 3 beneficiaries or name different beneficiaries for the Option 1 balance and the Temporary Annuity balance, see information in this booklet on completing the Lump Sum Beneficiary Designation form

Option 1 Balance of Contributions and/or Temporary Annuity Balance Beneficiary(ies)

Complete this section only if you selected Option 1, Option 4-2W/1 or 3W/1 combined or the Temporary Annuity allowance. You may change this beneficiary(ies) at any time. This designation automatically revokes when there is a change in your marital status, domestic partnership status, or when there is a birth or adoption of a child. Please refer to the detailed instructions in this booklet for more information

Name (First Name Middle Initial Last Name) _____ Social Security Number _____

Birth Date (mm/dd/yyyy) _____ Gender Male Female Relationship to You _____

Address _____

City _____ State _____ ZIP _____ Country _____

Name (First Name Middle Initial Last Name) _____ Social Security Number _____

Birth Date (mm/dd/yyyy) _____ Gender Male Female Relationship to You _____

Address _____

City _____ State _____ ZIP _____ Country _____

Name (First Name Middle Initial Last Name) _____ Social Security Number _____

Birth Date (mm/dd/yyyy) _____ Gender Male Female Relationship to You _____

Address _____

City _____ State _____ ZIP _____ Country _____

Section 4

All Applicants must complete this section. Designate your beneficiary to receive your Lump-Sum Retired Death Benefit

Retired Death Benefit

This section designates the person who will receive your Lump-Sum Retired Death Benefit. You may change this beneficiary(ies) at any time. This designation automatically revokes when there is a change in your marital status, domestic partnership status, or when there is a birth or adoption of a child. Please refer to the detailed instructions in this booklet for more information

Name (First Name Middle Initial Last Name) LESLIE M. CATALANO Social Security Number _____

Birth Date (mm/dd/yyyy) 02/22/1958 Gender Male Female Relationship to You WIFE

Address _____

City _____ State _____ ZIP _____ Country _____

Name (First Name Middle Initial Last Name) _____ Social Security Number _____

Birth Date (mm/dd/yyyy) _____ Gender Male Female Relationship to You _____

Address _____

City _____ State _____ ZIP _____ Country _____

Put your name and Social Security number at the top of every page

DANIEL ANTHONY CATALANO
Your Name

Social Security Number

Section 4, continued

Retired Death Benefit, continued

All Applicants must complete this section

Designate your beneficiary to receive your Lump-Sum Retired Death Benefit

Name (First Name Middle Initial Last Name) _____ Social Security Number _____

Birth Date (mm/dd/yyyy) _____ Gender Male Female Relationship to You _____

Address _____

City _____ State _____ ZIP _____ Country _____

Section 5

Survivor Continuance

Please answer all five questions and complete the information in each section where you answered "yes"

Please refer to the detailed instructions in this booklet for more information

1 Will you be married on and at least one year prior to your retirement date? No Yes, provide

LESLIE M. CATALANO Social Security Number _____

02/22/1958 Birth Date (mm/dd/yyyy) Male Female Gender 06/16/1984 Date of Marriage

2 Will you be registered with the California Secretary of State as being in a domestic partnership on and at least one year prior to your retirement date? No Yes, provide

Name of Domestic Partner (First Name Middle Initial Last Name) _____ Social Security Number _____

Birth Date (mm/dd/yyyy) _____ Gender Male Female Date of Registered Partnership (mm/dd/yyyy) _____

3 Do you have any natural or adopted unmarried children under age 18? No Yes, provide

Name of Child (First Name Middle Initial Last Name) _____ Social Security Number _____ Birth Date (mm/dd/yyyy) _____

Name of Child (First Name Middle Initial Last Name) _____ Social Security Number _____ Birth Date (mm/dd/yyyy) _____

4 Do you have any unmarried children who were disabled prior to their 18th birthday and who are still disabled? No Yes, provide

Name of Child (First Name Middle Initial Last Name) _____ Social Security Number _____ Birth Date (mm/dd/yyyy) _____

Name of Child (First Name Middle Initial Last Name) _____ Social Security Number _____ Birth Date (mm/dd/yyyy) _____

5 Are your parents dependent upon you for one-half of their support? No Yes, provide

Name of Parent (First Name Middle Initial Last Name) _____ Social Security Number _____ Birth Date (mm/dd/yyyy) _____

Name of Parent (First Name Middle Initial Last Name) _____ Social Security Number _____ Birth Date (mm/dd/yyyy) _____

Section 6

Last Day on Payroll

Please enter the last day you received compensation

11/05/2009
(mm/dd/yyyy)

Put your name and Social Security number at the top of every page

DANIEL ANTHONY CATALANO
Your Name

3

Section 7

Employer Certification

Have your employer complete this section

Please refer to the detailed instructions in this booklet for more information

Do not detach from application

This certification is not required if you are or were separated from employment for more than four months before your retirement date

11/05/2009 Employee's Last Day of Payroll (mm/dd/yyyy) 11/06/2009 Employee's Separation Date (mm/dd/yyyy)

Balance of unused sick leave hours on employee's date of separation N/A Hours - 8 = Days

Balance of educational leave hours on employee's date of separation N/A Hours - 8 = Days

By signing below, you hereby certify, under the penalty of perjury, that the above information is true, complete, and correct to the best of your knowledge. Any changes to this information must be submitted on an Amended Employer Certification form

Brigitte Charles Signature of Employer Brigitte Charles Print Name (First Name Middle Initial Last Name)

Principal Human Resources Analyst Position Title of Employer (714) 536-5917 Phone Number of Employer 08/25/2009 Date (mm/dd/yyyy)

Section 8

Tax Withholding Election

Please choose one only

Federal Income Tax information Please refer to the detailed instructions in this booklet for more information

- Do not withhold federal income tax
- Withhold federal income tax in the amount of \$ per month
Dollars
- Withhold federal income tax based on the tax tables for
 - A married individual with 3 tax withholding exemptions
Number
 - A single individual with tax withholding exemptions
Number
 In addition to the amount withheld based on the tax tables, withhold \$ per month
Dollars

Please choose one only

State Income Tax information Please refer to the detailed instructions in this booklet for more information

State withholding is optional for out-of-state residents

- Do not withhold State of California income tax
- Withhold State of California income tax in the amount of \$ per month
Dollars
- Withhold State of California income tax based on the tax tables for
 - A married individual with 3 tax withholding exemptions
Number
 - A single individual with tax withholding exemptions
Number
 In addition to the amount withheld based on the tax tables, withhold \$ per month
Dollars
- Withhold State of California income tax in the amount of 10 percent of the federal income tax withholding amount

Put your name and Social Security number at the top of every page

DANIEL ANTHONY CATALANO

Your Name

Social Security Number

Section 9

This section must be completed or your application will be returned

If your spouse's or domestic partner's signature is not available, See instructions in this booklet on completing the Justification for Absence of Signature form Your signature and your spouse's or domestic partner's signature must be notarized by a notary public or witnessed by a CalPERS representative.

Member Signature and Notary

I certify, under the penalty of perjury, that the information submitted hereon is true and correct to the best of my knowledge I understand to cancel this application or to change the elected option or beneficiary I must notify CalPERS before the mailing of my first full monthly retirement allowance check

I understand that if I am married or in a registered domestic partnership, but do not name my spouse or partner as beneficiary, they may still be entitled to a community property share of the Option 1 lump sum return of contributions benefit or a share of the monthly option death benefit allowance Their community property interest is 50% of the benefit based on the contributions or service credit earned for the period of CalPERS service during which we were married or in a registered partnership My non-spouse or non-partner designated beneficiary will receive the portion of the lump sum Option 1 benefit or monthly option allowance that is not payable to my spouse or domestic partner I understand that my spouse or domestic partner will have the right to disclaim entitlement to their community property interest in the death benefit at the time the benefit becomes payable, if they so desire

More detailed information on this section is available in this booklet

Are you legally married or do you have a legal domestic partner? Yes No

If yes, your spouse or domestic partner must sign this election

If no, please indicate Never Married/or in Partnership Divorced/Annulled

Widowed Or Termination of Domestic Partnership

Daniel Catalano
Your Signature

08/26/2009
Date (mm/dd/yyyy)

Luis Catalano
Your Spouse's or Domestic Partner's Signature

08/26/2009
Date (mm/dd/yyyy)

State of California, County of _____

On _____ before me, _____
Date Name of Notary/Witness

personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument I certify under Penalty of Perjury under the laws of the State of California that the foregoing paragraph is true and correct

Notary Seal

Witness my hand and official seal or authorized CalPERS representative signature

Natalie Masri RPS1
Signature of Notary or CalPERS Representative Position Title

8/26/2009
Date (mm/dd/yyyy)

Natalie Masri ORO
Print Name CalPERS Office (if applicable)

Mail to: **CalPERS Benefit Services Division • P O Box 942711, Sacramento, California 94229-2711**



Employer Services Division
P.O. Box 942709
Sacramento, CA 94229-2709
Telecommunications Device for the Deaf - (916) 795-3240
888 CalPERS (or 888-225-7377) FAX (916) 795-4166

September 25, 2009

Mr. Daniel A. Catalano

Dear Mr. Catalano:

Recently you applied to the California Public Employees' Retirement System (CalPERS) for retirement as an employee of the City of Huntington Beach (City). In the process of reviewing compensation reported by the City on your behalf, unidentified amounts of special compensation were noted. Based upon information received from the City, CalPERS has determined that some of the special compensation has been reported in error and will not be used in the calculation of your retirement allowance.

In accordance with the Police Officers' Association Memoranda of Understanding (MOU), the City reported for all members' special compensation identified as Holiday Pay for a total of eighty (80) holiday hours earned for the year; per the California Code of Regulations (CCR) 571, this is reportable compensation.

However, the City also reported special compensation identified as Holiday Premium Pay for the identified final compensation period of July 1, 2008 to June 30, 2009.

The Police Officers' Association MOU, under Article VII, Section G - Holidays, (2) Holidays Worked, states in part:

"Employees who work on a recognized City holiday shall be compensated at their overtime rate for time actually worked..."

This special pay is reported when a member has worked on a recognized City holiday.

The Holiday Premium Pay is calculated per the formula below and reported to CalPERS for each service period when worked. The amounts used in the calculations are from the previous reported bi-weekly service period.

The formula used to calculate the Holiday Premium Overtime Payrate is:

September 25, 2009

$$\frac{((\text{Hourly Pay Rate} \times \text{Hours Worked} + \text{Special Pays}) \times 1.5) / \text{Hours Worked} - \text{Hourly Pay Rate}}{\text{Hourly Pay Rate}} = \text{Holiday Premium Overtime Payrate.}$$

Holiday Premium Pay is not considered reportable compensation because it is considered overtime which is not reportable per Government Code 20635, and it is not found in the exclusive list of special compensation items as enumerated under California Code of Regulations (CCR) 571.

Additionally, the Holiday Premium Pay is calculated by a formula that compounds the hourly pay rate, hours worked, and special pays from the previously reported bi-weekly service period.

Further, Holiday Pay has already been reported in accordance with the Police Officers' Association MOU on a bi-weekly basis for a total of eighty (80) holiday hours earned for the year and is considered reportable compensation per CCR 571 (a)(5).

You have the right to appeal the decision referred to in this letter if you desire to do so, by filing a written appeal with CalPERS, in Sacramento, within **thirty days of the date of the mailing of this letter**, in accordance with Government Code section 20134 and sections 555-555.4, Title 2, California Code of Regulations. An appeal, if filed, should set forth the factual basis and legal authorities for such appeal. A copy of the applicable statute and Code of Regulations sections are included for your reference. If you file an appeal, the Legal Office will contact you and handle all requests for information.

Your appeal will be set for hearing with the Office of Administrative Hearings (OAH). The assigned CalPERS attorney will contact you to coordinate a hearing date. Depending on the current caseload of the OAH and the assigned attorney, the hearing date may be set several months after the case is opened. The OAH will typically offer its earliest available hearing date that meets the schedule of both parties.

If you choose not to be represented by an attorney, the assigned CalPERS lawyer will be in direct communication with you during the appeal process. If you do hire an attorney, please let CalPERS know immediately so our attorney can work directly with him or her.

Attached is an informational brochure on the General Procedures for Administrative Hearings.

After the hearing is completed, the Administrative Law Judge will issue a Proposed Decision in approximately 30 days. The CalPERS Board of Administration will then make a determination whether to accept or reject that Proposed Decision. If the Board rejects the Proposed Decision, they will hold a Full Board Hearing in order to review the entire hearing record again before finalizing their decision.

September 25, 2009

Your appeal should be mailed to the following address:

Lori McGartland, Division Chief
Employer Services Division
P.O. Box 942709
Sacramento, CA 94229-2709

By copy of this letter, we ask the City to reverse the Holiday Premium Pay that has been reported as special compensation. Upon completion of the reversal, CalPERS will credit the City with any contributions paid on this item. Additionally, the City is asked to stop reporting any future reporting of the Holiday Premium Pay to CalPERS.

If you have any questions or concerns regarding this matter, please contact Jody Cozad, Manager at (888) CalPERS (225-7377).

Sincerely,



Marion Montez, Section Manager
Compensation & Employer Review Units

Enclosure

cc: City of Huntington Beach
Lori McGartland, Chief

§555. Action of Executive Officer.

The Executive Officer is hereby authorized to act: on any application for refund of contributions, crediting of service, correction of records, retirement for disability or service; and death benefits and allowances; and to fix and authorize the payment of any refund, allowance or benefit to which such applicant may be found to be entitled; to cause medical examination of retired persons; and to reinstate such persons from retirement upon his determination that disability does not exist. The Executive Officer may refer the question of an applicant's entitlement to any refund, allowance or benefit or of his reinstatement from retirement to a hearing officer for hearing.

The Executive Officer is hereby authorized and empowered to delegate to his subordinates authority to take any such action on his behalf.

NOTE

Authority cited for Article 2: Section 20120, Government Code. Reference: Sections 20107 and 20133, Government Code.

HISTORY

1. New Article 2 (§§ 555 through 555.4) filed 8-10-64; effective thirtieth day thereafter (Register 64, No. 17).
2. Amendment filed 2-26-75; effective thirtieth day thereafter (Register 75, No. 9).

§555.1. Right of Appeal.

Any applicant dissatisfied with the action of the Executive Officer on his application, other than his referral of the matter for hearing, may appeal such action to the Board by filing a written notice of such appeal at the offices of the Board within thirty days of the date of the mailing to him by the Executive Officer, at his most recent address of record, of notice of the action and right of appeal. An appeal shall contain a statement of the facts and the law forming the basis for appeal. Upon a satisfactory showing of good cause, the Executive Officer may grant additional time not to exceed 30 days, within which to file such appeal.

HISTORY

1. Amendment filed 4-28-76; effective thirtieth day thereafter (Register 76, No. 18).

§555.2. Statement of Issues.

Any applicant filing an appeal shall be entitled to a hearing, and upon the filing of an appeal in accordance with these rules, or upon the Executive Officer's referral of any question for hearing, the Executive Officer shall execute a statement of issues. Such action of the Executive Officer shall not preclude the Board from recalling the proceedings for its review or hearing.

§555.3. Accusation.

Any member whose retirement for disability has been requested by his employer shall be entitled to a hearing. The Executive Officer, upon determination that a member shall be retired for disability on such application, shall file an accusation and serve a copy thereof on the member and his employer.

§555.4. Hearings.

All hearings shall be conducted in accordance with the provisions of Chapter 5, Part 1, Division 3, Title 2 of the Government Code. Each case shall be heard by the hearing officer alone. All proposed decisions of hearing officers shall be referred to the Board. The Executive Officer is hereby authorized and empowered to take, in the name and on behalf of the Board, any action which the Board is authorized or directed by law to take with respect to procedural and jurisdictional matters in connection with any case in which a statement of issues or accusation has been filed.

Daniel Catalano

Lori McGartland, Division Chief
Employer Services Division
P.O. Box 942709
Sacramento, Ca. 94229-2709

October 22, 2009

Ms. McGartland,

I received a letter from CalPERS rejecting a portion of my final compensation as reported by the City of Huntington Beach. The rejection was based on the issue of special compensation Holiday Premium Pay. I am advising you of my intention to appeal the decision referred to in the letter I received dated September 25, 2009, from Marion Montez, Section Manager, Compensation & Employer Review Units.

I am a member of the Huntington Beach Police Officers Association. I notified the president of the association, Kregg Muller, of the rejection notification. Muller advised me our association has retained the law firm Silver, Hadden, Silver, Wexler and Levine, 1428 2nd St., Santa Monica, Ca. 90401. The Attorney of Record is Steve Silver, 310-393-1486. The issue of special compensation Holiday Premium Pay is currently being negotiated with CalPERS. I will be added to the list of individuals currently party to the appeal.

Sincerely,

Daniel Catalano



DATE: May 27, 2011
 TO: OFFICE OF ADMINISTRATIVE HEARINGS
 FROM: CalPERS
 Legal Office
 P. O. Box 942707
 Sacramento, CA 94229-2707

2349 Gateway Oaks Dr., Ste 200
 SACRAMENTO, CA 95831
 Phone 916-263-0550 FAX 916-263-0554
 Jonathan Lew, Presiding Judge

1515 CLAY STREET, SUITE 206
 OAKLAND, CA 94612
 Phone 510-622-2722 FAX 510-622-2743
 Michael Cohn, Acting Presiding Judge

320 WEST FOURTH STREET, ROOM 630
 LOS ANGELES, CA 90013
 Phone 213-576-7200 FAX 213-576-7244
 Janis S. Rovner, Presiding Judge

1350 FRONT STREET, ROOM 6022
 SAN DIEGO, CA 92101
 Phone 619-525-4475 FAX 619-525-4419
 Alan R. Alvord, Presiding Judge

(PLEASE TYPE AND SUBMIT IN TRIPLICATE)

STATE AGENCY REQUEST TO SET (Cal. Code Regs., tit. 1, § 1018)		
CASE TITLE RICHARD C. BRIGHT, NORMAN (ELDO) E. EVENSON and DANIEL CATALANO		OAH CASE NO.
NAME OF AGENCY California Public Employees' Retirement System (CalPERS)		AGENCY CASE NO. 9329
AGENCY ATTORNEY/REPRESENTATIVE Name, Address, Telephone and Facsimile Nos. Henry W. Crowle Senior Staff Counsel CalPERS P.O. Box 942707 Sacramento, CA 94229-2707 (916) 795-0119 (Office) (916) 795-3659 (Fax)	RESPONDENT/APPELLANT/PETITIONER Name, Address, Telephone and Facsimile Nos. Richard Briht Norman Evenson Daniel Catalano	RESPONDENT ATTORNEY/REPRESENTATIVE Name, Address, Telephone and Facsimile Nos. Stephen H. Silver P.O. Box 2161 Santa Monica, CA 90407-2161 (310) 393-1486
<input type="checkbox"/> ACCUSATION <input checked="" type="checkbox"/> STATEMENT OF ISSUES <input type="checkbox"/> OTHER (LIST)		
STATUTORY TIME LIMIT <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES	IF YES, PROVIDE LEGAL AUTHORITY	IF YES, DATE BY WHICH CASE MUST BE HEARD
TIME ESTIMATE FOR HEARING	<input type="checkbox"/> TAPE RECORDED HEARING BY CONSENT (Gov. Code, § 11512, subd. (d)) <input checked="" type="checkbox"/> OAH TO REQUEST CSR <input type="checkbox"/> AGENCY TO PROVIDE CSR	
HOURS	DAYS	PLACE OF HEARING
	2	Los Angeles Office of Administrative Hearings
DATES PREFERRED	DATES AVAILABLE	DATES UNAVAILABLE FOR THE NEXT SIX MONTHS
DATES COORDINATED WITH ALL PARTIES? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	November 15, & 16, 2011 @ 9:00 A.M.	
ADDITIONAL COMMENTS AND/OR INSTRUCTIONS, REQUEST FOR ACCOMMODATION Date has been confirmed with OAH/Respondent/Representative		
<input type="checkbox"/> SECURITY REQUESTED (ATTACH WRITTEN REQUEST)		
REQUEST TO SET ACKNOWLEDGEMENT		
DATE(S) SET/ STARTING TIME	PLACE OF HEARING	DATE: BY (916)

Copy

1 PETER H. MIXON, GENERAL COUNSEL
HENRY W. CROWLE, SENIOR STAFF COUNSEL, SBN 49359
2 CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
Lincoln Plaza North, 400 "Q" Street, Sacramento, CA 95811
3 P.O. Box 942707, Sacramento, CA 94229-2707
Telephone: (916) 795-0119
4 Facsimile: (916) 795-3659

5 Attorneys for Petitioner California
Public Employees' Retirement System
6

7 BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
8

9	In the Matter of the Calculation of Final Compensation of	)	CASE NO. 9329
10	DANIEL CATALANO AND NORMAN (ELDO) E. EVENSON,	)	OAH NO. L-2011061387
11	Respondents,	)	AMENDED STATEMENT OF ISSUES
12	and	)	Hearing Date: November 15 & 16, 2011
13	CITY OF HUNTINGTON BEACH,	)	Hearing Location: Los Angeles, CA
14	Respondent.)	

16
17 Petitioner California Public Employees' Retirement System (CalPERS), states:

18 I

19 Petitioner makes and files this Amended Statement of Issues in its official
20 capacity as such and not otherwise.

21 II

22 CalPERS and respondents, through their respective counsel, have agreed and
23 stipulated that respondents Catalano and Evenson, both non-managerial peace
24 officers for respondent City of Huntington Beach, their employer, are designated as
25 representatives of their similarly situated fellow non-managerial peace officers in
26 seeking a determination of whether or not compensation identified as Holiday
27 Premium Pay should be considered "compensation earnable." Non-managerial peace
28

1 officers operate under Memorandum of Understanding, Resolution No. 2006-19. The
2 final decision arising from this hearing is agreed to be binding on all such similarly
3 situated, non-managerial peace officers employed by the City of Huntington Beach.
4 This agreement and stipulation was entered into for the sake of efficiency and
5 economy for all involved, including the Office of Administrative Hearings. Previously
6 identified respondent Richard C. Bright has been removed as a party to these
7 proceedings since he is part of management which operates pursuant to a different
8 Memorandum of Understanding, Resolution No. 2006-43. "Compensation earnable"
9 issues pertaining to separate respondent Bright and other management officers will be
10 the subject of separate proceedings.
11

12
13 Respondents Daniel Catalano and Norman (Eldo) E. Evenson (respondents
14 Catalano and Evenson) were employed by respondent City of Huntington Beach
15 (respondent City). Respondent Evenson retired effective September 20, 2008 as a
16 Motor Police Officer on industrial disability with just over 29 years of service credit.
17 Respondent Catalano retired effective November 6, 2009 as a Police Officer with just
18 over thirty years of service credit.

19 Respondent City is a public agency contracting with CalPERS for retirement
20 benefits for its eligible employees. The provisions of respondent City's contract with
21 CalPERS are contained in the California Public Employees' Retirement Law (the
22 PERL).

23 III

24 CalPERS is a defined benefit plan. Benefits for its members are funded by
25 member and employer contributions, and by interest and other earnings on those
26 contributions. The amount of a member's contributions is determined by applying a
27 fixed percentage to the member's compensation. A public agency's contribution is
28 determined by applying a rate to the payroll of the agency. Using certain actuarial

1 assumptions specified by law, the CalPERS Board of Administration sets the employer
2 contribution rate on an annual basis.

3 IV

4 The amount of a member's service retirement allowance is calculated by
5 applying a percentage figure, based upon the member's age on the date of retirement,
6 to the member's years of service and the member's "final compensation." In
7 computing a member's retirement allowance, CalPERS staff may review the salary
8 reported by the employer for the member to ensure that only those items allowed
9 under the PERL will be included in the member's "final compensation" for purposes of
10 calculating the retirement allowance. Respondent City not only reported as special
11 compensation Holiday Pay, it also reported special compensation identified as Holiday
12 Premium Pay for Holidays Worked. CalPERS rejected the Holidays Premium Pay as
13 special compensation since it does not constitute reportable compensation pursuant to
14 Government Code section 20635. Additionally, the City, pursuant to the Memorandum
15 of Understanding, Resolution 2006-019, already reports Holiday Pay in each bi-weekly
16 pay period.

17 V

18 The following provisions of the Government Code, which were in effect at all
19 times pertinent to this appeal, are relevant to calculation of final compensation:

20 Section 20630 provides in pertinent part:

21 (a) As used in this part, "compensation" means the remuneration
22 paid out of funds controlled by the employer in payment for the
23 member's services performed during normal working hours or for
time during which the member is excused from work because of any
of the following:

24 (1) Holidays.

(2) Sick leave.

25 (3) Industrial disability leave, during which, benefits are payable
pursuant to Sections 4800 and 4850 of the Labor Code or Article 4
26 (commencing with Section 19869) of Chapter 2.5 of Part 2.6, or
Section 44043 or 87042 of the Education Code.

27 (4) Vacation.

(5) Compensatory time off.

28 (6) Leave of absence.

(b) When compensation is reported to the board, the employer shall

1 identify the pay period in which the compensation was earned
2 regardless of when reported or paid. Compensation shall be
3 reported in accordance with Section 20636 and shall not exceed
4 compensation earnable, as defined in Section 20636.

5 **Section 20635 provides:**

6 When the compensation of a member is a factor in any computation
7 to be made under this part, there shall be excluded from those
8 computations any compensation based on overtime put in by a
9 member whose service retirement allowance is a fixed percentage
10 of final compensation for each year of credited service. For the
11 purposes of this part, overtime is the aggregate service performed
12 by an employee as a member for all employers and in all categories
13 of employment in excess of the hours of work considered normal for
14 employees on a full-time basis, and for which monetary
15 compensation is paid.

16 If a member concurrently renders service in two or more positions,
17 one or more of which is full time, service in the part-time position
18 shall constitute overtime. If two or more positions are permanent
19 and full time, the position with the highest payrate or base pay shall
20 be reported to this system. This provision shall apply only to service
21 rendered on or after July 1, 1994.

22 **Section 20636 provides:**

23 (a) "Compensation earnable" by a member means the payrate and
24 special compensation of the member, as defined by subdivisions (b),
25 (c), and (g), and as limited by Section 21752.5.

26 (b) (1) "Payrate" means the normal monthly rate of pay or base pay
27 of the member paid in cash to similarly situated members of the
28 same group or class of employment for services rendered on a full-
time basis during normal working hours, pursuant to publicly
available pay schedules. "Payrate," for a member who is not in a
group or class, means the monthly rate of pay or base pay of the
member, paid in cash and pursuant to publicly available pay
schedules, for services rendered on a full-time basis during normal
working hours, subject to the limitations of paragraph (2) of
subdivision (e).

(2) "Payrate" shall include an amount deducted from a member's
salary for any of the following:

(A) Participation in a deferred compensation plan.

(B) Payment for participation in a retirement plan that meets the
requirements of Section 401(k) of Title 26 of the United States Code.

(C) Payment into a money purchase pension plan and trust that
meets the requirements of Section 401(a) of Title 26 of the United
States Code.

(D) Participation in a flexible benefits program.

(3) The computation for a leave without pay of a member shall be

1 based on the compensation earnable by him or her at the beginning
2 of the absence.

3 (4) The computation for time prior to entering state service shall be
4 based on the compensation earnable by him or her in the position
5 first held by him or her in state service.

6 (c) (1) Special compensation of a member includes a payment
7 received for special skills, knowledge, abilities, work assignment,
8 workdays or hours, or other work conditions.

9 (2) Special compensation shall be limited to that which is received
10 by a member pursuant to a labor policy or agreement or as
11 otherwise required by state or federal law, to similarly situated
12 members of a group or class of employment that is in addition to
13 payrate. If an individual is not part of a group or class, special
14 compensation shall be limited to that which the board determines is
15 received by similarly situated members in the closest related group
16 or class that is in addition to payrate, subject to the limitations of
17 paragraph (2) of subdivision (e).

18 (3) Special compensation shall be for services rendered during
19 normal working hours and, when reported to the board, the
20 employer shall identify the pay period in which the special
21 compensation was earned.

22 (4) Special compensation may include the full monetary value of
23 normal contributions paid to the board by the employer, on behalf of
24 the member and pursuant to Section 20691, provided that the
25 employer's labor policy or agreement specifically provides for the
26 inclusion of the normal contribution payment in compensation
27 earnable.

28 (5) The monetary value of a service or noncash advantage furnished
by the employer to the member, except as expressly and specifically
provided in this part, is not special compensation unless regulations
promulgated by the board specifically determine that value to be
"special compensation."

(6) The board shall promulgate regulations that delineate more
specifically and exclusively what constitutes "special compensation"
as used in this section. A uniform allowance, the monetary value of
employer-provided uniforms, holiday pay, and premium pay for
hours worked within the normally scheduled or regular working
hours that are in excess of the statutory maximum workweek or
work period applicable to the employee under Section 201 et seq. of
Title 29 of the United States Code shall be included as special
compensation and appropriately defined in those regulations.

(7) Special compensation does not include any of the following:

(A) Final settlement pay.

(B) Payments made for additional services rendered outside of
normal working hours, whether paid in lump sum or otherwise.

(C) Any other payments the board has not affirmatively determined
to be special compensation.

1
2 (d) Notwithstanding any other provision of law, payrate and special
3 compensation schedules, ordinances, or similar documents shall be
4 public records available for public scrutiny.

5 (e) (1) As used in this part, "group or class of employment" means a
6 number of employees considered together because they share
7 similarities in job duties, work location, collective bargaining unit, or
8 other logical work related grouping. Under no circumstances shall
9 one employee be considered a group or class.

10 (2) Increases in compensation earnable granted to an employee
11 who is not in a group or class shall be limited during the final
12 compensation period applicable to the employees, as well as the
13 two years immediately preceding the final compensation period, to
14 the average increase in compensation earnable during the same
15 period reported by the employer for all employees who are in the
16 same membership classification, except as may otherwise be
17 determined pursuant to regulations adopted by the board that
18 establish reasonable standards for granting exceptions.

19 (f) As used in this part, "final settlement pay" means any pay or cash
20 conversions of employee benefits that are in excess of
21 compensation earnable, that are granted or awarded to a member in
22 connection with, or in anticipation of, a separation from employment.

23 The board shall promulgate regulations that delineate more
24 specifically what constitutes final settlement pay.

25 VI

26 The Board of Administration exclusively delineated all items of "special
27 compensation" in California Code of Regulations, Title 2, Division 1, Chapter 2,
28 Subchapter 1, Article 4, section 571.

That section provides, in pertinent part:

a) The following list exclusively identifies and defines special
compensation items for members employed by contracting agency
and school employers that must be reported to CalPERS if they are
contained in a written labor policy or agreement:

(1) INCENTIVE PAY

(2) EDUCATIONAL PAY

(3) PREMIUM PAY

(4) SPECIAL ASSIGNMENT PAY

Shift Differential - Compensation to employees who are routinely
and consistently scheduled to work other than a standard "daytime" shift,
e.g. graveyard shift, swing shift, shift change, rotating shift, split shift or

1 weekends.

2 (5) STATUTORY ITEMS

3 Holiday Pay - Additional compensation for employees who are
4 normally required to work on an approved holiday because they work in
5 positions that require scheduled staffing without regard to holidays. If these
6 employees are paid over and above their normal monthly rate of pay for
7 approved holidays, the additional compensation is holiday pay and
8 reportable to PERS.

9 For those employees with written labor agreements providing
10 holiday credit and allowing employees to cash out accumulated holiday
11 credit, the cash out must be done at least annually and reported in the
12 period earned. If a written labor agreement allows an employee to
13 accumulate holiday credit beyond the year in which it is earned and an
14 employee later elects to cash out accumulated holiday credit, it is not
15 compensation for PERS purposes.

16 If an employee utilizes the cash out option only during his/her final
17 compensation period, it will be considered final settlement pay and
18 excluded from reportable compensation. If the cash out option is also
19 utilized near his/her final compensation period, it may still be excluded
20 based upon a review of the contracting agency or school employer's
21 experience relating to: the number of employees in the group with this
22 option; the number of employees who exercise this option; the frequency
23 with which employees exercise this option; whether or not the cash out is
24 paid periodically, and in a manner that is historically consistent; and
25 whether or not the cash out would create an unfunded liability over and
26 above PERS' actuarial assumptions. This review will be conducted by
27 PERS on a case-by-base basis.

28 (b) The Board has determined that all items of special compensation
listed in subsection (a) are:

- (1) Contained in a written labor policy or agreement;
- (2) Available to all members in the group or class;
- (3) Part of normally required duties;
- (4) Performed during normal hours of employment;
- (5) Paid periodically as earned;
- (6) Historically consistent with prior payments for the job classification;
- (7) Not paid exclusively in the final compensation period;
- (8) Not final settlement pay; and
- (9) Not creating an unfunded liability over and above PERS' actuarial assumptions.

1 (c) Only items listed in subsection (a) have been affirmatively
2 determined to be special compensation. All items of special compensation
3 reported to PERS will be subject to review for continued conformity with all
4 of the standards listed in subsection (b).

5 (d) If items of special compensation is not listed in subsection (a), or
6 is out of compliance with any of the standards in subsection (b) as reported
7 for an individual, then it shall not be used to calculate final compensation for
8 that individual.

9 VII

10 Respondents, Catalano and Evenson and respondent City of Huntington Beach
11 were notified of CalPERS' determination and were advised of their appeal rights.

12 VIII

13 Respondents, Catalano and Evenson filed timely appeals. Because of the
14 similarity of their circumstances of employment with respondent City of Huntington
15 Beach and request for Holidays Worked being reportable for purposes of final
16 compensation calculations, they are joined as respondents and are acting as
17 representatives of their similarly situated fellow non-managerial peace officers.

18 IX

19 This appeal is limited to the issue of whether respondents and similarly situated
20 non-managerial peace officers are entitled to have Holiday Premium Pay reported to
21 CalPERS as "compensation earnable" for purposes of use in their final compensation
22 calculation.

23 BOARD OF ADMINISTRATION
24 CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

25 Dated: 11/14/11

26 BY 
27 MARION MONTEZ, ASSISTANT DIVISION CHIEF
28 CUSTOMER ACCOUNT SERVICES DIVISION

RESOLUTION NO. 2006-19

A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF HUNTINGTON BEACH APPROVING AND IMPLEMENTING THE
MEMORANDUM OF UNDERSTANDING BETWEEN THE HUNTINGTON BEACH
POLICE OFFICERS' ASSOCIATION (POA) AND THE CITY OF HUNTINGTON BEACH
FOR APRIL 1, 2006 THROUGH MARCH 31, 2010

The City Council of the City of Huntington Beach does resolve as follows:

The Memorandum of Understanding between the City of Huntington Beach and the Huntington Beach Police Officers' Association ("POA"), a copy of which is attached hereto as EXHIBIT "A" and by reference made a part hereof, is hereby approved and ordered implemented in accordance with the terms and conditions thereof, and the City Administrator is authorized to execute this Agreement. Such Memorandum of Understanding shall be effective for the term April 1, 2006 through March 31, 2010.

PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting thereof held on the 1st day of May, 2006.

Don Sullivan
Mayor

REVIEWED AND APPROVED:

Janet C. Caldwell
City Administrator

APPROVED AS TO FORM:

Janice M. Smith
City Attorney 4/20/06

INITIATED AND APPROVED:

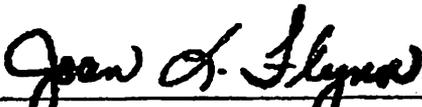
[Signature]
Deputy City Administrator-City Services

Res. No. 2006-19

**STATE OF CALIFORNIA
COUNTY OF ORANGE) ss:
CITY OF HUNTINGTON BEACH)**

I, JOAN L. FLYNN the duly elected, qualified City Clerk of the City of Huntington Beach, and ex-officio Clerk of the City Council of said City, do hereby certify that the whole number of members of the City Council of the City of Huntington Beach is seven; that the foregoing resolution was passed and adopted by the affirmative vote of at least a majority of all the members of said City Council at an regular meeting thereof held on the 1st day of May, 2006 by the following vote:

AYES: Bohr, Green, Coerper, Sullivan, Hardy, Hansen, Cook
NOES: None
ABSENT: None
ABSTAIN: None



City Clerk and ex-officio Clerk of the
City Council of the City of
Huntington Beach, California

Memorandum of Understanding

Between

Huntington Beach
Police Officers' Association



and

City of Huntington Beach



April 1, 2006 – March 31, 2010

POA MOU

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MEMORANDUM OF UNDERSTANDING
Between
THE CITY OF HUNTINGTON BEACH
(Hereinafter called CITY)
and
THE HUNTINGTON BEACH POLICE OFFICERS' ASSOCIATION
(Hereinafter called ASSOCIATION or POA)

PREAMBLE

WHEREAS the designated representatives of the City of Huntington Beach and the Huntington Beach Police Officers' Association have met and conferred in good faith with respect to salaries, benefits and other terms and conditions of employment for the employees represented by the Association;

NOW, THEREFORE, this Memorandum of Understanding is made to become effective April 1, 2006 and it is agreed as follows:

ARTICLE I - TERM OF MOU

This Memorandum of Understanding (MOU) shall be in effect for a term commencing on April 1, 2006 and ending at midnight March 31, 2010. Except as expressly provided herein, no further improvements or changes in the salaries and monetary benefits and other terms and conditions of employment of the employees represented by the Association shall take effect during the term of this agreement and the Association expressly waives any right to request any improvements or changes in salaries or monetary benefits and other terms and conditions of employment specifically provided herein for the employees represented in the unit. Provided, however, the City and Association shall, upon request, meet and confer to address issues not specifically covered by provisions of this MOU, and/or discussed during the meet and confer process immediately preceding the adoption of the current MOU.

ARTICLE II - REPRESENTATIONAL UNIT/CLASS

It is recognized that the Huntington Beach Police Officers' Association is the employee organization which has the right to meet and confer in good faith with the City on behalf of employees of the Huntington Beach Police Department within the classification titles as outlined in Exhibit A attached hereto and incorporated herein.

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ARTICLE III - MANAGEMENT RIGHTS

The City and Chief of Police retain all rights, powers and authority to manage and direct the performance of police services and the work force, except as modified by the Memorandum of Understanding.

Nothing herein shall change the City's obligation to meet and confer as to the effects of any such management decision upon wages, hours, terms and conditions of employment or be construed as granting the City or Chief of Police the right to make unilateral changes in wages, hours, terms and conditions of employment.

The parties agree the City has the right to unilaterally make decisions on all matters that are outside the scope of bargaining. Such matters include, but are not limited to, consideration of the merits, necessity, level or organization of police services, staffing requirements, overtime assignments, number and location of work stations, nature of work to be performed, contracting for any work or operation, reasonable employee performance standards, reasonable work and safety rules and regulations.

