ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO DENY PETITION FOR RECONSIDERATION

The hearing on this case was completed November 15, 2011. Following hearing, a Proposed Decision was issued on March 15, 2013. The Decision was in favor of Respondents. The Board voted to remand the Proposed Decision on May 15, 2013. Respondents submitted this Petition for Reconsideration on May 31, 2013.

The issue in this case concerns payment of "Holiday Premium Pay" to the City of Huntington Beach rank and file police officers. In calculating the final compensation of Respondents Non-Management Police Officers, CalPERS denied the inclusion of Holiday Premium Pay.

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

CalPERS allows the officers to claim regular pay plus paid holiday pay as part of compensation earnable. CalPERS denied the additional Holiday Premium Pay as overtime. The police officers appealed.

CalPERS argued that the officers were "double dipping" for working on a holiday, because they received their pay, plus the holiday pay whether they worked or not. If they actually worked the holiday, the officers received an additional Holiday Premium Pay added on top, resulting in "double dipping" and improperly spiking their pensions.

After hearing and post-hearing briefing, the Administrative Law Judge (ALJ) concluded that Respondents' appeal should be granted. The ALJ found that Holiday Premium Pay is reportable to CalPERS as "Holiday Pay" within the meaning of California Code of Regulations section 571(a)(5) because:

(1) it is additional compensation above the compensation paid every employee for the 10 holidays when not worked;
(2) it is paid to officers who are normally required to work on an approved holiday because they work in positions that require staffing without regard to holidays; and
(3) it is over and above their normal monthly pay for approved holidays, thus is plainly additional compensation. The ALJ also found no evidence of pension spiking.

The ALJ concluded that Respondent's appeal should be granted. Respondents and Staff argued that the Board adopt the Proposed Decision.

The Board voted to remand for taking additional evidence on two issues:

(1) whether the Holiday Premium Pay constitutes 262% of the Respondents' regular rate of pay, or 50% of the Respondents' regular rate of pay; and

(2) whether the Holiday Premium Pay constitutes one layer of additional pay over and above the Respondents' regular rate of pay, or two or more layers of additional pay over and above Respondents' regular rate of pay.

Respondents filed a Petition for Reconsideration of the Remand on May 31, 2013. Respondents argue that the remand will receive evidence on issues unrelated to the subject matter of these appeals. Respondents argue that the Statement of Issues, evidence and documents at hearing all define the issue as "whether respondents and similarly situated non-managerial peace officers are entitled to have Holiday Premium Pay reported to CalPERS as 'compensation earnable' for purposes of use in their final compensation calculation." The amount of the Holiday Premium Pay was never an issue; rather the issue was whether the Holiday Premium Pay (regardless of its amount) must be regarded as "compensation earnable."

At hearing, the ALJ left open some calculation determinations, including whether Respondents had been paid 262% or 50% of their regular rate of pay. The ALJ also questioned whether the Holiday Premium Pay had been paid as agreed by the City in its MOU with the Police Officers Association.

Moreover, there were questions as to how the respondent's regular rate of pay, and the additional layers of pay were calculated. During hearing, the ALJ specifically indicated that "no determination is made as to whether the actual amounts reported to PERS for Respondents Catalano and Evanson is correct." Government Code Section 20636(c)(2) specifically provides that special compensation shall be limited to that which is received by a member pursuant to an MOU. The ALJ did not determine respondents' calculation of pay, so the Board remanded the issue for taking additional evidence on whether the Holiday Premium Pay constitutes one layer, or two or more layers, of additional pay over respondents' regular rate of pay. The transparency of compensation earnable is the basis for SB 53, and this case presented lack of transparency from respondents and the City as to calculation methodology.

The Board properly remanded two issues regarding calculation of the amount of the Holiday Premium Pay. Staff argues that Respondent's Petition for Reconsideration should be denied.

The risks of denying the Petition for Reconsideration are minimal. Respondent may file a writ petition in superior court seeking to overturn the decision of the Board.

June 19, 2013

Elizabeth Yelland

ELIZABETH YELLAND
Senior Staff Attorney