

AB 719

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CONCURRENCE IN SENATE AMENDMENTS
 AB 719 (Negrete McLeod)
 As Amended August 18, 2003
 Majority vote

ASSEMBLY:	74-2	(May 27, 2003)	SENATE:	22-12	(September 12, 2003)
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Original Committee Reference: P.E., R, & S.S.

SUMMARY : Allows various California Public Employees' Retirement System (CalPERS) members, to be eligible to purchase up to five years of non-qualified service in CalPERS.

The Senate amendments clarify the term "state service" for the purpose of establishing eligibility for the service credit purchase.

EXISTING LAW under the Public Employees' Retirement Law (PERL), service retirement allowances are calculated, in part, based on years of credited service. Members of that retirement system may receive service credit for public service not otherwise subject to credit, upon payment of specified additional contributions.

AS PASSED BY THE ASSEMBLY, this bill:

- 1) Allowed a state member, school member, or local member upon the member's contracting agency's election to be subject to the provision, to be eligible to purchase up to five years of non-qualified service in CalPERS.
- 2) Required a member making this election to have at least five years of service credit prior to the purchase and would be required to pay the full cost of the purchase.
- 3) Authorized specified members of that system to elect to make additional contributions and receive up to five years of additional retirement service credit, as defined, subject to specified limitations.
- 4) Contributions would have been deposited in the Public

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Employees' Retirement Fund, a continuously appropriated fund. By increasing member contributions to that fund, this bill would make an appropriation.

FISCAL EFFECT : According to CalPERS, this benefit is intended to be cost neutral to employers. The member pays the full present value cost of the additional service credit. The full present value cost is calculated to be equivalent to the cost of the increased benefit due to the additional service credit.

COMMENTS : There are several types of service credit that may be purchased by a member in CalPERS. These types of service credit include military service, service as a volunteer in Peace Corps or AmeriCorps, certain types of service prior to membership, and others.

In general, there are two ways of paying for the increase in retirement benefit that results from the crediting of the additional service credit. One method of payment requires the member to pay the portion that would normally be attributable to the member's contributions and interest, and the employer to pay the balance. This method most commonly applies when the employer directly benefited from the service being purchased, such as when a member worked for the employer before the agency came into CalPERS, or worked part-time or seasonally prior to full time CalPERS, covered employment.

The other type of payment is known as the "full present value" payment. In this case, the member pays for the full cost of the increase in benefit that will result from the service credit purchase. This cost method generally applies when an employer does not directly benefit from the member's service, such as with military or Peace Corps service.

Federal tax-qualification laws allow a member of a tax-qualified defined benefit program, such as CalPERS, to purchase up to five years of nonqualified time. Nonqualified time is sometimes referred to as "air time" because it does not correspond to any service actually performed. The only requirements for purchasing nonqualified time are that the amount purchased cannot exceed five years, and a member purchasing nonqualified time must have earned at least five years of service credit before being eligible to purchase the nonqualified time. At this time there is no provision in PERL to allow a member to

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purchase nonqualified time.

Supporters argue that the option to purchase nonqualified time allows members of CalPERS to increase their retirement benefits at no cost to employers. Many members take breaks in employment to raise children, advance their educations, or work in the private sector for a time. Members who enter CalPERS covered employment later in life or who have breaks in service, will find that purchasing nonqualified time can contribute to providing a livable retirement income.

Supporters also contend that recent changes in federal tax laws allow people to roll over funds from personal tax-qualified savings accounts (such as 401(k), 403 (b), and 457) in order to purchase service credit in defined benefit plans. This practice makes the purchase of nonqualified time easier for those who have accumulated personal savings.

Analysis Prepared by : Clem Meredith / P.E., R. & S.S. / (916)
319-3957

FN: 0004183

SENATE RULES COMMITTEE	AB 719
Office of Senate Floor Analyses	
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THIRD READING

Bill No: AB 719
 Author: Negrete McLeod (D)
 Amended: 8/18/03 in Senate
 Vote: 21

SENATE PUBLIC EMP. & RET. COMMITTEE : 4-1, 6/23/03
 AYES: Soto, Ashburn, Escutia, Karnette
 NOES: Oller

ASSEMBLY FLOOR : 74-2, 5/27/03 - See last page for vote

SUBJECT : Public employees retirement: retirement
 benefit
 enhancement

SOURCE : California Professional Firefighters
 California Independent Public Employees
 Legislative
 Council

DIGEST : This bill allows various State Public Employees Retirement System (PERS) members, including employees or officers of the state, the university, a school employer or a contracting agency and certain legislative employees, to be eligible to purchase up to five years of non-qualified service in PERS.