ARTICLE IV - EXISTING CONDITIONS OF EMPLOYMENT

Except as expressly provided herein, the adoption of this Memorandum of Understanding shall not change existing terms, conditions of employment that have been established in prior agreements between City and Association.

ARTICLE V - SEVERABILITY

If any section, sub-section, sentence, clause, phrase or portion of this MOU or any additions or amendments thereof, or the application thereof to any person, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this resolution or its application to other persons. The City Council hereby declares that it would have adopted this MOU and each section, sub-section, sentence, clause, phrase or portion, and any additions or amendments thereof, irrespective of the fact that any one or more sections, sub-sections, sentences, clauses, phrases or portions, or the application thereof to any person, be declared invalid or unconstitutional.

ARTICLE VI - SALARY SCHEDULE AND PERS PICKUP

A. Salary Schedule - Except wage increases as described below, all new or increased benefits established by this Agreement shall be effective the first full pay period that includes April 8, 2006, unless otherwise specified. In addition, employees shall be compensated at hourly salary rates by classification title and salary range during the term of this agreement as set out in Exhibit A attached hereto and incorporated herein.

1. Effective April 8, 2006, all non-sworn employees shall receive a 4% wage increase.

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2. Effective the first full pay period that includes October 1, 2006, all sworn employees shall receive a 4% wage increase.
3. Effective the first full pay period that includes April 1, 2007, all employees shall receive a 2% wage increase.
4. Effective the first full pay period that includes October 1, 2007, all employees shall receive a 2% wage increase.
5. Effective the first full pay period that includes April 1, 2008, all employees shall receive a 2.5% wage increase.
6. Effective the first full pay period that includes October 1, 2008, all employees shall receive a 2.5% wage increase.
7. Effective the first full pay period that includes April 1, 2009, all employees shall receive a 2.5% wage increase.
8. Effective the first full pay period that includes October 1, 2009, all employees shall receive a 2.5% wage increase.

B. Non-Sworn PERS Pickup - Each non-sworn employee covered by this agreement shall be reimbursed an amount equal to 7% of the employee's part of his or her PERS contribution. The above PERS pickup is not base salary but is done pursuant to Section 414(h)(2) of the Internal Revenue Code.

C. Sworn PERS Pickup - Each sworn employee covered by this agreement shall be reimbursed an amount equal to 9% of the employee's part of his or her PERS contribution unless modified by Article XI Retirement. The above PERS pickup is not base salary but is done pursuant to Section 414(h)(2) of the Internal Revenue Code.

D. Collection of Payroll Overpayments - In the event that a payroll over payment is discovered and verified, and considering all reasonable factors including the length of time that the over payment was made and if and when the employee could have reasonably known about such over payment, the City will take action to collect from the employee the amount of over payment(s). Such collection shall be processed by payroll deduction over a reasonable period of time considering the total amount of over payment.

In the event the employee separates from employment during the collection period, the final amount shall be deducted from the last payroll check of the employee. If applicable, the balance due from the employee shall be communicated upon employment separation if the last payroll check does not sufficiently cover the amount due the City.

It shall be the responsibility of the employee and the City to periodically monitor the accuracy of compensation payments or reimbursements due to the possibility of a clerical oversight or error. The City reserves the right to also collect compensation over payments caused by or the result of misinterpretation of a pay provision by non-authorized personnel. The interpretation of all pay provisions shall be administered by the City Administrator or designee and as adopted by the City Council. Unauthorized compensation payments shall not constitute a past practice.

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ARTICLE VII - SPECIAL PAY

A. Police Professional Development Plan

1. The Professional Development Plan for sworn personnel shall be as follows:

a. College Degree Program

- i. Upon earning an AA Degree or attaining "Junior status" in a degree program, an employee shall be paid three percent (3%) of base hourly rate of pay in addition to other compensation.
- ii. Upon earning a BA/BS Degree, an employee shall be paid six percent (6%) of base hourly rate of pay in addition to other compensation. This pay is in lieu of pay received under sub-section (a)i above.

b. Post Certificate Program

- i. Upon verification of having earned an Intermediate POST Certificate, an employee shall be paid three percent (3%) of base hourly rate of pay in addition to other compensation.
- ii. Upon verification of having earned an Advanced POST Certificate, an employee shall be paid six percent (6%) of base hourly rate of pay in addition to other compensation. This pay is in lieu of pay received under sub-section (b)i above.

2. Stipulations:

- a. College major shall be Police Science, Criminology, Political Science, Sociology, Law, Business Administration, Public Administration, Psychology or closely similar field as approved by the Chief of Police.
- b. Initial eligibility must be approved by the Chief of Police. No incentive shall be taken away without just cause.
- c. Obtaining transcripts or other acceptable documentation is the employee's responsibility. An employee may verify "Junior" status by submission of written verification that the employee has completed 60 or more accredited units and has achieved Junior status with that educational institution.
- d. The maximum benefit that may be paid to an employee under this Section is twelve percent (12%) of the base hourly rate in addition to other compensation.

3. POST Supervisory Leadership Institute:

Police Sergeants that have completed the POST Supervisory Leadership Institute shall receive \$80 per month.

B. Flight Pay - Employees assigned to duty as helicopter flight personnel shall be paid eight percent (8%) of their base hourly rate of pay in addition to other compensation.

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C. Certified Flight Instructors - Employees assigned as certified flight instructors shall be paid thirteen percent (13%) of their base hourly rate of pay in addition to other compensation. This pay is in lieu of Flight Pay defined in Section B above.

D. Shift Differential - Detention and Communication Employees' required to work on a regular assigned shift that occurs during swing shift or graveyard shift, as defined by departmental policy through the meet and confer process, shall be paid five percent (5%) of the employee's base hourly rate of pay in addition to other compensation for all hours worked during the swing or graveyard shift. The parties agree the department policy has been established by the meet and confer process.

E. Motor Pay

1. Employees regularly assigned to motorcycle duty shall be paid as hazardous duty pay five percent (5%) of their base hourly rate of pay in addition to other compensation.

2. The parties agrees that any time spent on maintenance and/or cleaning of motorcycles shall be on-duty unless overtime has been approved in advance. The Department shall supply necessary materials needed to perform the following duties:

a. Keeping the assigned motorcycle cleaned and waxed.

b. Keeping the drive chain properly lubricated and adjusted.

c. Performing a daily check of the motorcycle fluid levels and tire pressure.

d. Scheduling required routine services at specified mileage intervals with police motorcycle mechanics.

F. Bilingual Pay - Qualified employees who meet the criteria shall be paid five percent (5%) of their base hourly rate of pay in addition to other compensation. Human Resources will have written and oral tests designed and administered to test for qualifications. The qualifications will cover the more routine foreign language requirements in filling out crime reports, interviewing suspects and witnesses, and responding to the public on matters relating to an incident or other police action.

1. The languages included will be Spanish, Vietnamese and American Sign language. Additional languages may be approved at the discretion of the Chief of Police.

2. Authorization of qualified employees for bilingual compensation will be based on the following:

a) A need for the employee to use the language in the City to support the implementation of police operations.

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- b) At the discretion of the Chief of Police, the number of employees qualified in each category may be limited based on department needs.
- c) Successful completion of tests authorized by the Chief of Police will be required to qualify for bilingual pay for any of the languages. Retesting may be done on an annual basis.

G. Holidays

- 1. Holiday Pay - Employees represented by the Association and actively employed by the City, in addition to other compensation, shall be paid each biweekly payroll one twenty-sixth (1/26) of the total eighty (80) holiday hours earned for the year.
- 2. Holidays Worked - Employees who work on a recognized City holiday shall be compensated at their overtime rate for time actually worked from 12:00 A.M. through 11:59 P.M.
- 3. Holidays - The following are the City recognized paid holidays under this MOU:
 - a) New Year's Day (January 1)
 - b) Martin Luther King's Birthday (third Monday in January)
 - c) President's Day (third Monday in February)
 - d) Memorial Day (last Monday in May)
 - e) Independence Day (July 4)
 - f) Labor Day (first Monday in September)
 - g) Veteran's Day (November 11)
 - h) Thanksgiving Day (fourth Thursday in November)
 - i) Friday after Thanksgiving
 - j) Christmas Day (December 25)

H. FTO Compensation - Compensation shall be one-quarter (.25) hours pay at the base hourly rate, which may be deposited as compensatory time, for each hour worked as a Field Training Officer in addition to other compensation for the following assignments:

- 1. Police Officers who have successfully completed a POST certified Field Training Officer Course and have been designated Field Training Officers, assigned to Traffic or Patrol Bureaus, shall be eligible for Field Training Officer compensation.
- 2. Detention Officers designated to act as Training Officers.
- 3. Motor Officers designated to act as Training Officers.
- 4. Communication Employees designated as Training Officers.

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I. Longevity Pay - The City shall provide all sworn officers, excluding Sergeants, the following longevity pay in addition to other compensation as established by the Department's Sworn Personnel Seniority List:

1. Five percent (5%) of the base hourly rate of pay at 10 years of service with City of Huntington Beach.
2. Ten percent (10%) of the base hourly rate of pay at 20 years of service with City of Huntington Beach. This pay is in lieu of the pay identified in sub-section 1 above.

An employee with ten (10) or more years of service in the classification of Police Sergeant with the City of Huntington Beach shall be paid five percent (5%) of their base hourly rate of pay in addition to other compensation. Effective the first full period that includes April 1, 2007, this benefit shall be eliminated and Sergeants shall be eligible to be paid Longevity Pay as outlined in sub-section I.1. and I.2. above.

Effective the first full period that includes April 1, 2007, all qualified sworn law enforcement experience shall be included in the calculation of longevity. Only sworn law enforcement experience as defined by California Penal Code Sections 830.1 and 830.2 or the out of state equivalent as determined by the Chief of Police shall be included.

J. Effective Date of Special Pays - All special pay shall be effective the first full pay period following certification and verification as approved by the Chief of Police or designee. All pays in this section are considered special pays and shall be included as part of the regular rate of pay for the purposes of calculating overtime. All pays not in this section are not considered special pays and are not included in the regular rate of pay for purposes of calculating overtime, except On-Call Court Time (Article IX(B)(3)(b)) and Cancelled Subpoenas (Article IX(B)(3)(c)) which shall be calculated into the regular rate of pay at base hourly rate, but not reported to PERS as special compensation.

K. No Pyramiding of Special Pay - Each special pay is a percentage of base hourly rate of pay and shall not be counted towards the value of any other special pay.

L. Nurse Pay - Employees in the classification of Detention Shift Supervisor, who possess a Nurse certification, pursuant to the Nurse classification job description, shall receive five percent (5%) of their base hourly rate, for so long as they possess the Nurse certification.

M. Reporting to PERS - Subject to State law and regulations, compensation paid as a result of this Article shall be reported to PERS as special compensation.

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ARTICLE VIII - UNIFORMS, CLOTHING, TOOLS AND EQUIPMENT

A. Uniforms

1. The City shall continue the Uniform Allowance in lieu of the City providing uniforms for employees represented by the Association. Such allowance shall be twelve hundred dollars (\$1,200) per year; payable in January to those employees on active duty on January 1st. Effective January 1, 2008, the Uniform Allowance for all employees shall be paid with the first paycheck in December. Employees hired after January 1st shall have their uniform allowance pro-rated for each month in which they were on active duty for a least one full shift, separately from payroll checks. It is the mutual intent of the parties that this allowance shall be utilized solely for the purpose of replacing, repairing and maintaining uniforms and clothing worn in the line of duty. The City will continue to make initial issuance of required uniforms and replace uniforms and equipment damaged in the line of duty including safety equipment required by state law, City resolution or ordinance, or by order of the Chief of Police. Effective January 1, 2008, the City shall increase the Uniform Allowance for all sworn employees to thirteen hundred dollars (\$1,300) per year.

2. PERS Reporting of Uniforms - The City shall report to the California Public Employees' Retirement System (CalPERS) the uniform allowance for each sworn and civilian classification as special compensation in accordance with Title 2, California Code of Regulation, Section 571(a)(5).

B. Special Assignment Uniform Needs - Uniforms and equipment for special assignments shall continue to be provided by the City.

C. Motorcycle Britches - Motorcycle officers shall receive four pairs of britches at the time of assignment. After initial issue, replacement britches may be issued on the recommendation of the Traffic Bureau Commander with approval of the Department Head. All replaced britches must be turned in when replacement britches are received.

ARTICLE IX - HOURS OF WORK/OVERTIME

A. Work Schedule:

1. The work schedules agreed to by the City and the Association during negotiations have been fully implemented and shall remain in effect during the life of this agreement unless the Association and the City mutually agree to changes. All employees are subject to be called to work any time to meet any and all emergencies or unusual conditions which, in the opinion of the City Administrator, Chief of Police or designee, may require such service from any of said employees.

a. All work schedules are designed to be in compliance with the requirements of the Fair Labor Standards Act (FLSA).

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- b. Meal times are included in all work schedules.
2. 4/10 Schedule - All employees not assigned a different work schedule pursuant to this article shall work a 4/10 schedule consisting of four (4) consecutive ten (10) hours days followed by three (3) consecutive days off in a seven (7) day period. All employees work an eighty (80) hour work period, except for Communication Employees who work a forty (40) hour work week.
3. 7/11.5 Schedule – The “7/11.5” work schedule applies to designated employees of the Uniform Division and Jail.
- a. Workday – A workday for employees assigned to the 7/11.5 work schedule will consist of 11 hours and 25 minutes of work.
- b. Eighty (80) Hour Work Period – For those sworn and detention employees working 11 hours and 25 minutes a day, the work period will consist of two consecutive weeks with three (3) consecutive shifts of 11 hours and 25 minutes in one week and four (4) consecutive shifts of 11 hours and 25 minutes in the second week. The total hours for these two consecutive weeks shall be considered equaling eighty (80) hours. The two-week cycle then repeats itself.
- c. Forty (40) Hour Work Week Communications Center - For Communication Employees working 11 hours and 25 minutes a day, one (1) work week shall consist of three consecutive shifts of 11 hours and 25 minutes and one (1) work week of four consecutive shifts of 11 hours and 25 minutes. The two (2) week cycle then repeats itself. If either party determines the schedule is ineffective, the Communications Center will return to the 4/10 schedule the first pay period following thirty (30) days notice.
- d. Exceptions – At the discretion of the Chief of Police, specialized assignments within the Uniform Division will work either the 4/10 or 7/11.5 as described above. Unless agreed upon by the Association, changes to these work shifts shall only be made during recruitment of new officers into the assignments. Task Force assignments outside the Police Department will be flexible based on an eighty (80) hour work period.
- e. Beach Schedule - If posted during recruitment, employees working the Beach detail shall be assigned a fixed schedule that incorporates a work week of four consecutive days comprised of two (2) 8-hour days and two (2) 12-hour days.
- f. Schedule – Employees assigned to training or a school in excess of thirty-two (32) hours in a work week will work a five (5) day, eight (8) hour work week in lieu of their regular work schedule.

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4. Overtime

- a. Employees assigned to an eighty (80) hour work period shall be paid at the rate of one and one-half (1 ½) times their regular rate of pay for all time worked in excess of their regularly scheduled shift and/or 80-hour work period.
- b. Employees assigned to a forty (40) hour work week shall be paid at the rate of one and one-half (1 ½) times their regular rate of pay for all time worked in excess of their regularly scheduled shift and/or forty (40) hour work week. However, Communication Operators on the 7/11.5 work schedule must work a minimum of forty (40) hours in the work week before earning overtime. Any hours worked in excess of the regularly scheduled shift that do not exceed forty (40) hours in a work week shall be paid at their regular rate of pay.

B. Other Time:

1. Compensatory Time - Federal law controls the use of compensatory time off. Title 29 U.S. Code 207(0) allows the employer and employee representative to establish a compensatory time off bank which allows overtime payment of the employer to be deferred. The parties agree that an employee may elect to receive compensatory time in lieu of pay to a maximum of one hundred sixty (160) hours.

The employee's right to use compensatory time off may be restricted if the requested use is "unduly" disruptive. Parties agree that use of compensatory time off at the following times will be unduly disruptive:

- a. At any time when the request for compensatory time off request presents an officer's safety problem by going below shift minimum as presented by City in the meet and confer process.
- b. Demands for employee's services meet or exceed the department's full staffing capabilities such as the Fourth of July Holiday, Memorial Day Holiday, Labor Day Holiday or events similar in so far as staffing needs are concerned.
- c. In addition to the above, other events, which may be designated as unduly disruptive, may be agreed upon by the City and the Association.
- d. The Association, its officers, agents, representatives and/or members agree that during the term of this MOU they will not call, engage in, request or condone the use of compensatory time off for any strike, walkout, work stoppage, job action, slowdown, sick-out, blue flu, withholding of services or other interference with City operations, or honor any job action by any other employee of the City, employee organizations, or employees of any other employers by withholding or refusing to perform services. In the event that the Association, its officers, agents, representatives, and/or members engage in

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any of the conduct prohibited herein above, the compensatory time off provision of this MOU shall sunset and thereafter overtime hours shall be compensated at the employee's overtime rate.

- e. In addition, this provision shall sunset on the last day of this MOU. Nothing herein shall be construed to prevent the parties to agree to place these provisions in a successor MOU.
 - f. To the extent that these provisions are inconsistent with the Settlement Agreement in HBPOA, et al. v. City of Huntington Beach, et al. Case No. CV 92-6265 CMB (Shx) said settlement agreement is superseded. Provisions not so superseded shall not be affected by the agreement.
2. Work Time - For the purpose of computing the 80 hour work period, the following shall be included in determining the eligibility for overtime pay.
- a. Sick leave.
 - b. Vacation time taken during the workweek.
 - c. Compensatory time off taken during the workweek.
 - d. Any other paid leave time taken during the workweek.
3. Subpoena Compensation

- a. Court Appearance Time - Employees required to appear in court during other than their scheduled working hours shall be paid a minimum of three (3) hours overtime pay; provided, however, that if such time overlaps with the employee's scheduled working hours, said rate shall be limited to those hours occurring prior to or after the employee's scheduled work time.

The City shall recognize administrative subpoenas the same as criminal and civil, including subpoenaed hearings conducted by telephone. Telephone Business under subpoena is differentiated from Telephonic Work as described in Section 6 below.

- b. On-Call Court Time - Employees required to be on-call for a court appearance during other than their scheduled working hours shall be paid a minimum of three (3) hours pay at their regular rate of pay for each morning and afternoon court session provided, however, that if such time overlaps with the employee's scheduled working hours, said rate shall be limited to those hours occurring prior to or after the employee's scheduled work time. On-Call Court Time shall not be considered hours worked for the purpose of calculating overtime. Notwithstanding Article IX(B)(1), an employee may not deposit more than sixty (60) hours per calendar year of compensatory time in lieu of pay for On-Call

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Court Time. At any time after one year from the ratification of this Agreement, the sixty (60) hour limitation will be removed if the Chief of Police determines there is no undue burden on staffing. Employees shall not be paid On-Call Court Time if Court Appearance Time is paid.

- c. **Cancelled Subpoenas** - Employee shall be paid two (2) hours of pay at their base hourly rate of pay for subpoenas cancelled with less than twenty-four (24) hours notice.
- d. **Retiree** - In accordance with department policy, if the City accepts a subpoena on behalf of a current employee who then retires or a retiree, a stipend will be provided for court appearance time. The stipend will be based on the present Step E of the base hourly rate of pay of the position the retiree held before retirement from City service. Paid court preparation time and travel expenses shall be mutually agreed upon between the City and the retiree.
4. **Standby Pay** - An employee who is placed on standby status by a supervisor shall be paid four (4) hours pay at their base hourly rate of pay for each 24 (twenty-four) hour period, or any part thereof, of standby status.
5. **Call Back** - Employees who are called back to work will be paid a minimum of two (2) hours pay at the overtime rate, upon arrival at the department or the incident scene until released. Should the called back employee be cancelled prior to arrival, the two (2) hour minimum shall be paid.
6. **Telephonic Business** - Off-duty employees shall be compensated a minimum of fifteen (15) minutes as hours worked when telephoned to conduct departmental business. Telephonic departmental business beyond fifteen (15) minutes shall be compensated in fifteen (15) minute increments (i.e., 16-30 minutes = 30 minutes of compensation, 31-45 minutes = 45 minutes compensation and so forth). Telephonic business is not considered Call Back Time as outlined in Article IX.B.5.
7. **Canine Compensation** - Employees assigned to canine duty shall be paid for the off-duty care, feeding and grooming of their canine and the routine, off-duty canine-related maintenance of their canine car. The City and the Association have considered the time that canine officers typically spend on off-duty canine care, and determined it to be fifteen (15) hours per month.

Employees assigned to canine duty shall be paid fifteen (15) hours per month of overtime rate of pay based on the canine care salary rate. The canine care salary rate shall be two-thirds (2/3) of the Canine Officer's base pay rate, excluding any specialty or similar pays.

In addition to the fifteen (15) hours of pay per month described in the preceding paragraph, canine officers shall be paid for off-duty veterinary visits and extraordinary off-duty care, provided that, absent an emergency, the Officers shall

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obtain supervisor approval for such care and shall submit payroll exemption slips. Any such additional canine compensation shall be paid at their overtime rate as defined in Article IX.A.4.

ARTICLE X - HEALTH AND OTHER INSURANCE BENEFITS

A. Health

The City shall continue to make available group medical, dental and vision benefits to all Association employees and qualified dependents. The effective date for medical, dental and vision coverage is the first of the month following date of hire. Effective the first of the month following the employee's date of hire, any required employee payroll deduction shall begin with the first full pay period following the effective date of coverage and shall continue through the end of the month in which the employee separates, unless otherwise precluded by CalPERS PEMCHA. All employee contributions shall be deducted on a pre-tax basis.

1. CalPERS Public Employees' Medical and Hospital Care Act

The City presently contracts with CalPERS to provide medical coverage. The City is required under CalPERS PEMCHA to make a contribution to retiree medical premiums. A retiree's right to receive a City contribution, and the City's obligation to make payment on behalf of retirees, shall only exist as long as the City contracts with CalPERS for medical insurance. In addition, while the City is in CalPERS, its obligations to make payments on behalf of retirees shall be limited to the minimum payment required by law.

a. PEMCHA Employer Contributions

The City shall contribute on behalf of each employee, the mandated minimum sum as required per month toward the payment of premiums for medical insurance under the PEMHCA program. As the mandated minimum is increased, the City shall make the appropriate adjustments by decreasing its flex benefits contribution accordingly as defined in the following sub-section.

b. Maximum Employer Contributions toward Flex Benefits

For the term of this agreement, the City's maximum monthly employer contribution for each employee's medical and vision insurance premiums are set forth as follows:

i. Effective January 1, 2007, the City Contribution shall be the sum of the participating Orange County Blue Shield HMO PEMHCA Plan plus the VSP Vision Plan premiums for each of the following categories:

a. Employee only ("EE")

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- b. Employee + one dependent ("EE" + 1)
- c. Employee + two or more dependents ("EE" + 2).

The maximum City Contribution shall be based on the employee's enrollment in each plan. The parties agree that the required PEMHCA contribution is included in this sum stated in the sub-section above. If the employee enrolls in a plan wherein the costs exceed the City Contribution, the employee is responsible for all additional premiums through pre-tax payroll deductions.

- ii. Effective January 1, 2008, the City Contribution in each category shall increase in an amount not to exceed ten percent (10%) of the City's Contribution for 2007. Any increase in premiums above the City's ten percent (10%) Contribution Cap will be the responsibility of the employee.
- iii. Effective January 1, 2009, the City Contribution in each category shall increase in an amount not to exceed ten percent (10%) of the City's Contribution in 2008. Any increase in premiums above the City's ten percent (10%) Contribution Cap will be the responsibility of the employee.
- iv. Effective January 1, 2010, the City's 2009 Contribution Cap shall be maintained. Any increase in premiums above the City's ten percent (10%) Contribution Cap will be the responsibility of the employee.
- v. In the event the Orange County Blue Shield HMO Plan is no longer a PEMCHA option, the City's Contribution for 2008 and 2009 shall increase by ten percent (10%) each year, provided that the City's Contribution shall not exceed the amount of an employee's actual premium.

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2. Dental Insurance

The annual maximum benefit for the Delta Dental PPO plan is \$2000 (two thousand dollars).

- a. Effective January 1, 2007, the maximum City Contribution shall be equivalent to the premium for the Delta Dental PPO plan based on the employee's enrollment of employee only ("EE"), employee plus one dependent ("EE+1") or employee plus two or more dependents ("EE+2").
- b. Effective January 1, 2008, the City Contribution shall increase in an amount not to exceed five percent (5%) of the City's Contribution for 2007. Any increase in premiums above the City's five percent (5%) Contribution Cap will be the responsibility of the employee.
- c. Effective January 1, 2009, the City Contribution shall increase in an amount not to exceed five percent (5%) of the City's Contribution for 2008. Any increase in premiums above the City's five percent (5%) Contribution Cap will be the responsibility of the employee.
- d. Effective January 1, 2010, the City shall maintain the Contribution Cap of 2009.

3. Retiree (Annuitant) Coverage

As required by the Government Code retired employees (annuitants) shall have available the ability to participate in the PEMHCA program. The City's requirement to provide retirees and/or annuitants medical coverage is solely governed by the Government Code requirement that requires the City to extend this benefit to retirees (annuitants). While the City is contracted with CalPERS to participate in the PEMHCA program, CalPERS shall be the sole determiner of eligibility for retiree and/or annuitant to participate in the PEMHCA program.

a. City Contribution (Unequal Contribution Method) for Retirees

As allowed by the Government Code and the CalPERS Board, and requested by the Association, the City shall use the Unequal Contribution Method to make City contributions on behalf of each retiree or annuitant. The starting year for the unequal contributions method is 2004 at \$1.00 per month. The City's contribution for each annuitant shall be increased annually by five percent (5%) of the monthly contribution for employees, until such time as the contributions are equal. The Service Credit Subsidy will be reduced every January 1st by an amount equal to any required amount to be paid by the City on behalf of the retiree (annuitant). The City shall make these payments only while the City is a participant in the PEMHCA program.

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b. Termination of Participation in the CalPERS PEMHCA program – Impact to Retirees

The City's requirement to provide retirees (annuitants) medical coverage is solely governed by the Government Code requirement that PEMHCA agencies extend this benefit to retirees (annuitants). If by agreement between the Association and the City or if the City elects to impose termination of its participation in the PEMHCA program retirees (annuitants) shall no longer be eligible for City provided medical insurance.

In the event that the City terminates its participation in the PEMHCA program, the retiree medical subsidy program in place in Resolution No. 2001-28 Exhibit C to the Memorandum of Understanding shall be reinstated. The City shall make any necessary modifications to conform to the new City sponsored medical insurance plan.

c. Termination Clause

The City and Association may each request termination of the City's contract with CalPERS after the announcement of State Legislation, Judicial Rulings, or a CalPERS Board Action that changes the employer's contribution, insurance premiums or program changes to the CalPERS medical plan.

The City and Association may elect to terminate its participation in the CalPERS PEMHCA program by mutual agreement through the meet and confer process between the Association and the City.

4. Medical/Vision Opt-Out

Effective January 1, 2007, an employee covered by a medical program outside of a City-provided program (evidence of which must be supplied to the Human Resources Division), may elect to discontinue City medical coverage and direct the cash value of the City's Contribution Cap for employee only ("EE") medical coverage as described in Article X.A.1.(b) be deposited into their Deferred Compensation account or any other pre-tax program offered or approved by the City.

An employee may also elect to discontinue vision coverage. The employee premium paid for vision coverage will be applied toward medical premium.

5. Section 125 Employee Plan

The City shall provide an Internal Revenue Code section 125 employee plan that allows employees to use pre-tax salary to pay for regular childcare, adult dependent care and/or unreimbursed medical expenses as determined by the Internal Revenue Code.

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6. Life Insurance

The City will provide \$50,000 term life insurance and \$50,000 accidental death and dismemberment insurance without evidence of insurability other than evidence of working full time. An additional \$10,000 of life insurance may be purchased, at the employee's cost, with evidence of insurability.

7. Income Protection Plan

The City authorizes the HBPOA to administer its own Long Term Disability (LTD) Program providing the following conditions are adhered to:

- a. The City and HBPOA agree that the City shall no longer provide a City sponsored LTD Program.
- b. HBPOA shall contract with an authorized provider for LTD program for the employees represented by the HBPOA.
- c. The City shall pay to HBPOA for the cost of LTD premiums not to exceed thirty-eight dollars (\$38) per month per occupied covered position represented by HBPOA.
- d. Non-dues paying represented employees shall be covered by the LTD Policy at the same premium rate as dues paying represented employees.
- e. City payment to HBPOA is to be made for each represented employee per month based on the bi-weekly payroll.
- f. HBPOA shall pay the authorized provider for the cost of premiums and any expenses incurred for administering the program.
- g. The City shall provide the HBPOA with a monthly report of covered employees.
- h. No self-funding/self-insurance of LTD benefits is permitted under this agreement.
- i. Upon request, the HBPOA shall provide documentation to the City as follows:
- j. An annual certification of the Plan on each anniversary the Plan is in effect which will include:
 1. A copy of the most current audited financial statements;
 2. A copy of the latest actuarial report, which should be completed by an independent "*Fellow of the Society of Actuaries*";
 3. A copy of the in-force LTD Program;

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4. A statement certifying that premiums collected are for LTD benefits for HBPOA represented employees only.
 5. A copy of the current plan document as well as any changes or amendments, or written confirmation that there have been no changes as LTD provider;
 6. A copy of the "*Summary Annual Report*" and, upon request, a copy of the latest filed Form 5500.
 7. A listing of active HBPOA claimants with all relevant data as requested by City (i.e., date of disability, etc.) including the allocated reserves for each claimant.
 8. Verification of the premium received and credited by the HBPOA.
 9. A statement certifying that the submitted premiums are only being utilized to provide LTD benefits for participating members including members of the HBPOA; and
 10. A written confirmation from the plan administrator confirming (i) that it is authorized to do business in California; (ii) that it is properly licensed; (iii) that it maintains current "Errors and Omissions" insurance; and (iv) that it is bonded.
- k. All Federal and State laws regarding LTD benefit coverage shall be followed.
- l. HBPOA agrees that it will indemnify and hold harmless the City as well as all direct or indirect successors, officers, directors, heirs, predecessors, assigns, agents, insurers, employees, attorneys, representatives, and each of them, past and present, from and against any claims, lawsuits, penalties, interest, taxes, or liability of any kind whatsoever, which may result from the HBPOA sponsored and administered LTD insurance program.

8. Post Retirement Medical Reimbursement Program

The parties agree that in lieu of establishing a Health Savings Account (HSA) pursuant to the previous MOU, the City shall discuss with Association and will implement a pre-tax post-retirement medical reimbursement program within ninety (90) days of ratification. During the term of this Agreement, the Association reserves the right to meet and confer on employee funding of a pre-tax post-retirement medical reimbursement program through wage increases implemented by this Agreement. At any time after April 1, 2008, the Association reserves the right to meet and confer on any potential employer funding of a pre-tax post-retirement medical reimbursement program.

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9. Long Term Care

- a. The City authorizes the HBPOA to administer its own Long Term Care (LTC) Program providing the following conditions are adhered to:
- b. HBPOA shall contract with an authorized provider for LTC program for the employees represented by the HBPOA.
- c. The City shall pay to HBPOA for the cost of LTC premiums not to exceed twenty-five (\$25) per month per occupied covered position represented by HBPOA effective June 1, 2006.
- d. Non-dues paying represented employees shall be covered by the LTC Program at the same premium rate as dues paying represented employees.
- e. City payment to HBPOA is to be made for each represented employee per month based on the bi-weekly payroll.
- f. HBPOA shall pay the authorized provider for the cost of premiums and any expenses incurred for administering the program.
- g. The City shall provide the HBPOA with a monthly report of covered employees.
- h. No self-funding/self-insurance of LTC benefits is permitted under this agreement.
- i. Upon request, the HBPOA shall provide any reasonable documentation to the City as similarly described in the LTD Program.
- j. All federal and State laws regarding LTC benefit coverage shall be followed.
- k. HBPOA agrees that it will indemnify and hold harmless the City as well as all direct or indirect successors, officers, directors, heirs, predecessors, assigns, agents, insurers, employees, attorneys, representatives, and each of them, past and present, from and against any claims, lawsuits, penalties, interest, taxes, or liability of any kind whatsoever, which may result from the HBPOA sponsored and administered LTC Program.

ARTICLE XI – RETIREMENT

A. Safety Employee Retirement Benefits:

1. 3% @ Age 50 Plan - The City shall provide the 3% @ Age 50 retirement formula set forth in California Government Code Section 21362.2 for all safety employees represented by the Association.

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If at any time after the implementation of the 3% at age 50 formula the City is required to make retirement contributions with respect to employees represented by the Association, the amount with respect to which each employee is reimbursed pursuant to Article IX.B.1 shall be reduced by a percentage equal to one-half of the percentage of compensation earnable the City is required to pay in retirement contributions to PERS, not to exceed 2.25%. For example, if the City is required to contribute an amount equal to 2% of each employee's "compensation earnable." The amount of the reimbursement set forth in Article VI.C shall be reduced from 9% of the employee's compensation earnable to 8% of the employee's compensation earnable. If, on the other hand, the City is required to contribute an amount equal to 8% of each employee's "compensation earnable," the amount of the reimbursement set forth in Article IX.B.1 shall be reduced to 6.75% of the employee's compensation earnable.

2. 1959 Survivors' Benefit Level IV (California Government Code Section 21574) - Members of the City's safety retirement plan shall be covered by the Fourth Level of the 1959 Survivor Benefit.
3. Pre-retirement Optional 2 Death Benefit (California Government Code Section 21548) - Safety Employees) -
4. One-Year Final Compensation (California Government Code Section 20042))

B. Miscellaneous Employee Retirement Benefits:

1. 2 % @ Age 55 Plan (California Government Code Section 21354) - Members of the City's miscellaneous retirement plan with the California Public Employee Retirement System (CalPERS) shall receive the 2% at age 55 CalPERS retirement plan.
2. 1959 Survivors' Benefit Level IV (California Government Code Section 21574) - Members of the City's miscellaneous retirement plan shall be covered by the Fourth Level of the 1959 Survivor Benefit.
3. Pre-Retirement Optional Settlement 2 Death Benefit (California Government Code Section 21548) Members of the City's miscellaneous retirement plan shall be covered by the Pre-Retirement Optional Settlement 2 Death Benefit.
4. One-Year Final Compensation (California Government Code Section 20042)

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- C. Retirement Benefits for Safety and Miscellaneous Employees - Self-Funded Supplemental Retirement Benefit - In the event a PERS member elects Option #2 (Section 21333) of the Public Employee's Retirement law, and the member is a unit employee who was hired prior to July 6, 1998, the City shall pay the difference between such elected option and the unmodified allowance which the member would have received for his/her life alone. This payment shall be made only to the member, shall be payable by the City during the life of the member, and upon that member's death, the City's obligation shall cease. The method of funding this benefit shall be at the sole discretion of the City. All unit employees hired after July 6, 1998 shall not be eligible for this benefit. (Note: The options provide that the allowance is payable to the member until his/her death, and then either the entire allowance, Option 2, or one-half of the allowance, Option 3) is paid to the beneficiary for life.)

ARTICLE XII - LEAVE BENEFITS

A. Vacation:

1. Anniversary Date - For the purpose of computing vacation, an employee's anniversary date shall be the most recent date on which he/she commenced full-time City employment.
2. Annual Vacation - The purpose of annual vacation is to provide a rest period, which will enable each employee to return to work physically and mentally refreshed. All employees shall be entitled to annual vacation with pay *except* the following:
 - a. Employees who have not completed six (6) months of continuous service with the City.
 - b. Employees who work less than full-time who are not permanent.
 - c. Employees on leave of absence.
3. Vacation Accrual - Employees in the City's service, having an average work week of forty (40) hours, shall accrue annual vacation with pay in accordance with the following:
 - a. For the first (1st) through the fourth (4th) year of continuous service, vacation time will be accrued at the rate of one hundred twelve (112) hours per year (4.31 biweekly).
 - b. For the fifth year (5th) and through the ninth (9th) year of continuous service, vacation time will be accrued at the rate of one hundred thirty six (136) hours per year (5.23 biweekly).

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- c. For the tenth (10th) year and through the fourteenth (14th) year of continuous service, vacation time will be accrued at the rate of one hundred sixty (160) hours per year (6.15 biweekly)
 - d. For the fifteenth (15th) year and thereafter of continuous service, vacation time will be accrued at the rate of one hundred ninety two (192) hours per year (7.38 biweekly).
4. Vacation
- a. No employee shall be permitted to take a vacation in excess of actual time earned and vacation shall not be accrued in excess of four hundred (400) hours. Vacations shall be taken only with permission of the Chief of Police ; however, the Chief of Police shall schedule all vacations with due consideration for the wish of the employee and particular regard for the need of the department.
 - b. Vacation accumulated in excess of the four hundred (400) hour cap shall be paid at the base hourly rate of pay on the first pay day following such accumulation.
5. Vacation Pay at Separation - Employees shall be paid for unused vacation upon separation of employment at which time they shall be paid compensation at their current regular rate of pay for all unused, earned vacation to which they are entitled to, through their last day of employment.
6. Conversion to Cash - An employee may elect to take up to eighty (80) hours of pay at their current regular rate of pay per calendar year for accrued vacation in lieu of time off. It is the intent of the parties that employees will take vacation during the current year.
7. Police Sergeants General Leave - Effective April 8, 2006, Police Sergeants shall not accrue or use General Leave and all General Leave, up to a maximum of four hundred (400) hours, shall be transferred to their Vacation bank. For one hundred and twenty (120) days following the ratification of this agreement, any Police Sergeant with a General Leave bank that exceeds four hundred (400) hours shall have the one-time option to "cash" out General Leave hours, at their regular rate of pay, by requesting the hours be provided in pay or deposited in deferred compensation or any other pre-tax program approved or provided by the City. The maximum number of hours paid shall not exceed two hundred forty (240) hours. If no election is made by the employee within one hundred and twenty (120) days, the hours in excess of four hundred (400) hours shall be paid out in the following pay period.

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B. Sick Leave Compensation

1. All employees shall be entitled to use a maximum of sixty (60) calendar day's paid sick leave per incident or illness. This leave shall not accumulate beyond the one year maximum and there shall be no pay off rights to unused leave upon separation of employment from the City.

2. Police Sergeants Sick Leave Pay Off

- a. Police Sergeants promoted before December 23, 2000, shall be entitled to the following sick leave payoff plan:

At separation from employment, all employees shall be paid, at their regular rate of pay, for twenty-five percent (25%) of unused, earned sick leave to four hundred eighty (480) hours accrued, and for thirty-five (35%) of all unused, earned sick leave in excess of four hundred eighty (480) hours, but not to exceed seven hundred twenty (720) hours. No Police Sergeant shall be paid at separation for more than seven hundred twenty (720) hours of unused, accumulated sick leave.