ANALYSIS : Existing law under the Public Employees' Retirement Law (PERL), service retirement allowances are calculated, in part, based on years of credited service. Members of that retirement system may receive service

CONTINUED

The other type of payment is known as the "full present value" payment. In this case, the member pays for the full cost of the increase in benefit that results from the service credit purchase. This cost method generally applies when an employer does not directly benefit from the member's service, such as with military or Peace Corps service.

Federal tax-qualification laws allow a member of a tax-qualified defined benefit program, such as CalPERS, to purchase up to five years of nonqualified time. Nonqualified time is sometimes referred to as "air time" because it does not correspond to any service actually performed. The only requirements for purchasing nonqualified time are that the amount purchased cannot exceed five years, and a member purchasing nonqualified time must have earned at least five years of service credit before being eligible to purchase the nonqualified time. At this time, there is no provision in PERL to allow a member to purchase nonqualified time.

FISCAL EFFECT : Appropriation: Yes Fiscal Com.: Yes
Local: No

According to PERS, this benefit is cost neutral to employers, as the member pays the full present value cost of the additional service credit. The full present value cost is calculated to be equivalent to the cost of the increased benefit due to the additional service credit.

SUPPORT : (Verified 6/23/03)

California Independent Public Employees Legislative Council
(co-source)
California Professional Firefighters (co-source)
California Federation of Teachers
California Fraternal Order of Police
California School Employees Association
California State Employees Association
California State University
Long Beach Police Officers Association
Santa Ana Police Officers Association

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Service Employees International Union
State Public Employees Retirement System

OPPOSITION : (Verified 6/23/03)

State Department of Finance

**** END ****

STATE AND CONSUMER SERVICES AGENCY **ENROLLED BILL REPORT**

CONFIDENTIAL-Government Code §6254(l)		
Department:/Board California Public Employees' Retirement System	Bill Number/Author: AB 719 / Negrete McLeod	
Sponsor: California Public Employees' Retirement System <input type="checkbox"/> Admin Sponsored Proposal No.	Related Bills AB 55	Chapting Order (if known) <input type="checkbox"/> Attachment
	Subject: NonQualified Time for CalPERS Members	

SUMMARY

AB 719 would allow any CalPERS member to purchase up to 5 years of non-qualified service, sometimes referred to as "airtime," in CalPERS. A member making this election would be required to have at least 5 years of service credit prior to the purchase and would be required to pay the full cost of the purchase. A member could not use the airtime to vest for retirement, disability, or health benefits. The time could only be used to increase the years of service for purposes of increasing the member's service retirement allowance.

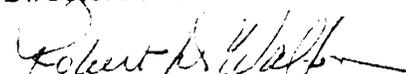
PURPOSE OF THE BILL

At this time there is no provision in Public Employee's Retirement Law to allow a member to purchase nonqualified time. AB 719 would allow CalPERS members to do so.

RECOMMENDATION AND SUPPORTING ARGUMENTS

SIGN

This bill will provide all CalPERS members with the opportunity to increase their

Departments That May Be Affected				
<input type="checkbox"/> New / Increased Fee	<input type="checkbox"/> Governor's Appointment	<input type="checkbox"/> Legislative Appointment	<input type="checkbox"/> State Mandate	<input type="checkbox"/> Urgency Clause
Dept/Board Position <input checked="" type="checkbox"/> Sign <input type="checkbox"/> Veto <input type="checkbox"/> Defer to:		Agency Secretary Position <input type="checkbox"/> Sign <input type="checkbox"/> Veto <input type="checkbox"/> Defer to:		
Director /Chair 	Date 9/18/03	Agency Secretary Date		

retirement benefits by purchasing up to five years of additional service credit. Members who receive the increased retirement benefits will pay for the full cost of the purchases. This legislation will be especially valuable to those who have entered employment later in life, or who have taken time off from employment to take care of health, family, or personal needs, or to improve their educations. These members will be able to purchase the service they have lost and thereby provide a better retirement for themselves and their families.