- b. Employees promoted to the rank of Police Sergeant on or after December 23, 2000 were credited with four hundred and eighty (480) sick leave hours. Effective April 8, 2006, Police Sergeants shall no longer use these hours. Effective April 8, 2006, as a one time option, for one hundred and twenty (120) days after ratification of this agreement, employees may elect to "cash" in their vested Sick Leave hours at their regular rate of pay, based upon ten percent (10%) vesting per year or any fraction thereof, retroactively applied to consecutive years of prior service as a Huntington Beach Police Sergeant. Such eligible hours for payoff shall follow the same payoff plan as outlined in this MOU for employees hired after November 20, 1978 as described above in subsection (a). The hours "cashed" may be provided in pay or deposited in deferred compensation or another pre-tax program approved or provided by the City. If no election is made by the employee within one hundred and twenty (120) days, the hours shall be paid out in the following pay period.

- C. Bereavement Leave - Employees shall be entitled to bereavement leave not to exceed three (3) working days in each instance of death in the immediate family. Immediate family is defined as father, mother, sister, brother, spouse, registered domestic partner, children, grandfather, grandmother, stepfather, stepmother, step grandfather, step grandmother, grandchildren, stepsisters, stepbrothers, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepchildren, or wards of which the employee is the legal guardian.

- D. Leave Benefits Entitlement - As employees do not accrue sick leave, all employees will be allowed to use up to (sixty) 60 hours per calendar year for family sick leave to care for a child, parent, spouse, or registered domestic partner during illness.

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The City will provide family and medical care leave for eligible employees that meet all requirements of State and Federal law. Rights and obligations are set forth in the Department of Labor Regulations implementing the Family Medical Leave Act (FMLA), and the regulations of the California Fair Employment and Housing Commission implementing the California Family Rights Act (CFRA). Time off for a work related injury shall not run concurrently with FMLA or CFRA leave for sworn and detention employees.

The City shall comply with all State and Federal leave benefit entitlements laws. An employee on an approved leave shall be allowed to use paid Sick Leave and earned Vacation, and/or Compensatory Time for the duration of the approved leave.

- E. Catastrophic Leave Donation Program - Under certain conditions, employees may donate leave time to another employee in need. The program is outlined in Exhibit F.
- F. Weekend Military Drills - The City shall continue to pay for weekend military drills for employees hired prior to July 1, 1988 and currently belonging to federal military reserve units. All other employees shall be granted rights in accordance with all applicable state and federal laws.
- G. Nurse Employees Certification - The City shall allow licensed nurse employees time off with pay to attend required courses necessary to maintain certification requirements.
- H. Pay In Lieu of Compensatory Time - Twice each year, employees may, at their option, be paid for their compensatory time. Payment when requested under this section shall be at the employee's regular rate of pay in effect at the time the request is made.
- I. Deferred compensation/Leave Benefit Cash Out - The value of any unused earned leave benefits may be transferred to deferred compensation in connection with separation from employment, but only during the time that the employee is actively employed with the City. The employee must request the transfer no later than the pay period prior to the employee's last day of employment.
- J. Association Business - An allowance of one thousand forty (1040) hours per year shall be established for the purpose of allowing authorized representatives of the Association to represent members of the Association in their employment relations. Such allowance may be utilized only by those persons authorized by the Board of Directors of the Association and such utilization shall be subject to the rules indicated in Exhibit B. Up to two hundred (200) hours per year of unused hours may be carried over to the subsequent year.

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ARTICLE XIII - CITY PERSONNEL RULES

All MOU provisions that supersede the City's Personnel Rules shall automatically be incorporated into the City's Personnel Rules as applicable. All City Personnel Rules shall apply to Association members, however, to the extent this MOU modifies the City's Personnel Rules, the Personnel Rules as modified will apply to Association members.

ARTICLE XIV - MISCELLANEOUS

A. Tuition Reimbursement - Education costs shall be paid to non-sworn employees on the basis of full refund for tuition fees, books and supplies-provided, however, that maximum reimbursement shall be at the rates currently in effect in the University of California system.

Upon approval of the Department Head and the Human Resources Manager, employees may be compensated for actual cost of tuition, books, fees, at accredited educational institutions that charge higher rates than the University of California, if it can be demonstrated by the employee that said educational institution presents the only accredited course or program within a reasonable commuting distance of the employee.

Tuition reimbursement shall be limited to job related courses or approved degree objectives and require prior approval by the Department Head and Human Resources Manager.

Reimbursements shall be made when employees present proof to the Human Resources Manager that they have paid such costs and successfully completed the course(s) with either a "C" grade or better, or a "Pass" grade in a pass/fail grading system.

B. Meal Allowance:

1. Per Diem - Employees shall be entitled to per diem under the following circumstances:
 - a. Personnel with prior knowledge and approval of their supervisor, and on work assignments, or attending meetings or training in excess of a twenty-five (25) mile radius beyond their normal work station, and which extends more than one (1) hour beyond their normal work hours or require lodging.
 - b. Meeting or training assignments, which include a meal, will be reimbursed at the actual cost of the meeting or meal, not to exceed the prorated per diem schedule.
 - c. Meal expenses other than listed in "a" or "b" may be considered for reimbursement (receipt required) at the discretion of the Division Commander.
 - d. Receipts are not required, other than as noted above.

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2. Per Diem Schedule - Forty-five dollars (\$45) per twenty-four (24) hour period or prorated as follows; breakfast – Ten dollars (\$10.00), Lunch – Fifteen dollars (\$15.00), Dinner – Twenty dollars (\$20.00).
- C. Mileage Allowance - The City shall reimburse employees for the use of personal automobiles at the existing IRS reimbursable rate.
- D. Weapon Vesting - Unit employees' assigned a weapon shall be vested with ten percent (10%) ownership per year so that ten (10) years after assignment of the weapon, to the employee, he/she shall be fully vested with ownership.
- E. Controlled Substance and Alcohol Testing - The City maintains the right to conduct a test during working hours of any employee that it reasonably suspects is under the influence of alcohol or a controlled substance in the workplace, consistent with department policy.
- F. Take Home Vehicles/ Distance to Work - Employees who take work vehicles home under this provision must reside within thirty-five (35) miles of the City limits. Those employees assigned a motorcycle who reside beyond thirty-five (35) miles of the City limits at the time of ratification of this Agreement may drive their motorcycle to and from their residence to their place of work if such travel does not exceed three hundred and fifty (350) miles per week.

The following unit classifications shall be allowed to take a City vehicle home under this provision: Employees assigned to the Executive Division, Administrative Division, Investigation Division and specific assignments in the Uniform Division that require a vehicle assignment as part of their duties (ie. Canine, Motorcycle, Accident Reconstruction, Special Enforcement Bureau).

Employees who take a City vehicle home are expected to be reasonably available to respond to work-related activities; however, there is no restriction of the employee's off-duty activities implied or intended by this expectation.

- G. Employee – Employer Relations Resolution - During the term of the agreement, the City and the Association agree to meet and confer to update the Employee-Employer Relations Resolution to reflect current State law.
- H. Use of Departmental Communications Systems - By agreement, the policy "Use of Departmental Communications Systems", adopted by side letter in 2002, has been incorporated into the Police Department Policy Manual.
- I. Administrative Appeal Procedure - In compliance with the Government Code, the Administrative Appeal Procedure for all public safety officers is referenced in Exhibit D of this Memorandum of Understanding.

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- J. Direct Deposit - All employees hired after the effective date of this agreement shall be required to enroll in and maintain participation in the City's direct deposit pay system.
- K. During the term of this Agreement, the City retains the right to meet and confer on any specific issue related to payroll implementation and/or compliance with the Fair Labor Standards Act (FLSA).

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ARTICLE XV - CITY COUNCIL APPROVAL

It is the understanding of the City and the Association that this Memorandum of Understanding is of no force or effect whatsoever unless and until adopted by resolution of the City Council of the City of Huntington Beach.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Understanding this 1st day of May, 2006.

CITY OF HUNTINGTON BEACH

HUNTINGTON BEACH POLICE OFFICERS' ASSOCIATION

By: Penelope Culbreth-Graft
Penelope Culbreth-Graft, CPA
City Administrator

By: Kreg Muller
Kreg Muller
POA President

By: Ken Small
Ken Small
Chief of Police

By: Russell Reinhart
Russell Reinhart
Negotiations Chairman/
POA Member

By: Bob Hall
Bob Hall
Deputy City Administrator

By: Corwin Bales
Corwin Bales
POA Member

By: Dan Villella
Dan Villella
Finance Director

By: Norm Evenson
Norm Evenson
POA Member

By: Renée Mayne
Renée Mayne
Chief Negotiator

By: Dennis Hashin
Dennis Hashin
POA Member

APPROVED AS TO FORM

By: Jennifer McGrath
Jennifer McGrath
City Attorney
JM
4/14/06

By: Jeff Huss
Jeff Huss
POA Member

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EXHIBIT A

CITY OF HUNTINGTON BEACH

POLICE OFFICERS' ASSOCIATION SALARY SCHEDULE

Effective April 8, 2006

Job Code	Classification	Range	A	B	C	D	E
0280	Communications Operator – PD	478	\$23.65	\$24.95	\$26.32	\$27.77	\$29.30
0281	Communications Supervisor – PD	505	\$27.06	\$28.55	\$30.12	\$31.78	\$33.53
0221	Detention Officer	477	\$23.53	\$24.82	\$26.19	\$27.63	\$29.15
0220	Detention Officer, Nurse	487	\$24.74	\$26.10	\$27.54	\$29.05	\$30.65
0222	Detention Shift Supervisor	504	\$26.93	\$28.41	\$29.97	\$31.62	\$33.36
0225	Police Recruit	449	\$20.46	\$21.59	\$22.78	\$24.03	\$25.35
0223	Police Officer	514	\$28.30	\$29.86	\$31.50	\$33.23	\$35.06
0159	Police Sergeant	564	\$36.32	\$38.32	\$40.43	\$42.65	\$45.00

Effective September 23, 2006

Job Code	Classification	Range	A	B	C	D	E
0280	Communications Operator – PD	478	\$23.65	\$24.95	\$26.32	\$27.77	\$29.30
0281	Communications Supervisor – PD	505	\$27.06	\$28.55	\$30.12	\$31.78	\$33.53
0221	Detention Officer	477	\$23.53	\$24.82	\$26.19	\$27.63	\$29.15
0220	Detention Officer, Nurse	487	\$24.74	\$26.10	\$27.54	\$29.05	\$30.65
0222	Detention Shift Supervisor	504	\$26.93	\$28.41	\$29.97	\$31.62	\$33.36
0225	Police Recruit	449	\$20.46	\$21.59	\$22.78	\$24.03	\$25.35
0223	Police Officer	522	\$29.47	\$31.09	\$32.80	\$34.60	\$36.50
0159	Police Sergeant	572	\$37.82	\$39.90	\$42.09	\$44.40	\$46.84

POA MOU

Effective March 24, 2007

Job Code	Classification	Range	A	B	C	D	E
0280	Communications Operator – PD	482	\$24.13	\$25.46	\$26.86	\$28.34	\$29.90
0281	Communications Supervisor – PD	509	\$27.62	\$29.14	\$30.74	\$32.43	\$34.21
0221	Detention Officer	481	\$24.02	\$25.34	\$26.73	\$28.20	\$29.75
0220	Detention Officer, Nurse	491	\$25.24	\$26.63	\$28.09	\$29.63	\$31.26
0222	Detention Shift Supervisor	508	\$27.49	\$29.00	\$30.59	\$32.27	\$34.04
0225	Police Recruit	453	\$20.88	\$22.03	\$23.24	\$24.52	\$25.87
0223	Police Officer	526	\$30.06	\$31.71	\$33.45	\$35.29	\$37.23
0159	Police Sergeant	576	\$38.58	\$40.70	\$42.94	\$45.30	\$47.79

Effective September 22, 2007

Job Code	Classification	Range	A	B	C	D	E
0280	Communications Operator – PD	486	\$24.62	\$25.97	\$27.40	\$28.91	\$30.50
0281	Communications Supervisor – PD	513	\$28.17	\$29.72	\$31.35	\$33.07	\$34.89
0221	Detention Officer	485	\$24.50	\$25.85	\$27.27	\$28.77	\$30.35
0220	Detention Officer, Nurse	495	\$25.75	\$27.17	\$28.66	\$30.24	\$31.90
0222	Detention Shift Supervisor	512	\$28.02	\$29.56	\$31.19	\$32.91	\$34.72
0225	Police Recruit	457	\$21.30	\$22.47	\$23.71	\$25.01	\$26.39
0223	Police Officer	530	\$30.66	\$32.35	\$34.13	\$36.01	\$37.99
0159	Police Sergeant	580	\$39.36	\$41.52	\$43.80	\$46.21	\$48.75

POA MOU

Effective March 22, 2008

Job Code	Classification	Range	A	B	C	D	E
0280	Communications Operator – PD	491	\$25.24	\$26.63	\$28.09	\$29.63	\$31.26
0281	Communications Supervisor – PD	518	\$28.87	\$30.46	\$32.14	\$33.91	\$35.78
0221	Detention Officer	490	\$25.10	\$26.48	\$27.94	\$29.48	\$31.10
0220	Detention Officer, Nurse	500	\$26.40	\$27.85	\$29.38	\$31.00	\$32.70
0222	Detention Shift Supervisor	517	\$28.73	\$30.31	\$31.98	\$33.74	\$35.60
0225	Police Recruit	462	\$21.82	\$23.02	\$24.29	\$25.63	\$27.04
0223	Police Officer	535	\$31.44	\$33.17	\$34.99	\$36.91	\$38.94
0159	Police Sergeant	585	\$40.34	\$42.56	\$44.90	\$47.37	\$49.98

Effective September 20, 2008

Job Code	Classification	Range	A	B	C	D	E
0280	Communications Operator – PD	496	\$25.89	\$27.31	\$28.81	\$30.39	\$32.06
0281	Communications Supervisor – PD	523	\$29.61	\$31.24	\$32.96	\$34.77	\$36.68
0221	Detention Officer	495	\$25.75	\$27.17	\$28.66	\$30.24	\$31.90
0220	Detention Officer, Nurse	505	\$27.06	\$28.55	\$30.12	\$31.78	\$33.53
0222	Detention Shift Supervisor	522	\$29.47	\$31.09	\$32.80	\$34.60	\$36.50
0225	Police Recruit	467	\$22.39	\$23.62	\$24.92	\$26.29	\$27.74
0223	Police Officer	540	\$32.24	\$34.01	\$35.88	\$37.85	\$39.93
0159	Police Sergeant	590	\$41.36	\$43.63	\$46.03	\$48.56	\$51.23

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Effective March 21, 2009

Job Code	Classification	Range	A	B	C	D	E
0280	Communications Operator – PD	501	\$26.53	\$27.99	\$29.53	\$31.15	\$32.86
0281	Communications Supervisor – PD	528	\$30.36	\$32.03	\$33.79	\$35.65	\$37.61
0221	Detention Officer	500	\$26.40	\$27.85	\$29.38	\$31.00	\$32.70
0220	Detention Officer, Nurse	510	\$27.75	\$29.28	\$30.89	\$32.59	\$34.38
0222	Detention Shift Supervisor	527	\$30.21	\$31.87	\$33.62	\$35.47	\$37.42
0225	Police Recruit	472	\$22.96	\$24.22	\$25.55	\$26.96	\$28.44
0223	Police Officer	545	\$33.04	\$34.86	\$36.78	\$38.80	\$40.93
0159	Police Sergeant	595	\$42.40	\$44.73	\$47.19	\$49.79	\$52.53

Effective September 19, 2009

Job Code	Classification	Range	A	B	C	D	E
0280	Communications Operator – PD	506	\$27.19	\$28.69	\$30.27	\$31.94	\$33.70
0281	Communications Supervisor – PD	533	\$31.12	\$32.83	\$34.64	\$36.55	\$38.56
0221	Detention Officer	505	\$27.06	\$28.55	\$30.12	\$31.78	\$33.53
0220	Detention Officer, Nurse	515	\$28.45	\$30.01	\$31.66	\$33.40	\$35.24
0222	Detention Shift Supervisor	532	\$30.97	\$32.67	\$34.47	\$36.37	\$38.37
0225	Police Recruit	477	\$23.53	\$24.82	\$26.19	\$27.63	\$29.15
0223	Police Officer	550	\$33.88	\$35.74	\$37.71	\$39.78	\$41.97
0159	Police Sergeant	600	\$43.48	\$45.87	\$48.39	\$51.06	\$53.86

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EXHIBIT B

GUIDELINES FOR THE USE OF THE ASSOCIATION BANK TIME

- A. Any substantial¹ time used for the Huntington Beach Police Officers' Association business while the member is using that time, is on a working status and this time will be deducted from the Association Bank, as per the Memorandum of Understanding.
- B. Any Association member desiring to use Association time, while they are on duty, shall obtain permission for their immediate supervisor, then from the President of the Association.

An Association member shall, on all but emergency situations, give adequate advance notice to his/her supervisor when requesting time off for Association business. If the employee's absence is less than one hour, use of Association bank time is not required. If the employee is away from work in excess of one hour, an Association book-time slip for all time away from work is required.

In the event that the President of the Association is not available to grant permission, the Vice-President will then have the responsibility to make the appropriate decision.

If the Association member's immediate supervisor will not grant the person who is requesting time off for Association business, then the President shall be immediately notified by the member.

If the business is of such a nature that it must be conducted by that particular Association member, then the President will take the matter to the Division level and every effort will be made to resolve the issue.

- C. Any member using Association time, while on duty, will submit an Association Bank Time Form and an overtime request form to the President. The member must write on top of the overtime form "ASSOCIATION BANK TIME OFF" and the payroll exception form will be signed by the supervisor and the President of the Police Officers' Association or his representative.

The communiqué will have the exact time and date that was used for the Association business, the location where the business was conducted.

- D. Those Association members that may use the Association Bank are:
1. President of the Huntington Beach Police Officers' Association
 2. Board of Directors of the Huntington Beach Police Officers' Association.

¹ 1. Substantial time, being defined as that time in excess of one hour and where the Association member is not available for duty until the Association business is concluded.

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3. Members assigned to committees designated by the President or the Board of Directors.
 4. PORAC Representative.
 5. Any other Association member designated.
- E. All memorandums and payroll exemption forms will be forwarded to payroll and the copies will be sent to the Secretary of the Association for accounting purposes.

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EXHIBIT C – SERVICE CREDIT SUBSIDY PLAN

An employee who has retired from the City and meets the plan participation requirements shall receive a monthly Service Credit Subsidy to reimburse the retiree for the payment of qualified medical expenses incurred for the purchase of medical insurance.

Plan Participation Requirements

1. At the time of retirement the employee has a minimum of ten (10) years of continuous regular (permanent) City service or is granted an industrial disability retirement; and
2. At the time of retirement, the employee is employed by the City; and
3. Following official separation from the City, the employee is granted a retirement allowance by the California Public Employees' Retirement System (CalPERS).

The City's obligation to pay the Service Credit Subsidy as indicated shall be modified downward or cease during the lifetime of the retiree upon the occurrence of any one of the following:

- a. On the first of the month in which a retiree or dependent reaches age 65 or on the date the retiree or dependent can first apply and become eligible, automatically or voluntarily, for medical coverage under Medicare (whether or not such application is made) the City's obligation to pay Service Credit Subsidy may be adjusted downward or eliminated.
 - b. In the event of the death of an eligible employee, whether retired or not, the amount of the Service Credit Subsidy benefit which the deceased employee was eligible for at the time of his/her death shall be paid to the surviving spouse or dependent for a period not to exceed twelve (12) months from the date of death.
4. Minimum Eligibility for Benefits – With the exception of an industrial disability retirement, eligibility for Service Credit Subsidy begins after an employee has completed ten (10) years of continuous regular (permanent) service with the City of Huntington Beach. Said service must be continuous unless prior service is reinstated at the time of his/her rehire in accordance with the City's Personnel Rules.

To receive the Service Credit Subsidy retirees are required to purchase medical insurance from City sponsored plans. The City shall have the right to

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require any retiree (annuitant) to annually certify that the retiree is purchasing medical insurance benefits.

5. Disability Retirees - Industrial disability retirees with less than ten (10) years of service shall receive a maximum monthly payment toward the premium for health insurance of \$121. Payments shall be in accordance with the stipulations and conditions, which exist for all retirees.
6. Service Credit Subsidy – Payment shall not exceed dollar amount, which is equal to the qualified medical expenses incurred for the purchase of City sponsored medical insurance.
7. Maximum Monthly Service Credit Subsidy Payments - All retirees, including those retired as a result of disability whose number of years of service prior to retirement exceeds ten (10), continuous years of regular (permanent) service shall be entitled to maximum monthly Service Credit Subsidy by the City for each year of completed City service as follows:

Maximum Service Credit Subsidy Retirements After:

<i>Years of Service</i>	<i>Service Credit Subsidy</i>
10	\$ 121
11	136
12	151
13	166
14	181
15	196
16	211
17	226
18	241
19	256
20	271
21	286
22	300
23	315
24	330
25	344

8. Medicare:

- a. All persons are eligible for Medicare coverage at age 65. Those with sufficient credited quarters of Social Security will receive Part A of Medicare at no cost. Those without sufficient credited quarters

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are still eligible for Medicare at age 65, but will have to pay for Part A of Medicare if the individual elects to take Medicare. In all cases, the participant pays for Part B of Medicare.

- b. When a retiree and his/her spouse are both 65 or over, and neither is eligible for paid Part A of Medicare, the Service Credit Subsidy shall pay for Part A for each of them or the maximum subsidy, whichever is less.
- c. When a retiree at age 65 is eligible for paid Part A of Medicare and his/her spouse is not eligible for paid Part A of Medicare, the spouse shall not receive the subsidy. When a retiree at age 65 is not eligible for paid Part A of Medicare and his/her spouse who is also age 65 is eligible for paid Part A of Medicare, the subsidy shall be for the retiree's Part A only.

9. Cancellation:

- a. For retirees/dependents eligible for paid Part A of Medicare, the following cancellation provisions apply:
 - i. Coverage for a retiree under the Service Credit Subsidy Plan will be eliminated on the first day of the month in which the retiree reaches age 65.
 - ii. At age 65 retirees are eligible to make application for Medicare. Upon being considered "eligible to make application," whether or not application has been made for Medicare, the Service Credit Subsidy Plan will be eliminated.

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EXHIBIT D

ADMINISTRATIVE APPEAL PROCEDURE

1. Authority

- a. Rule 20 of the existing City Personnel Rules provides an administrative procedure for appealing any discipline that involves a loss in pay. Rule 20 applies to all City employees.
- b. Government Code Section 3304(b) allows that an appeal procedure be made available to all "public safety officers" (as defined at Government Code § 3301) for the following "punitive actions:" (i) official reprimands; (ii) punitive transfers that do not involve a loss of pay, and (iii) non-punitive transfers that does result in a loss of pay. Such actions will be collectively referred to as an "Action." Case law allows such an appeal procedure to be more limited than afforded under Rule 20.
- c. This provision is intended to establish the Administrative Arbitration Panel to hear appeals from public safety officers. This provision only applies to an "Action" as defined above in "b." It does not apply to a non-punitive transfer imposed on a public safety officer that does not result in a loss of pay. (Government Code § 3304(b))

2. Administrative Arbitration Panel

- a. Appeals will be heard by a neutral fact finding group of three City employees.
- b. Only active full-time employees of the City of Huntington Beach Police Department may serve on the Administrative Arbitration Panel. The Panel is comprised of one employee selected by the POA, one employee selected by the Chief of Police, and the third employee selected by mutual agreement between the first two Panel members. If no agreement can be reached, the "strike-out" process will be used to select the third Panel member, with the POA and the Chief each submitting four names for consideration. A coin toss will determine the party striking first with the POA reserving the right to call the coin or defer.

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- c. The panel member selected by the – Chief of Police, the POA, and the panelmember selected by the – Chief of Police and the POA shall each select one alternate to the panel to serve in place of a panel member in case of conflicts of interest.
- d. A Panel member will serve one year. If the Panel member selected to serve on an Administrative Arbitration Panel has direct involvement in the punitive action or is a party to the issue, he or she will be replaced by the alternate

3. Appeal Notice

- a. An appealing officer has five (5) calendar days from date of receipt of an "Action" to file a written appeal with the Chief of Police; otherwise, the "Action" shall stand as issued with no further rights to appeal.
- b. If an officer chooses not to appeal an "Action, " they may submit a written rebuttal within thirty (30) days from date of receiving the "Action." The written rebuttal will be filed with the "Action" in the officer's official personnel file.

4. Scheduling of Hearing

Upon receipt of the written appeal notice, the – Chief of Police is required to immediately request the Administrative Arbitration Panel to convene for a hearing. The Administrative Arbitration Panel is required to convene within thirty (30) days of receiving notice from the Chief of Police.

5. Hearing Procedure

- a. All hearings shall be closed to the public unless the disciplined officer requests a public hearing.
- b. All hearings shall be tape-recorded.
- c. The Administrative Arbitration Panel shall hear testimony from the appealing officer and the Department (specifically, the officer who investigated the conduct that led to the Written Reprimand). Testimony shall not exceed one hour from each side and an additional fifteen (15) minutes shall be given to each for rebuttal. The Department shall be heard first.

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- d. If an appealing officer wishes to submit a written argument in lieu of oral testimony, they may do so provided that they notify the opposing party. The written testimony may not exceed one thousand five hundred (1,500) words. The written testimony must be submitted to the Administrative Arbitration Panel and the - Chief of Police by no later than three (3) days in advance of the scheduled hearing.
- e. There is no right to sworn testimony, subpoenas, cross-examination or representation by third parties, including attorneys, at the hearing.
- f. In all "Actions" involving punitive discipline, the burden of proof shall be on the Department to show by a preponderance of the evidence that just cause exists for imposing discipline. In all non-punitive "Actions" (e.g., a non-punitive transfer that results in a loss of pay), the burden of proof shall be on the Department to show by a preponderance of the evidence that reasonable grounds exist for the transfer.

6. Rendering of Decision by the Administrative Arbitration Panel

- a. At the conclusion of the hearing, the Administrative Arbitration Panel shall deliberate in closed session.
- b. The decision of the Administrative Arbitration Panel is binding with no further rights to appeal.
- c. The decision of the Administrative Arbitration Panel must be issued in writing to the appealing officer within seven (7) calendar days from the conclusion of the hearing.
- d. The member of the Administrative Arbitration Panel who was selected by the POA and the - Chief of Police shall be responsible for preparing and distributing the decision with a copy to both parties.
- e. The decision shall include the following:
 - Sustained ("Action" stands)
 - Not Sustained ("Action" does not stand)
 - Other Recommendation(s) to the Chief of Police
- f. In the event an officer's "Action" is *Sustained*, they may, within five (5) calendar days from the date of the Administrative Arbitration Panel's decision, file a written rebuttal. The written rebuttal will be filed with the

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"Action" in the employee's official personnel file, along with the tape recording of the hearing.

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EXHIBIT E

VOLUNTARY CATASTROPHIC LEAVE DONATION

Guidelines

1. Purpose

The purpose of the voluntary catastrophic leave donation program is to bridge employees who have been approved leave time to either; return to work, long-term disability, or medical retirement. Permanent employees who accrue vacation, general leave or compensatory time may donate such leave to another permanent employee when a catastrophic illness or injury befalls that employee or because the employee is needed to care for a seriously ill family member. The leave-sharing Leave Donation Program is Citywide across all departments and is intended to provide an additional benefit. Nothing in this program is intended to change current policy and practice for use and/or accrual of vacation, general, or sick leave.

2. Definitions

Catastrophic Illness or Injury - A serious debilitating illness or injury, which incapacitates the employee or an employee's family member.

Family Member - For the purposes of this policy, the definition of family member is that defined in the Family Medical Leave Act (child, parent, spouse or domestic partner).

3. Eligible Leave

Accrued compensatory, vacation or general leave hours may be donated. The minimum donation an employee may make is two (2) hours and the maximum is forty (40) hours.

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4. Eligibility

Permanent employees who accrue vacation or general leave may donate such hours to eligible recipients. Compensatory time accrued may also be donated. An eligible recipient is an employee who:

- Accrues vacation or general leave;
- Is not receiving disability benefits or Workers' Compensation payments; and
- Requests donated leave.

5. Transfer of Leave

The maximum donation credited to a recipient's leave account shall be the amount necessary to ensure continuation of the employee's regular salary during the employee's period of approved catastrophic leave. Donations will be voluntary, confidential and irrevocable. Hours donated will be converted into a dollar amount based on the hourly wage of the donor. The dollar amount will then be converted into accrued hours based on the recipient's hourly wage.

An employee needing leave will complete a Leave Donation Request Form and submit it to the Department Director for approval. The Department Director will forward the form to Human Resources for processing. Human Resources, working with the department, will send out the request for leave donations.

Employees wanting to make donations will submit an Authorization for Donation to the Human Resources Division (payroll).

All donation forms submitted to payroll will be date stamped and used in order received for each bi-weekly pay period. Multiple donations will be rotated in order to insure even use of time from donors. Any donation form submitted that is not needed will be returned to the donor.

6. Other

Please contact the Human Resources Division on questions regarding employee participation in this program.

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**Voluntary Catastrophic Leave Donation Program
Leave Request Form**

Requestor, Please Complete

According to the provisions of the Voluntary Catastrophic Leave Donation Program, I hereby request donated vacation, general leave or compensatory time.

MY SIGNATURE CERTIFIES THAT:

- A Leave of absence in relation to a catastrophic illness or injury has been approved by my Department; and
- I am not receiving disability benefits or Workers' Compensation payments.

Name: <i>(Please Print or Type: Last, First, MI)</i>	
Work Phone:	Department:
Job Title:	Employee ID#:
Requester Signature:	Date:
Department Director Signature of Support:	Date:
Human Resources Division Use Only	
End donation date will bridge to: <input type="checkbox"/> Long Term Disability <input type="checkbox"/> Medical Retirement beginning <input type="checkbox"/> Length of FMLA leave ending <input type="checkbox"/> Return to work	End donation date:
Human Resources Manager Signature	Date signed:

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**Voluntary Catastrophic Leave Donation Program
Leave Donation Form**

Donor, please complete

Donor Name: <i>(Please Print or Type: Last, First, MI)</i>	
Work Phone:	
Donor Job Title:	
Type of Accrued Leave:	Number of Hours I wish to Donate:
<input type="checkbox"/> Vacation	_____ Hours of Vacation
<input type="checkbox"/> Compensatory Time	_____ Hours of Compensatory Time
<input type="checkbox"/> General Leave	_____ Hours of General Leave

I understand that this voluntary donation of leave credits, once processed, is irrevocable; but if not needed, the donation will be returned to me. I also understand that this donation will remain confidential.

I wish to donate my accrued vacation, comp or general leave hours to the Leave Donation Program for:

Eligible recipient employee's name (Last, First, MI):	
Donor Signature:	Date:

Please submit to Payroll in the Human Resources Division.

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Exhibit F Job Sharing Program

Definition

Job Sharing: Two employees share one job, subject to the following conditions:

Eligibility

1. Police Officers eligible for this program must have three (3) years experience as a patrol Officer for Huntington Beach Police. Lateral Officers with two (2) years prior patrol experience are eligible after two (2) years of patrol assignment with HBPD. Police Sergeants are not eligible for the job sharing program.
2. Communications Operators eligible for this program must have three (3) years dispatch experience as a Communications Operator for Huntington Beach Police. Lateral Communication Operators with three (3) years of prior experience are eligible after two (2) years experience with HBPD.
3. Detention Officers are eligible after two (2) years experience as Detention Officers with HBPD.

Benefits

Job Sharing employees will:

1. Bid for one position on a patrol squad or duty position.
2. Use the seniority of the junior member of the team to establish bid shift order.
3. Receive medical coverage for employee only, or a \$200 stipend upon proof of medical coverage per MOU proposal.
4. Accrue Seniority for PERS and the department on a half time basis.
5. Receive hourly pay.
6. Receive one half (1/2) uniform allowance.
7. Receive half education pay at individual rate.
8. Receive half holiday pay.
9. Receive Sick time per MOU.
10. Accrue vacation on half time basis.
11. Earn seniority on half time basis.
12. Earn compensation for court appearance per MOU.
13. Receive time and one half pay for mandatory overtime.

Conditions

1. Absent an emergency, employees seeking a return to full time assignment are required to give 90-day notice of intent.

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2. In the event of an emergency separation of the sharing partner, the remaining partner will enjoy a 90-day window within the shared position before returning to full time employment.
3. The remaining partner will return to full time when the sharing partner leaves the position, unless replaced by another qualified job share employee.
4. Job sharing employees are not eligible for voluntary overtime.
5. Up to five positions would be eligible for job sharing in uniform patrol.
6. Only one position in dispatch and the jail would be eligible for job sharing.
7. Job sharing employees cannot work specialty assignments (i.e. SWAT, Beach Detail, HNT).
8. Job Sharing would be limited to the five (5) year term. Job sharing candidates leaving the position would be eligible for re-entry after one year in patrol.

RESOLUTION NO. 2010-13

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HUNTINGTON BEACH
AMENDING THE MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY AND
THE HUNTINGTON BEACH POLICE OFFICERS' ASSOCIATION (HBPOA), BY
ADOPTING THE SIDE LETTER OF AGREEMENT

WHEREAS, on May 1, 2006, the City Council of Huntington Beach adopted Resolution No. 2006-19 for the purpose of adopting the Memorandum of Understanding (MOU) between the City and the Huntington Beach Police Officers' Association (HBPOA); and

Subsequent to the adoption of the MOU, the City of Huntington Beach and the HBPOA agreed to changes to the MOU that are reflected in a Side Letter of Agreement between the City of Huntington Beach and the HBPOA ("Side Letter of Agreement") attached hereto as Exhibit A and incorporated herein by this reference.

NOW, THEREFORE, IT IS HEREBY RESOLVED by the City Council of the City of Huntington Beach as follows:

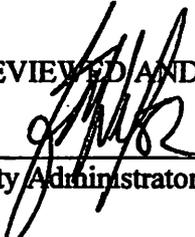
1. The Side Letter of Agreement attached hereto as **Exhibit A** is approved and adopted.
2. The Side Letter of Agreement amends the MOU between the City of Huntington Beach and the HBPOA.

PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting thereof held on the 1st day of March, ~~200~~ 2010.



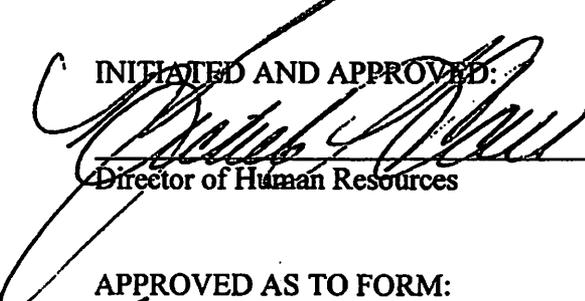
Mayor

REVIEWED AND APPROVED:



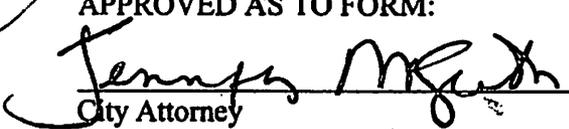
City Administrator

INITIATED AND APPROVED:



Director of Human Resources

APPROVED AS TO FORM:



City Attorney

2-9-10

**City of Huntington Beach
SIDE LETTER AGREEMENT**

Representatives of the Huntington Beach Police Officers' Association ("POA") and the City of Huntington Beach ("City") hereby agree to extend the terms related to the POA MOU with respect to the following:

TERM OF MOU EXTENSION

This Memorandum of Understanding (MOU) shall be extended for the period April 1, 2010 and ending at midnight September 30, 2011. HBPOA exclusively reserves the right to extend this extended MOU for up to an additional six (6) months through and including March 31, 2012.

CONCESSION ITEMS

The HBPOA agrees to the following concession items that will sunset at the expiration of the MOU extension:

1. ARTICLE XIV – MISCELLANEOUS

- L. The Physical Fitness program compensation of earning paid time off as outlined in Section 208.8 – 208.8.8 of the Huntington Beach Police Department Policy Manual is hereby suspended until the expiration of the MOU extension. HBPD SWAT team members are required to participate in the PT program; however, PT paid time off will not accrue to HBPD SWAT team members during the suspension period. It is the intent to incorporate the PT program with the ability to earn paid time off into the subsequent MOU.

2. ARTICLE VI - SALARY SCHEDULE AND PERS PICKUP

B. Non-Sworn PERS Pickup Article VI. B. is hereby modified such that the combined City-paid and employee-paid contribution equals 8%. Effective the pay period beginning April 3, 2010, the City shall pay 4.75% of each employee's "compensation earnable" of the employer-paid contribution of 8%. All non-safety employees covered by this agreement shall pay 4.25% of "compensation earnable" towards the employer-paid contribution of 8%.

C. Sworn PERS Pickup

- a. Article VI. C. is hereby modified such that the combined City-paid and employee-paid contribution equals 9%. Effective the pay period beginning April 3, 2010, the City shall pay 4.75% of each employee's "compensation earnable" of the employer-paid contribution of 9%. All safety employees covered by this agreement shall pay 4.25% of "compensation earnable" towards the employer-paid contribution of 9%.

3. PERSONNEL RULE 5-21. REEMPLOYMENT LISTS - MODIFIED

Personnel Rule 5-21 shall be modified during the term of this contract extension to provide that in the event any employee represented by HBPOA is demoted in lieu of layoff, that individual shall be placed at the top of a re-employment list for the classification from which the individual was demoted and shall be given the first opportunity to fill any vacancy in that classification irrespective of how much time transpires between the demotion and the existence of the vacancy.

CHANGES TO EXISTING MOU NOT SUBJECT TO SUNSET CLAUSE

ARTICLE VII - SPECIAL PAY

A. Police Professional Development Plan

1. The Professional Development Plan for sworn personnel shall be as follows:

a. College Degree Program

- i. Upon earning an AA Degree or attaining "Junior status" in a degree program, an employee shall be paid three percent (3%) of base hourly rate of pay in addition to other compensation.
- ii. Upon earning a BA/BS Degree, an employee shall be paid six percent (6%) of base hourly rate of pay in addition to other compensation. This pay is in lieu of pay received under sub-section (a)i above.
- iii. College Degrees or College Units under this program shall conform to POST standards for accreditation as noted in POST Regulation 9070 (c)(1)(A) and (B)

G. Holidays

2. Holidays Worked - Employees who work on a recognized City holiday shall be compensated Shift Differential Pay. Holiday Shift Differential Pay is available to all members of the HBPOA that are regularly scheduled to work a recognized holiday. Members shall receive Shift Differential Pay equal to fifty percent (50%) of their regular rate of pay for all time actually worked from 12:00 A.M. through 11:59 P.M. on the recognized holiday.