ANALYSIS

Proposed Changes

This bill would allow any CalPERS member with 5 or more years of service credit to purchase up to 5 years of nonqualified time. The election to purchase nonqualified time could only be made once, and members must purchase in whole year increments. Members electing to purchase nonqualified time would pay the full present value cost for the service credit purchase. The time could not be used for any other purpose than increasing years of service for service retirement purposes.

Issues

Example of member cost to purchase service under this provision.

The following table illustrates the cost to a member, earning \$50,000 per year, for purchasing 5 years of service at different ages and under two different formulas:

	2 percent at age 55	3 percent at age 50
Member age 40 with 10 years service	\$25,000 to \$30,000	\$50,000 to \$60,000
Member age 55 with 25 years service	\$40,000 to \$50,000	\$90,000 to \$100,000

As can be seen in the examples, the cost is cheaper at younger ages. This is due to the fact that contributions paid at younger ages have longer to earn compounded interest before the member retires. In addition, factors such as compensation amount, retirement formula, amount of COLA increases, 1 year or 3 year final compensation, and the number of years of service the member already has at the time of the purchase will affect the cost of the purchase.

Results

CalPERS members with five or more years of service will be eligible to make a one-time purchase of up to 5 years of nonqualified time. Members electing this benefit will pay the full present value cost of the benefit increase resulting from the additional service credit. Purchasing the service will not allow the member to vest sooner for retirement, disability, or health benefits. Members who elect to purchase this service may do so in installment payments over a period of time of up to 15 years. The member must begin

the purchase prior to retirement, but may make the payments after retirement by a reduction in retirement income.

LEGISLATIVE HISTORY

- 2003 Chapter 261 (AB 55, Correa)—Allows members in the 1937 Act Retirement System to purchase up to 5 years of nonqualified time in that system. The provisions of this year's bill pertaining to the 1937 Act System are similar to provisions in AB 2004 (Correa, 2002).
- 2002 AB 2004 (Correa)—Would have allowed members in the 1937 Act Retirement System to purchase up to 5 years of nonqualified time in that system. This bill was amended late in the session to provide legislative employee members of CalPERS with the same benefit. Governor Davis vetoed the bill, implying that the benefit should be available to all CalPERS members when he stated, "This bill confers a special benefit on legislative employees not available generally to all State employees." CalPERS did not have time to take a position on this bill.
- 1998 Chapter 1076 (SB 2126, Committee on PE&R)—Authorized vested members of the California State Teachers' Retirement System to purchase up to five years of additional service credit for nonqualified service.

PROGRAM BACKGROUND

There are several types of service credit that may be purchased by a member in CalPERS. These types of service credit include military service, service as a volunteer in Peace Corps or AmeriCorps, and certain types of service prior to membership.

In general, there are two ways of paying for the increase in retirement benefit that results from the crediting of the additional service credit. One method of payment requires the member to pay the portion that would normally be attributable to the member's contributions and interest, and the employer to pay the balance. This method most commonly applies when the employer directly benefited from the service being purchased—such as when a member worked for the employer before the agency came into CalPERS, or worked part-time or seasonally prior to full-time CalPERS-covered employment.

The other type of payment is known as the "full present value" payment. In this case, the member pays for the full cost of the increase in benefit that will result from the service credit purchase. This cost method generally applies when an employer does not directly benefit from the member's service, such as with military or Peace Corps service.

The Internal Revenue Code allows a member of a tax-qualified defined benefit program, such as CalPERS, to purchase up to 5 years of nonqualified time. Nonqualified time is sometimes referred to as "air time" because it does not correspond to any service actually performed. The only requirements for purchasing nonqualified time are that the amount purchased cannot exceed 5 years, and a member purchasing nonqualified time

must have earned at least 5 years of service credit before being eligible to purchase the nonqualified time.

FISCAL IMPACT

Program Costs

This benefit is intended to be cost neutral to employers. The member would pay the full present value cost of the additional service credit. The full present value cost is calculated to be equivalent to the cost of the increased benefit due to the additional service credit.

It is possible that in some cases the benefit may be more expensive than projected, such as when a member receives a dramatic increase in compensation prior to retirement or a higher retirement formula (such as going from the 2 percent at age 50 safety formula to the 3 percent at age 50 formula). On the other hand, the benefit may be less expensive than projected, such as when a member dies at a young age. The factors used in full present value calculations are intended to encompass these possibilities.

Administrative Costs

There will be many requests for estimates if this bill is enacted, resulting in increased workload for CalPERS' Member Services Division staff, at least for a period of time immediately following enactment. In addition, there will be changes required to CalPERS automated systems to accommodate this particular type of service credit purchase. The administrative costs associated with these changes have not been estimated.

SUPPORT/OPPOSITION

Support:

California Independent Public Employees Legislative Council and California Professional Firefighters, Cosponsors; California Federation of Teachers; California Fraternal Order of Police; CalPERS; California School Employees Association; California State Employees Association; California State University (CSU); Long Beach Police Officers Association; Santa Ana Police Officers Association; Service Employees International Union

Opposition:

Department of Finance

ARGUMENTS

Pro:

Being able to purchase airtime allows members of CalPERS to increase their retirement benefits at no cost to employers. Many members take breaks in employment to raise children, advance their educations, or work in the private sector for a time. For members who do not enter CalPERS covered employment until later in life or who have breaks in service, purchasing nonqualified time may contribute to providing a livable retirement income.

In addition, recent changes in federal tax laws allow people to roll over funds from personal tax-qualified savings accounts (such as 401(k), 403 (b), and 457) to purchase service credit in defined benefit plans, making the purchase of nonqualified time easier for those who have accumulated personal savings.

Con:

The Department of Finance has stated that they believe this benefit should be subject to collective bargaining.

VOTES

	<u>AYE</u>	<u>NO</u>	<u>DATE</u>
Assembly Floor:	74	2	05/27/2003
Senate Floor:	22	12	09/12/2003
Concurrence Vote:	65	6	09/13/2003

The votes were split upon partisan lines, with Republicans casting the no votes.

LEGISLATIVE STAFF CONTACT

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Karen Neuwald
Chief
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AGENCY:

Happy Chastain
SCSA
Office: 653-3111

CalPERS supports AB 719 and recommends that this bill be signed by the Governor. The following draft veto message is provided in compliance with the Administration policy that veto messages be drafted for bills that received more than 5 "no" votes on the floor of either house.

VETO MESSAGE
Assembly Bill 719

To the Members of the California Assembly:

I am returning Assembly Bill 719 without my signature.

This bill would allow CalPERS members to purchase up to five years of unqualified time as service credit in CalPERS by paying the full cost for that service. Although I sympathize with public employees who wish to improve their retirement benefits by investing in the retirement system, I believe that this benefit should first be bargained.

Sincerely,

GRAY DAVIS

BILL ANALYSIS

State and Consumer Services Agency

CONFIDENTIAL-Government Code §6254(l)		
Department: California Public Employees' Retirement System (CalPERS)	Author: Negrete McLeod	Bill Number: AB 719
Internal Routing:	Sponsor: Service Employees International Union; California Professional Firefighters	Version Amended 3/24/03
Subject: NonQualified Time for CalPERS Members		Related Bills: AB 55

SUMMARY

AB 719 would allow any CalPERS member to purchase up to 5 years of non-qualified service in CalPERS. A member making this election would be required to have at least 5 years of service credit prior to the purchase and would be required to pay the full cost of the purchase. A member could not use the five years for vesting purposes for retirement, disability, or health benefits. The time could only be used to increase the years of service for purposes of increasing the member's service retirement allowance.

PURPOSE OF THE BILL

At this time there is no provision in Public Employee's Retirement Law to allow a member to purchase nonqualified time. AB 719 would allow CalPERS members to do so.

RECOMMENDATION AND SUPPORTING ARGUMENTS

SUPPORT

This bill will provide all CalPERS members with the opportunity to increase their retirement benefits by purchasing up to five years of additional service credit. Members who will receive the increased retirement benefits will pay for the full cost of the

Departments That May Be Affected			
<input type="checkbox"/> New / Increased Fee		<input type="checkbox"/> Governor's Appointment	
<input type="checkbox"/> State Mandate		<input type="checkbox"/> Legislative Appointment	
<input type="checkbox"/> Urgency Clause		<input type="checkbox"/> Regulations Required	
<input type="checkbox"/> Legislative Report			
Department Position	Agency Position	Governor Office Use Only	
<input checked="" type="checkbox"/> S <input type="checkbox"/> O <input type="checkbox"/> Defer to:	<input type="checkbox"/> S <input type="checkbox"/> O <input type="checkbox"/> Defer to:	_____ Position Approved	
<input type="checkbox"/> SIA <input type="checkbox"/> OUA	<input type="checkbox"/> SA <input type="checkbox"/> OUA	_____ Position Disapproved	
<input type="checkbox"/> N	<input type="checkbox"/> N	_____ Position Noted	
<input type="checkbox"/> NP	<input type="checkbox"/> NP	_____ No Position	
<input type="checkbox"/> NA	<input type="checkbox"/> NA		
Department	Date	Agency	Date
<i>[Signature]</i>	6/17/03		
		By	Date