ARTICLE IX - HOURS OF WORK/OVERTIME

B. Other Time:

3. Subpoena Compensation

- b. On-Call Court Time - Employees required to be on-call for a court appearance during other than their scheduled working hours shall be paid a minimum of three (3) hours pay at their regular rate of pay for each morning and afternoon court session provided, however, that if such time overlaps with the employee's scheduled working hours, said rate shall be limited to those hours occurring prior to or after the employee's scheduled work time. On-Call Court Time shall not be considered hours worked for the purpose of calculating overtime. Employees shall not be paid On-Call Court Time if Court Appearance Time is paid.
- c. Cancelled Subpoenas - Employee shall be paid two (2) hours of pay at their regular rate of pay for subpoenas cancelled with less than twenty-four (24) hours notice.

ARTICLE XI - RETIREMENT

A. Safety Employee Retirement Benefits:

1. 3% @ Age 50 Plan - The City shall provide the 3% @ Age 50 retirement formula set forth in California Government Code Section 21362.2 for all safety employees represented by the Association.

If at any time after the implementation of the 3% at age 50 formula the City is required to make retirement contributions with respect to employees represented by the Association, the amount with respect to which each employee is reimbursed pursuant to Article VI.C shall be reduced by a percentage equal to one-half of the percentage of compensation earnable the City is required to pay in retirement contributions to PERS, not to exceed 2.25%. For example, if the City is required to contribute an amount equal to 2% of each employee's "compensation earnable." The amount of the reimbursement set forth in Article VI.C shall be reduced from 9% of the employee's compensation earnable to 8% of the employee's compensation earnable. If, on the other hand, the City is required to contribute an amount equal to 8% of each employee's "compensation earnable," the amount of the reimbursement set forth in Article VI.C shall be reduced to 6.75% of the employee's compensation earnable.

B. Miscellaneous Employee Retirement Benefits:

1. 2.5% @ Age 55 Plan (California Government Code Section 21354.4) – Members of the City's miscellaneous retirement plan with the California Public Employee Retirement System (CalPERS) shall receive the 2.5% at age 55 CalPERS retirement plan.

THE BELOW LISTED PREVIOUSLY AGREED TO SIDE LETTERS ARE HEREBY INCORPORATED INTO THE HBPOA MOU

ARTICLE VI – SALARY SCHEDULE AND PERS PICKUP

- B. Non-Sworn PERS Pickup - Each non-sworn employee covered by this agreement shall be reimbursed an amount equal to 8% of the employee's part of his or her PERS contribution. The above PERS pickup is not base salary but is done pursuant to Section 414(h)(2) of the Internal Revenue Code (Reference Resolution No. 2007-88).

ARTICLE X – HEALTH AND OTHER INSURANCE BENEFITS

8. ~~Post Retirement Medical Reimbursement Program~~

~~The parties agree that in lieu of establishing a Health Savings Account (HSA) pursuant to the previous MOU, the City shall discuss with Association and will implement a pre-tax post retirement medical reimbursement program within ninety (90) days of ratification. During the term of this Agreement, the Association reserves the right to meet and confer on employee funding of a pre-tax post retirement medical reimbursement program through wage increases implemented by this Agreement. At any time after April 1, 2008, the Association reserves the right to meet and confer on any potential employer funding of a pre-tax post retirement medical reimbursement program.~~

A. HEALTH

8. EMPLOYEE WELFARE BENEFIT TRUST FUND

The City authorizes the HBPOA to participate in an employee welfare medical benefit trust fund program, called the PORAC Retiree Medical Trust, provided the following conditions are adhered to:

1. The City and HBPOA agree that the City shall not provide any contribution to the program.
2. Effective 5/31/08, City shall withhold \$100.00 monthly for each represented employee. Thereafter, said withholding shall be in an amount as designated in writing by the HBPOA. Deductions shall be taken on the first two checks of each month.
3. HBPOA shall pay all associated expenses incurred for participation in the program.
4. Upon request, the HBPOA shall provide documentation to the City as follows:
 - a. A copy of the in-force employee medical welfare benefit trust fund program;
 - b. A statement certifying that funds collected are for employee welfare medical benefits for HBPOA represented employees only;
 - c. A copy of the current program document as well as any changes of amendments, or written confirmation that there have been no changes as employee medical welfare benefit trust fund program provider;
 - d. Verification of the funds submitted to the PORAC Retiree Medical Trust, and
 - e. A statement certifying that the submitted funds are only being utilized to provide employee welfare medical benefit trust funds for participating members including members of the HBPOA.
5. City shall pay the withheld funds to the PORAC Retiree Medical Trust bi-weekly.
6. All Federal and State laws regarding employee medical welfare benefit trust funds coverage shall be followed.
7. HBPOA agrees that it will indemnify and hold harmless the City as well as all direct or indirect successors, officers, directors, heirs, predecessors, assigns, agents, insurers, employees, attorneys, representatives, and each of them, past and present, from and against any claims, lawsuits, penalties, interest, taxes, or liability of any kind whatsoever, which may result from the qualified employee welfare benefit trust fund program (Reference Resolution No. 2008-35).

- C. Retirement Benefits for Safety and Miscellaneous Employees – Self Funded Supplemental Retirement Benefit – In the event a PERS member elects Option #1, #2, #2W, #3, #3W or #4 of the Public Employee's Retirement law, and the member is a unit employee who was hired prior to July 6, 1998, the City shall pay the difference between such elected option and the unmodified allowance which the member would have received for his/her life alone as provided in California Government Code sections 21455, 21456, 21457, 21458, and 21459 as said referenced Government Code sections exist as of the date of this agreement. This payment shall be made only to the member, shall be payable by the City during the life of the member, and upon that member's death, the City's obligation shall cease. The method of funding this benefit shall be at the sole discretion of the City. All unit employees hired after July 6, 1998 shall not be eligible for this benefit (Reference Resolution No. 2009-12).

ARTICLE XII – LEAVE BENEFITS

I. Deferred compensation/Leave Benefit Cash Out

The value of any unused earned leave benefits (sick, vacation, general leave) shall be transferred to deferred compensation or a qualified medical retirement trust program in connection with separation from employment, but only during the time the employee is actively employed with the City. Any transfer to the qualified medical retirement trust

program shall be on a pre-tax basis. The employee must request the transfer no later than the pay period prior to the employee's last day of employment. Any unused earned leave benefits remaining upon separation will be transferred to the qualified medical retirement trust program on a pre-tax basis (Reference Resolution No. 2008-35).

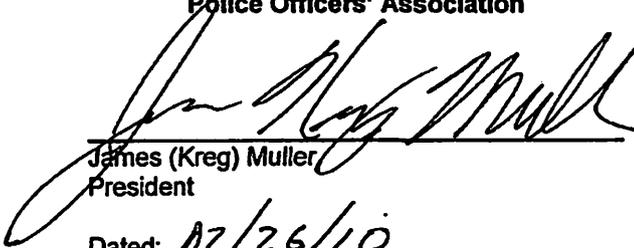
Side-Letter Implementation

The provisions contained in this side letter are effective April 3, 2010 following approval by the City of Huntington Beach City Council and will remain in full force and effect unless otherwise specifically modified, either by subsequent side-letter or a successor memorandum of understanding.

IN WITNESS WHEREOF, the parties have caused this SIDE LETTER AGREEMENT to be executed by and through their authorized officers on MARCH 01, 2010.

**Huntington Beach
Police Officers' Association**

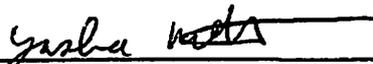
City of Huntington Beach

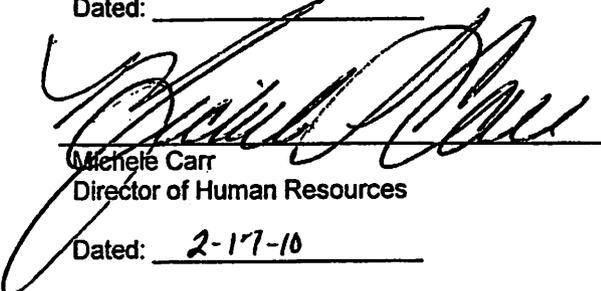

James (Kreg) Muller
President


Fred A. Wilson
City Administrator

Dated: 02/26/10

Dated: _____


Yasha Nikitin
Vice-President


Michele Carr
Director of Human Resources

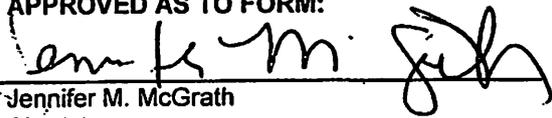
Dated: 03/01/10

Dated: 2-17-10


Ken Small
Police Chief

Dated: 2-17-2010

APPROVED AS TO FORM:


Jennifer M. McGrath
City Attorney

Dated: 2.24.10

Res. No. 2010-13

**STATE OF CALIFORNIA
COUNTY OF ORANGE) ss:
CITY OF HUNTINGTON BEACH)**

I, JOAN L. FLYNN the duly elected, qualified City Clerk of the City of Huntington Beach, and ex-officio Clerk of the City Council of said City, do hereby certify that the whole number of members of the City Council of the City of Huntington Beach is seven; that the foregoing resolution was passed and adopted by the affirmative vote of at least a majority of all the members of said City Council at a regular meeting thereof held on **March 1, 2010** by the following vote:

AYES: Carchio, Coerper, Hardy, Green, Bohr, Dwyer, Hansen
NOES: None
ABSENT: None
ABSTAIN: None



City Clerk and ex-officio Clerk of the
City Council of the City of
Huntington Beach, California

Payroll Detail Information

Daniel A Catalano

SSN:

Fiscal Year: 2009/2010 Agency Code: 0097

<u>Coverage Group</u>	<u>Business Month</u>	<u>Continuous Count</u>	<u>Service Month</u>	<u>Type</u>	<u>Pay Code</u>	<u>Pay Rate</u>	<u>Earnings</u>	<u>Code</u>	<u>Normal Contribution</u>	<u>Code</u>	<u>Tax Deferred Member Contribution</u>	<u>Service Credit</u>	<u>Unit/Agency Code</u>	<u>Account Code</u>	<u>Survivor Amount</u>	<u>Discrepancy Flag</u>
75001	Nov	1	11/09	3	09	1991.690+	1991.69+			16	179.25+					
75001	Nov	1	11/09	3	01	7274.800+	1916.77+			11	172.51+	0.263+			0.93+	
75001	Nov	1	10/09	5	09	1304.310+	1304.31+			16	117.39+					
75001	Oct	2	10/09	3	09	1304.310+	1304.31+			16	117.39+					
75001	Nov	1	10/09	5	01	7274.800+	3357.61+			11	302.19+	0.462+			0.93+	
75001	Oct	1	10/09	4	01	7274.800+	3357.60+			11	302.19+	0.462+			0.93+	
75001	Oct	1	10/09	3	01	7274.800+	3357.61+			11	302.19+	0.462+			0.93+	
75001	Sep	1	09/09	4	09	1777.990+	1777.99+			16	160.01+					
75001	Sep	1	09/09	4	01	7094.533+	3274.39+			11	294.69+	0.462+			0.93+	
75001	Sep	3	08/09	3	01	7094.533+	3274.40+			11	294.69+	0.462+			0.93+	
75001	Sep	5	07/09	3	09	1271.970+	1271.97+			16	114.48+					
75001	Jul	1	07/09	4	01	7094.533+	3274.41+			11	294.69+	0.462+			0.93+	
75001	Jul	1	07/09	3	01	7094.533+	3274.40+			11	294.69+	0.462+			0.93+	

Payroll Detail Information

Daniel A Catalano

SSN:

Fiscal Year: 2008/2009 Agency Code: 0097

Coverage Group	Business Month	Continuous Count	Service Month	Type	Pav Code	Pav Rate	Earnings	Code	Normal Contribution	Code	Tax Deferred Member Contribution	Service Credit	Unit/Agency Code	Account Code	Survivor Amount	Discrepancy Flag
75001	Jun	1	06/09	4	09	1271.970+	1271.97+			16	114.48+					
75001	Jun	1	06/09	4	01	7094.533+	3274.39+			11	294.69+	0.462+				
75001	Jun	1	06/09	3	09	1271.970+	1271.97+			16	114.48+				0.93+	
75001	Jun	1	06/09	3	01	7094.533+	3274.40+			11	294.69+	0.462+			0.93+	
75001	May	1	05/09	5	09	1777.990+	1777.99+			16	160.01+					
75001	May	1	05/09	5	01	7094.533+	3274.39+			11	294.69+	0.462+			0.93+	
75001	May	4	04/09	3	09	1271.970+	1271.97+			16	114.48+					
75001	May	4	04/09	3	01	7094.533+	3274.40+			11	294.69+	0.462+			0.93+	
75001	Mar	2	03/09	3	09	1240.890+	1240.89+			16	111.68+					
75001	Mar	1	03/09	4	01	6921.200+	3194.40+			11	287.49+	0.462+			0.93+	
75001	Mar	1	03/09	3	01	6921.200+	3194.39+			11	287.49+	0.462+			0.93+	
75001	Feb	1	02/09	4	09	1734.580+	1734.58+			16	156.11+					
75001	Feb	1	02/09	3	09	1240.890+	1240.89+			16	111.68+					
75001	Feb	2	02/09	3	01	6921.200+	3194.40+			11	287.49+	0.462+			0.93+	
75001	Jan	1	01/09	4	09	1734.580+	1734.58+			16	156.11+					
75001	Jan	1	01/09	3	09	1240.890+	1240.89+			16	111.68+					
75001	Jan	2	01/09	3	01	6921.200+	3194.39+			11	287.49+	0.462+			0.93+	
75001	Dec	1	12/08	4	09	1240.890+	1240.89+			16	111.68+					
75001	Dec	1	12/08	4	01	6921.200+	3194.39+			11	287.49+	0.462+			0.93+	
75001	Dec	1	12/08	3	09	1240.890+	1240.89+			16	111.68+					
75001	Dec	1	12/08	3	09	1300.000+	1300.00+			16	117.00+					
75001	Dec	1	12/08	3	01	6921.200+	3194.39+			11	287.49+	0.462+			0.93+	
75001	Nov	1	11/08	4	09	1240.890+	1240.89+			16	111.68+					
75001	Nov	1	11/08	3	09	1734.580+	1734.58+			16	156.11+					
75001	Nov	2	11/08	3	01	6921.200+	3194.40+			11	287.49+	0.462+			0.93+	
75001	Oct	1	10/08	5	09	1240.890+	1240.89+			16	111.68+					
75001	Oct	2	10/08	3	09	1240.890+	1240.89+			16	111.68+					
75001	Oct	1	10/08	5	01	6921.200+	3194.40+			11	287.49+	0.462+			0.93+	
75001	Oct	2	10/08	3	01	6921.200+	3194.40+			11	287.49+	0.462+			0.93+	
75001	Sep	1	09/08	4	09	1210.130+	1210.13+			16	108.91+					
75001	Sep	1	09/08	3	09	1691.600+	1691.60+			16	152.24+					
75001	Sep	2	09/08	3	01	6749.600+	3115.20+			11	280.37+	0.462+			0.93+	
75001	Aug	1	08/08	4	01	6749.600+	3115.21+			11	280.37+	0.462+			0.93+	
75001	Aug	4	07/08	3	09	1210.130+	1210.13+			16	108.91+					
75001	Aug	3	07/08	3	01	6749.600+	3115.20+			11	280.37+	0.462+			0.93+	

Payroll Detail Information

Daniel A Catalano

SSN:

Fiscal Year: 2007/2008 Agency Code: 0097

Coverage Group	Business Month	Continuous Count	Service Month	Type	Pav Code	Pav Rate	Earnings	Code	Normal Contribution	Code	Tax Deferred Member Contribution	Service Credit	Unit/Agency Code	Account Code	Survivor Amount	Discrepancy Flag
75001	Jun	1	06/08	4	09	1210.130+	1210.13+			16	108.91+					
75001	Jun	1	06/08	4	01	6749.600+	3115.20+			11	280.37+	0.462+			0.93+	
75001	Jun	1	06/08	3	09	1210.130+	1210.13+			16	108.91+					
75001	Jun	1	06/08	3	01	6749.600+	3115.20+			11	280.37+	0.462+			0.93+	
75001	May	1	05/08	5	09	1691.600+	1691.60+			16	152.24+					
75001	May	1	05/08	5	01	6749.600+	3115.20+			11	280.37+	0.462+			0.93+	
75001	May	4	04/08	3	09	1210.130+	1210.13+			16	108.91+					
75001	May	4	04/08	3	01	6749.600+	3115.20+			11	280.37+	0.462+			0.93+	
75001	Mar	2	03/08	3	09	1180.610+	1180.61+			16	106.25+					
75001	Mar	1	03/08	4	01	6584.933+	3039.20+			11	273.53+	0.462+			0.93+	
75001	Mar	1	03/08	3	01	6584.933+	3039.21+			11	273.53+	0.462+			0.93+	
75001	Feb	1	02/08	4	09	1650.310+	1650.31+			16	148.53+					
75001	Feb	1	02/08	4	01	6584.933+	3039.21+			11	273.53+	0.462+			0.93+	
75001	Feb	1	02/08	3	09	1180.610+	1180.61+			16	106.25+					
75001	Feb	1	02/08	3	01	6584.933+	3039.21+			11	273.53+	0.462+			0.93+	
75001	Jan	1	01/08	3	09	1447.960+	1447.96+			16	130.32+					
75001	Jan	1	01/08	3	01	6584.933+	3039.20+			11	273.53+	0.462+			0.93+	
75001	Jan	1	01/08	4	09	1650.310+	1650.31+			16	148.53+					
75001	Jan	1	01/08	4	01	6584.933+	3039.21+			11	273.53+	0.462+			0.93+	
75001	Dec	1	12/07	4	09	1447.960+	1447.96+			16	130.32+					
75001	Dec	1	12/07	3	09	1180.610+	1180.61+			16	106.25+					
75001	Dec	2	12/07	3	01	6584.933+	3039.20+			11	273.53+	0.462+			0.93+	
75001	Nov	1	11/07	5	09	1591.910+	1591.91+			16	143.27+					
75001	Nov	1	11/07	5	01	6584.933+	3039.20+			11	273.53+	0.462+			0.93+	
75001	Nov	1	11/07	4	01	6584.933+	3039.21+			11	273.53+	0.462+			0.93+	
75001	Nov	4	10/07	3	09	1180.610+	1180.61+			16	106.25+					
75001	Nov	3	10/07	3	01	6584.933+	3039.20+			11	273.53+	0.462+			0.93+	
75001	Sep	5	07/07	4	09	1156.980+	1156.98+			16	104.13+					
75001	Jul	1	07/07	3	09	1560.080+	1560.08+			16	140.41+					
75001	Sep	6	07/07	3	01	6453.200+	2978.40+			11	268.05+	0.462+			0.93+	

Payroll Detail Information

Daniel A Catarano

SSN: [REDACTED]

Fiscal Year: 2006/2007 Agency Code: 0097

Coverage Group	Business Month	Continuous Count	Service Month	Type	Pay Code	Pay Rate	Earnings	Code	Normal Contribution	Code	Tax Deferred Member Contribution	Service Credit	Unit/Agency Code	Account Code	Survivor Amount	Discrepancy Flag
75001	Jun	1	06/07	5	09	1156.980+	1156.98+			16	104.13+					
75001	Jun	1	06/07	5	01	6453.200+	2978.40+			11	268.05+					
75001	Jun	1	06/07	4	09	1156.980+	1156.98+			16	104.13+	0.462+			0.93+	
75001	Jun	1	06/07	4	01	6453.200+	2978.40+			11	268.05+	0.462+			0.93+	
75001	Jun	1	06/07	3	09	1156.980+	1156.98+			16	104.13+				0.93+	
75001	Jun	1	06/07	3	01	6453.200+	2978.40+			11	268.05+	0.462+			0.93+	
75001	May	2	05/07	3	09	1156.980+	1156.98+			16	104.13+				0.93+	
75001	May	2	05/07	3	01	6453.200+	2978.40+			11	268.05+	0.462+			0.93+	
75001	Apr	1	04/07	3	09	1156.980+	1156.98+			16	104.13+				0.93+	
75001	Apr	1	04/07	3	01	6453.200+	2978.40+			11	268.05+	0.462+			0.93+	
75001	Apr	1	04/07	4	09	1156.980+	1156.98+			16	104.13+				0.93+	
75001	Apr	1	04/07	4	01	6453.200+	2978.40+			11	268.05+	0.462+			0.93+	
75001	Mar	6	01/07	3	09	1134.310+	1134.31+			16	102.09+				0.93+	
75001	Jan	1	01/07	3	09	1200.000+	1200.00+			16	108.00+				0.93+	
75001	Mar	6	01/07	3	01	6326.667+	2920.00+			11	262.80+	0.462+			0.93+	
75001	Dec	1	12/06	5	09	1134.310+	1134.31+			16	102.09+				0.93+	
75001	Dec	1	12/06	4	09	1134.310+	1134.31+			16	102.09+				0.93+	
75001	Dec	1	12/06	3	09	1529.510+	1529.51+			16	137.65+				0.93+	
75001	Dec	1	12/06	5	01	6326.667+	2920.00+			11	262.80+	0.462+			0.93+	
75001	Nov	4	10/06	3	09	1134.310+	1134.31+			16	102.09+				0.93+	
75001	Dec	6	10/06	3	01	6326.667+	2920.00+			11	262.80+	0.462+			0.93+	
75001	Sep	1	09/06	4	09	1089.560+	1089.56+			16	98.07+				0.93+	
75001	Sep	1	09/06	3	09	1469.160+	1469.16+			16	132.23+				0.93+	
75001	Aug	3	07/06	4	09	1089.560+	1089.56+			16	98.07+				0.93+	
75001	Jul	1	07/06	3	09	1336.300+	1336.30+			16	120.27+				0.93+	
75001	Sep	6	07/06	3	01	6077.067+	2804.80+			11	252.43+	0.462+			0.93+	

Payroll Detail Information

Daniel A Catalano

SSN: /

Fiscal Year: 2005/2006 Agency Code: 0097

Coverage Group	Business Month	Continuous Count	Service Month	Type	Pav Code	Pav Rate	Earnings	Code	Normal Contribution	Code	Tax Deferred Member Contribution	Service Credit	Unit/Agency Code	Account Code	Survivor Amount	Discrepancy Flag
75001	Jun	1	06/06	5	09	1089.560+	1089.56+			16	98.07+					
75001	Jun	1	06/06	4	09	1089.560+	1089.56+			16	98.07+					
75001	Jun	1	06/06	4	09	1097.780+	1097.78+			16	98.80+					
75001	Jun	1	06/06	3	09	1089.560+	1089.56+			16	98.07+					
75001	Jun	1	06/06	5	01	6077.067+	2804.80+			11	252.43+	0.462+				
75001	Jun	1	06/06	4	01	6077.067+	2804.80+			11	252.43+	0.462+				J.93+
75001	Jun	1	06/06	3	01	6077.067+	2804.80+			11	252.43+	0.462+				J.93+
75001	May	1	05/06	4	09	1408.610+	1408.61+			16	126.77+					J.93+
75001	May	1	05/06	3	09	586.250+	586.25+			16	52.76+					
75001	Apr	7	01/06	4	09	905.290+	905.29+			16	81.48+					
75001	May	9	01/06	4	01	6077.067+	2804.80+			11	252.43+	0.462+				J.93+
75001	Jan	1	01/06	3	09	1281.110+	1281.11+			16	115.29+					J.93+
75001	Jan	1	01/06	3	01	6077.067+	2804.80+			11	252.43+	0.462+				J.93+
75001	Jan	1	01/06	3	09	1200.000+	1200.00+			16	108.00+					J.93+
75001	Dec	1	12/05	5	09	905.290+	905.29+			16	81.48+					
75001	Dec	1	12/05	4	09	1007.510+	1007.51+			16	90.68+					
75001	Dec	1	12/05	5	01	6077.067+	2804.80+			11	252.43+	0.462+				J.93+
75001	Jan	1	11/05	3	09	905.290+	905.29+			16	81.48+					J.93+
75001	Jan	1	11/05	3	01	6077.067+	2804.80+			11	252.43+	0.462+				J.93+
75001	Dec	2	11/05	4	09	905.290+	905.29+			16	81.48+					J.93+
75001	Dec	3	11/05	4	01	6077.067+	2804.80+			11	252.43+	0.462+				J.93+
75001	Oct	2	10/05	3	09	905.290+	905.29+			16	81.48+					J.93+
75001	Oct	2	10/05	3	01	6077.067+	2804.80+			11	252.43+	0.462+				J.93+
75001	Sep	1	09/05	4	09	909.120+	909.12+			16	81.83+					J.93+
75001	Sep	1	09/05	4	01	5841.333+	2696.00+			11	242.64+	0.462+				J.93+
75001	Sep	1	09/05	3	09	1189.380+	1189.38+			16	107.04+					J.93+
75001	Aug	1	08/05	4	09	876.080+	876.08+			16	78.85+					
75001	Aug	1	08/05	3	09	876.083+	876.08+			16	78.85+					
75001	Sep	3	08/05	3	01	5841.333+	2696.00+			11	242.64+	0.462+				J.93+
75001	Jul	1	07/05	5	09	923.080+	923.08+			16	83.08+					J.93+
75001	Jul	1	07/05	4	09	1150.460+	1150.46+			16	103.55+					
75001	Jul	1	07/05	3	09	876.080+	876.08+			16	78.85+					
75001	Jul	1	07/05	5	01	5841.333+	2696.00+			11	242.64+	0.462+				J.93+
75001	Jul	2	07/05	3	01	5841.333+	2696.00+			11	242.64+	0.462+				J.93+
75001	Aug	1	03/04	3	09	20.010+	20.01+			16	1.80+					J.93+

Payroll Detail Information

Daniel A Catalano

SSN:

Fiscal Year: 2005/2006 Agency Code: 0097

<u>Coverage Group</u>	<u>Business Month</u>	<u>Continuous Count</u>	<u>Service Month</u>	<u>Type</u>	<u>Pav Code</u>	<u>Pav Rate</u>	<u>Earnings</u>	<u>Code</u>	<u>Normal Contribution</u>	<u>Code</u>	<u>Tax Deferred Member Contribution</u>	<u>Service Credit</u>	<u>Unit/Agency Code</u>	<u>Account Code</u>	<u>Survivor Amount</u>	<u>Discrepancy Flag</u>
75001	Aug	1	02/04	3	09	20.010+	20.01+			16	1.80+					
75001	Aug	1	01/04	5	09	20.010+	20.01+			16	1.80+					
75001	Aug	1	01/04	4	09	20.010+	20.01+			16	1.80+					
75001	Aug	1	12/03	4	09	20.010+	20.01+			16	1.80+					
75001	Aug	1	10/03	3	09	20.010+	20.01+			16	1.80+					
75001	Aug	1	09/03	3	09	20.010+	20.01+			16	1.80+					
75001	Aug	1	02/03	3	09	39.120+	39.12+			16	3.52+					
75001	Aug	1	12/02	4	09	39.120+	39.12+			16	3.52+					
75001	Aug	1	12/02	3	09	71.720+	71.72+			16	6.45+					
75001	Aug	1	11/02	4	09	19.560+	19.56+			16	1.76+					
75001	Aug	1	11/02	3	09	19.560+	19.56+			16	1.76+					
75001	Aug	1	10/02	3	09	19.560+	19.56+			16	1.76+					
75001	Aug	1	08/02	4	09	19.560+	19.56+			16	1.76+					
75001	Aug	1	08/02	3	09	19.560+	19.56+			16	1.76+					

Payroll Detail Information

Daniel A Catalano

SSN:

Fiscal Year: 2004/2005 Agency Code: 0097

<u>Coverage Group</u>	<u>Business Month</u>	<u>Continuous Count</u>	<u>Service Month</u>	<u>Type</u>	<u>Pay Code</u>	<u>Pay Rate</u>	<u>Earnings</u>	<u>Code</u>	<u>Normal Contribution</u>	<u>Code</u>	<u>Tax Deferred Member Contribution</u>	<u>Service Credit</u>	<u>Unit/Agency Code</u>	<u>Account Code</u>	<u>Survivor Amount</u>	<u>Discrepancy Flag</u>
75001	Jun	1	06/05	4	09	1192.280+	1192.28+			16	107.31+					
75001	Jun	1	06/05	4	01	5841.333+	2696.00+			11	242.64+	0.462+			0.93+	
75001	Jun	1	06/05	3	09	908.360+	908.36+			16	81.75+					
75001	Jun	1	06/05	3	01	5841.333+	2696.00+			11	242.64+	0.462+			0.93+	
75001	May	4	04/05	3	09	876.080+	876.08+			16	78.85+					
75001	Apr	1	04/05	3	09	53.720+	53.72+			16	4.84+					
75001	Mar	1	03/05	4	09	876.080+	876.08+			16	78.85+					
75001	Mar	1	03/05	3	09	1160.660+	1160.66+			16	104.45+					
75001	May	5	03/05	4	01	5841.333+	2696.00+			11	242.64+	0.462+			0.93+	
75001	Mar	1	03/05	3	01	5841.333+	2696.00+			11	242.64+	0.462+			0.93+	
75001	Feb	1	02/05	4	09	876.080+	876.08+			16	78.85+					
75001	Feb	1	02/05	4	01	5841.333+	2696.00+			11	242.64+	0.462+			0.93+	
75001	Feb	1	02/05	3	09	627.320+	627.32+			16	56.45+					
75001	Feb	1	01/05	4	09	923.990+	923.99+			16	83.16+					
75001	Jan	1	01/05	3	09	802.630+	802.63+			16	72.24+					
75001	Jan	1	01/05	3	09	1200.000+	1200.00+			16	108.00+					
75001	Feb	3	01/05	3	01	5959.200+	2750.40+			11	247.53+	0.462+			0.93+	
75001	Dec	1	12/04	5	09	627.320+	627.32+			16	56.45+					
75001	Dec	1	12/04	5	01	5959.200+	2750.40+			11	247.53+	0.462+			0.93+	
75001	Dec	6	10/04	3	09	627.320+	627.32+			16	56.45+					
75001	Apr	1	09/04	3	01	5841.333+	1120.00+			15	100.80+					
75001	Sep	1	09/04	4	09	897.020+	897.02+			16	80.73+					
75001	Sep	3	08/04	3	09	627.320+	627.32+			16	56.45+					
75001	Dec	10	08/04	3	01	5959.200+	2750.40+			11	247.53+	0.462+			0.93+	
75001	Aug	1	07/04	5	09	627.320+	627.32+			16	56.45+					
75001	Oct	2	07/04	3	09	627.320+	627.32+			16	56.45+					
75001	Aug	1	07/04	5	01	5959.200+	2750.40+			11	247.53+	0.462+			0.93+	
75001	Oct	2	07/04	3	01	5959.200+	2750.40+			11	247.53+	0.462+			0.93+	

R07188
9/14/2009

CATALANO, DANIEL A
 [REDACTED]
 MISSION VIEJO, CA 92692-5282

06/05-4

Route: 18
 Check No: 234439
 Check Date: 7/3/2009
 Period End: 6/28/2009

Period Earnings	Hours	Rate	Amount	Year to Date	Description	Period Amount	Year to Date
Regular	45.75	40.930	1,872.54	38,237.75	Gross Wages	4853.24	68,709.57
PT Taken				799.40	Federal Income Tax	813.33	8,955.10
Vacation	34.25	40.930	1,401.85	5,208.77	State Income Tax	211.82	2,933.43
Sick				487.42		0.00	
Comp Taken				588.20	Medical Trust	50.00	650.00
Holiday Prens				1,493.40	AD&D	1.50	19.50
POA FI Instr			425.87	5,886.58	Survivor	.93	13.02
Holiday			125.94	1,741.60	POA Dues	35.47	455.89
Longevity 10%			327.44	4,528.16	Addl Dues	49.87	631.09
Adv POST			198.46	2,716.84	Credit Union	990.00	12,870.00
EdInc POA-BA			198.46	2,716.84	PERS	306.88	4,344.61
PERS			308.88	4,344.61	2.25 PERS Contribution	102.29	1,448.16
Gross Pay			4,853.24		Total Deductions		1,536.94
					Net Pay		2,491.15

Edinc

R07188
9/15/2009

CATALANO, DANIEL A
MISSION VIEJO, CA 92692-6262

02/09-4

Route: 18
Check No: 221685
Check Date: 2/27/2009
Period End: 2/20/2009

Period Earnings	Hours	Rate	Amount	Year to Date	Description	Period Amount	Year to Date
Regular	80.00	39.930	3,194.40	13,238.77	Gross Wages	5281.68	24,727.34
Vacation				2,735.20	Federal Income Tax	738.48	3,332.88
Holiday Prom	11.42	43.230	493.69	987.38	State Income Tax	238.30	1,051.51
POA El Instr			415.27	2,076.35		0.00	
Holiday			122.88	614.30	Medical Trust	50.00	200.00
Longevity 10%			319.44	1,597.20	AD&D	1.50	6.00
Adv POST			191.66	958.30	Survivor	.93	4.65
Edinc POA-BA			191.66	958.30	POA Dues	34.60	138.40
PERS			332.70	1,583.54	Addl Dues	47.00	188.00
					Credit Union	990.00	3,960.00
					PERS	332.70	1,583.54
					2.25 PERS Contribution	110.90	521.17
Gross Pay	5,281.68				Total Deductions	1,567.63	
					Net Pay	2,721.29	

R07186
9/15/2009

CATALANO, DANIEL A
MISSION VIEJO, CA 92692-5262

01/09-4

Route: 18
Check No: 218978
Check Date: 1/30/2009
Period End: 1/23/2009

Period Earnings	Hours	Rate	Amount	Year to Date	Description	Period Amount	Year to Date
Regular	68.58	39.930	2,738.39	7,303.97	Gross Wages	5281.67	14,730.99
Vacation	11.42	39.930	458.00	2,279.20	Federal Income Tax	748.98	1,880.60
Holiday/Promt	11.42	43.230	493.69	493.69	State Income Tax	240.95	623.79
POA FI Instr			415.27	1,245.81		0.00	
Holiday			122.86	368.58	Medical Trust	0.00	100.00
Longevity 10%			319.44	958.32	AD&D	0.00	3.00
Adv POST			191.68	574.88	Survivor	.93	2.79
Edinc POA-BA			191.68	574.88	POA Dues	0.00	68.20
PERS			332.70	931.48	Addl Dues	0.00	94.00
					Credit Union	0.00	1,980.00
					PERS	332.70	931.48
					2.25 PERS Contribution	110.90	310.48
Gross Pay			5,281.67		Total Deductions		444.53
					Net Pay	3,827.23	

R07186
9/15/2009

CATALANO, DANIEL A
MISSION VIEJO, CA 92692-5262

11/08-3

Route: 18
Check No: 212224
Check Date: 11/21/2008
Period End: 11/14/2008

Period Earnings	Hours	Rate	Amount	Year to Date	Description	Period Amount	Year to Date
Regular	80.00	39.930	3,194.40	68,344.13	Gross Wages	5428.00	120,266.18
PT Taken				1,430.25	Federal Income Tax	761.77	16,083.34
CourtSpecial	3.00	55.441	166.32	324.58	State Income Tax	247.64	5,125.32
Vacation				3,898.73		0.00	
Sick				444.69	MedicalTrust	50.00	1,057.05
CompTaken				433.85	AD&D	1.50	33.00
HolidayPrem	11.42	43.230	493.69	2,930.73	Survivor	.93	22.32
Vac Overage				3,399.49	125-HLTH	69.23	1,661.52
Premium OT				2,100.53	POA Dues	34.60	740.92
POA FI Instr			415.27	9,691.52	Addl Dues	47.00	956.50
Spec Prem OT				815.98	Credit Union	990.00	21,780.00
Holiday			122.88	2,867.20	PERS	332.70	7,184.72
Longevity 10%			319.44	7,454.96	2.25 PERS Contribution	110.90	2,394.85
Adv POST			191.68	4,472.92		0.00	
Edinc POA-BA			191.68	4,472.92		0.00	
PERS			332.70	7,184.72		0.00	
Gross Pay						5,428.00	
			Total Deductions	1,638.88			
					Net Pay		2,781.73

R07188
9/14/2009

CATALANO, DANIEL A
 [REDACTED]
 MISSION VIEJO, CA 92682-5262

Route: 18
 Check No: 606807
 Check Date: 12/12/2008
 Period End: 12/12/2008

12/08-3

Period Earnings	Hours	Rate	Amount	Year to Date	Description	Period Amount	Year to Date
Regular				71,318.91	Gross Wages	1387.75	126,387.60
Uniform Allow			1,300.00	1,300.00	Federal Income Tax	317.69	17,000.58
PT Taken				1,430.25	State Income Tax	76.25	5,388.87
CourtSpecial				324.56		0.00	
Vacation				4,116.35	MedicalTrust	0.00	1,107.05
Sick				444.69	AD&D	0.00	34.50
CompTaken				433.85	Survivor	0.00	23.25
HolidayPrem				2,930.73	12S-HLTH	0.00	1,730.75
Vac Overage				3,398.49	POA Dues	0.00	775.52
Premium OT				2,100.53	Add Dues	0.00	1,003.50
POA FI Instr				10,108.79	Credit Union	0.00	22,770.00
Spec Prem OT				815.98	PERS	87.75	7,571.85
Holiday				2,990.08	2.25 PERS Contribution	29.25	2,523.89
Longevity10%				7,774.40		0.00	
Adv POST				4,684.58		0.00	
Edtnc POA-BA				4,684.58		0.00	
PERS			87.75	7,571.85		0.00	
Gross Pay	1,387.75				Total Deductions	117.00	
					Net Pay	876.81	

R07188
9/14/2009

CATALANO, DANIEL A

MISSION VIEJO, CA 92692-5262

09/08-3

Period End: 9/5/2008

Check Date: 9/12/2008

Check No: 205316

Router: 18

Period Earnings	Hours	Rate	Amount	Year to Date	Description	Period Amount	Year to Date
Regular	80.00	38.940	3,115.20	52,451.33	Gross Wages	5131.28	95,275.66
PT Taken			1,430.25	1,430.25	Federal Income Tax	690.34	12,765.19
CourtSpecial			158.24	158.24	State Income Tax	221.07	4,069.64
Vacation			3,898.73	3,898.73	Medical Trust	0.00	0.00
Sick			433.85	433.85	AD&D	1.50	25.50
Camp Taken			2,437.04	2,437.04	Survivor	.93	17.67
Holiday/PTem	11.42	42.160	481.47				
Vac Overage			3,399.49	3,399.49	125-HLTH	69.23	1,315.37
Premium OT			1,587.41	1,587.41	POA Dues	33.75	588.77
POA FI Inst			7,625.46	7,625.46	Add Dues	47.00	721.50
Spec Prem OT			608.88	608.88	Credit Union	990.00	16,830.00
Holiday			2,255.85	2,255.85	PERS	324.48	5,881.92
Longevity 10%			311.52	311.52	2.25 PERS Contribution	108.15	1,887.28
Adv POST			188.91	188.91		0.00	0.00
Edinc POA-BA			188.91	188.91		0.00	0.00
PERS			324.48	5,881.92		0.00	0.00
Total Deductions			1,825.02				
Gross Pay					Net Pay	2,594.83	