purchases. This legislation will be especially valuable to those who have entered employment later in life, or who have taken time off from employment to take care of health, family, or personal needs, or to increase their educations. These members will be able purchase the service they have lost and thereby to provide a better retirement for themselves and their families.

ANALYSIS

Proposed Changes

This bill would allow any CalPERS member with 5 or more years of service credit to purchase from 1 to 5 years of nonqualified time. The election to purchase nonqualified time could only be made once. Members electing to purchase nonqualified time would pay the full present value cost for the service credit purchase. The time could not be used for any other purpose than increasing years of service for service retirement purposes.

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Members who elect to purchase service may do so over a period of time of up to 15 years. The member must begin the purchase prior to retirement, but may make the payments after retirement by a reduction in retirement income.

Results

CalPERS members with five or more years of service will be eligible to make a one-time purchase of up to 5 years of nonqualified time. Members electing this benefit will pay the full present value cost of the benefit increase resulting from the additional service credit. Purchasing the service will not allow the member to vest sooner for retirement, disability, or health benefits.

LEGISLATIVE HISTORY

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- 2002 AB 2004 (Correa)—Would have allowed members in the 1937 Act Retirement System to purchase up to 5 years of nonqualified time in that system. This bill was amended late in the session to provide legislative employee members of CalPERS with the same benefit. Governor Davis vetoed the bill, implying that the benefit should be available to all CalPERS members when he stated, "This bill confers a special benefit on legislative employees not available generally to all State employees." CalPERS did not have time to take a position on this bill.
- 1998 Chapter 1076 (SB 2126, Committee on PE&R)—Authorized vested members of the California State Teachers' Retirement System to purchase up to five years of additional service credit for nonqualified service.

PROGRAM BACKGROUND

There are several types of service credit that may be purchased by a member in CalPERS. These types of service credit include military service, service as a volunteer in Peace Corps or AmeriCorps, certain types of service prior to membership, and others.

In general, there are two ways of paying for the increase in retirement benefit that results from the crediting of the additional service credit. One method of payment requires the member to pay the portion that would normally be attributable to the member's contributions and interest, and the employer to pay the balance. This method most commonly applies when the employer directly benefited from the service being purchased--such as when a member worked for the employer before the agency came into CalPERS, or worked part-time or seasonally prior to full-time CalPERS-covered employment.

The other type of payment is known as the "full present value" payment. In this case, the member pays for the full cost of the increase in benefit that will result from the service credit purchase. This cost method generally applies when an employer does not directly benefit from the member's service, such as with military or Peace Corps service.

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must have earned at least 5 years of service credit before being eligible to purchase the nonqualified time.

FISCAL IMPACT

Program Costs

This benefit is intended to be cost neutral to employers. The member would pay the full present value cost of the additional service credit. The full present value cost is calculated to be equivalent to the cost of the increased benefit due to the additional service credit.

It is possible that in some cases the benefit may be more expensive than projected, such as when a member receives a dramatic increase in compensation prior to retirement or a higher retirement formula (such as going from the 2 percent at age 50 safety formula to the 3 percent at age 50 formula). In fact, members most likely to benefit from the increase will be those most likely to take advantage of the opportunity to do so. On the other hand, the benefit may be less expensive than projected, such as when a member dies at a young age. The factors used in full present value calculations are intended to encompass these possibilities.

Administrative Costs

There will undoubtedly be many, many requests for estimates if this bill is enacted, resulting in increased workload for Member Services Division staff, at least for a period of time immediately following enactment. In addition, there will be changes required to CalPERS automated systems. The administrative costs associated with these changes have not been estimated.

SUPPORT/OPPOSITION

Support:

Service Employees International Union; California Professional Firefighters, Cosponsors; California Federation of Teachers; California School Employees Association; California State Employees Association; CalPERS

Opposition:

None known.

ARGUMENTS

Pro:

Being able to purchase nonqualified time allows members of CalPERS to increase their retirement benefits at no cost to employers. Many members take breaks in employment to raise children, advance their educations, or work in the private sector for a time. For members who do not enter CalPERS covered employment until later in life or who have

breaks in service, purchasing nonqualified time can be contribute to providing a livable retirement income.

In addition, recent changes in federal tax laws allow people to roll over funds from personal tax-qualified savings accounts (such as 401(k), 403 (b), and 457) to purchase service credit in defined benefit plans, making the purchase of nonqualified time easier for those who have accumulated personal savings.

Con:

There is no known opposition to this bill.

LEGISLATIVE STAFF CONTACT

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2003

What is Additional Retirement Service Credit? (Frequently referred to as "Air Time")

Additional Retirement Service Credit (ARSC) is a new service credit option which allows active CalPERS members in compensated employment the opportunity to purchase "additional retirement service credit" that can be applied toward retirement, which may result in a higher monthly pension.

What are the eligibility requirements?

- You must be an active CalPERS member (State, School or Public Agency) with at least 5 years of **earned** service credit.
- You must self-certify that you had compensated employment other than governmental, educational or educational association for the years you are purchasing.

How much ARSC can I purchase?

- You may purchase up to five years of additional service in whole year increments (1, 2, 3, 4 or 5 years).
- You have only one opportunity to make the purchase, even if you initially choose to purchase less than 5 years.

How much will it cost to purchase ARSC?

- A present value costing method is used to determine how much you will pay for this service credit. This means CalPERS looks at the projected increase you are expected to receive from the ARSC and converts that to a lump sum cost in today's dollars.
- Members pay for the entire cost of the estimated increase in their future retirement income – the costing method is intended to be "cost neutral" to employers.

Where do I find out how much it will cost to purchase ARSC?

- You can find out the cost to purchase ARSC by visiting the CalPERS web site at www.calpers.ca.gov/servicecredit/airtime.htm.
- State and School members - use the Service Credit Cost Estimator on the CalPERS web site.
- Public Agency Members - use the *Additional Retirement Service Credit Worksheet* (either Miscellaneous or Safety) which is available on the CalPERS web site.

How do I purchase ARSC?

- Download the ARSC Cost Request Form from the CalPERS web site.
- Submit both the ARSC Cost Request Form and a printout of the results from the online Service Credit Cost Estimator (or the Excel worksheet if a Public Agency member).
- If either of these two items is not included in your purchase request, your request may be returned to you.

Where can I find more information?

- Attached is a list of Frequently Asked Questions (FAQ's) from the CalPERS web site.
- For the most current information on ARSC, visit the CalPERS web site at www.calpers.ca.gov/servicecredit/airtime.htm.



General Information & Eligibility FAQs

New Service Credit Option - Additional Retirement Service Credit (AirTime)

Other FAQs

What is Additional Retirement Service Credit (Air Time)?

Basically, it means that active CalPERS members can purchase "additional retirement service credit" that can be applied toward retirement benefits. In some cases, certification of past employment may be required. The costing method is intended to be "cost neutral" to employers, which means the member covers the entire cost to fund future benefits.

How do I determine if I'm eligible?

You must be an active CalPERS member in compensated employment and have at least five years of earned service credit when you make the election. The purchase of other types of service credit may not be used to meet the 5-year requirement. If you're a public agency member, your employer does not have to amend their CalPERS contract or pass a resolution to provide this new service credit option.

My current employment is not reported to CalPERS, but I am a member. Am I eligible to purchase this credit?

You must be a member in compensated employment with a CalPERS-covered employer to be eligible.

I'm retired. Can I still purchase this service to improve my benefits?

No, the law does not extend this option to retirees.

How much time can be purchased?

You can buy from one to five years of additional service credit. Credit must be purchased in whole year increments and only one election can be made (even if you choose to purchase less than five years of credit).

Is there a window period or deadline for this credit purchase opportunity?

This service credit option will be available on an ongoing basis (unless repealed by future legislation). There is no set period to submit a request, other than those limitations imposed by the eligibility criteria. For example, a request received after separation from employment would not be processed because you must be in compensated employment with a CalPERS employer to be eligible to elect the additional service credit.

If I buy two years now, can I buy the remaining three years later?

No, only one election is permitted under the law.

The legislation mentioned "State service." I work for a public agency (or school district), am I eligible?