R07188
9/15/2009

CATALANO, DANIEL A
MISSION VIEJO, CA 92692-5262

05/08-5

Route: 18
Check No: 185187
Check Date: 8/8/2008
Period End: 5/30/2008

Period Earnings	Hours	Rate	Amount	Year to Date	Description	Period Amount	Year to Date
Regular	80.00	38.940	3,115.20	35,979.70	Gross Wages	5580.84	60,703.50
PT Taken				438.89	Federal Income Tax	803.67	8,191.99
CourtSpecial				158.24	State Income Tax	283.23	2,818.57
CompTaken				433.85		0.00	
HolidayPrem	11.42	42.160	481.47	1,955.57	MedicalTrust	46.28	507.05
Vac Overage	7.38	38.940	287.38	3,388.49	AD&D	1.50	16.50
Premium OT	2.00	58.410	116.82	316.27	Survivor	.93	11.18
POA FI Instr			404.98	4,780.60	125-HLTH	69.23	830.78
Spec Prem OT			45.38	122.87	POA Dues	33.75	368.27
Holiday			119.81	1,417.28	Addl Dues	47.00	439.50
Longevity10%			311.52	3,685.04	Credit Union	990.00	10,890.00
Adv POST			188.91	2,211.00	PERS	324.46	3,585.70
Edinc POA-BA			188.91	2,211.00	2.25 PERS Contribution	108.15	1,195.19
PERS			324.46	3,585.70		0.00	
Gross Pay						5,580.84	
			Total Deductions	1,821.28			
					Net Pay	2,892.66	

R07188
11/20/2009

CATALANO, DANIEL A

Route: 18
Check No: 178097
Check Date: 12/7/2007
Period End: 11/30/2007

Period Earnings	Hours	Rate	Amount	Year to Date	Description	Period Amount	Year to Date
Regular	60.00	37.990	2,279.40	68,528.97	Gross Wages	5382.32	130,006.63
Uniform Allow				1,200.00	Federal Income Tax	772.09	18,473.97
PT Taken	20.00	37.990	759.80	1,766.78	State Income Tax	254.37	5,987.51
Sick-Family				372.30		0.00	
CompStraight	9.00	37.990			MedicalTrust	44.45	1,024.39
CourtSpecial	3.00	52.748	158.24	310.28	VSP Coverage	0.00	2.41
Sick				744.60	DeltaPPO EE2	0.00	16.35
CompTaken				4,943.58	PORAC EE+2	0.00	45.54
HolidayPrem	10.00	41.130	411.30	814.40	AD&D	1.50	34.50
Vac Overage	7.38	37.990	280.57	6,869.32	Survivor	.93	23.25
Premium OT				7,547.04	125-HLTH	50.00	1,250.00
POA FI Instr			395.10	9,666.17	POA Dues	32.92	740.87
Spec Prem OT				2,931.74	Addl Dues	37.75	884.00
Holiday			116.89	2,859.77	Credit Union	990.00	22,770.00
Longevity10%			303.92	7,435.52	PERS	312.60	7,104.68
Adv POST			182.35	4,481.25	2.25 PERS Contribution	104.20	2,368.09
Edinc POA-BA			182.35	4,481.25		0.00	
PERS			312.60	7,104.68		0.00	
Gross Pay						5,382.32	
			Total Deductions	1,574.35			
					Net Pay		2,781.51

R07188
11/20/2009

CATALANO, DANIEL A

Route: 18
Check No: 185820
Check Date: 2/29/2008
Period End: 2/22/2008

Period Earnings	Hours	Rate	Amount	Year to Date	Description	Period Amount	Year to Date
Regular	79.00	37.990	3,001.22	14,344.29	Gross Wages	5296.44	25,933.93
PT Earned	20.00	37.990			Federal Income Tax	744.27	3,570.64
PT Taken	1.00	37.990	37.99	417.89	State Income Tax	241.13	1,149.60
CourtSpecial				158.24		0.00	
CompTaken				433.85	MedicalTrust	0.00	183.23
HolidayPrem	11.42	41.130	469.70	1,474.10	AD&D	0.00	6.00
Vac Overage	7.38	37.990	280.37	1,401.85	Survivor	.93	4.65
Premium OT				199.45	125-HLTH	69.23	348.15
POA FI Instr			395.10	1,975.50	POA Dues	0.00	131.68
Spec Prem OT				77.49	Addl Dues	0.00	151.00
Holiday			118.89	584.45	Credit Union	0.00	3,980.00
Longevity10%			303.92	1,519.60	PERS	316.55	1,523.72
Adv POST			182.35	911.75	2.25 PERS Contribution	105.51	507.88
Edinc POA-BA			182.35	911.75		0.00	
PERS			316.55	1,523.72		0.00	
Gross Pay	5,288.44				Net Pay	3,808.82	
			Total Deductions	492.22			

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CATALANO, DANIEL A

Route: 18
Check No: 181951
Check Date: 1/18/2008
Period End: 1/11/2008

Period Earnings	Hours	Rate	Amount	Year to Date	Description	Period Amount	Year to Date
Regular	70.00	37.990	2,659.30	5,698.50	Gross Wages	5268.22	10,576.02
PT Taken	10.00	37.990	379.90	379.90	Federal Income Tax	732.70	1,475.75
CourtSpecial	3.00	52.748	158.24	158.24	State Income Tax	238.83	477.51
HolidayPrem	6.50	41.130	267.35	534.70		0.00	
Vac Overage	7.38	37.990	280.37	560.74	MedicalTrust	48.26	90.71
Premium OT	.50	58.985	28.49	199.45	AD&D	1.50	3.00
POA FI Instr			395.10	790.20	Survivor	.93	1.96
Spec Prem OT			11.07	77.49	125-HLTH	69.23	138.46
Holiday			118.89	233.78	POA Dues	32.92	65.84
Longevity10%			303.92	607.84	Addl Dues	37.75	75.50
Adv POST			182.35	364.70	Credit Union	990.00	1,980.00
Edinc POA-BA			182.35	364.70	PERS	302.89	605.78
PERS			302.89	605.78	2.25 PERS Contribution	100.96	201.92
Gross Pay			5,268.22		Total Deductions	1,582.44	
					Net Pay	2,716.25	

R07188
11/20/2009

CATALANO, DANIEL A

Route: 18
Check No: 184599
Check Date: 7/20/2007
Period End: 7/13/2007

Period Earnings	Hours	Rate	Amount	Year to Date	Description	Period Amount	Year to Date
Regular	70.00	37.230	2,606.10	40,431.05	Gross Wages	5119.59	74,219.69
Uniform Allow				1,200.00	Federal Income Tax	708.50	10,069.90
CourtSpecial				152.04	State Income Tax	230.71	3,222.51
Sick				744.60	Medical Trust	44.45	624.34
CompTaken	10.00	37.230	372.30	3,091.55	VSP Coverage	0.00	2.41
HolidayPrem	10.00	40.310	403.10	403.10	DeltaPPO EE2	0.00	16.35
Vac Overage	7.38	37.230	274.78	4,083.67	PORAC EE+2	0.00	45.54
Premium OT				1,916.25	AD&D	1.50	21.00
POA FI Instr			387.19	5,754.72	Survivor	.93	13.95
Spec Prem OT				744.40	125-HLTH	50.00	750.00
Holiday			114.55	1,702.57	POA Dues	32.26	447.23
Longevity10%			297.84	4,428.72	Add Dues	37.75	544.25
Adv POST			178.70	2,656.00	Credit Union	990.00	13,860.00
EdInc POA-BA			178.70	2,656.00	PERS	306.35	4,257.02
PERS			306.35	4,257.02	2.25 PERS Contribution	102.11	1,418.93
Gross Pay	5,119.59			Total Deductions	1,565.35	Net Pay	2,615.03

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CATALANO, DANIEL A

Route: 18
Check No: 143567
Check Date: 12/8/2006
Period End: 12/1/2006

Period Earnings	Hours	Rate	Amount	Year to Date	Description	Period Amount	Year to Date
Regular	77.00	38.500	2,810.50	47,484.62	Gross Wages	6311.55	127,568.08
Uniform Allow				1,200.00	Federal Income Tax	1038.52	15,610.28
PT Taken				5,822.48	State Income Tax	351.19	5,093.27
Sick-Family				350.60	VSP Coverage	2.41	60.40
CourtSpecial				598.18	DeltaPPO EE2	18.35	398.26
Vacation				350.60	PORAC EE+2	45.54	1,138.50
CompTaken	3.00	38.500	109.50	109.50	AD&D	1.50	34.50
Inj-Safety				18,478.20	Survivor	.93	23.25
HolidayPrem	10.00	38.520	395.20	1,397.38	125-HLTH	32.31	807.75
Vac Coverage	7.38	38.500	269.37	2,428.79	POA Dues	31.63	704.99
Premium OT	17.00	54.750	930.75	12,852.41	Addl Dues	40.00	720.00
PCA FI Instr			379.60	9,918.65	Credit Union	990.00	22,770.00
Spec Prem OT			361.58	4,928.78	PERS	300.34	6,750.74
Holiday			112.31	2,718.15	2.25 PERS Contribution	100.11	2,250.32
Longevity10%			292.00	7,068.60		0.00	
Educ Incentive				1,218.48		0.00	
Adv POST			175.20	2,895.48		0.00	
EdInc POA-BA			175.20	2,895.48		0.00	
PERS			300.34	6,750.74		0.00	
Gross Pay						6,311.55	
			Total Deductions	1,581.12			
					Net Pay	3,380.72	

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CATALANO, DANIEL A

Route: 18
Check No: 138033
Check Date: 9/15/2008
Period End: 8/8/2008

Period Earnings	Hours	Rate	Amount	Year to Date	Description	Period Amount	Year to Date
Regular	54.50	35.060	1,910.77	31,010.57	Gross Wages	4987.23	91,817.01
Uniform Allow				1,200.00	Federal Income Tax	689.80	9,912.05
PT Taken	25.50	35.060	894.03	5,101.23	State Income Tax	227.63	3,165.27
Sick-Family				350.60	VSP Coverage	2.41	45.94
CourtSpecial				292.08	DeltaPPO EE2	18.35	298.16
Vacation				350.60	PORAC EE+2	45.54	865.28
Inj-Safety				16,478.20	AD&D	1.50	27.00
HolidayPrem	10.00	37.960	379.60	1,002.16	Survivor	.93	17.67
Vac Overage	7.38	35.060	258.74	823.20	125-HLTH	32.31	613.89
Premium OT	2.00	52.590	105.18	7,362.61	POA Dues	30.38	546.84
POA FI Instr			364.62	7,657.03	Addl Dues	40.00	520.00
Spec Prem OT			40.86	2,796.18	Credit Union	980.00	17,820.00
Holiday			107.88	2,049.72	PERS	288.49	5,092.85
Longevity10%			280.48	5,329.12	2.25 PERS Contribution	96.17	1,697.70
Educ Incentive				1,218.48		0.00	
Adv POST			168.29	1,851.19		0.00	
Educ POA-BA			168.29	1,851.19		0.00	
PERS			288.49	5,092.85		0.00	
Gross Pay						4,987.23	
			Total Deductions	1,544.08			
					Net Pay	2,505.72	

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CATALANO, DANIEL A

Route: 18
Check No: 97117
Check Date: 6/24/2006
Period End: 6/17/2006

Period Earnings	Hours	Rate	Amount	Year to Date	Description	Period Amount	Year to Date
Regular	80.00	33.700	2,696.00	31,632.50	Gross Wages	5054.93	61,048.59
Uniform Allow				1,200.00	Federal Income Tax	783.97	8,558.25
PT Taken				674.00	State Income Tax	258.43	2,753.93
CourtPm				151.85		0.00	
Vacation				2,925.40	VSP Coverage	2.56	30.95
CompTaken				33.70	DeltaPPO EE2	3.88	58.69
HolidayPrem	10.00	31.620	316.20	1,124.28	PQRAC EE+2	45.54	583.24
Retro Pay				1,120.00	AD&D	1.50	18.00
Premium OT	13.50	50.550	682.43	6,648.73	Survivor	.93	12.09
POA FI Instr			350.48	4,631.24	POA Dues	28.20	345.84
Spec Prem OT			221.78	1,791.00	Addl Dues	25.50	306.00
Holiday			103.69	1,390.83	Credit Union	990.00	11,880.00
Longevity10%			289.60	2,428.40	PERS	262.46	3,316.85
Educ Incentive			152.31	1,880.03	2.25 PERS Contribution	87.49	1,105.58
PERS			282.48	3,316.85		0.00	
Gross Pay			5,054.93		Total Deductions	1,449.04	
					Net Pay	2,585.49	

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CATALANO, DANIEL A

Route: 18
Check No: 125811
Check Date: 5/26/2008
Period End: 5/18/2008

Period Earnings	Hours	Rate	Amount	Year to Date	Description	Period Amount	Year to Date
Regular	40.00	35.060	1,402.40	14,725.20	Gross Wages	4487.81	48,731.55
Uniform Allow				1,200.00	Federal Income Tax	275.24	3,374.03
PT Taken				701.20	State Income Tax	73.53	1,009.76
Vacation				350.60		0.00	
Inj-Safety	40.00	35.060	1,402.40	15,075.80	VSP Coverage	2.41	26.66
HolidayPrem				375.82	DeltaPPO EE2	18.35	187.38
Premium OT				972.92	PORAC EE+2	45.54	500.94
POA FI Instr			683.67	4,010.83	AD&D	1.50	15.00
Spec Prem OT				314.02	Survivor	.93	10.23
Holiday			107.88	1,188.68	125-HLTH	32.31	355.41
Longevity10%			280.48	3,085.28	POA Dues	30.38	303.80
Educ Incentive				1,523.10	Addl Dues	20.00	200.00
Adv POST			168.29	168.29	Credit Union	990.00	9,900.00
Edinc POA-BA			168.29	168.29	PERS	284.40	2,873.52
PERS			284.40	2,873.52	2.25 PERS Contribution	94.80	957.67
Gross Pay			4,487.81		Total Deductions		1,518.62
					Net Pay	2,630.42	

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CATALANO, DANIEL A

Route: 18
Check No: 114848
Check Date: 1/20/2008
Period End: 1/13/2008

Period Earnings	Hours	Rate	Amount	Year to Date	Description	Period Amount	Year to Date
Regular	70.00	35.060	2,454.20	4,908.40	Gross Wages	4361.70	9,742.35
Uniform Allow				1,200.00	Federal Income Tax	565.63	1,385.71
PT Taken	10.00	35.060	350.60	701.20	State Income Tax	181.44	418.14
HolidayPrem	11.50	32.680	375.82	375.82		0.00	
Premium OT				105.18	VSP Coverage	2.41	4.97
POA FI Instr			364.62	729.24	DeltaPPO EE2	18.35	20.21
Spec Prem OT				33.85	PORAC EE+2	45.54	91.08
Holiday			107.88	215.76	AD&D	1.50	3.00
Longevity10%			280.48	560.96	Survivor	.93	1.86
Educ Incentive			152.31	304.62	125-HLTH	32.31	64.62
PERS			275.79	607.22	POA Dues	30.38	60.78
					Addl Dues	20.00	40.00
					CredR Union	990.00	1,980.00
					PERS	275.79	607.22
					2.25 PERS Contribution	91.93	202.41
Gross Pay	4,361.70		Total Deductions	1,507.14	Net Pay	2,107.49	

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11/20/2009

CATALANO, DANIEL A

Route: 18
Check No: 99527
Check Date: 7/22/2009
Period End: 7/15/2009

Period Earnings	Hours	Rate	Amount	Year to Date	Description	Period Amount	Year to Date
Regular	50.00	33.700	1,685.00	36,013.50	Gross Wages	4108.10	69,635.66
Uniform Allow				1,200.00	Federal Income Tax	527.47	9,713.04
PT Taken				674.00	State Income Tax	168.45	3,127.60
CourtPrm				151.65		0.00	
Vacation	30.00	33.700	1,011.00	3,936.40	VSP Coverage	2.58	36.07
CompTaken				33.70	Delta PPO EE2	3.88	64.41
HolidayPrm	8.50	32.260	274.30	1,398.64	PORAC EE+2	45.54	674.32
Retro Pay				1,120.00	AD&D	1.50	21.00
Premium OT				7,154.23	Survivor	.93	13.95
POA FI Instr			350.48	5,332.20	POA Dues	29.20	404.24
Spec Prem OT				1,955.27	Addl Dues	20.00	346.00
Holiday			103.69	1,598.21	Credit Union	990.00	13,860.00
Longevity10%			269.60	2,965.60	PERS	259.64	3,817.61
Educ Incentive			152.31	2,284.65	2.25 PERS Contribution	86.55	1,272.50
PERS			259.64	3,817.61		0.00	
Gross Pay	4,108.10				Total Deductions		
				1,439.78	Net Pay	1,970.40	

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11/20/2009

CATALANO, DANIEL A

Route: 18
Check No: 89244
Check Date: 3/18/2005
Period End: 3/11/2005

Period Earnings	Hours	Rate	Amount	Year to Date	Description	Period Amount	Year to Date
Regular	79.00	33.700	2,662.30	14,994.70	Gross Wages	6348.28	28,725.84
Uniform Allow				1,200.00	Federal Income Tax	1112.87	4,235.23
CourtPm				151.65	State Income Tax	376.03	1,360.35
Vacation				1,375.20		0.00	
CompTaken	1.00	33.700	33.70	33.70	VSP Coverage	2.58	13.03
HolidayPrem	9.00	31.629	284.66	756.56	DeltaPPO EE2	3.88	29.87
Premium OT	34.00	50.550	1,718.70	3,575.22	PORAC EE+2	45.54	284.46
POA FI Instr			350.48	2,177.88	AD&D	1.50	9.00
Spec Prem OT			492.40	860.90	Survivor	.93	5.58
Holiday			103.69	630.50	POA Dues	29.20	170.84
Longevity10%			289.60	539.20	Addl Dues	25.50	153.00
Educ Incentive			152.31	913.88	Credit Union	990.00	5,940.00
PERS			278.52	1,526.27	PERS	260.32	1,526.27
					2.25 PERS Contribution	88.77	508.73
Gross Pay			6,348.28		Total Deductions		1,446.18
					Net Pay	3,412.20	

Payroll Detail Information

Eldo E Evenson

SSN:

Fiscal Year: 2008/2009 Agency Code: 0097

<u>Coverage Group</u>	<u>Business Month</u>	<u>Continuous Count</u>	<u>Service Month</u>	<u>Type</u>	<u>Pav Code</u>	<u>Pav Rate</u>	<u>Earnings</u>	<u>Code</u>	<u>Normal Contribution</u>	<u>Code</u>	<u>Tax Deferred Member Contribution</u>	<u>Service Credit</u>	<u>Unit/Agency Code</u>	<u>Account Code</u>	<u>Survivor Amount</u>	<u>Discrepancy Flag</u>
75001	Sep	1	09/08	4	09	2367.900+	2367.90+			16	213.11+					
75001	Sep	1	09/08	3	09	289.190+	289.19+			16	26.03+					
75001	Sep	1	09/08	3	01	6749.600+	635.50+			15	57.20+					
75001	Sep	1	09/08	4	01	6749.600+	3115.20+			11	280.37+	0.462+			0.93+	
75001	Sep	1	09/08	3	01	6749.600+	1038.53+			11	93.47+	0.154+			0.93+	
75001	Aug	4	07/08	3	09	867.460+	867.46+			16	78.07+					
75001	Aug	4	07/08	3	01	6749.600+	3115.20+			11	280.37+	0.462+			0.93+	

Payroll Detail Information
 Eldo E Evenson

SSN: Fiscal Year: 2007/2008 Agency Code: 0097

Coverage Group	Business Month	Continuous Count	Service Month	Type	Pay Code	Pay Rate	Earnings	Code	Normal Contribution	Code	Tax Deferred Member Contribution	Service Credit	Unit/Agency Code	Account Code	Survivor Amount	Discrepancy Flag
75001	Jun	1	06/08	4	09	867.460+	867.46+			16	78.07+					
75001	Jun	1	06/08	4	01	6749.600+	3115.20+			11	280.37+	0.462+				
75001	Jun	1	06/08	3	09	867.460+	867.46+			16	78.07+				0.93+	
75001	Jun	1	06/08	3	01	6749.600+	3115.20+			11	280.37+	0.462+				
75001	May	1	05/08	5	09	867.460+	867.46+			16	78.07+				0.93+	
75001	May	1	05/08	5	01	6749.600+	3115.20+			11	280.37+	0.462+				
75001	May	4	04/08	3	09	867.460+	867.46+			16	78.07+				0.93+	
75001	May	4	04/08	3	01	6749.600+	3115.20+			11	280.37+	0.462+				
75001	Mar	3	02/08	4	09	846.300+	846.30+			16	76.17+				0.93+	
75001	Mar	3	02/08	4	01	6584.933+	3039.20+			11	273.53+	0.462+				
75001	Feb	1	02/08	3	09	846.300+	846.30+			16	76.17+				0.93+	
75001	Feb	1	02/08	3	01	6584.933+	3039.20+			11	273.53+	0.462+				
75001	Jan	1	01/08	3	09	846.300+	846.30+			16	76.17+				0.93+	
75001	Jan	1	01/08	3	01	6584.933+	3039.20+			11	273.53+	0.462+				
75001	Jan	1	01/08	4	09	846.300+	846.30+			16	76.17+				0.93+	
75001	Jan	1	01/08	4	01	6584.933+	3039.20+			11	273.53+	0.462+				
75001	Dec	2	12/07	3	09	846.300+	846.30+			16	76.17+				0.93+	
75001	Dec	2	12/07	3	01	6584.933+	3039.20+			11	273.53+	0.462+				
75001	Nov	1	11/07	5	09	846.300+	846.30+			16	76.17+				0.93+	
75001	Nov	1	11/07	5	01	6584.933+	3039.20+			11	273.53+	0.462+				
75001	Nov	4	10/07	3	09	846.300+	846.30+			16	76.17+				0.93+	
75001	Nov	4	10/07	3	01	6584.933+	3039.20+			11	273.53+	0.462+				
75001	Sep	1	09/07	4	09	829.360+	829.36+			16	74.64+				0.93+	
75001	Sep	1	09/07	3	09	1065.820+	1065.82+			16	95.92+					
75001	Sep	2	09/07	3	01	6453.200+	2978.40+			11	268.05+	0.462+				
75001	Aug	2	08/07	3	09	829.360+	829.36+			16	74.64+				0.93+	
75001	Aug	2	08/07	3	01	6453.200+	2978.41+			11	268.05+	0.462+				
75001	Jul	1	07/07	4	09	1545.290+	1545.29+			16	139.08+				0.93+	
75001	Jul	1	07/07	3	09	1326.060+	1326.06+			16	119.35+					
75001	Jul	2	07/07	3	01	6453.200+	2978.40+			11	268.05+	0.462+				

Payroll Detail Information

Eldo E Evenson

SSN: !

Fiscal Year: 2006/2007 Agency Code: 0097

Coverage Group	Business Month	Continuous Count	Service Month	Type	Pay Code	Pay Rate	Earnings	Code	Normal Contribution	Code	Tax Deferred Member Contribution	Service Credit	Unit/Agency Code	Account Code	Survivor Amount	Discrepancy Flag
75001	Jun	1	06/07	5	09	935.840+	935.84+			16	84.23+					
75001	Jun	1	06/07	5	01	6453.200+	2978.40+			11	268.05+	0.462+				
75001	Jun	1	06/07	4	09	1148.050+	1148.05+			16	103.32+				0.93+	
75001	Jun	1	06/07	4	01	6453.200+	2978.41+			11	268.05+	0.462+				
75001	Jun	1	06/07	3	09	2118.630+	2118.63+			16	190.68+				0.93+	
75001	Jun	1	06/07	3	01	6453.200+	2978.40+			11	268.05+	0.462+				
75001	May	1	05/07	4	01	6453.200+	2978.40+			11	268.05+	0.462+			0.93+	
75001	May	1	05/07	3	01	6453.200+	2978.41+			11	268.05+	0.462+			0.93+	
75001	May	4	04/07	3	09	829.360+	829.36+			16	74.64+				0.93+	
75001	Apr	1	04/07	4	01	6453.200+	2978.40+			11	268.05+	0.462+				
75001	Apr	1	04/07	3	01	6453.200+	2978.41+			11	268.05+	0.462+			0.93+	
75001	Mar	1	03/07	4	09	1483.980+	1483.98+			16	133.56+				0.93+	
75001	Mar	1	03/07	3	09	1229.940+	1229.94+			16	110.69+					
75001	Feb	1	02/07	4	09	1508.120+	1508.12+			16	135.73+					
75001	Feb	1	02/07	3	09	1542.380+	1542.38+			16	138.81+					
75001	Jan	1	01/07	4	09	1811.110+	1811.11+			16	163.00+					
75001	Mar	5	01/07	4	01	6326.667+	2920.00+			11	262.80+	0.462+				
75001	Jan	1	01/07	3	09	1195.680+	1195.68+			16	107.61+				0.93+	
75001	Jan	1	01/07	3	01	6326.667+	2920.00+			11	262.80+	0.462+				
75001	Jan	1	01/07	3	09	1200.000+	1200.00+			16	108.00+				0.93+	
75001	Dec	1	12/06	5	09	1229.940+	1229.94+			16	110.69+					
75001	Dec	1	12/06	4	09	813.110+	813.11+			16	73.17+					
75001	Dec	1	12/06	3	09	1349.110+	1349.11+			16	121.41+					
75001	Dec	1	12/06	5	01	6326.667+	2920.01+			11	262.80+	0.462+			0.93+	
75001	Dec	1	12/06	4	01	6326.667+	2920.01+			11	262.80+	0.462+				
75001	Nov	1	11/06	4	09	917.500+	917.50+			16	82.57+				0.93+	
75001	Nov	3	10/06	3	09	813.110+	813.11+			16	73.17+					
75001	Dec	4	10/06	4	01	6326.667+	2920.00+			11	262.80+	0.462+			0.93+	
75001	Oct	1	10/06	3	01	6326.667+	2920.01+			11	262.80+	0.462+				
75001	Sep	1	09/06	4	09	781.030+	781.03+			16	70.29+				0.93+	
75001	Sep	1	09/06	3	09	1148.410+	1148.41+			16	103.36+					
75001	Aug	3	07/06	4	09	781.030+	781.03+			16	70.29+					
75001	Jul	1	07/06	3	09	1148.410+	1148.41+			16	103.36+					
75001	Sep	5	07/06	4	01	6077.067+	2804.80+			11	252.43+	0.462+			0.93+	
75001	Jul	1	07/06	3	01	6077.067+	2804.82+			11	252.44+	0.462+			0.93+	

Payroll Detail Information

Eldo E Evenson

SSN:

Fiscal Year: 2005/2006 Agency Code: 0097

<u>Coverage Group</u>	<u>Business Month</u>	<u>Continuous Count</u>	<u>Service Month</u>	<u>Type</u>	<u>Pay Code</u>	<u>Pay Rate</u>	<u>Earnings</u>	<u>Code</u>	<u>Normal Contribution</u>	<u>Code</u>	<u>Tax Deferred Member Contribution</u>	<u>Service Credit</u>	<u>Unit/Agency Code</u>	<u>Account Code</u>	<u>Survivor Amount</u>	<u>Discrepancy Flag</u>
75001	Jun	1	06/06	5	09	781.030+	781.03+			16	70.29+					
75001	Jun	1	06/06	4	09	868.680+	868.68+			16	78.19+					
75001	Jun	1	06/06	4	09	480.720+	480.72+			16	43.27+					
75001	Jun	1	06/06	3	09	1214.620+	1214.62+			16	109.32+					
75001	Jun	1	06/06	5	01	6077.067+	2804.80+			11	252.43+	0.462+				
75001	Jun	1	06/06	4	01	6077.067+	2804.80+			11	252.43+	0.462+				J.93+
75001	Jun	1	06/06	3	01	6077.067+	2804.81+			11	252.43+	0.462+				J.93+
75001	May	1	05/06	4	09	784.540+	784.54+			16	70.61+					
75001	May	2	04/06	4	09	680.910+	680.91+			16	61.28+					
75001	Apr	1	04/06	3	09	693.530+	693.53+			16	62.41+					
75001	May	3	04/06	4	01	6077.067+	2804.80+			11	252.43+	0.462+				
75001	Apr	1	04/06	3	01	6077.067+	2804.80+			11	252.43+	0.462+				J.93+
75001	Mar	1	03/06	3	09	680.910+	680.91+			16	61.28+					J.93+
75001	Mar	1	03/06	3	01	6077.067+	2804.80+			11	252.43+	0.462+				J.93+
75001	Mar	1	03/06	4	09	680.910+	680.91+			16	61.28+					J.93+
75001	Mar	1	03/06	4	01	6077.067+	2804.80+			11	252.43+	0.462+				J.93+
75001	Feb	1	02/06	3	09	680.910+	680.91+			16	61.28+					J.93+
75001	Feb	1	02/06	3	01	6077.067+	2804.80+			11	252.43+	0.462+				J.93+
75001	Feb	1	02/06	4	09	1015.060+	1015.06+			16	91.36+					J.93+
75001	Feb	1	02/06	4	01	6077.067+	2804.80+			11	252.43+	0.462+				J.93+
75001	Jan	1	01/06	4	09	1003.750+	1003.75+			16	90.33+					J.93+
75001	Jan	1	01/06	4	01	6077.067+	2804.80+			11	252.43+	0.462+				J.93+
75001	Jan	1	01/06	3	09	680.910+	680.91+			16	61.28+					J.93+
75001	Jan	1	01/06	3	01	6077.067+	2804.80+			11	252.43+	0.462+				J.93+
75001	Jan	1	01/06	3	09	1200.000+	1200.00+			16	108.00+					J.93+
75001	Dec	1	12/05	3	09	680.910+	680.91+			16	61.28+					
75001	Dec	1	12/05	3	01	6077.067+	2804.80+			11	252.43+	0.462+				J.93+
75001	Dec	1	12/05	4	09	680.910+	680.91+			16	61.28+					J.93+
75001	Dec	1	12/05	4	01	6077.067+	2804.80+			11	252.43+	0.462+				J.93+
75001	Dec	1	12/05	5	09	680.910+	680.91+			16	61.28+					J.93+
75001	Dec	1	12/05	5	01	6077.067+	2804.80+			11	252.43+	0.462+				J.93+
75001	Jan	1	11/05	3	09	680.910+	680.91+			16	61.28+					J.93+
75001	Jan	1	11/05	3	01	6077.067+	2804.80+			11	252.43+	0.462+				J.93+
75001	Nov	1	11/05	4	09	680.910+	680.91+			16	61.28+					J.93+
75001	Nov	1	11/05	4	01	6077.067+	2804.80+			11	252.43+	0.462+				J.93+

Payroll Detail Information

Daniel A Catalano

SSN:

Fiscal Year: 2005/2006 Agency Code: 0097

<u>Coverage Group</u>	<u>Business Month</u>	<u>Continuous Count</u>	<u>Service Month</u>	<u>Type</u>	<u>Pay Code</u>	<u>Pay Rate</u>	<u>Earnings</u>	<u>Code</u>	<u>Normal Contribution</u>	<u>Code</u>	<u>Tax Deferred Member Contribution</u>	<u>Service Credit</u>	<u>Unit/Agency Code</u>	<u>Account Code</u>	<u>Survivor Amount</u>	<u>Discrepancy Flag</u>
75001	Aug	1	02/04	3	09	20.010+	20.01+		16		1.80+					
75001	Aug	1	01/04	5	09	20.010+	20.01+		16		1.80+					
75001	Aug	1	01/04	4	09	20.010+	20.01+		16		1.80+					
75001	Aug	1	12/03	4	09	20.010+	20.01+		16		1.80+					
75001	Aug	1	10/03	3	09	20.010+	20.01+		16		1.80+					
75001	Aug	1	09/03	3	09	20.010+	20.01+		16		1.80+					
75001	Aug	1	02/03	3	09	39.120+	39.12+		16		3.52+					
75001	Aug	1	12/02	4	09	39.120+	39.12+		16		3.52+					
75001	Aug	1	12/02	3	09	71.720+	71.72+		16		6.45+					
75001	Aug	1	11/02	4	09	19.560+	19.56+		16		1.76+					
75001	Aug	1	11/02	3	09	19.560+	19.56+		16		1.76+					
75001	Aug	1	10/02	3	09	19.560+	19.56+		16		1.76+					
75001	Aug	1	08/02	4	09	19.560+	19.56+		16		1.76+					
75001	Aug	1	08/02	3	09	19.560+	19.56+		16		1.76+					

Payroll Detail Information

Eldo E Evenson

SSN:

Fiscal Year: 2004/2005 Agency Code: 0097

Coverage Group	Business Month	Continuous Count	Service Month	Type	Pay Code	Pay Rate	Earnings	Code	Normal Contribution	Code	Tax Deferred Member Contribution	Service Credit	Unit/Agency Code	Account Code	Survivor Amount	Discrepancy Flag
75001	Jun	1	06/05	4	09	660.400+	660.40+			16	59.44+					
75001	Jun	1	06/05	4	01	5841.333+	2696.00+			11	242.64+	0.462+			0.93+	
75001	Jun	1	06/05	3	09	972.050+	972.05+			16	87.48+					
75001	Jun	1	06/05	3	01	5841.333+	2696.00+			11	242.64+	0.462+			0.93+	
75001	May	4	04/05	3	09	660.400+	660.40+			16	59.44+					
75001	Apr	1	04/05	3	09	43.720+	43.72+			16	3.93+					
75001	May	4	04/05	3	01	5841.333+	2696.00+			11	242.64+	0.462+			0.93+	
75001	Mar	2	03/05	3	09	660.400+	660.40+			16	59.44+					
75001	Mar	1	03/05	4	01	5841.333+	2696.01+			11	242.64+	0.462+			0.93+	
75001	Mar	1	03/05	3	01	5841.333+	2696.00+			11	242.64+	0.462+			0.93+	
75001	Feb	1	02/05	4	09	918.950+	918.95+			16	82.71+					
75001	Feb	1	02/05	3	09	396.550+	396.55+			16	35.69+					
75001	Feb	1	02/05	4	01	5841.333+	2696.01+			11	242.64+	0.462+			0.93+	
75001	Feb	1	02/05	3	01	5959.200+	2750.40+			11	247.53+	0.462+			0.93+	
75001	Feb	1	01/05	4	09	396.550+	396.55+			16	35.69+					
75001	Feb	1	01/05	4	01	5959.200+	2750.40+			11	247.53+	0.462+			0.93+	
75001	Jan	1	01/05	3	09	396.550+	396.55+			16	35.69+					
75001	Jan	1	01/05	3	01	5959.200+	2750.40+			11	247.53+	0.462+			0.93+	
75001	Jan	1	01/05	3	09	1200.000+	1200.00+			16	108.00+					
75001	Dec	1	12/04	5	09	396.550+	396.55+			16	35.69+					
75001	Dec	2	12/04	3	09	396.550+	396.55+			16	35.69+					
75001	Dec	1	12/04	5	01	5959.200+	2750.40+			11	247.53+	0.462+			0.93+	
75001	Nov	1	11/04	4	09	622.950+	622.95+			16	56.07+					
75001	Apr	1	09/04	3	01	5841.333+	1120.00+			15	100.80+					
75001	Nov	4	09/04	4	09	396.550+	396.55+			16	35.69+					
75001	Sep	1	09/04	3	09	622.950+	622.95+			16	56.07+					
75001	Aug	2	08/04	3	09	396.550+	396.55+			16	35.69+					
75001	Dec	10	08/04	3	01	5959.200+	2750.40+			11	247.53+	0.462+			0.93+	
75001	Aug	1	07/04	5	09	396.550+	396.55+			16	35.69+					
75001	Oct	1	07/04	4	09	396.550+	396.55+			16	35.69+					
75001	Oct	1	07/04	3	09	740.350+	740.35+			16	66.63+					
75001	Aug	1	07/04	5	01	5959.200+	2750.40+			11	247.53+	0.462+			0.93+	
75001	Oct	2	07/04	3	01	5959.200+	2750.40+			11	247.53+	0.462+			0.93+	

01/07/13

LINE	DESCRIPTION	AMOUNT	AMOUNT	AMOUNT	AMOUNT	AMOUNT	AMOUNT	AMOUNT	AMOUNT	AMOUNT
1 P	Regular	63.58	36,500	2,320.67	3,917.55					
2 P	Uniform Allow				1,200.00					
3 P	Comp/Premium	11.00	36,500							
4 P	Sick	11.42	36,500		416.83					
5 P	Comp/Taken				1,323.13					
6 P	Inj-Sabbv	5.00	36,500	182.50	182.50					
7 P	Holiday/Prem	11.42	33,500	382.57	382.57					
8 P	FTO Cash				418.83					
9 P	Vac Overage	7.38	36,500	289.37	538.74					
10 P	Premium OT				714.48					
11	Motor Pay				292.00					
12	Spec Prem OT				198.85					
13 B	Holiday				224.62					
14 B	Longevty/10%				584.00					
15 B	Adv POST				350.40					
16 B	Edinc PDA-AA				175.20					
17	PERB				87.80					
GROSS WAGES					4662.86					
FEDERAL INCOME TAX					802.35					
STATE INCOME TAX					182.57					
MEDICAL TRUST					44.96					
VSP COVERAGE					0.00					
DENTAL/PO EE2					0.00					
PORAC EE+1					3.67					
ADDFER					0.00					
OPTIONAL LIFE INS					1.58					
AD&D					3.00					
BURWOR					.93					
PHILIFE					32.05					
POA DUES					31.63					
ADDF DUES					113.88					
CREDIT UNION LOAN					2028.68					
PERB					277.81					
TOTAL					11,556.74					
NET PAY					1,771.26					
TOTAL					537.19					
TOTAL					899.92					
TOTAL					2.41					
TOTAL					16.35					
TOTAL					24.78					
TOTAL					1.85					
TOTAL					1.58					
TOTAL					8.00					
TOTAL					1.86					
TOTAL					64.10					
TOTAL					63.26					
TOTAL					227.72					
TOTAL					4,058.32					
TOTAL					838.93					