If you currently work for any CalPERS employer (reported for compensated employment) and have five years of earned service credit, you are eligible for this option. The term "State service" as defined under the Retirement Law includes all CalPERS employer categories, not just to employment with the State of California.

I work for a public agency. Does my employer need to amend their contract to allow this option?

This service credit option does not have to be provided through an employer contract amendment or resolution.

I work for the State. Will purchasing this service credit increase my "State service" (seniority credit)?

No, this service will increase your CalPERS service credit only.

Can my service with a reciprocal retirement system be used to satisfy the five years eligibility retirement?

No, only service credit earned with CalPERS can be used.

Can I purchase this additional credit if I retired under a "partial service retirement?"

While partially retired you are still considered an active member. So, as long as you meet the other eligibility requirements, you'll be eligible.

Requesting A Purchase FAQs

New Service Credit Option - Additional Retirement Service Credit (AirTime)

Other FAQs

How do I request cost information and election documents?

You will need to submit a request on a CalPERS service credit form. This form, along with completion instructions, is currently being developed and should be available online soon. Be sure to check back often to see when it's available.

What is the purchase request process?

First, you'll be required to get a cost estimate of the additional service credit using the Service Credit Cost Estimator. (Public agency members need to use our worksheets.) We also recommend you complete an estimate of your future retirement benefits with and without the purchase of this additional credit by using the Retirement Planning Calculator. Then, if you decide to make the purchase, complete the request form, include the employment certification section, and mail it to CalPERS, along with a copy of your service credit cost calculation results.

After CalPERS receives my request, what happens next?

We will review your eligibility and your cost calculation assumptions will be completed. If your cost calculation is reasonably close to our formal calculation, and you are eligible for the purchase, an election package will be sent to you for the number of years you indicated on your request form.

If your cost calculation is not close to our formal calculation, we'll send you information based on our figures for each year of service, along with a confirmation form to be returned if you decide to move formal with your purchase.

If your request information is incomplete or you are not eligible, we'll send you notification of the problem and any action you need to take.

How is the cost calculated for this additional service credit?

The costing method is the same method used to for all service credit types that have become law since the late 1980s. You'll be required to pay the entire cost of the future projected increase in your benefit from the service purchase credit, offsetting any employer liability. The cost is derived from "actuarial probability factors" that determine the projected benefit and the current payment required to fund that benefit. These probabilities are the same set of assumptions our actuarial staff use to ensure all our benefit programs are adequately funded.

How long after I request cost information will it take for me to receive my election documents?

We will certainly make every effort to process requests in a timely and accurate manner. More than 500,000 CalPERS members are eligible for this option. Due to the potentially huge response to this new law, it's not possible to accurately predict processing times at this point.

Payment Options FAQs

New Service Credit Option - Additional Retirement Service Credit (AirTime)**What payment options are available for this purchase?**

You can pay the cost in full, select a payment plan, or pay a portion up front (like a down payment) and then pay for the balance through a payment plan.

Other FAQs**How does the payment plan work?**

A payment plan is available which, depending on the amount you owe, can extend up to 180 months (15 years). The election information package we'll send you will include payment amounts for different whole years, so you can choose which works best for you. Keep in mind that if a payment plan is selected, you will be required to pay interest on any unpaid balance. The interest rate will be the same as the interest crediting rate in effect at the time of your election. The current interest rate is 6 percent compounded annually.

Can payments be made on a pre-tax basis?

Pre-tax payroll deductions can be selected if your employer participates in our Pre-Tax Payroll Deduction Plan. While the State participates, many school and public agency employers do not. If pre-tax deductions are approved and your employer participates, we'll send you information on this with your election package. Once pre-tax payments are elected, you cannot alter the payment schedule, make partial lump sum payments, or pay the balance off early while still employed with an employer participating in the Deduction Plan.

How will after-tax vs. pre-tax payments affect the taxes on my retirement benefit income?

At retirement, after-tax contributions are used to determine the non-taxable portion of your retirement allowance, so, pre-tax payments will increase that portion of your allowance subject to taxes. You may want to speak with your tax advisor about your overall tax situation and review our publication Taxes and Your Retirement before selecting pre-tax payments. Keep in mind that once you select the pre-tax payment option, you cannot alter the payment schedule.

What happens if I'm still making payments when I want to retire?

At retirement, your deductions will automatically continue as after-tax retirement deductions, unless you advise us you want to make a partial or full payment. You may want to contact us as you approach retirement (within six months or so) to discuss your payment options.