6/07/4

Spec	Pay Type	Pay Amount Description	Hours	Hourly Rate	Gross Pay	YTD Amount	DR#	Discretionary Deduction	YTD Gross Pay	YTD Gross Pay	YTD Gross Pay
1 P	Regular		90.00	36.500	2,920.00	6,837.55		Gross Wages	5669.82	17,226.56	
2 P	Uniform Allow					1,200.00		Federal Income Tax	866.87	2,857.13	
3 P	Comp Premium		8.00	36.500				State Income Tax	288.03	825.22	
4 P	Sick					416.83	1088	Medical Trust	44.96	134.88	
5 P	Comp Taken					1,323.13	2105	VSP Coverage	0.00	2.41	
6 P	Inj-Safety					192.60		Delta PPO EE2	0.00	16.35	
7 P	Holiday Prem		8.00	33.500	268.00	650.57	2324	PORAC EE+1	3.87	28.46	
8 P	FTO Cash		20.00	36.500	730.00	1,146.83		Optional Life Ins	1.59	5.03	
9 P	Vac Overage		7.38	36.500	269.37	808.11	3010	AD&D	3.00	9.00	
10 P	Premium OT		4.00	68.438	273.75	988.24	3020	Survivor	.93	2.79	
11	Motor Pay				146.00	438.00	3050	PrinLife	32.05	96.15	
12	Spec Prem OT				76.24	275.19	7007	POA Dues	31.83	94.89	
13 B	Holiday				112.31	336.83		Addl Dues	113.86	341.58	
14 B	Longevity 10%				292.00	875.00	7050	Credit Union	2029.66	6,088.88	
15 B	Adv POST				175.20	525.60		PERS	318.35	958.28	
16 B	Edinc POA-AA				87.60	262.80		2.25 PERS Contribution	106.45	319.42	
17	PERS				319.35	958.28			0.00		

Address Number: 23368

Check Date: 2/2/2007

Address Number: 23368

Check Date: 2/2/2007

Gross Pay: 3193.55

YTD Gross Pay: 17,226.56

02/107/3

Seq	Pay/Account	Pay Description	Hours	Rate	Gross Pay	TD Allow	Deductions	Gross Pay	TD Allow
1 P	Regular		80.001	36.500	2,920.00	9,757.55		5907.73	23,134.29
2 P	Unifrm Allow					1,200.00	Federal Income Tax	952.89	3,610.02
3 P	Sick					418.83	State Income Tax	312.41	1,137.63
4 P	Comptaken					1,323.13	Medical/Trust	44.96	178.84
5 P	Inj-Safety					182.50	VSP Coverage	0.00	2.41
6 P	Holiday-Prem					850.57	Dell/PO EE2	0.00	16.35
7 P	FTO Cash		19.98	36.500	729.27	1,976.10	Optional Life Ins	3.67	32.13
8 P	Vac Overage		7.38	36.500	269.37	1,077.48	AD&D	1.58	6.82
9 P	Premium OT		10.00	88.424	884.24	1,872.48	Sum'vor	3.00	12.00
10	Moltr Pay					584.00	Prt/Life	.93	3.72
11	Spec Prem OT					148.00	POA Duess	37.05	128.20
12 B	Holiday					485.72	Add Duess	31.63	126.52
13 B	Longevity10%					448.24	Credit Union	113.86	455.44
14 B	Adv POST					1,168.00		2029.66	9,118.84
15 B	Edinc PO/MA					700.80		307.21	1,259.48
					87.80	350.40			
PERS					301.21	1,250.40	7.75 PERS CONTRIBUTION	100.40	419.82

02/07/14

Address Number: 12345
 City: ALBANY, NY
 State: NY
 Zip: 12242

Check Number: 02/2007
 Pay Period Ending Date: 02/28/2014

Seq. No.	Pay Type	Pay/Account Description	Hours	Holly. Rate	Gross Pay	YTD Amount	YTD Amount	YTD Amount	YTD Amount	YTD Amount	YTD Amount
1 P	Regular		80.00		2,920.00	12,077.55	1,200.00			6158.69	29,292.98
2 P	Uniform Allow						1,200.00			1024.18	4,634.18
3 P	Comp/Premium		8.00	36.500	292.00	1,200.00				336.08	1,473.71
4 P	Sick									44.45	224.29
5 P	Comp/Taken									0.00	2.41
6 P	Inj-Safety									0.00	16.35
7 P	Holiday/Prem		11.42	33.600	382.57	1,033.14	2324	PORAC EE-1	3.07	3.07	35.80
8 P	FTO Cash		8.58	36.500	312.44	2,188.54		Optional Life Ins	1.59	1.59	8.21
9 P	Vac Overage		7.38	36.500	268.37	1,346.89			3.00	3.00	15.00
10 P	Premium OT		15.00	60.809	809.14	2,581.82	3020	Survivor	.93	.93	4.65
11	Major Pay				148.00	730.00	3050	Prnl/Le	32.05	32.05	180.25
12	Spec Prem OT				253.16	718.88	7007	POA Dues	31.53	31.53	158.15
13 B	Holiday				112.31	561.55		Add Dues	113.98	113.98	569.30
14 B	Longevity %				292.00	1,480.00	7050	Credit Union	2029.66	2029.66	10,148.30
15 B	Adv POST				175.20	878.00			298.90	298.90	1,558.39
16 B	Edline POA-AA				87.80	438.00		2.25 PERA Contribution	99.83	99.83	519.45
17	PERA					236,801	1,540,330			1,070	

Order No: 1018
 Order Date: 02/07/14
 Order Amount: 1,540,330

03/07/14

Seq	Pay Type	Pay/Allow Description	Rate	Hours	Amount	YTD Amount	YTD Hours	YTD Rate	YTD Gross	YTD Tax	YTD Net
1 P	Regular		69.50	36.500	2,538.75	17,732.90			Gross Wages	8476.58	41,382.83
2 P	Uniform Allow					1,200.00			Federal Income Tax	1126.33	8,527.09
3 P	Comp/Premium		12.00	36.500		418.83			State Income Tax	370.02	2,124.59
4 P	SICK					2,034.88			Medical/Trust	0.00	288.74
5 P	Comp Taken		10.50	36.500	383.25	2,555.50			VSP Coverage	0.00	2.41
6 P	Inf Safety					1,033.14			Delapp/EE2	0.00	18.35
7 P	Holiday/Prm					3,276.24			PORAC EE+1	3.87	43.14
8 P	FTO Cash		18.38	36.500	670.87	1,895.59			Optional Life Ins	0.00	9.80
9 P	Vac Overage		7.38	36.500	289.37	1,895.59			AD&D	0.00	18.00
10 P	Premium OT		17.60	67.329	1,178.25	4,474.38			Survivor	.33	6.51
11	Motor Pay				146.00	1,022.00			FunLife	0.00	192.30
12	Spec Prem OT				328.11	1,245.94			POA Dues	0.00	189.78
13 B	Holiday				112.31	788.17			Addl Dues	0.00	883.18
14 B	Longevity/0%				292.00	2,044.00			Credit Union	0.00	12,177.88
15 B	Adv/POST				175.20	1,228.40			PERS	287.27	2,135.78
18 B	Edinc POA/AA				87.80	813.20			2.25 PERS Contribution	99.08	711.91
17	PERS				287.27	2,135.78				0.00	

908

04/07/13

Seq	Pay Type	Pay/Account Description	Hours	Hourly Rate	Gross Pay	YTD Amount	DEBIT Code	DEBIT Description	CREDIT	YTD Credit
1	P	Regular	17.42	37.230	649.55	18,361.35		Gross Wages	5196.28	46,579.12
2	P	Uniform Allow			1,200.00	1,200.00		Federal Income Tax	815.66	7,242.75
3	P	Sick	11.42	37.230	425.17	842.00		State Income Tax	187.52	2,312.11
4	P	Comp/Taken	12.83	37.230	477.86	2,512.54	1088	Medical/Trust	44.45	313.18
5	P	Int-Safety	10.50	37.230	390.92	848.42	2106	VSP Coverage	0.00	2.41
6	P	Assoc Time	27.83	37.230	1,036.11	1,036.11		DeltaPPO EE2	0.00	16.35
7	P	Holiday/Prm			1,033.14	1,033.14	2324	PORAC EE+1	3.67	46.81
8	P	FTO Cash			3,276.24	3,276.24		Optional Life Ins	1.59	11.39
9	P	Vac Overage	7.38	37.230	274.76	2,160.35	3010	AD&D	3.00	21.00
10	P	Premium OT	12.00	55.845	670.14	5,144.50	3020	Survivor	.93	7.44
11		Motor Pay			146.92	1,170.92	3050	PrmlLife	32.05	224.35
12		Spec Prem OT			186.60	1,432.54	4010	Nationwide	300.00	300.00
13	B	Holiday			114.55	900.72	7007	POA Dues	31.63	221.41
14	B	Longevty/10%			297.84	2,341.84		Addl Dues	113.86	797.02
15	B	AGY POST			176.70	1,405.10	7050	Credit Union	2029.66	14,207.62
16	B	Edific POA-AA			89.36	702.65		PERS	257.02	2,392.80
17		PERS			257.02	2,392.80		PERS Contribution	85.67	797.58

06/07/13

Seq	Type	Pay Account Description	Rate	Hours	Gross Pay	YTD Amount	OBA Code	Pay Description	Debit Amount	YTD Debit Amount
1 P		Regular	70.00	37.230	2,606.10	29,311.34		Gross Wages	5,988.92	68,404.81
2 P		Uniform Allow				1,200.00		Federal Income Tax	882.04	10,327.43
3 P		Comp Premium	8.00	37.230		842.00	1088	State Income Tax	298.61	3,293.57
4 P		Sick			372.30	3,498.16	2108	Medicaid	44.45	480.99
5 P		Comp Taken	10.00	37.230		646.42		VSP Coverage	0.00	2.41
6 P		Inj-Safety				1,036.11	2324	DeltaPPO EE2	0.00	18.35
7 P		Assoc Time				1,033.14		Optional Life Ins	3.67	61.49
8 P		Holiday/Prem	34.63	37.230	1,288.27	4,565.51	3010		3.00	33.00
9 P		FTO Cash			274.78	3,259.39	3020	AD&D	.93	11.16
10 P		Vac Overage	7.38	37.230		7,582.43	3050	Survivor	32.05	352.55
11 P		Premium OT			212.04	1,766.80	4010	PinLife	300.00	1,500.00
12		Motor Pay			149.82	2,105.83	7007	Nationwide	32.26	350.45
13		Spec Prem OT			59.04	1,358.92		POA Dues	111.61	1,243.46
14 B		Holiday			114.55	3,533.20	7050	Credit Union	2079.86	22,326.26
15 B		Longevity 0%			297.84	2,119.90		PERs	344.05	3,507.91
16 B		Adv POST			176.70	1,059.95		2.25 PERs Contribution	114.88	1,189.27
17 B		Edine POA-AA			89.35					
PERs					241.05	3,507.91			0.00	

Seq	Type	Pay Account Description	Rate	Hours	Gross Pay	YTD Amount	OBA Code	Pay Description	Debit Amount	YTD Debit Amount
18		PERs			241.05	3,507.91			0.00	

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06/07/14

Seq	Pay Type	Pay Method Description	Hours	Rate	Gross Pay	YTD Allow	DBA Code	Description	Current Amount	YTD Gross Amount
1	P	Regular	53.16	37.230	1,979.15	31,280.49		Gross Wages	4679.75	73,084.56
2	P	Unltdm Allow				1,200.00		Federal Income Tax	549.18	10,878.69
3	P	Sick-Family	11.42	37.230	425.17	425.17		State Income Tax	182.78	3,458.35
4	P	Comp-Premium	18.00	37.230			1088	Medicatrust	44.45	535.44
5	P	Sick	11.42	37.230	425.17	1,267.17	2106	VSP Coverage	0.00	2.41
6	P	Comp-Taken	1.00	37.230	37.23	3,533.39		DeliaPPO EE2	0.00	16.35
7	P	Int-Salary	3.00	37.230	111.89	758.11	2324	FORAC EE-1	3.67	85.18
8	P	Assoc Time				1,036.11		Optional Life Ins	1.59	19.34
9	P	Holiday/Prem				1,033.14	3010	AD&D	3.00	36.00
10	P	FTO Cash	8.56	37.230	318.89	4,884.20	3020	Surkovr	.83	12.09
11	P	Vac Overage	7.38	37.230	274.78	3,534.15	3050	PubLife	32.05	384.60
12	P	Premium OT				7,562.43	4010	Nationwide	300.00	1,800.00
13		Molatr Pay			148.92	1,915.52	7007	POA Dues	32.26	382.71
14		Spec Prem OT				2,105.83		Addl Dues	111.81	1,355.07
15	B	Holiday			114.55	1,473.47	7050	Credit Union	2029.66	24,355.92
16	B	Longevity 10%			297.94	3,831.04		PER8	278.63	3,798.44
17	B	Adv POST			178.70	2,298.60		2.25 PER8 Contribution	92.84	1,292.11
18	B	EDITE POKAM			89.25	1,149.30			0.00	
19		PER8			278.63	3,798.44			0.00	

Address Number
 2388
 1722409
 24 PERIOD END DATE
 6/30/14
 COUNTY
 STATE

Pay Period Ending	Hourly Pay Rate	Hours Worked	Base Pay	Special Pays	Rate	subtotal	Hours Worked	subtotal	Hourly Pay Rate	Holiday Premium Pay Overtime Payrate	Hours of Premium Overtime	Holiday Premium Amount
1/12/2007	36.50 *	80 =	2,920.00 +	813.42 *	1.5 =	5,600.13 /	80 =	70.00 -	36.50 =	33.50 *	11.42 =	382.59
1/26/2007	36.50 *	80 =	2,920.00 +	813.11 *	1.5 =	5,599.67 /	80 =	70.00 -	36.50 =	33.50 *	8 =	267.97
2/26/2007	36.50 *	80 =	2,920.00 +	813.11 *	1.5 =	5,599.67 /	80 =	70.00 -	36.50 =	33.50 *	11.42 =	382.52
7/xx/2007	37.23 *	80 =	2,978.40 +	829.36 *	1.5 =	5,711.64 /	80 =	71.40 -	37.23 =	34.17 *	11.42 =	390.17

* Special compensation included in calculation is Motor Pay, Holiday Pay, Longevity Pay, Advanced POST Pay and Education Pay)

Formula given to CalPERS from Huntington Beach

$$((\text{hourly Pay Rate} * \text{Hours Worked} + \text{All Special Pays}) * 1.5) / \text{Hours Worked} - \text{Hourly Pay Rate} = \text{Holiday Premium Pay Overtime Payrate}$$

Formula outlined in MOU

G. 2. Employees who work on a recognized City Holiday shall be compensated at their overtime rate for time actually worked form 12:00 A.M. through 11.59 P.M.

However, the holidays are being compensated at up to 262% of their normal rate of pay.

Days worked with Holiday Premium Pay Equals a Rate of Pay 262% over Regular Rate of Pay

Huntington Beach compensates their employees for 10 City recognized holidays through Holiday Pay.
 This amount is paid every pay period regardless if the employee worked a holiday or not.
 Mr. Evenson was paid \$112.31 per pay period for Holiday Pay

$$112.31 * 26 = 2920.06 / 10 = 292.01 \quad \text{Average amount paid to Mr. Evenson for each of the 10 holidays recognized by Huntington Beach}$$

The only holiday recognized by the City in the first pay period of the year is New Year's Day

In the first pay period in January 2007, Mr. Evenson's pay stub shows he worked on a holiday for 11.42 hours

	Hours	Hourly Payrate	Amount Paid
Hours paid at his regular rate of pay of \$36.50	11.42	* 36.5	416.83
In addition he was also paid \$33.50 for the same 11.42 hours as Holiday Premium	11.42	33.5	382.57
In addition he was paid an average of \$292.01 per City recognized holiday	-	-	<u>292.01</u>
Total amount paid to employee for 11.42 hours on January 1, 2007			1091.41
 Hourly rate paid to employee for the 11.42 hours on January 1, 2007			 95.57
 Regular hourly rate of pay			 36.50
 Increase of payrate for holidays worked compared to average payrate			 262%

RESPONDENTS' EXHIBITS

**Daniel A. Catalano, Norman (Eldo) E. Evenson
CalPERS Case No. 9329
OAH Case No. L-2011061387**

Exhibit	Document	Date
8-A	CalPERS Statement of Issues	June 15, 2011
A	CalPERS Acceptance of Request for Appeal on behalf of Bright and Evenson	February 23, 2009
B	CalPERS Legal Office Notice re receipt of Bright / Evenson Appeal	April 15, 2009
C	Stephen H. Silver letter to Peter Mixon/CalPERS Legal Office requesting information re referral of matter to Legal Office	April 20, 2009
D	CalPERS Notice of Case Assignment	July 13, 2009
E	2 CCR § 571 California Code of Regulations	September 2011
F	Respondents' Trial Brief	November 14, 2011
G	2 CCR § 571 California Code of Regulations	September 2011
H	CalPERS Office of Audit Services Public Agency Audit - City of Huntington Beach	July 2003

1 PETER H. MIXON, GENERAL COUNSEL
HENRY W. CROWLE, SENIOR STAFF COUNSEL, SBN 49359
2 CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
Lincoln Plaza North, 400 "Q" Street, Sacramento, CA 95811
3 P.O. Box 942707, Sacramento, CA 94229-2707
Telephone: (916) 795-0119
4 Facsimile: (916) 795-3659

5 Attorneys for Petitioner California
Public Employees' Retirement System
6

7 BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
8

9	In the Matter of the Calculation of Final	)	CASE NO. 9329
10	Compensation of	)	OAH NO. L-2011061387
11	RICHARD C. BRIGHT, NORMAN (ELDO)	)	STATEMENT OF ISSUES
12	E. EVENSON AND DANIEL CATALANO,	)	Hearing Date: November 15 & 16, 2011
13	Respondent,	)	Hearing Location: Los Angeles, CA
14	and)	
15	CITY OF HUNTINGTON BEACH,)	
	Respondent.)	

16
17 Petitioner California Public Employees' Retirement System (CalPERS), states:

18 I

19 Petitioner makes and files this Statement of Issues in its official capacity as
20 such and not otherwise.

21 II

22 Respondents Richard C. Bright, Norman (Eldo) E. Evenson and Daniel
23 Catalano (respondents Bright, Evenson and Catalano) were employed by respondent
24 City of Huntington Beach (respondent City). Respondent Bright retired effective
25 December 27, 2008 as a Police Lieutenant on industrial disability with just over 31
26 years of service credit. Respondent Evenson retired effective September 20, 2008 as
27 a Motor Police Officer on industrial disability with just over 29 years of service credit.
28

1 Respondent Catalano retired effective November 6, 2009 as a Police Officer
2 with just over thirty years of service credit.

3 Respondent City is a public agency contracting with CalPERS for retirement
4 benefits for its eligible employees. The provisions of respondent City's contract with
5 CalPERS are contained in the California Public Employees' Retirement Law (the
6 PERL).

7 CalPERS is a defined benefit plan. Benefits for its members are funded by
8 member and employer contributions, and by interest and other earnings on those
9 contributions. The amount of a member's contributions is determined by applying a
10 fixed percentage to the member's compensation. A public agency's contribution is
11 determined by applying a rate to the payroll of the agency. Using certain actuarial
12 assumptions specified by law, the CalPERS Board of Administration sets the employer
13 contribution rate on an annual basis.

14 III

15 The amount of a member's service retirement allowance is calculated by
16 applying a percentage figure, based upon the member's age on the date of retirement,
17 to the member's years of service and the member's "final compensation." In
18 computing a member's retirement allowance, CalPERS staff may review the salary
19 reported by the employer for the member to ensure that only those items allowed
20 under the PERL will be included in the member's "final compensation" for purposes of
21 calculating the retirement allowance. Respondent City not only reported as special
22 compensation Holiday Pay, it also reported special compensation identified as Holiday
23 Premium Pay for Holidays Worked. CalPERS rejected the Holidays Premium Pay as
24 special compensation, on the basis that it is considered overtime and therefore does
25 not constitute reportable compensation pursuant to Government Code section 20635.
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IV

The following provisions of the Government Code, which were in effect at all times pertinent to this appeal, are relevant to calculation of final compensation:

Section 20630 provides in pertinent part:

(a) As used in this part, "compensation" means the 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 any of the following:

- (1) Holidays.
- (2) Sick leave.
- (3) Industrial disability leave, during which, benefits are payable pursuant to Sections 4800 and 4850 of the Labor Code or Article 4 (commencing with Section 19869) of Chapter 2.5 of Part 2.6, or Section 44043 or 87042 of the Education Code.
- (4) Vacation.
- (5) Compensatory time off.
- (6) Leave of absence.

(b) When compensation is reported to the board, the employer shall identify the pay period in which the compensation was earned regardless of when reported or paid. Compensation shall be reported in accordance with Section 20636 and shall not exceed compensation earnable, as defined in Section 20636.

Section 20631 provides:

A contracting agency may report an amount for each member that is equal to a uniformly applied percentage of salary in lieu of computing and reporting the actual compensation attributable to each individual member if the contracting agency has agreed in a memorandum of understanding reached pursuant to Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 that the aggregate amount to be reported by the contracting agency for all members within a membership classification bears a reasonable relation to the aggregate amount that would otherwise be required to be reported pursuant to Section 20636.

Section 20635 provides:

When the compensation of a member is a factor in any computation to be made under this part, there shall be excluded from those computations any compensation based on overtime put in by a member whose service retirement allowance is a fixed percentage of final compensation for each year of credited service. For the purposes of this part, overtime is the aggregate service performed by an employee as a member for all employers and in all categories of employment in excess of the hours of work considered normal for employees on a full-time basis, and for which monetary compensation is paid.

1 If a member concurrently renders service in two or more positions,
2 one or more of which is full time, service in the part-time position
3 shall constitute overtime. If two or more positions are permanent
4 and full time, the position with the highest payrate or base pay shall
5 be reported to this system. This provision shall apply only to service
6 rendered on or after July 1, 1994.

7 Section 20636 provides:

8 (a) "Compensation earnable" by a member means the payrate and
9 special compensation of the member, as defined by subdivisions (b),
10 (c), and (g), and as limited by Section 21752.5.

11 (b) (1) "Payrate" means the normal monthly rate of pay or base pay
12 of the member paid in cash to similarly situated members of the
13 same group or class of employment for services rendered on a full-
14 time basis during normal working hours, pursuant to publicly
15 available pay schedules. "Payrate," for a member who is not in a
16 group or class, means the monthly rate of pay or base pay of the
17 member, paid in cash and pursuant to publicly available pay
18 schedules, for services rendered on a full-time basis during normal
19 working hours, subject to the limitations of paragraph (2) of
20 subdivision (e).

21 (2) "Payrate" shall include an amount deducted from a member's
22 salary for any of the following:

23 (A) Participation in a deferred compensation plan.

24 (B) Payment for participation in a retirement plan that meets the
25 requirements of Section 401(k) of Title 26 of the United States Code.

26 (C) Payment into a money purchase pension plan and trust that
27 meets the requirements of Section 401(a) of Title 26 of the United
28 States Code.

(D) Participation in a flexible benefits program.

(3) The computation for a leave without pay of a member shall be
based on the compensation earnable by him or her at the beginning
of the absence.

(4) The computation for time prior to entering state service shall be
based on the compensation earnable by him or her in the position
first held by him or her in state service.

(c) (1) Special compensation of a member includes any payment
received for special skills, knowledge, abilities, work assignment,
workdays or hours, or other work conditions.

(2) Special compensation shall be limited to that which is 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. If an individual is not part of a group or class, special
compensation shall be limited to that which the board determines is
received by similarly situated members in the closest related group
or class that is in addition to payrate, subject to the limitations of
paragraph (2) of subdivision (e).

1 (3) Special compensation shall be for services rendered during
2 normal working hours and, when reported to the board, the
3 employer shall identify the pay period in which the special
4 compensation was earned.

5 (4) Special compensation may include the full monetary value of
6 normal contributions paid to the board by the employer, on behalf of
7 the member and pursuant to Section 20691, provided that the
8 employer's labor policy or agreement specifically provides for the
9 inclusion of the normal contribution payment in compensation
10 earnable.

11 (5) The monetary value of a service or noncash advantage furnished
12 by the employer to the member, except as expressly and specifically
13 provided in this part, is not special compensation unless regulations
14 promulgated by the board specifically determine that value to be
15 "special compensation."

16 (6) The board shall promulgate regulations that delineate more
17 specifically and exclusively what constitutes "special compensation"
18 as used in this section. A uniform allowance, the monetary value of
19 employer-provided uniforms, holiday pay, and premium pay for
20 hours worked within the normally scheduled or regular working
21 hours that are in excess of the statutory maximum workweek or
22 work period applicable to the employee under Section 201 et seq. of
23 Title 29 of the United States Code shall be included as special
24 compensation and appropriately defined in those regulations.

25 (7) Special compensation does not include any of the following:

26 (A) Final settlement pay.

27 (B) Payments made for additional services rendered outside of
28 normal working hours, whether paid in lump sum or otherwise.

(C) Any other payments the board has not affirmatively determined
to be special compensation.

(d) Notwithstanding any other provision of law, payrate and special
compensation schedules, ordinances, or similar documents shall be
public records available for public scrutiny.

(e) (1) As used in this part, "group or class of employment" means a
number of employees considered together because they share
similarities in job duties, work location, collective bargaining unit, or
other logical work related grouping. Under no circumstances shall
one employee be considered a group or class.

(2) Increases in compensation earnable granted to an employee
who is not in a group or class shall be limited during the final
compensation period applicable to the employees, as well as the
two years immediately preceding the final compensation period, to
the average increase in compensation earnable during the same
period reported by the employer for all employees who are in the
same membership classification, except as may otherwise be
determined pursuant to regulations adopted by the board that
establish reasonable standards for granting exceptions.

1 (f) As used in this part, "final settlement pay" means any pay or cash
2 conversions of employee benefits that are in excess of
3 compensation earnable, that are granted or awarded to a member in
4 connection with, or in anticipation of, a separation from employment.

5 The board shall promulgate regulations that delineate more
6 specifically what constitutes final settlement pay.

7 V

8 The Board of Administration exclusively delineated all items of "special
9 compensation" in California Code of Regulations, Title 2, Division 1, Chapter 2,
10 Subchapter 1, Article 4, section 571.

11 That section provides in pertinent part:

12 a) The following list exclusively identifies and defines special
13 compensation items for members employed by contracting agency
14 and school employers that must be reported to CalPERS if they are
15 contained in a written labor policy or agreement:

16 (1) INCENTIVE PAY

17 (2) EDUCATIONAL PAY

18 (3) PREMIUM PAY

19 (4) SPECIAL ASSIGNMENT PAY

20 Shift Differential - Compensation to employees who are routinely
21 and consistently scheduled to work other than a standard "daytime" shift,
22 e.g. graveyard shift, swing shift, shift change, rotating shift, split shift or
23 weekends.

24 (5) STATUTORY ITEMS

25 Holiday Pay - Additional compensation for employees who are
26 normally required to work on an approved holiday because they work in
27 positions that require scheduled staffing without regard to holidays. If these
28 employees are paid over and above their normal monthly rate of pay for
approved holidays, the additional compensation is holiday pay and
reportable to PERS.

For those employees with written labor agreements providing
holiday credit and allowing employees to cash out accumulated holiday
credit, the cash out must be done at least annually and reported in the
period earned. If a written labor agreement allows an employee to
accumulate holiday credit beyond the year in which it is earned and an
employee later elects to cash out accumulated holiday credit, it is not
compensation for PERS purposes.

If an employee utilizes the cash out option only during his/her final
compensation period, it will be considered final settlement pay and

1 excluded from reportable compensation. If the cash out option is also
2 utilized near his/her final compensation period, it may still be excluded
3 based upon a review of the contracting agency or school employer's
4 experience relating to: the number of employees in the group with this
5 option; the number of employees who exercise this option; the frequency
6 with which employees exercise this option; whether or not the cash out is
7 paid periodically, and in a manner that is historically consistent; and
8 whether or not the cash out would create an unfunded liability over and
9 above PERS' actuarial assumptions. This review will be conducted by
10 PERS on a case-by-base basis.

11 (b) The Board has determined that all items of special compensation
12 listed in subsection (a) are:

13 (1) Contained in a written labor policy or agreement;

14 (2) Available to all members in the group or class;

15 (3) Part of normally required duties;

16 (4) Performed during normal hours of employment;

17 (5) Paid periodically as earned;

18 (6) Historically consistent with prior payments for the job
19 classification;

20 (7) Not paid exclusively in the final compensation period;

21 (8) Not final settlement pay; and

22 (9) Not creating an unfunded liability over and above PERS'
23 actuarial assumptions.

24 (c) Only items listed in subsection (a) have been affirmatively
25 determined to be special compensation. All items of special compensation
26 reported to PERS will be subject to review for continued conformity with all
27 of the standards listed in subsection (b).

28 (d) If an items of special compensation is not listed in subsection (a),
or is out of compliance with any of the standards in subsection (b) as
reported for an individual, then it shall not be used to calculate final
compensation for that individual.

VI

Respondents, Bright, Evenson and Catalano and the respondent City of
Huntington Beach were notified of CalPERS' determination and were advised of their
appeal rights.

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VII

Respondents, Bright, Evenson and Catalano filed timely appeals. Because of the similarity of their circumstances of employment with respondent City of Huntington Beach and request for Holidays Worked being reportable for purposes of final compensation, they are joined as respondents.

IX

This appeal is limited to the issue of whether respondents are entitled to have Holidays Worked pay be reportable for purposes of final compensation.

BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

Dated: 12/15/11 BY Marion Montez
MARION MONTEZ, ASSISTANT DIVISION CHIEF
EMPLOYER SERVICES DIVISION



Employer Services Division
P.O. Box 942709
Sacramento, CA 94229-2709
Telecommunications Device for the Deaf - (916) 795-3240
888 CalPERS (or 888-225-7377) FAX (916) 795-3005

February 23, 2009

Mr. Stephen H. Silver
Silver, Hadden, Silver, Wexler & Levine
P.O. Box 2161
Santa Monica, CA 90407-2161

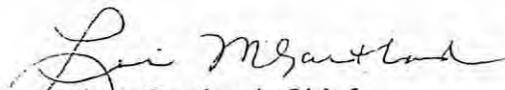
Dear Mr. Silver:

Your recent letter appealing CalPERS' determination regarding disallowance of special compensation pay on behalf of Richard C. Bright and Eldo Evenson has been received and accepted. We will proceed with the Administrative Remedy Process.

This process can take several months to complete and you will be notified by the CalPERS' Legal Office of the hearing date.

If you have any further questions, please contact us at (888) Cal PERS (225-7377).

Sincerely,


Lori McGartland, Chief
Employer Services Division

cc: Richard C. Bright
Eldo Evenson
Michele Carr, HR Director, City of Huntington Beach





Legal Office
P.O. Box 942707
Sacramento, CA 94229-2707
Telecommunications Device for the Deaf - (916) 795-3240
(916) 795-3675 FAX (916) 795-3659

April 15, 2009

Stephen H. Silver, Esq.
Silver, Hadden, Silver, Wexler & Levine
P.O. Box 2161
Santa Monica, CA 90407-2161

Dear Mr. Silver:

Re: APPEAL REGARDING FINAL COMPENSATION OF RICHARD C.
BRIGHT AND ELDO E. EVENSON

This is to acknowledge that the above case was received in the California Public Employees' Retirement System's (CalPERS') Legal Office on May 14, 2009. We will notify you when the case has been assigned to the attorney who will represent CalPERS regarding the appeal. As this appeal proceeds to hearing, CalPERS will request a hearing date from the Office of Administrative Hearings, and will serve you with our Statement of Issues and a Notice of Hearing.

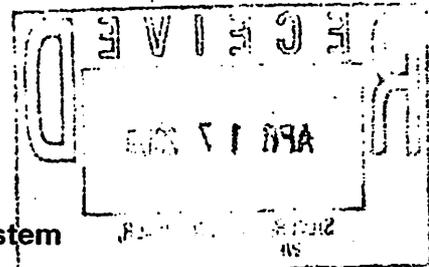
Please send all future correspondence regarding this matter to the above post office box.

If you have any questions, you may contact the Legal Office directly at (916) 795-3675.

Sincerely,

CalPERS Legal Office

cc: Michele Carr, City of Huntington Beach



SILVER, HADDEN, SILVER, WEXLER & LEVINE

A PROFESSIONAL LAW CORPORATION

STEPHEN H. SILVER
JAM J. HADDEN
SUSAN SILVER
ROBERT M. WEXLER
RICHARD A. LEVINE
KEN YUWILER
ELIZABETH SILVER TOURGEMAN
HOWARD A. LIBERMAN
MICHAEL D. SCHWARTZ
MICHAEL SIMIDJIAN

1428 SECOND STREET
SANTA MONICA, CALIFORNIA 90401
MAILING ADDRESS
POST OFFICE BOX 2161
SANTA MONICA, CALIFORNIA 90407-2161
TELEPHONE (310) 393-1486
TELEPHONE (323) 870-0900
FACSIMILE (310) 395-5801

WORKER'S COMPENSATION
OF COUNSEL
STEVEN E. KAYE

April 20, 2009

CalPERS Legal Office
P.O. Box 942707
Sacramento, CA 94229-2707

Re: **SHIFT DIFFERENTIAL PAY FOR HUNTINGTON BEACH POLICE
OFFICERS INCLUDING RETIREES RICHARD C. BRIGHT AND ELDO
EVENSON WHOSE REGULAR WORK SCHEDULE REQUIRES THEM
TO WORK ON A HOLIDAY**

To Whom It May Concern:

I received a letter from an unidentified person in the CalPERS Legal Office dated April 15, 2009 regarding the above-captioned matter. It informed me that the above matter had been received by the Legal Office and that I would be notified when the case has been assigned to the CalPERS attorney. My purpose in writing this letter is to try to "nip in the bud" and thereby avoid a time consuming and expensive appeal hearing which, in my opinion, should not have to occur.

In two separate letters to the City of Huntington Beach dated January 26, 2009 and January 27, 2009, respectively, Section Manager Marion Montez informed the City that, with respect to retired safety members Richard C. Bright and Eldo E. Evenson, holiday premium pay which the City had reported to CalPERS as compensation earnable and caused the attendant employer and member retirement contributions to be paid, would not be regarded as such and, therefore, the final compensation and resulting retirement allowances of those individuals would be reduced. The basis for the position asserted by Ms. Montez is that this premium pay constituted overtime which is expressly excluded from compensation earnable pursuant to Government Code Section 20625. Copies of those letters are enclosed

On February 13, 2009, I addressed a letter to Division Chief Lori McGartland explaining that the position advocated by Ms. Montez was based upon a misunderstanding as to the nature of the holiday premium pay. I observed that, while at first glance this pay may sound like premium overtime compensation, with respect to those holidays that fell on a regular scheduled workday, the premium was not provided for working beyond the regular work schedule. I explained that, instead, under those conditions it represented a form of shift differential pay to individuals whose regular schedule requires them to work at undesirable time, i.e., holidays, when other workers are on a paid leave of absence enjoying the time with their families and

CalPERS Legal Office

April 20, 2009

Page 2

friends. I emphasized that this premium pay fits the definition of "shift differential", which is one of the "special assignment pay" items identified in Section 571(a)(4) of the CalPERS Regulations. I analogized this situation to one of the examples set forth in the Regulations, i.e., premium pay for working on weekends that were included in an individual's regular schedule. A copy of my letter to Ms. McGartland is also enclosed.

What is most significant is that I have not received any explanation that makes any sense as to why the CalPERS staff did not agree with the position advocated in my letter to Ms. McGartland and, instead, decided to refer the matter to your office. Hopefully, the attorney to whom this case is assigned will review all of the correspondence and other relevant materials and contact me immediately so that every effort can be made to resolve this matter without a costly appeal hearing. I would sincerely appreciate the CalPERS Legal Office giving this matter its prompt attention.

Sincerely,


STEPHEN H. SILVER

SHS:rlg

Enclosures

cc: Huntington Beach Police Officers' Association (*via email and U.S. Mail*) (*w/encl.*)
Richard C. Bright (*w/encl.*)
Eldo Evenson (*w/encl.*)
Jennifer McGrath, City Attorney, City of Huntington Beach (*w/encl.*)
Michelle Carr, Human Resources Director, City of Huntington Beach
Peter Mixon, Chief Counsel, CalPERS (*via fax & U.S. Mail*)
Lori McGartland, Division Chief, CalPERS
Marion Montez

05886-ltr.wpd

** Transmit Conf. Report **

P. 1

Apr 20 '09 13:58

Telephone Number	Mode	Start	Time	Pages	Result	Note
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 TELEPHONE (323) 870-0900
 FACSIMILE (310) 395-5801

WORKER'S COMPENSATION
 OF COUNSEL
 STEVEN E. KAYE

DATE: April 20, 2009 FAX NO: (916) 795-3659
 TO: PETER MIXON, CHIEF COUNSEL
 OF: CalPERS
 FROM: STEPHEN H. SILVER

DOCUMENT TRANSMITTED: 2 PAGE LETTER + ATTACHMENT

NUMBER OF PAGES: 4 (including this cover sheet)

COMMENTS:

SHOULD ANY PROBLEM OCCUR DURING TRANSMISSION, PLEASE CALL (310) 393-1486.

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Legal Office
P.O. Box 942707
Sacramento, CA 94229-2707
Telecommunications Device for the Deaf - (916) 795-3240
(916) 795-3675 Fax (916) 795-3659

July 13, 2009

Stephen H. Silver, Esq.
Silver, Hadden, Silver, Wexler & Levine
P.O. Box 2161
Santa Monica, CA 90407-2161

Dear Mr. Silver:

Subject: NOTICE OF CASE ASSIGNMENT - In the Matter of the Calculation of Final Compensation of RICHARD C. BRIGHT and NORMAN (ELDO) E. EVENSON, Respondent, and CITY OF HUNTINGTON BEACH, Respondent, Case No. 9329

This is in response to your appeal letter dated February 13, 2009. Henry W. Crowle, Senior Staff Counsel has been assigned to represent the California Public Employees' Retirement System (CalPERS) in this matter. Please send all future correspondence regarding this matter to the above post office box.

CalPERS will request a hearing date from the Office of Administrative Hearings, and will serve you with our Statement of Issues and a Notice of Hearing.

If you have any questions, you may contact Mr. Crowle at telephone number (916) 795-0119.

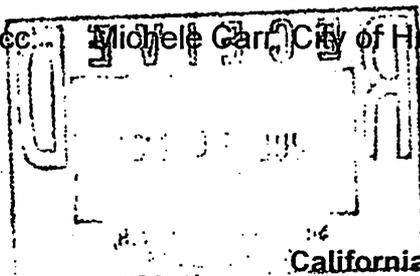
Sincerely,

A handwritten signature in cursive script, appearing to read "Susan D. Buzynski".

Susan D. Buzynski
Associate Governmental Program Analyst
CalPERS Legal Office

SDB:tim

cc: Middlefield, City of Huntington Beach



California Public Employees' Retirement System
www.calpers.ca.gov

Welcome to the online source for the
California Code of Regulations

2 CA ADC § 571

2 CCR § 571

Cal. Admin. Code tit. 2, § 571

Barclays Official California Code of Regulations Currentness

Title 2. Administration

Division 1. Administrative Personnel

Chapter 2. Board of Administration of Public Employees' Retirement System

Subchapter 1. Employees' Retirement System Regulations

Article 4. Contracts

→§ 571. Definition of Special Compensation.

(a) The following list exclusively identifies and defines special compensation items for members employed by contracting agency and school employers that must be reported to CalPERS if they are contained in a written labor policy or agreement:

(1) INCENTIVE PAY

Bonus - Compensation to employees for superior performance such as "annual performance bonus" and "merit pay". If provided only during a member's final compensation period, it shall be excluded from final compensation as "final settlement" pay. A program or system must be in place to plan and identify performance goals and objectives.

Dictation/Shorthand/Typing Premium - Compensation to clerical employees for shorthand, dictation or typing at a specified speed.

Longevity Pay - Additional compensation to employees who have been with an employer, or in a specified job classification, for a certain minimum period of time exceeding five years.

Management Incentive Pay - Compensation granted to management employees in the form of additional time off or extra pay due to the unique nature of their job. Employees within the group cannot have the option to take time off or receive extra pay. This compensation must be reported periodically as earned and must be for duties performed during normal work hours. This compensation cannot be for overtime, nor in lieu of other benefits excluded under the statutes, nor for special compensation not otherwise listed in this Section 571.

Marksmanship Pay - Compensation to local police officers, county peace officers and school police or security officers who meet an established criterion such as "certification" as a marksperson.

Master Police Officer - Compensation to local police officers, county peace officers and school police or security officers who meet specified requirements, years of employment, performance standards, education, Peace Officer Standard Training (POST), and perform a

specialty assignment.

Physical Fitness Program - Compensation to local safety members and school security officers who meet an established physical fitness criterion.

Value of Employer-Paid Member Contributions (EPMC) - The full monetary value of employer-paid member contributions (EPMC) paid to CalPERS and reported as an item of special compensation on behalf of all members in a group or class.

The value of EPMC is calculated on all "compensation earnable" excluding the special compensation of the monetary value of EPMC paid to CalPERS by the employer under Government Code section 20636(c)(4), thus eliminating a perpetual calculation.

(A) A resolution or ordinance of the governing body must be provided to CalPERS indicating the group or class, effective date, and the percent or amount of EPMC being paid and reported as an item of special compensation. The resolution or ordinance must be formally adopted by the employer's governing body, and submitted to CalPERS for review and approval.

(B) The resolution or ordinance must specify that the value of EPMC will be reported as an item of special compensation consistently, for all members in the affected group or class of employment - except that the employer's governing body may elect a "time-in-grade exception" which shall only apply to persons newly-hired into the pertinent group or class of employment.

(C) To be classified as "newly-hired," a member of the group or class must not have been previously hired or retained by the employer in any capacity whatsoever.

(D) The time-in-grade exception must be elected in the same resolution or ordinance, or by amendment thereto, as adopted by the employer's governing body for the purpose of paying and reporting the value of EPMC, pursuant to this Section 571. The exception can only be used for the value of EPMC, and not for any other item of special compensation.

1. The time-in-grade exception must be applied consistently to all newly-hired employees in the pertinent group or class.

2. The time-in-grade requirement may be incremental, not to exceed a total of five (5) years. For example, the initial requirement may be three years for paying fifty percent (50%) with increases of twenty-five percent (25%) for each additional year of time-in-grade.

3. Once the initial time-in-grade requirement has been met by a newly-hired employee, the employer shall begin paying and reporting the value of EPMC for him or her to the same extent as for all others in the pertinent group or class.

(E) To implement the time-in-grade exception, the employer's governing body must acknowledge that it may experience an upward adjustment to its employer contribution rate. The acknowledgment must be included in the resolution or ordinance by which the employer's governing body elected to pay and report EPMC as an item of special compensation, by adoption or amendment thereto.

(F) The full terms of the resolution or ordinance by which the employer's governing body elects to pay and report the value of EPMC as an item of special compensation - along with any time-in-grade exception for newly-hired employees - must be incorporated into the written labor agreement that pertains to the affected group or class of employment.

The time-in-grade exception from paying and reporting the value of EPMC as an item of special compensation pursuant to this Section 571, is separate and apart from the time-in-grade exception from paying EPMC pursuant to Section 569 of these regulations. Both of these exceptions are separate and apart from, nor do they apply to, the process for converting EPMC to payrate during the period of final compensation, pursuant to Section 20692 of the Government Code.

Off-Salary-Schedule Pay - Compensation in addition to base salary paid in similar lump-sum amounts to a group or class of employees. These payments are routinely negotiated through collective bargaining in lieu of increases to the salary schedule. These payments are based on a similar percent of scheduled salary not to exceed six percent (6%) per fiscal year. The contracting agency or school employer may adopt similar action for non-represented groups or classes of employment as were negotiated through collective bargaining.

(2) EDUCATIONAL PAY

The items of special compensation outlined below do not include reimbursement to an employee for the cost of an application or test, books, tuition or travel.

Applicator's Differential - Compensation to employees who are required to maintain a Qualified Pesticide Applicator's Certificate.

Certified Public Accountant Incentive - Compensation to miscellaneous employees passing an exam and receiving a license as a Certified Public Accountant.

Educational Incentive - Compensation to employees for completing educational courses, certificates and degrees which enhance their ability to do their job. A program or system must be in place to evaluate and approve acceptable courses. The cost of education that is required for the employee's current job classification is not included in this item of special compensation.

Emergency Medical Technician Pay - Compensation to safety employees who obtain and maintain an emergency medical technical (EMT) certification.

Engineering Registration Premium - Compensation to engineers who have taken and passed a California engineering proficiency exam and are registered with the State of California.

Government Agency Required Licenses - Compensation to employees receiving and maintaining a license required by government or regulatory agencies to perform their duties.

International Conference of Building Officials (ICBO) Certificate - Compensation to building inspectors who obtain and maintain an International Conference of Building Officials (ICBO) certificate in one or more certified areas.

Mechanical Premium (Brake Adjustment License, SMOG Inspector License) - Compensation to employees who obtain and maintain state-required mechanical licenses.

National Institute of Automotive Service Excellence (NIASE) Certificate - Compensation to mechanics who obtain and maintain a National Institute of Automotive Service Excellence (NIASE) certificate.

Notary Pay - Compensation to clerical employees who obtain and maintain a notary public certificate from the State of California or are deputized by an agency's chief administrative officer to sign legal or financial documents for the agency.

Paramedic Pay - Compensation to employees who obtain and maintain certification in auxiliary medical techniques.

Peace Officer Standard Training (POST) Certificate Pay - Compensation to local police officers, county peace officers and school police or security officers who obtain Peace Officer Standard Training (POST) certification.

Reading Specialist Premium - Compensation to certificated employees who have obtained special training and provide literacy instruction as part of their teaching duties.

Recertification Bonus - Compensation to local firefighters who obtain and maintain a fire safety and prevention certificate for a specified period of time.

Special Class Driver's License Pay - Compensation to school bus drivers or street maintenance employees who are required to obtain and maintain a special class driver's license to perform their duties.

Undergraduate/Graduate/Doctoral Credit - Compensation to school district employees who are required to obtain a specified degree.

(3) PREMIUM PAY

Temporary Upgrade Pay - Compensation to employees who are required by their employer or governing board or body to work in an upgraded position/classification of limited duration.

(4) SPECIAL ASSIGNMENT PAY

Accountant Premium - Compensation to rank and file employees who are routinely and consistently responsible for developing the employer's budget.

Administrative Secretary Premium - Compensation to an administrative secretary responsible for coordinating meetings, plans and other specialized activities for the governing body of the contracting agency or school employer.

Aircraft/Helicopter Pilot Premium - Compensation to safety employees who are routinely and consistently assigned as aircraft/helicopter pilots.

Asphalt Work Premium - Compensation to miscellaneous employees who are routinely and consistently assigned to mix, transport and/or apply a tar-like substance for sidewalks, roads, roofs and/or parking lots.

Audio Visual Premium - Compensation to miscellaneous employees who are routinely and consistently responsible for operating audio visual equipment.

Auditorium Preparation Premium - Compensation to school employees who are routinely and consistently assigned to prepare auditorium(s), i.e. setting up stages, lighting, props and chairs for performing arts purposes.

Bilingual Premium - Compensation to employees who are routinely and consistently assigned to positions requiring communication skills in languages other than English.

Branch Assignment Premium - Compensation to employees who are routinely and consistently assigned to a branch office or work site that is identified as "rural" or "remote" in the written labor agreement.

Canine Officer/Animal Premium - Compensation to local police officers, county peace officers

and school police or security officers who are routinely and consistently assigned to handle, train and board a canine or horse. Compensation shall not include veterinarian fees, feed or other reimbursable expenses for upkeep of the animal.

Cement Finisher Premium - Compensation to miscellaneous employees who are routinely and consistently assigned to finish cement work, e.g. watering, brushing or surfacing.

Circulation Librarian Premium - Compensation to library staff who are routinely and consistently assigned to the circulation desk of the library.

Computer Operations Premium - Compensation to employees who have special knowledge of computer processes and applications.

Confidential Premium - Compensation to rank and file employees who are routinely and consistently assigned to sensitive positions requiring trust and discretion.

Contract Administrator Coordinator Premium - Compensation to school employees who routinely and consistently coordinate administrative contracts for instruction or facility maintenance.

Crime Scene Investigator Premium - Compensation to local police officers, county peace officers and school police or security officers who are routinely and consistently assigned to analyze and explore a crime scene.

Critical Care Differential Premium - Compensation to nursing staff who are routinely and consistently assigned to critical and intensive medical or psychological care areas.

D.A.R.E. Premium - Compensation to local police officers, county peace officers and school police or security officers who routinely and consistently provide training to students on drug abuse resistance.

Detective Division Premium - Compensation to local police officers, county peace officers and school police or security officers who are routinely and consistently assigned to a detective or investigative division or intelligence duties.

Detention Services Premium - Compensation to employees who are routinely and consistently assigned to areas where criminally charged persons are confined and nursing staff who are routinely and consistently assigned to an adult facility where criminally charged persons are confined.

DUI Traffic Officer Premium - Compensation to local police officers, county peace officers and school police or security officers who are routinely and consistently assigned to enforce Driving Under the Influence (DUI) of alcohol or drug laws.

Extradition Officer Premium - Compensation to local police officers and county peace officers who are routinely and consistently assigned to return a person to the custody of another jurisdiction.

Fire Inspector Premium - Compensation to "fire inspector" personnel who are routinely and consistently assigned to inspect buildings and other permanent structures for compliance with governmental safety standards.

Fire Investigator Premium - Compensation to "fire investigation" personnel who are routinely and consistently assigned to investigate causes of destructive burning.

Fire Prevention Assignment Premium - Compensation to rank and file local firefighters who are

routinely and consistently assigned to specific fire inspections and investigative work during normal hours of employment that may differ from the work schedule of fire suppression personnel.

Fire Staff Premium - Compensation to rank and file local firefighters who are routinely and consistently assigned to administrative work during normal hours of employment that may differ from the work schedule of fire suppression personnel.

Flight Time Premium - Compensation to safety employees for time spent as co-pilot or crew on work related air missions.

Float Differential Premium - Compensation for nurses not specifically assigned to a specific station.

Front Desk Assignment (Jail) - Compensation to employees staffing a jail who are routinely and consistently assigned the duty of responding to questions from the public.

Fugitive Officer Premium - Compensation to local police officers and county peace officers who are routinely and consistently assigned to pursue persons who have or are fleeing from justice.

Gang Detail Assignment Premium - Compensation to local police officers, county peace officers and school police or security officers who are routinely and consistently assigned to enforce laws relating to a group of individuals banded together for unlawful activities.

Grading Assignment Premium - Compensation to employees who are routinely and consistently assigned to inspect the degree of rise or descent of a sloping surface.

Hazard Premium - Compensation to employees who are routinely and consistently exposed to toxic, radioactive, explosive or other hazardous substances or perform hazardous activities to implement health or safety procedures.

Heavy/Special Equipment Operator - Compensation to employees who are routinely and consistently assigned to operate heavy equipment or specialized equipment.

Height Premium - Compensation to employees who are routinely and consistently required to work on ladders or mechanical devices at heights over 40 feet.

Housing Specialist Premium - Compensation to city housing specialists who are routinely and consistently assigned to perform administrative functions of the housing division.

Juvenile Officer Premium - Compensation to local police officers, county peace officers and school police or security officers who are routinely and consistently assigned to enforce laws that restrict the activities of juveniles.

Lead Worker/Supervisor Premium - Compensation to employees who are routinely and consistently assigned to a lead or supervisory position over other employees, subordinate classifications, or agency-sponsored program participants.

Library Reference Desk Premium - Compensation to library staff who are routinely and consistently assigned to provide direction or resources to library patrons.

Maintenance Premiums:

Gas Maintenance Premium - Compensation to maintenance employees who are routinely and consistently assigned to inspect gas construction, repair instruments or perform pipeline

welder duties.

Plumber Irrigation System Premium - Compensation to plumbers who are routinely and consistently assigned as irrigation systems plumbing specialists.

Refuse Collector Premium - Compensation to maintenance employees who are routinely and consistently assigned to collect refuse.

Street Lamp Replacement Premium - Compensation to maintenance employees who are routinely and consistently assigned to replace street lamps from an aerial bucket.

MCO Instructor Premium - Compensation to miscellaneous employees who are routinely and consistently assigned to train Motor Coach Operators, i.e. bus drivers.

Motorcycle Patrol Premium - Compensation to local police officers and county peace officers who are routinely and consistently assigned to operate and/or patrol on motorcycle.

Mounted Patrol Premium - Compensation to local police officers and county peace officers who are routinely and consistently assigned to patrol on horseback.

Narcotic Division Premium - Compensation to local police officers, county peace officers and school police or security officers who are routinely and consistently assigned to drug enforcement.

Paramedic Coordinator Premium - Compensation to paramedics who are routinely and consistently assigned to coordinate training activities in auxiliary medical techniques.

Park Construction Premium - Compensation to groundskeepers who are routinely and consistently assigned to build park equipment.

Park Maintenance/Equipment Manager Premium - Compensation to park maintenance employees who are routinely and consistently assigned to equipment management and other administrative duties.

Parking Citation Premium - Compensation to employees who are routinely and consistently assigned to read parking meters and cite drivers who have violated parking laws.

Patrol Premium - Compensation to local police officers, county peace officers and school police or security officers who are routinely and consistently assigned to patrol detail.

Police Administrative Officer - Compensation to rank and file police officers, county peace officers and school police or security officers who are routinely and consistently assigned to police administration to provide support for the police chief and command staff in the operation of the police department.

Police Investigator Premium - Compensation to rank and file local police officers, county peace officers and school police or security officers who are routinely and consistently assigned to analyze crimes or investigative accidents.

Police Liaison Premium - Compensation to rank and file local police officers, county peace officers and school police or security officers who are routinely and consistently assigned to function as a liaison between special persons, groups or courts and the police/sheriff department.

Police Polygraph Officer - Compensation to local police officers, county peace officers and school police or security officers who are routinely and consistently assigned to administer and

interpret polygraph exams.

Police Records Assignment Premium - Compensation to employees who are routinely and consistently assigned to the police records division.

Rangemaster Premium - Compensation to local police officers, county peace officers and school police or security officers who are routinely and consistently assigned to supervise the target range facilities and all related activities.

Refugee Arrival Cleanup Premium - Compensation to employees who are routinely and consistently assigned to cleanup from activities directly related to refugee arrival flights.

Safety Officer Training/Coordinator Premium - Compensation to employees who are routinely and consistently assigned to instruct personnel in safety procedures.

Sandblasting Premium - Compensation to miscellaneous employees who are routinely and consistently assigned to operate sandblasting equipment.

School Yard Premium - Compensation to part-time school district employees who are routinely and consistently assigned to supervise students during recreation.

Search Pay Premium - Compensation to employees who are routinely and consistently assigned to search and process prisoners in the induction area of jails.

Severely Disabled Premium - Compensation to school instructional aides who are routinely and consistently assigned to work with severely disabled students.

Sewer Crew Premium - Compensation to laborers who are routinely and consistently assigned to repair and maintain sewer systems.

Shift Differential - Compensation to employees who are routinely and consistently scheduled to work other than a standard "daytime" shift, e.g. graveyard shift, swing shift, shift change, rotating shift, split shift or weekends.

Solo Patrol Premium - Compensation to local police officers, county peace officers and school police or security officers who are routinely and consistently assigned to patrol alone in vehicles.

Sprinkler and Backflow Premium - Compensation to groundskeepers who are routinely and consistently assigned to repair large sprinkler head controllers, valves and backflow prevention devices.

Tiller Premium - Compensation to local firefighters who are routinely and consistently assigned to operate the tiller on an aerial ladder.

Tire Technician Premium - Compensation to equipment attendants who are routinely and consistently assigned to work on heavy duty tires, e.g. for buses and large construction equipment.

Traffic Detail Premium - Compensation to employees who are routinely and consistently assigned to direct traffic.

Training Premium - Compensation to employees who are routinely and consistently assigned to train employees.

Tree Crew Premium - Compensation to maintenance workers who are routinely and

consistently assigned to remove, prune, or otherwise care for trees.

Utility Meter Premium - Compensation to miscellaneous employees who are routinely and consistently assigned to re-read utility meters, repair or set and install meters.

Utilities Systems Operation Premium - Compensation to maintenance or carpenter employees who are routinely and consistently assigned to planner duties in the maintenance division.

Water Certification Premium - Compensation to miscellaneous employees who are routinely and consistently assigned to test local water quality for compliance with governmental health standards.

(5) STATUTORY ITEMS

Fair Labor Standards Act (FLSA) - Compensation paid for normal full-time work schedule including premium pay required by FLSA. For example, a firefighter's normal work schedule is 56 hours per week. FLSA states premium pay must be paid on all hours worked above 53 hours per week up to what is considered normal for employees on a full-time basis. In this example, the firefighter works 56 hours in a normal work week. Therefore compensation would be reported for 53 hours per week and FLSA premium pay would be reported for 3 hours per week. Any work performed above 56 hours per week would be considered overtime and would not be reported to PERS.

Holiday Pay - Additional compensation for employees who are normally required to work on an approved holiday because they work in positions that require scheduled staffing without regard to holidays. If these employees are paid over and above their normal monthly rate of pay for approved holidays, the additional compensation is holiday pay and reportable to PERS.

For those employees with written labor agreements providing holiday credit and allowing employees to cash out accumulated holiday credit, the cash out must be done at least annually and reported in the period earned. If a written labor agreement allows an employee to accumulate holiday credit beyond the year in which it is earned and an employee later elects to cash out accumulated holiday credit, it is not compensation for PERS purposes.

If an employee utilizes the cash out option only during his/her final compensation period, it will be considered final settlement pay and excluded from reportable compensation. If the cash out option is also utilized near his/her final compensation period, it may still be excluded based upon a review of the contracting agency or school employer's experience relating to: the number of employees in the group with this option; the number of employees who exercise this option; the frequency with which employees exercise this option; whether or not the cash out is paid periodically, and in a manner that is historically consistent; and whether or not the cash out would create an unfunded liability over and above PERS' actuarial assumptions. This review will be conducted by PERS on a case-by-base basis.

Uniform Allowance - Compensation paid or the monetary value for the purchase, rental and/or maintenance of required clothing, including clothing made from specially designed protective fabrics, which is a ready substitute for personal attire the employee would otherwise have to acquire and maintain. This excludes items that are solely for personal health and safety such as protective vests, pistols, bullets, and safety shoes.

(b) The Board has determined that all items of special compensation listed in subsection (a) are:

(1) Contained in a written labor policy or agreement as defined at Government Code section 20049, provided that the document:

(A) Has been duly approved and adopted by the employer's governing body in accordance

with requirements of applicable public meetings laws;

(B) Indicates the conditions for payment of the item of special compensation, including, but not limited to, eligibility for, and amount of, the special compensation;

(C) Is posted at the office of the employer or immediately accessible and available for public review from the employer during normal business hours or posted on the employer's internet website;

(D) Indicates an effective date and date of any revisions;

(E) Is retained by the employer and available for public inspection for not less than five years; and

(F) Does not reference another document in lieu of disclosing the item of special compensation;

(2) Available to all members in the group or class;

(3) Part of normally required duties;

(4) Performed during normal hours of employment;

(5) Paid periodically as earned;

(6) Historically consistent with prior payments for the job classification;

(7) Not paid exclusively in the final compensation period;

(8) Not final settlement pay; and

(9) Not creating an unfunded liability over and above PERS' actuarial assumptions.

(c) Only items listed in subsection (a) have been affirmatively determined to be special compensation. All items of special compensation reported to PERS will be subject to review for continued conformity with all of the standards listed in subsection (b).

(d) If an items of special compensation is not listed in subsection (a), or is out of compliance with any of the standards in subsection (b) as reported for an individual, then it shall not be used to calculate final compensation for that individual.

Note: Authority cited: Sections 20120-20124, 20636(c)(6) and 20636.1(c)(6), Government Code. Reference: Sections 20630, 20636, 20636.1 and 20691, Government Code.

Research Note: See Oden v. Public Employees' Retirement System (1994) 23 Cal.App.4th 194 [28 Cal.Rptr.2d 388]; City of Sacramento v. Public Employees' Retirement System (1991) 237 Cal.App.3d 1470 [280 Cal.Rptr. 847]; City of Fremont v. Board of Administration(1989) 219 Cal.App.3d 1026 [263 Cal.Rptr. 164]; Guelfi v. Marin County Employees' Retirement Association (1983) 145 Cal.App.3d 297 [193 Cal.Rptr. 343]; Rose v. City of Hayward (1981) 126 Cal.App.3d 926 [179 Cal.Rptr. 287]; Santa Monica P.O.A. v. Bd. of Admin. Public Employees' Retirement System (1978) 69 Cal.App.3d 96 [137 Cal.Rptr.771].

HISTORY

1. New section filed 7-5-94 as an emergency; operative 7-5-94 (Register 94, No. 27). A Certificate of Compliance must be transmitted to OAL by 11-2-94 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 7-5-94 order transmitted to OAL 10-28-94; disapproved by OAL and order of repeal as to 7-5-94 order filed on 12-14-94 (Register 94, No. 50).

3. New section refiled 12-15-94 as an emergency, with amendments; operative 12-15-94 (Register 94, No. 50). A Certificate of Compliance must be transmitted to OAL by 4-14-95 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 12-15-94 order including amendments transmitted to OAL 4-11-95 and filed 5-23-95 (Register 95, No. 21).

5. Amendment of subsections (a)-(a)(1), new subsections (a)(1)(A)-(F) and amendment of Note filed 9-22-99; operative 10-22-99 (Register 99, No. 39).

6. Amendment of subsection (a)(5) filed 5-22-2002; operative 6-21-2002 (Register 2002, No. 21).

7. Amendment of subsection (b)(1), new subsections (b)(1)(A)-(F) and amendment of Note filed 7-11-2011; operative 8-10-2011 (Register 2011, No. 28).

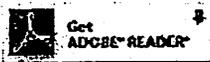
8. Change without regulatory effect amending Note filed 9-22-2011 pursuant to section 100, title 1, California Code of Regulations (Register 2011, No. 38).

2 CCR § 571, 2 CA ADC § 571

This database is current through 9/30/11 Register 2011, No. 39

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1 STEPHEN H. SILVER, SBN 038241
SILVER, HADDEN, SILVER, WEXLER & LEVINE.
2 1428 Second Street, Suite 200
P.O. Box 2161
3 Santa Monica, California 90407-2161
Tele: (310) 393-1486
4 Fax: (310) 395-5801

5 Attorneys for Respondents NORMAN
(ELDO) E. EVENSON and DANIEL CATALANO
6
7

8 **BOARD OF ADMINISTRATION**
9 **CALIFORNIA PUBLIC EMPLOYEES RETIREMENT SYSTEM**
10

11 In the Matter of the Calculation of Final	)	Case No.: 9329
12 Compensation of)	
13 RICHARD C. BRIGHT, NORMAN (ELDO)	)	OAH NO. L-2011061387
14 E. EVENSON AND DANIEL CATALANO,	)	RESPONDENTS' TRIAL BRIEF
15 Respondents,	)	DATE: November 15 & 16, 2011
16 and	)	TIME: 9:30 a.m.
17 CITY OF HUNTINGTON BEACH,	)	PLACE: Office of Administrative Hearings
18 Respondent.	)	320 W. Fourth St., Suite 630
	)	Los Angeles, CA 90013

19
20 **I. INTRODUCTION**

21 As the Statement of Issues ("SI") prepared by California Public Employees' Retirement
22 System (CalPERS) reveals (at 2/21-25), the sole issue presented in this case is whether the
23 "holiday premium pay for holidays worked" earned by the Respondents constitutes
24 "compensation earnable" because it is "special compensation" as defined in California
25 Government Code Section 20636 and Section 571(a) of the California Code of Regulations. The
26 evidence will clearly establish that the holiday premium pay in question is provided to sworn
27 peace officers who are routinely and consistently scheduled to work on holidays such as
28 Memorial Day, Independence Day, Thanksgiving, Christmas and New Year's, when employees

1 working a "standard daytime shift" are effectively granted a leave of absence without loss of
2 pay. Because the pay is for regularly scheduled hours normally worked by similarly situated
3 full-time sworn peace officers, it is not overtime, which is excluded from pensionable income
4 under Government Code Section 20635 (SI 3/22-27). Instead, it represents "inconvenience pay"
5 for working regularly scheduled hours that are undesirable.

6 Therefore, this premium compensation falls within the definition of "special
7 compensation" as defined in Government Code Section 20636(c)(1) because it is a "payment
8 received for . . . work assignment, **workdays** or hours" (SI, 4/22-23.) (Emphasis added.)
9 It constitutes "Shift Differential" which is identified in Section 571(a)(4) of the Regulations
10 promulgated by CalPERS pursuant to Government Code Section 20636(c)(6) (SI, 5/10-14)
11 because it is "[c]ompensation to employees who are routinely and consistently scheduled to
12 work other than a standard 'daytime' shift" (SI, 6/16-18.) Further, it also amounts to an
13 additional form of holiday pay within the meaning of Government Code Section 20636(c)(6) and
14 Section 571(a)(5) of the CalPERS Regulations because it constitutes "[a]dditional compensation
15 for employees who are normally required to work on an approved holiday because they work in
16 positions that require scheduled staffing without regard to holidays." (See SI, 5/11 and 6/19-23.)

17 **II. STATEMENT OF FACTS**

18 The evidence to be presented at the hearing will establish the following.

19 Until March 1, 2010, the applicable collective bargaining agreements, each of which was
20 entitled Memorandum of Understanding ("MOU"), entered into between the City of Huntington
21 Beach and the employee organization recognized to represent the Respondents, the Huntington
22 Beach Police Officers' Association ("POA"), described the premium pay in question in a
23 somewhat misleading manner. The applicable provision stated that "[e]mployees who work
24 on a recognized City holiday shall be compensated at their overtime rate for time actually

25 ///

26 ///

27 ///

28 ///

1 worked from 12:00 am through 11:59 pm.”¹

2 Because both the City and the POA believed that the premium pay clearly qualified as
3 “special compensation,” the City reported this income to CalPERS as such and all required
4 employer and employee retirement contributions were paid on those amounts. Thus, there is no
5 issue of underfunding or “spiking.”

6 As a result of this somewhat misleading language, CalPERS initially notified the
7 Respondents that it was declining to include this premium compensation in their “final
8 compensation” (the base upon which their pensions were calculated) because it constituted
9 overtime compensation, which clearly is excluded from those calculations. However, when
10 Respondents submitted their appeals, they enlightened CalPERS that, notwithstanding the
11 language in the MOU, the pay in question was not overtime compensation because it constituted
12 pay for time that was part of the employees’ regularly scheduled hours of work. Respondents
13 explained that the pay for working those holidays actually needed to be broken down into two
14 components. The straight time portion of the time-and-one-half pay was simply the same
15 straight-time pay being provided for all regularly scheduled hours of work. The remaining half-
16 time, or premium, portion was the “inconvenience” pay for having to work at undesirable times
17 when employees who were consistently and routinely scheduled to work a daytime shift were

18 _____
19 ^{1/} In a Side Letter Agreement between the City and the POA dated March 1, 2010, the
20 parties clarified this language so that it would better describe the true intent of the parties.
21 Article VII.G.2 revised this benefit to read as follows:

21 G. Holidays

22 2. Holidays Worked - Employees who work on a recognized City
23 holiday shall be compensated Shift Differential Pay. Holiday Shift
24 Differential Pay is available to all members of the HBPOA that are
25 regularly scheduled to work a recognized holiday. Members shall
26 receive Shift Differential Pay equal to fifty percent (50%) of their
27 regular rate of pay for all time actually worked from 12:00 A.M.
28 through 11:59 P.M. on the recognized holiday.

26 Should this decision apply to individuals who retired after the named Respondents with a
27 final compensation measurement period that included time that was subsequent to the
28 approval by the City Council of Huntington Beach of this Side Letter Agreement on March
1, 2010, this clarifying language would govern their entitlement to include the premium pay
in their pension calculations.

1 given the day off with pay to spend with their families, etc.

2 Notwithstanding this explanation, CalPERS has continued to refuse to include this
3 premium pay in the final compensation of the Respondents. No formal, written explanation
4 other than the fact that CalPERS still considers it overtime (SI, 2/23-25) has been afforded to
5 justify or support this position.

6 **III. ARGUMENT**

7 **A. The Holiday Premium Pay Qualifies as Shift Differential.**

8 The form of holiday pay that is at issue in this case occurs when an individual whose
9 regularly scheduled hours of work include a holiday is provided extra premium compensation for
10 the inconvenience having to work at an undesirable time when most of our work force is given
11 the day off with pay to spend with their families or to engage in other enjoyable personal
12 activities. Respondents have consistently asserted, and still vehemently assert, that this premium
13 pay clearly fits the definition of "shift differential" which is set forth in Section 571(a)(4) of the
14 California Code of Regulations that were adopted by CalPERS pursuant to the authority granted
15 in Government Code Section 20636(c)(6). CalPERS has defined "shift differential" as

16 "Compensation to employees who are routinely and consistently
17 scheduled to work other than a standard 'daytime' shift, *e.g.*,
18 graveyard shift, swing shift, shift change, rotating shift, split shift
19 or weekends." (SI, 6/16-18.)

20 The Statement of Issues does not address the subject of why CalPERS believes that this
21 premium pay does not fit within the definition of "shift differential." As noted above, the only
22 explanation given for the decision by CalPERS to refuse to regard this pay as "special
23 compensation" is that "it is considered overtime." (SI, 2/24.)

24 Notwithstanding the misleading language in the MOU, this premium compensation does
25 not fit within the definition of overtime. As the Statement of Issues notes (at 3/21-27),
26 Government Code Section 20635 defines overtime as "the aggregate service performed . . . in
27 excess of the hours of work considered normal for employees on a full-time basis, and for
28 which monetary compensation is paid." (Emphasis added.) However, the premium pay in

1 question is **not** paid for services in excess of hours of work considered normal. This premium
2 pay is for hours that are part of the employees' **regularly scheduled work shift** which
3 represents hours of work considered normal for peace officers employed by the City of
4 Huntington Beach (and elsewhere).

5 The straight time portion of this pay fits within the definition of "payrate" as defined in
6 Government Code Section 20636(b)(1) in that it is part of "the normal monthly rate of pay or
7 base pay . . . paid in cash to similarly situated members of the same group or class of
8 employment for services rendered on a full-time basis during normal working hours pursuant to
9 publicly available pay schedules." (SI, 4/2-12.)

10 The premium pay, which is the only issue presented in this case, directly falls within the
11 definition of "shift differential." It clearly is compensation for being routinely and consistently
12 scheduled to work other than a standard daytime shift. (SI, 6/16-18.) It is virtually identical to
13 the **examples** used by CalPERS in its definition (*i.e.* "graveyard, swing shift, shift change,
14 rotating shift, split shift or weekends"). There is absolutely no difference between extra pay for
15 the inconvenience of having to work nights and weekends, on the one hand, and holidays, on the
16 other hand. In fact, for all intents and purposes, holidays are identical to weekends. Thus,
17 because extra pay for working on a Sunday that is part of an employee's regular hours of work is
18 regarded as special compensation, the exact same result must follow with respect to extra pay for
19 working on a recognized holiday that falls on the ensuing Monday that is part of the employee's
20 regularly scheduled hours of work.

21 **B. The Holiday Premium Pay Also Qualifies As Holiday Pay.**

22 The holiday premium pay at issue also satisfies the definition of "holiday pay" set forth
23 in Government Code Section 20636(c)(6) and Section 571(a)(5) of the California Code of
24 Regulations (SI, 6/19-23). The Regulation expressly defines "holiday pay" as "[a]dditional
25 compensation for employees who are normally required to work on an approved holiday
26 because they work in positions that require scheduled staffing without regard to holidays."
27 (Emphasis added.) It adds that "[i]f these employees are **paid over and above their normal**
28 **monthly rate of pay for approved holidays**, the additional compensation is holiday pay and

1 reportable to PERS.” (Emphasis added.) There can be no question that the holiday premium
2 pay at issue constitutes “additional compensation for employees who are normally required to
3 work on an approved holiday because they work in positions that require scheduled staffing
4 without regard to holidays” that is “over and above their normal monthly rate of pay.”

5 Respondents also received another form of holiday pay which was reported as special
6 compensation in accordance with the promulgations described above. (SI, 2/21-22.) There is no
7 dispute that the City and Respondents acted properly in reporting this form of holiday pay as
8 special compensation. Absolutely nothing in those enactments prohibits an employer from
9 providing the “holiday pay” defined in Section 571(a)(3) in two separate components. Thus,
10 even though the Respondents received separate “holiday pay” (*i.e.*, pay in lieu of holidays), that
11 circumstance does not preclude a determination that they received additional “holiday pay”
12 through the holiday premium compensation which, like the other “holiday pay,” was “additional
13 compensation for employees who are normally required to work on an approved holiday because
14 they work in positions that require scheduled staffing without regard to holidays.”

15 **IV. CONCLUSION**

16 The law is well-settled that “[a]ny ambiguity or uncertainty in the meaning of pension
17 legislation must be resolved in favor of the pensioner” *Ventura County Deputy Sheriffs’*
18 *Ass’n. v. Board of Retirement* (1997) 16 Cal.4th 490. Furthermore, Article 16, Section 17(b) of
19 the California Constitution provides as follows:

20 “(b) The members of the retirement board of a public pension or
21 retirement system shall discharge their duties with respect to the system solely in
22 the interest of, and for the exclusive purposes of providing benefits to,
23 participants and their beneficiaries, minimizing employer contributions thereto,
24 and defraying reasonable expenses of administering the system. A retirement
25 board’s duty to its participants and their beneficiaries shall take precedence
26 over any other duty.” (Emphasis added.)

27 Clearly, based upon the above definitions of “special compensation set forth in the
28 CalPERS Regulations, both the City and the POA, as the representative of Respondents, had

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2 CA ADC § 571

2 CCR § 571

Cal. Admin. Code tit. 2, § 571

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Title 2. Administration

Division 1. Administrative Personnel

Chapter 2. Board of Administration of Public Employees' Retirement System

Subchapter 1. Employees' Retirement System Regulations

Article 4. Contracts

→§ 571. Definition of Special Compensation.

(a) The following list exclusively identifies and defines special compensation items for members employed by contracting agency and school employers that must be reported to CalPERS if they are contained in a written labor policy or agreement:

(1) INCENTIVE PAY

Bonus - Compensation to employees for superior performance such as "annual performance bonus" and "merit pay". If provided only during a member's final compensation period, it shall be excluded from final compensation as "final settlement" pay. A program or system must be in place to plan and identify performance goals and objectives.

Dictation/Shorthand/Typing Premium - Compensation to clerical employees for shorthand, dictation or typing at a specified speed.

Longevity Pay - Additional compensation to employees who have been with an employer, or in a specified job classification, for a certain minimum period of time exceeding five years.

Management Incentive Pay - Compensation granted to management employees in the form of additional time off or extra pay due to the unique nature of their job. Employees within the group cannot have the option to take time off or receive extra pay. This compensation must be reported periodically as earned and must be for duties performed during normal work hours. This compensation cannot be for overtime, nor in lieu of other benefits excluded under the statutes, nor for special compensation not otherwise listed in this Section 571.

Marksmanship Pay - Compensation to local police officers, county peace officers and school police or security officers who meet an established criterion such as "certification" as a marksperson.

Master Police Officer - Compensation to local police officers, county peace officers and school police or security officers who meet specified requirements, years of employment, performance standards, education, Peace Officer Standard Training (POST), and perform a

specialty assignment.

Physical Fitness Program - Compensation to local safety members and school security officers who meet an established physical fitness criterion.

Value of Employer-Paid Member Contributions (EPMC) - The full monetary value of employer-paid member contributions (EPMC) paid to CalPERS and reported as an item of special compensation on behalf of all members in a group or class.

The value of EPMC is calculated on all "compensation earnable" excluding the special compensation of the monetary value of EPMC paid to CalPERS by the employer under Government Code section 20636(c)(4), thus eliminating a perpetual calculation.

(A) A resolution or ordinance of the governing body must be provided to CalPERS indicating the group or class, effective date, and the percent or amount of EPMC being paid and reported as an item of special compensation. The resolution or ordinance must be formally adopted by the employer's governing body, and submitted to CalPERS for review and approval.

(B) The resolution or ordinance must specify that the value of EPMC will be reported as an item of special compensation consistently, for all members in the affected group or class of employment - except that the employer's governing body may elect a "time-in-grade exception" which shall only apply to persons newly-hired into the pertinent group or class of employment.

(C) To be classified as "newly-hired," a member of the group or class must not have been previously hired or retained by the employer in any capacity whatsoever.

(D) The time-in-grade exception must be elected in the same resolution or ordinance, or by amendment thereto, as adopted by the employer's governing body for the purpose of paying and reporting the value of EPMC, pursuant to this Section 571. The exception can only be used for the value of EPMC, and not for any other item of special compensation.

1. The time-in-grade exception must be applied consistently to all newly-hired employees in the pertinent group or class.

2. The time-in-grade requirement may be incremental, not to exceed a total of five (5) years. For example, the initial requirement may be three years for paying fifty percent (50%) with increases of twenty-five percent (25%) for each additional year of time-in-grade.

3. Once the initial time-in-grade requirement has been met by a newly-hired employee, the employer shall begin paying and reporting the value of EPMC for him or her to the same extent as for all others in the pertinent group or class.

(E) To implement the time-in-grade exception, the employer's governing body must acknowledge that it may experience an upward adjustment to its employer contribution rate. The acknowledgment must be included in the resolution or ordinance by which the employer's governing body elected to pay and report EPMC as an item of special compensation, by adoption or amendment thereto.

(F) The full terms of the resolution or ordinance by which the employer's governing body elects to pay and report the value of EPMC as an item of special compensation - along with any time-in-grade exception for newly-hired employees - must be incorporated into the written labor agreement that pertains to the affected group or class of employment.

The time-in-grade exception from paying and reporting the value of EPMC as an item of special compensation pursuant to this Section 571, is separate and apart from the time-in-grade exception from paying EPMC pursuant to Section 569 of these regulations. Both of these exceptions are separate and apart from, nor do they apply to, the process for converting EPMC to payrate during the period of final compensation, pursuant to Section 20692 of the Government Code.

Off-Salary-Schedule Pay - Compensation in addition to base salary paid in similar lump-sum amounts to a group or class of employees. These payments are routinely negotiated through collective bargaining in lieu of increases to the salary schedule. These payments are based on a similar percent of scheduled salary not to exceed six percent (6%) per fiscal year. The contracting agency or school employer may adopt similar action for non-represented groups or classes of employment as were negotiated through collective bargaining.

(2) EDUCATIONAL PAY

The items of special compensation outlined below do not include reimbursement to an employee for the cost of an application or test, books, tuition or travel.

Applicator's Differential - Compensation to employees who are required to maintain a Qualified Pesticide Applicator's Certificate.

Certified Public Accountant Incentive - Compensation to miscellaneous employees passing an exam and receiving a license as a Certified Public Accountant.

Educational Incentive - Compensation to employees for completing educational courses, certificates and degrees which enhance their ability to do their job. A program or system must be in place to evaluate and approve acceptable courses. The cost of education that is required for the employee's current job classification is not included in this item of special compensation.

Emergency Medical Technician Pay - Compensation to safety employees who obtain and maintain an emergency medical technical (EMT) certification.

Engineering Registration Premium - Compensation to engineers who have taken and passed a California engineering proficiency exam and are registered with the State of California.

Government Agency Required Licenses - Compensation to employees receiving and maintaining a license required by government or regulatory agencies to perform their duties.

International Conference of Building Officials (ICBO) Certificate - Compensation to building inspectors who obtain and maintain an International Conference of Building Officials (ICBO) certificate in one or more certified areas.

Mechanical Premium (Brake Adjustment License, SMOG Inspector License) - Compensation to employees who obtain and maintain state-required mechanical licenses.

National Institute of Automotive Service Excellence (NIASE) Certificate - Compensation to mechanics who obtain and maintain a National Institute of Automotive Service Excellence (NIASE) certificate.

Notary Pay - Compensation to clerical employees who obtain and maintain a notary public certificate from the State of California or are deputized by an agency's chief administrative officer to sign legal or financial documents for the agency.

Paramedic Pay - Compensation to employees who obtain and maintain certification in auxiliary medical techniques.

Peace Officer Standard Training (POST) Certificate Pay - Compensation to local police officers, county peace officers and school police or security officers who obtain Peace Officer Standard Training (POST) certification.

Reading Specialist Premium - Compensation to certificated employees who have obtained special training and provide literacy instruction as part of their teaching duties.

Recertification Bonus - Compensation to local firefighters who obtain and maintain a fire safety and prevention certificate for a specified period of time.

Special Class Driver's License Pay - Compensation to school bus drivers or street maintenance employees who are required to obtain and maintain a special class driver's license to perform their duties.

Undergraduate/Graduate/Doctoral Credit - Compensation to school district employees who are required to obtain a specified degree.

(3) PREMIUM PAY

Temporary Upgrade Pay - Compensation to employees who are required by their employer or governing board or body to work in an upgraded position/classification of limited duration.

(4) SPECIAL ASSIGNMENT PAY

Accountant Premium - Compensation to rank and file employees who are routinely and consistently responsible for developing the employer's budget.

Administrative Secretary Premium - Compensation to an administrative secretary responsible for coordinating meetings, plans and other specialized activities for the governing body of the contracting agency or school employer.

Aircraft/Helicopter Pilot Premium - Compensation to safety employees who are routinely and consistently assigned as aircraft/helicopter pilots.

Asphalt Work Premium - Compensation to miscellaneous employees who are routinely and consistently assigned to mix, transport and/or apply a tar-like substance for sidewalks, roads, roofs and/or parking lots.

Audio Visual Premium - Compensation to miscellaneous employees who are routinely and consistently responsible for operating audio visual equipment.

Auditorium Preparation Premium - Compensation to school employees who are routinely and consistently assigned to prepare auditorium(s), i.e. setting up stages, lighting, props and chairs for performing arts purposes.

Bilingual Premium - Compensation to employees who are routinely and consistently assigned to positions requiring communication skills in languages other than English.

Branch Assignment Premium - Compensation to employees who are routinely and consistently assigned to a branch office or work site that is identified as "rural" or "remote" in the written labor agreement.

Canine Officer/Animal Premium - Compensation to local police officers, county peace officers

and school police or security officers who are routinely and consistently assigned to handle, train and board a canine or horse. Compensation shall not include veterinarian fees, feed or other reimbursable expenses for upkeep of the animal.

Cement Finisher Premium - Compensation to miscellaneous employees who are routinely and consistently assigned to finish cement work, e.g. watering, brushing or surfacing.

Circulation Librarian Premium - Compensation to library staff who are routinely and consistently assigned to the circulation desk of the library.

Computer Operations Premium - Compensation to employees who have special knowledge of computer processes and applications.

Confidential Premium - Compensation to rank and file employees who are routinely and consistently assigned to sensitive positions requiring trust and discretion.

Contract Administrator Coordinator Premium - Compensation to school employees who routinely and consistently coordinate administrative contracts for instruction or facility maintenance.

Crime Scene Investigator Premium - Compensation to local police officers, county peace officers and school police or security officers who are routinely and consistently assigned to analyze and explore a crime scene.

Critical Care Differential Premium - Compensation to nursing staff who are routinely and consistently assigned to critical and intensive medical or psychological care areas.

D.A.R.E. Premium - Compensation to local police officers, county peace officers and school police or security officers who routinely and consistently provide training to students on drug abuse resistance.

Detective Division Premium - Compensation to local police officers, county peace officers and school police or security officers who are routinely and consistently assigned to a detective or investigative division or intelligence duties.

Detention Services Premium - Compensation to employees who are routinely and consistently assigned to areas where criminally charged persons are confined and nursing staff who are routinely and consistently assigned to an adult facility where criminally charged persons are confined.

DUI Traffic Officer Premium - Compensation to local police officers, county peace officers and school police or security officers who are routinely and consistently assigned to enforce Driving Under the Influence (DUI) of alcohol or drug laws.

Extradition Officer Premium - Compensation to local police officers and county peace officers who are routinely and consistently assigned to return a person to the custody of another jurisdiction.

Fire Inspector Premium - Compensation to "fire inspector" personnel who are routinely and consistently assigned to inspect buildings and other permanent structures for compliance with governmental safety standards.

Fire Investigator Premium - Compensation to "fire investigation" personnel who are routinely and consistently assigned to investigate causes of destructive burning.

Fire Prevention Assignment Premium - Compensation to rank and file local firefighters who are

routinely and consistently assigned to specific fire inspections and investigative work during normal hours of employment that may differ from the work schedule of fire suppression personnel.

Fire Staff Premium - Compensation to rank and file local firefighters who are routinely and consistently assigned to administrative work during normal hours of employment that may differ from the work schedule of fire suppression personnel.

Flight Time Premium - Compensation to safety employees for time spent as co-pilot or crew on work related air missions.

Float Differential Premium - Compensation for nurses not specifically assigned to a specific station.

Front Desk Assignment (Jail) - Compensation to employees staffing a jail who are routinely and consistently assigned the duty of responding to questions from the public.

Fugitive Officer Premium - Compensation to local police officers and county peace officers who are routinely and consistently assigned to pursue persons who have or are fleeing from justice.

Gang Detail Assignment Premium - Compensation to local police officers, county peace officers and school police or security officers who are routinely and consistently assigned to enforce laws relating to a group of individuals banded together for unlawful activities.

Grading Assignment Premium - Compensation to employees who are routinely and consistently assigned to inspect the degree of rise or descent of a sloping surface.

Hazard Premium - Compensation to employees who are routinely and consistently exposed to toxic, radioactive, explosive or other hazardous substances or perform hazardous activities to implement health or safety procedures.

Heavy/Special Equipment Operator - Compensation to employees who are routinely and consistently assigned to operate heavy equipment or specialized equipment.

Height Premium - Compensation to employees who are routinely and consistently required to work on ladders or mechanical devices at heights over 40 feet.

Housing Specialist Premium - Compensation to city housing specialists who are routinely and consistently assigned to perform administrative functions of the housing division.

Juvenile Officer Premium - Compensation to local police officers, county peace officers and school police or security officers who are routinely and consistently assigned to enforce laws that restrict the activities of juveniles.

Lead Worker/Supervisor Premium - Compensation to employees who are routinely and consistently assigned to a lead or supervisory position over other employees, subordinate classifications, or agency-sponsored program participants.

Library Reference Desk Premium - Compensation to library staff who are routinely and consistently assigned to provide direction or resources to library patrons.

Maintenance Premiums:

Gas Maintenance Premium - Compensation to maintenance employees who are routinely and consistently assigned to inspect gas construction, repair instruments or perform pipeline

welder duties.

Plumber Irrigation System Premium - Compensation to plumbers who are routinely and consistently assigned as irrigation systems plumbing specialists.

Refuse Collector Premium - Compensation to maintenance employees who are routinely and consistently assigned to collect refuse.

Street Lamp Replacement Premium - Compensation to maintenance employees who are routinely and consistently assigned to replace street lamps from an aerial bucket.

MCO Instructor Premium - Compensation to miscellaneous employees who are routinely and consistently assigned to train Motor Coach Operators, i.e. bus drivers.

Motorcycle Patrol Premium - Compensation to local police officers and county peace officers who are routinely and consistently assigned to operate and/or patrol on motorcycle.

Mounted Patrol Premium - Compensation to local police officers and county peace officers who are routinely and consistently assigned to patrol on horseback.

Narcotic Division Premium - Compensation to local police officers, county peace officers and school police or security officers who are routinely and consistently assigned to drug enforcement.

Paramedic Coordinator Premium - Compensation to paramedics who are routinely and consistently assigned to coordinate training activities in auxiliary medical techniques.

Park Construction Premium - Compensation to groundskeepers who are routinely and consistently assigned to build park equipment.

Park Maintenance/Equipment Manager Premium - Compensation to park maintenance employees who are routinely and consistently assigned to equipment management and other administrative duties.

Parking Citation Premium - Compensation to employees who are routinely and consistently assigned to read parking meters and cite drivers who have violated parking laws.

Patrol Premium - Compensation to local police officers, county peace officers and school police or security officers who are routinely and consistently assigned to patrol detail.

Police Administrative Officer - Compensation to rank and file police officers, county peace officers and school police or security officers who are routinely and consistently assigned to police administration to provide support for the police chief and command staff in the operation of the police department.

Police Investigator Premium - Compensation to rank and file local police officers, county peace officers and school police or security officers who are routinely and consistently assigned to analyze crimes or investigative accidents.

Police Liaison Premium - Compensation to rank and file local police officers, county peace officers and school police or security officers who are routinely and consistently assigned to function as a liaison between special persons, groups or courts and the police/sheriff department.

Police Polygraph Officer - Compensation to local police officers, county peace officers and school police or security officers who are routinely and consistently assigned to administer and

interpret polygraph exams.

Police Records Assignment Premium - Compensation to employees who are routinely and consistently assigned to the police records division.

Rangemaster Premium - Compensation to local police officers, county peace officers and school police or security officers who are routinely and consistently assigned to supervise the target range facilities and all related activities.

Refugee Arrival Cleanup Premium - Compensation to employees who are routinely and consistently assigned to cleanup from activities directly related to refugee arrival flights.

Safety Officer Training/Coordinator Premium - Compensation to employees who are routinely and consistently assigned to instruct personnel in safety procedures.

Sandblasting Premium - Compensation to miscellaneous employees who are routinely and consistently assigned to operate sandblasting equipment.

School Yard Premium - Compensation to part-time school district employees who are routinely and consistently assigned to supervise students during recreation.

Search Pay Premium - Compensation to employees who are routinely and consistently assigned to search and process prisoners in the induction area of jails.

Severely Disabled Premium - Compensation to school instructional aides who are routinely and consistently assigned to work with severely disabled students.

Sewer Crew Premium - Compensation to laborers who are routinely and consistently assigned to repair and maintain sewer systems.

Shift Differential - Compensation to employees who are routinely and consistently scheduled to work other than a standard "daytime" shift, e.g. graveyard shift, swing shift, shift change, rotating shift, split shift or weekends.

Solo Patrol Premium - Compensation to local police officers, county peace officers and school police or security officers who are routinely and consistently assigned to patrol alone in vehicles.

Sprinkler and Backflow Premium - Compensation to groundskeepers who are routinely and consistently assigned to repair large sprinkler head controllers, valves and backflow prevention devices.

Tiller Premium - Compensation to local firefighters who are routinely and consistently assigned to operate the tiller on an aerial ladder.

Tire Technician Premium - Compensation to equipment attendants who are routinely and consistently assigned to work on heavy duty tires, e.g. for buses and large construction equipment.

Traffic Detail Premium - Compensation to employees who are routinely and consistently assigned to direct traffic.

Training Premium - Compensation to employees who are routinely and consistently assigned to train employees.

Tree Crew Premium - Compensation to maintenance workers who are routinely and

consistently assigned to remove, prune, or otherwise care for trees.

Utility Meter Premium - Compensation to miscellaneous employees who are routinely and consistently assigned to re-read utility meters, repair or set and install meters.

Utilities Systems Operation Premium - Compensation to maintenance or carpenter employees who are routinely and consistently assigned to planner duties in the maintenance division.

Water Certification Premium - Compensation to miscellaneous employees who are routinely and consistently assigned to test local water quality for compliance with governmental health standards.

(5) STATUTORY ITEMS

Fair Labor Standards Act (FLSA) - Compensation paid for normal full-time work schedule including premium pay required by FLSA. For example, a firefighter's normal work schedule is 56 hours per week. FLSA states premium pay must be paid on all hours worked above 53 hours per week up to what is considered normal for employees on a full-time basis. In this example, the firefighter works 56 hours in a normal work week. Therefore compensation would be reported for 53 hours per week and FLSA premium pay would be reported for 3 hours per week. Any work performed above 56 hours per week would be considered overtime and would not be reported to PERS.

Holiday Pay - Additional compensation for employees who are normally required to work on an approved holiday because they work in positions that require scheduled staffing without regard to holidays. If these employees are paid over and above their normal monthly rate of pay for approved holidays, the additional compensation is holiday pay and reportable to PERS.

For those employees with written labor agreements providing holiday credit and allowing employees to cash out accumulated holiday credit, the cash out must be done at least annually and reported in the period earned. If a written labor agreement allows an employee to accumulate holiday credit beyond the year in which it is earned and an employee later elects to cash out accumulated holiday credit, it is not compensation for PERS purposes.

If an employee utilizes the cash out option only during his/her final compensation period, it will be considered final settlement pay and excluded from reportable compensation. If the cash out option is also utilized near his/her final compensation period, it may still be excluded based upon a review of the contracting agency or school employer's experience relating to: the number of employees in the group with this option; the number of employees who exercise this option; the frequency with which employees exercise this option; whether or not the cash out is paid periodically, and in a manner that is historically consistent; and whether or not the cash out would create an unfunded liability over and above PERS' actuarial assumptions. This review will be conducted by PERS on a case-by-base basis.

Uniform Allowance - Compensation paid or the monetary value for the purchase, rental and/or maintenance of required clothing, including clothing made from specially designed protective fabrics, which is a ready substitute for personal attire the employee would otherwise have to acquire and maintain. This excludes items that are solely for personal health and safety such as protective vests, pistols, bullets, and safety shoes.

(b) The Board has determined that all items of special compensation listed in subsection (a) are:

(1) Contained in a written labor policy or agreement as defined at Government Code section 20049, provided that the document:

(A) Has been duly approved and adopted by the employer's governing body in accordance

with requirements of applicable public meetings laws;

(B) Indicates the conditions for payment of the item of special compensation, including, but not limited to, eligibility for, and amount of, the special compensation;

(C) Is posted at the office of the employer or immediately accessible and available for public review from the employer during normal business hours or posted on the employer's internet website;

(D) Indicates an effective date and date of any revisions;

(E) Is retained by the employer and available for public inspection for not less than five years; and

(F) Does not reference another document in lieu of disclosing the item of special compensation;

(2) Available to all members in the group or class;

(3) Part of normally required duties;

(4) Performed during normal hours of employment;

(5) Paid periodically as earned;

(6) Historically consistent with prior payments for the job classification;

(7) Not paid exclusively in the final compensation period;

(8) Not final settlement pay; and

(9) Not creating an unfunded liability over and above PERS' actuarial assumptions.

(c) Only items listed in subsection (a) have been affirmatively determined to be special compensation. All items of special compensation reported to PERS will be subject to review for continued conformity with all of the standards listed in subsection (b).

(d) If an items of special compensation is not listed in subsection (a), or is out of compliance with any of the standards in subsection (b) as reported for an individual, then it shall not be used to calculate final compensation for that individual.

Note: Authority cited: Sections 20120-20124, 20636(c)(6) and 20636.1(c)(6), Government Code. Reference: Sections 20630, 20636, 20636.1 and 20691, Government Code.

Research Note: See Oden v. Public Employees' Retirement System (1994) 23 Cal.App.4th 194 [28 Cal.Rptr.2d 388]; City of Sacramento v. Public Employees' Retirement System (1991) 237 Cal.App.3d 1470 [280 Cal.Rptr. 847]; City of Fremont v. Board of Administration(1989) 219 Cal.App.3d 1026 [263 Cal.Rptr. 164]; Guelfi v. Marin County Employees' Retirement Association (1983) 145 Cal.App.3d 297 [193 Cal.Rptr. 343]; Rose v. City of Hayward (1981) 126 Cal.App.3d 926 [179 Cal.Rptr. 287]; Santa Monica P.O.A. v. Bd. of Admin. Public Employees' Retirement System (1978) 69 Cal.App.3d 96 [137 Cal.Rptr.771].

HISTORY

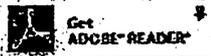
1. New section filed 7-5-94 as an emergency; operative 7-5-94 (Register 94, No. 27). A Certificate of Compliance must be transmitted to OAL by 11-2-94 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 7-5-94 order transmitted to OAL 10-28-94; disapproved by OAL and order of repeal as to 7-5-94 order filed on 12-14-94 (Register 94, No. 50).
3. New section refiled 12-15-94 as an emergency, with amendments; operative 12-15-94 (Register 94, No. 50). A Certificate of Compliance must be transmitted to OAL by 4-14-95 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 12-15-94 order including amendments transmitted to OAL 4-11-95 and filed 5-23-95 (Register 95, No. 21).
5. Amendment of subsections (a)-(a)(1), new subsections (a)(1)(A)-(F) and amendment of Note filed 9-22-99; operative 10-22-99 (Register 99, No. 39).
6. Amendment of subsection (a)(5) filed 5-22-2002; operative 6-21-2002 (Register 2002, No. 21).
7. Amendment of subsection (b)(1), new subsections (b)(1)(A)-(F) and amendment of Note filed 7-11-2011; operative 8-10-2011 (Register 2011, No. 28).
8. Change without regulatory effect amending Note filed 9-22-2011 pursuant to section 100, title 1, California Code of Regulations (Register 2011, No. 38).

2 CCR § 571, 2 CA ADC § 571

This database is current through 9/30/11 Register 2011, No. 39

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PUBLIC AGENCY AUDIT

CITY OF HUNTINGTON BEACH



CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

OFFICE OF AUDIT SERVICES

**EMPLOYER CODE 0097
JOB # P02-046**

JULY 2003

CITY OF HUNTINGTON BEACH

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JULY 2003

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BACKGROUND

The California Public Employees' Retirement Systems (CalPERS) provides a variety of programs serving members employed by more than 2,500 local public agencies as well as State agencies and state universities. The agencies contract with CalPERS for retirement benefits, with CalPERS providing actuarial services necessary for the agencies to fund their benefit structure. In addition, CalPERS provides services which facilitate the retirement process.

CalPERS Actuarial and Employer Services Division (AESD) manages contract coverage for public agencies and receives, processes and posts payroll information. CalPERS Benefit Services Division (BNSD) provides services for eligible members who submit service or disability retirement applications. BNSD sets up retirees' accounts, processes applications, calculates retirement allowances, prepares monthly retirement benefit payment rolls, and makes adjustments to retirement benefits.

Retirement allowances are computed using three factors: years of service, age at retirement and final compensation. Final compensation is defined as the highest average annual compensation earnable by a member during the last one or three consecutive years of employment (one year for all State and school members and those public agency members with a one-year final compensation as a contract provision), unless the member elects a different period with a higher average.

The employers' knowledge of the laws relating to membership and payroll reporting facilitates the employer in providing CalPERS with appropriate employee information. Appropriately enrolling eligible employees and correctly reporting payroll is necessary to accurately compute a member's retirement allowance.

The City of Huntington Beach (City) is located in northwest Orange County between Long Beach and Newport Beach. The City was incorporated as a charter city in 1909, with a City Council/City Administrator form of government. The City is a full service city with major departments that include City Administrator's office, Administrative Services, Building and Safety, Planning, Library Services, Public Works, Community Services, Economic Development and Police and Fire.

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The City contracted with CalPERS, effective October 1, 1945, to provide retirement benefits for Local Fire Fighters, Local Police Officers (safety members) and employees other than local safety members (miscellaneous members). Excluded from membership are Crossing Guards, hired on or after September 1, 1973 and Administrative Interns, Human Services Interns and Planning Interns hired on or after September 1, 1973. The City's elected the optional provisions of Government Code, Sections 20042, (One-Year Final Compensation).

Memoranda of Understandings (MOUs) outline all City employees' salaries and benefits and states the terms of employment agreed upon between the City and its employees.

The City's Payroll Department processes payroll and reports by diskette to CalPERS bi-weekly.

SCOPE

As part of the Board approved public agency audit plan for the fiscal year 2002-03, we reviewed the City's personnel and payroll records and payroll reporting processes as these records and processes relate to the City's contract with CalPERS. The objective of this review was limited to the determination that the City is in compliance with applicable sections of the California Government Code (Sections 20000 et seq.) and Title 2 of the California Code of Regulations and that prescribed reporting and enrollment procedures are being followed. The fieldwork for this review was conducted from July 28, 2003 to July 31, 2003.

The audit period was limited to the examination of the records and processes from April 1, 2000 through June 30, 2003. To accomplish the audit objectives we performed the following:

- ✓ Reviewed the contract and subsequent amendments the City has with CalPERS, correspondence files maintained at CalPERS, and employment agreements the City has with its employees.
- ✓ Interviewed key staff members to obtain an understanding of the City's personnel and payroll procedures.
- ✓ Sampled the payroll transactions for two pay periods, and compared the City's payroll register with the data reported to CalPERS to determine whether the City correctly reported compensation.

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- ✓ Sampled part-time employees, retired annuitants and contract and payment records for independent contractors to determine whether eligible agency employees were properly enrolled.
- ✓ Reviewed the City's process for disability retirement determinations and appeal procedures for local safety members.
- ✓ Sampled employees' membership classifications to determine if the City classified employees in the appropriate safety and miscellaneous coverage groups.

OPINION

In our opinion, the City is in compliance in all material respects, with the provisions of the Public Employees' Retirement Laws and its regulations for those transactions we included in our sample test.. The City appropriately enrolled employees and accurately reported member earnings to CalPERS for the employees included in our sample, except where noted in the following Risks and Mitigations table.

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RISKS AND MITIGATION TABLE

In developing our opinions, we considered the following risks and mitigation. We also include our observations and comments.

RISKS	MITIGATION & OBSERVATION	COMMENTS
<p>1. The City may not accurately report compensation to CalPERS.</p>	<p>The City appropriately reported to CalPERS, in our test sample: authorized pay rates, regular pay, pay codes, uniform allowance of Police and Fire personnel, educational pay, shorthand pay, bilingual pay, shift pay, and POST pay. However, the City did not correctly report a retroactive payment, did not accurately report Emergency Medical Technician (EMT) pay, holiday pay, uniform allowances, and Fair Labor Standards Act (FLSA) pay and incorrectly reported the work schedule codes for certain employees.</p> <p><u>Retroactive payroll reporting error</u></p> <p>A retroactive payment was not properly reported to CalPERS. Specifically, in the 7/02-4 pay period, a member received a retroactive payment in the amount of \$701.40 due to a new pay rate of \$4,130.53. The new pay rate was retroactive to February 8, 2002. The City incorrectly reported a pay rate of \$701.40, retroactive to pay period 7/02-4. The City should have reported a pay rate of \$4,130.53, retroactive to pay period 2/02-3.</p>	<p>The City should report the earliest service period involved in a retroactive adjustment. The transaction should include the member's new pay rate and the total additional earnings and contributions for the period.</p>

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RISKS	MILITATION & IDENTIFICATION	COMMENTS
<p>1. The City may not accurately report compensation to CalPERS. (continued)</p>	<p>CalPERS Procedures Manual, Section 3.42 outlines the methodology for making a retroactive salary adjustment.</p> <p><u>Emergency Medical Technician (EMT) pay</u></p> <p>The City did not correctly report EMT pay. Specifically, the City did not report EMT Certificate pay for Ocean Life Guards. The Surf City Lifeguards Employee Association's MOU, which was negotiated on February 18, 2003 and effective December 21, 2002 through December 31, 2004, provides a payment in the amount of 5% of the Lifeguards hourly rate for having an EMT Certificate. The Lifeguards previous MOU, effective January 1, 2000 through December 31, 2002 provides employees possessing an EMT Certificate an additional fifty cents per hour above their regular hourly wage. The City did not report EMT pay as special compensation on behalf of eligible employees.</p> <p>EMT pay is a reportable item of special compensation per California Code of Regulations, Section 571(a)(2).</p> <p><u>Holiday pay</u></p> <p>The City did not correctly report holiday compensation to CalPERS. Specifically, the City reported holiday pay for safety employees, except for Police Lieutenants and Captains. The City's Police Lieutenants and Captains holiday pay, which is coded as "Type 91 Hol-Lt&Capt" in the City's payroll records, was not reported to CalPERS as</p>	<p>The City should work with CalPERS Actuarial and Employer Services Division to assess the impact of this incorrect reporting and determine what adjustments are needed.</p> <p>The City should immediately begin reporting EMT certificate pay as compensation to CalPERS for all eligible lifeguards.</p> <p>The City should work with CalPERS Actuarial and Employer Services Division to assess the impact of this incorrect reporting and determine what adjustments are needed.</p> <p>The City should immediately begin reporting all holiday pay as compensation to CalPERS for Police Lieutenants and Captains. The City should also report all appropriate holiday pay for Police Sergeants.</p> <p>The City should work with CalPERS Actuarial and Employer Services Division to assess the impact of this incorrect reporting and determine what adjustments are needed.</p>

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RISKS	MITIGATION & OBSERVATION	COMMENTS
<p>1. The City may not accurately report compensation to CalPERS. (continued)</p>	<p>compensation. In addition, a Police Sergeant received holiday pay in the amount of \$226.20 in pay period 7/02-4, coded as "90 HolidayPrem", which was not reported as compensation to CalPERS.</p> <p>Holiday pay is a reportable time of special compensation per California Code of Regulations, Section 571(a)(5).</p> <p><u>Uniform Allowance</u></p> <p>The City did not correctly report all uniform allowances. Specifically, the City properly reported the uniform allowances of Police and Fire personnel, however, the City did not report the value of the uniforms provided to employees working in the Public Work and Marine Safety Units. The City contracted with a private vendor to provide uniform services for the employees working in the Public Work and Marine Safety units required to wear uniforms:</p> <p>The compensation paid or the monetary value for the purchase, rental and/or maintenance of required clothing is an item of special compensation per California Code of Regulations, Section 571(a) (5).</p> <p><u>Fair Labor Standards Act (FLSA) pay</u></p> <p>FLSA compensation was not properly reported to CalPERS. Specifically, the City incorrectly paid FLSA premium payments as the payments were based on an</p>	<p>The City should immediately begin reporting the value of the purchase, rental and maintenance of uniforms for those employees who are required to wear uniforms furnished and maintained by the City.</p> <p>The City should work with CalPERS Actuarial and Employer Services Division to assess the impact of this incorrect reporting and determine what adjustments are needed.</p> <p>The City should immediately begin using the maximum hour standard of 114 instead of 110 for their 15 day work period FLSA calculation.</p>

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RISKS	CAUSE AND MITIGATION	COMMENTS
<p>1. The City may not accurately report compensation to CalPERS. (continued)</p>	<p>hourly threshold less than the federally mandated maximum hour standard. This resulted in FLSA payments, which were not due under FLSA guidelines, being reported to CalPERS.</p> <p>Article VII, Section A.2 of the Fire MOU effective October 1, 2000 through September 30, 2003 defines the 24-hour shift fire fighters' work period as, "a fifteen (15) day work period as defined by the Fair Labor Standards Act (FLSA)."</p> <p>Article VII, Section C.1 of the Fire MOU states, in part, "All hours worked in excess of 110 hours in an FLSA work period shall be compensated at the premium rate (one and one half times the regular rate of pay). Each employee assigned to twenty-four shifts for a full FLSA work period shall receive 102.67 hours of regular pay and 9.33 hours of premium pay in each bi-weekly pay period, which shall compensate the employee the for FLSA overtime for regular scheduled shift work".</p> <p>However, Title 29, Part 553.23 entitled "Overtime Compensation Rules" of the Code of Federal Regulations states, in part, (a) For those employees engaged in fire protection activities who have a work period of at least 7 but less than 28 consecutive days, no overtime compensation is required under 7(k) until the number of hours worked exceeds the number of hours which bears the same relationship to 212 as the number of days in the work period bears to 28.</p>	<p>The City should work with CalPERS Actuarial and Employer Services Division to assess the impact of this issue and determine what adjustments, if any, are needed.</p>

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RISKS	MITIGATION & OBSERVATION	COMMENTS												
<p>1. The City may not accurately report compensation to CalPERS. (continued)</p>	<p>(c) The ratio of 212 hours to 28 days for employees engaged in fire protection activities is 7.57 hours per day (rounded). Accordingly, overtime compensation (in premium pay or compensatory time) is required for all hours worked in excess of the following maximum hours standards:</p> <table border="1" data-bbox="707 581 1194 889"> <thead> <tr> <th>Work Period (days)</th> <th>Maximum Hours Standards</th> </tr> </thead> <tbody> <tr> <td>28</td> <td>212</td> </tr> <tr> <td>:</td> <td>:</td> </tr> <tr> <td>15</td> <td>114</td> </tr> <tr> <td>:</td> <td>:</td> </tr> <tr> <td>7</td> <td>53</td> </tr> </tbody> </table> <p>Therefore, for a 15 day work period, the City should have used 114 as the maximum hour standard instead of 110.</p> <p>The City reported an average of 112 hours every two weeks at the firefighters' pay rate for their regular earnings. In addition, the City reported 9.3 hours per pay period (every two weeks) at ½ the firefighters' pay rate for FLSA compensation.</p> <p><u>Work schedule codes</u></p> <p>The City did not correctly report all work schedule codes for their employees. Specifically, the City correctly</p>	Work Period (days)	Maximum Hours Standards	28	212	:	:	15	114	:	:	7	53	
Work Period (days)	Maximum Hours Standards													
28	212													
:	:													
15	114													
:	:													
7	53													

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RISKS	MITIGATION & OBSERVATION	COMMENTS
<p>1. The City may not accurately report compensation to CalPERS. (continued)</p>	<p>reported work schedule code 173 for monthly employees working an average of 173 hours per month and work schedule code 243 for their firefighters working an average of 243 hours per month, but did not report the correct work schedule code for life guards.</p> <p>The City's life guard employees are paid at an hourly rate and the City properly reported the hourly pay code (04) and pay rates. However, the City reported a work schedule code 173, instead of the correct work schedule code of 400.</p> <p>The work schedule code is a three digit numeric code used in the calculation of the employer's rate and the member's retirement. The work schedule code identifies what the employer considers to be full-time employment for employees working in the same work group.</p>	<p>The City should immediately begin using work schedule code of 400 for their hourly paid life guard employees whose normal work week is an average of 40 hours per week.</p> <p>The City should work with CalPERS Actuarial and Employer Services Division to determine the impact of these incorrect reporting issues and what adjustments, if any, are needed.</p> <p>A confidential list identifying the individuals mentioned in this report has been sent to the City under separate cover.</p>
<p>2. The City may not enroll all eligible employees into CalPERS membership.</p>	<p>The City did not properly enroll all employees into CalPERS membership. Specifically, the City did not enroll several temporary/part-time employees who met membership eligibility requirements. In addition, the City did not properly report the earnings of part-time employees who were already enrolled in CalPERS membership.</p>	

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RISKS	MITIGATION & OBSERVATION	COMMENTS
<p>2. The City may not enroll all eligible employees into CalPERS membership. (continued)</p>	<p><u>Part-time employees not enrolled</u></p> <p>We reviewed the hours worked by a sample of thirteen part-time employees during fiscal years 2001/2002 and 2002/2003. Five of the temporary employees worked 1000 hours or more in a fiscal year, therefore, qualifying for membership, and they should have been enrolled.</p> <p>Two of these employees had worked 1,000 hours by the end of June 2002 and should have been enrolled into CalPERS membership no later than July 6, 2002. One employee had worked 1000 hours as of the pay period ended May 24, 2002 and should have been enrolled into membership by May 25, 2002. Another employee had worked 1000 hours as of the pay period ended May 10, 2002 and should have been enrolled into CalPERS membership by May 11, 2002. In Fiscal year 2002/2003, a temporary/part-time employee had worked 1000 hours by the end of June 30, 2003 and should have been enrolled into CalPERS membership no later than July 5, 2003.</p> <p><u>Part-time employees' earnings not reported</u></p> <p>The audit identified two temporary/part-time employees, who were already CalPERS members, however, their earnings were not reported. These two employees did not</p>	<p>The City should review all hours worked in a fiscal year by all temporary/part-time employees and enroll those that meet membership eligibility criteria. In addition, the City should implement procedures to monitor the hours worked for temporary/part-time employees in order to identify which employees to enroll once membership eligibility requirements are met.</p> <p>The City should work with CalPERS Actuarial and Employer Services Division to enroll the employees identified in this report and determine what adjustments are needed. A confidential list identifying the individuals has been sent to the City under separate cover.</p> <p>The City should review the membership status of all temporary/part-time employees and report the earnings of those that are</p>

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RISKS	MITIGATION & OBSERVATION	COMMENTS
<p>2. The City may not enroll all eligible employees into CalPERS membership. (continued)</p>	<p>work the 1,000 or more hours normally required for membership, however, as they were already CalPERS members, their earnings should have been reported from the time of their membership.</p> <p>One employee became an active member on May 1, 2001 and the other employee became an active member on September 8, 1998. Their earnings should have been reported to CalPERS subsequent to their membership date.</p> <p>Another employee, who worked more than 1,000 hours in fiscal year 2001/2002 was an active member of CalPERS and enrolled by the City on October 9, 2000. However, earnings were not reported after October 2000.</p> <p>California Government Code, Section 20305(a)(3)(B), states, in part, "An employee serving less on a less than full-time basis is excluded from this system unless the person works more than 1,000 hours within the fiscal year, in which case, membership shall be effective not later than the first day of the first pay period of the month following the month in which 1,000 hours of service were completed."</p>	<p>already members. In addition, the City should implement procedures to monitor the status of temporary/part-time employees in order to identify when part-time employees who subsequently become members, and have their earnings reported.</p> <p>The City should work with CalPERS Actuarial and Employer Services Division to determine what adjustments are needed. A confidential list identifying the individuals has been sent to the City under separate cover.</p>

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RISKS	MITIGATION & OBSERVATION	COMMENTS
<p>2. The City may not enroll all eligible employees into CalPERS membership. (continued)</p>	<p>The City's contract with CalPERS excludes Reserve Fire Fighters hired on or after 12/04/86, Crossing Guards, Student Designated Positions and Senior Outreach Assistants hired on or after 3/18/82. The City appropriately excluded Reserve Fire Fighters hired on or after 12/04/86, Crossing Guards, Student Designated Positions and Senior Outreach Assistants hired on or after 3/18/82 from CalPERS membership.</p> <p>We reviewed a sample of individuals classified as independent contractors. The sample of eight individuals were properly classified as independent contractors and excluded from membership.</p>	<p>No comment.</p> <p>No comment.</p>
<p>3. The City may not appropriately reinstate eligible retired annuitants into CalPERS membership.</p>	<p>We reviewed the hours worked by a sample of seven retired annuitants who had both a retirement date and date of hire subsequent to the audit period. We reviewed the hours worked during calendar years 2001 and 2002. The sampled retired annuitants all worked within 960-hour limitation stated in Government Code Section 21224.</p>	<p>No comment.</p>
<p>4. The City may not appropriately report members under the proper classification/coverage group code.</p>	<p>We judgmentally selected a sample of 10 employees who work in various departments in order to determine if the City appropriately reported members under the proper coverage group codes. Coverage Group Code 70001 is an acceptable miscellaneous code, Code 74001 is an acceptable Fire Safety code, Code 75001 is an acceptable</p>	<p>No comment.</p>

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FINDING	IMPLICATIONS/DEFERRED ACTION	COMMENTS
	<p>Police Safety code, and Code 76001 is an acceptable Lifeguard Safety code for the City to use.</p> <p>No exceptions were found on the CalPERS listings for coverage groups reported for the sampled employees.</p>	
<p>5. The City may not make timely disability retirement determinations and/or may not have appeal procedures in place for local safety members.</p>	<p>All IDR determinations that were filed within the audit scope were made within the 6-month determination period.</p>	<p>No comment.</p>

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CONCLUSION

During the audit period, the City appropriately enrolled employees and accurately reported member earnings for the employees in our sample, except for the instances noted in this report.

We limited the scope of this review to the areas specified in the audit scope of this report. We limited our test of retirement transactions to our samples of City payroll reports and personnel records. This testing procedure provides reasonable, but not absolute, assurance that transactions complied with the California Government Code during the period reviewed, except as noted above.

Respectfully submitted,

Larry Jensen, CIA
Chief, Office of Audit Services

Date: July 2003
Staff: Bruce Smith, CIA, Audit Manager
Michael Dutil, CIA