Since payments made after retirement are required to be made on an after-tax basis, will I have pay taxes on those contributions twice?

There will be a non-taxable portion of your retirement based upon after-tax contributions and an expected number of lifetime payments. Because the outstanding balance will be paid with after-tax dollars, the balance will be included as already taxed in the determination of the non-taxable portion of your retirement benefits. Although this non-taxable portion may be minimal, it is important that you fully understand how this works before you make any decision on pre-tax vs. after-tax payments.

Can I pay through an actuarial equivalent reduction (AER) of my future retirement allowance?

This payment plan method is not available for this kind of service credit purchase. The AER method is only available for the conversion of State Second Tier service to the First Tier formula.

I have service credit with several different CalPERS-covered employers. If I purchase this additional service credit, which employer will the service be credited to?

The additional service will be credited to your current employer and benefit formula. The cost will be based on future benefits under that employer and formula.

Can I select which employer or benefit formula my additional service will be credited to?

No, the law does not allow you choose of how the additional service will be credited.

If I purchase this credit, would it apply towards my retirement eligibility?

No, the law specifically states that this additional credit option cannot be used to qualify for health, retirement, or any other benefits.

Impact On Your Retirement, Death & Health Benefits & Community Property Settlements FAQs

New Service Credit Option - Additional Retirement Service Credit (AirTime)

Other FAQs

How does the Additional Retirement Service credit impact the limit to the percentage of final compensation I can receive?

Final compensation is one of the factors used to determine your retirement benefits. Miscellaneous members do not have a limit on the percent of final compensation they can receive. If a miscellaneous member had enough years of service credit, purchasing additional retirement service, could cause their benefit to exceed 100 percent of their final compensation. The law places a percentage limit on the amount of final compensation safety members can receive as retirement benefits (depending on their employer and retirement formula). Since the additional service credit would be posted to your current employment formula, and you are a safety member at the time you purchase the credit, when you retire your benefits would be limited based on your particular safety formula.

How will after-tax vs. pre-tax payments affect my retirement benefits?

When considering this service purchase and your payment method, understanding the tax liability of your retirement benefit is important. Our Retirement Planning Calculator can help you estimate your future benefit as well as the additional benefit the service credit purchase would provide. Once you determine the amount of total retirement income and the additional benefit, you may want to refer to our Taxes and Your Retirement booklet for more information.

I previously retired and then reinstated from retirement to active service. Can I purchase this service credit and how would it be used in my retirement calculation when I re-retire?

You can purchase the service credit while you are in active, compensated employment. If you earn less than one year of service credit while reinstated, CalPERS would restore your original retirement allowance for all time worked prior to your reinstatement. The additional credit and any other service earned after reinstatement would be calculated using the information at the time of your second retirement and then added to the previously restored allowance.

If you earn more than one year of service credit while reinstated to active service, we will recalculate your retirement benefit using the information at the time of the second retirement for all service, but apply an actuarial adjustment to account for your previous retirement.

Note: Purchasing the additional service credit will not count toward the one year of earned service.

Can the additional service retirement credit be used to qualify me for a disability retirement available to those with at least 10 years of service?

The Additional Retirement Service credit cannot be used to qualify for or change the method of calculating benefits.

If I purchase this service on a payment plan and die before the balance is paid in full, will my beneficiary be required to continue to pay?

If your death is before you retire:

- If only lump sum pre-retirement death benefits are payable, your beneficiary will not be required to continue additional retirement service credit payments. The total amount of payments received up until your death will be paid as part of the death benefit to your beneficiary.
- If you are eligible for retirement and your spouse elects a monthly death benefit, then payments will be deducted from your spouse's death monthly benefit until the balance is paid in full. Your spouse can pay the remaining balance with a lump sum after-tax payment. If you were not old enough for retirement, but you worked for at least 20 years, and the Alternate Death Benefit is payable, then the same payment options exist as for the Alternate Death Benefit allowance.

If your death is after you retire:

- If you elected an option that provides a monthly lifetime allowance to a beneficiary, or you elected the Unmodified or Option 1 and the Survivor Continuance allowance is payable, then the balance may be paid in full or payments can be deducted from your beneficiary's or survivor's monthly benefit until the balance is paid in full.
- If you elected Option 1 and the Survivor Continuance allowance is not payable, your beneficiary will not be required to continue the Additional Retirement Service credit payments. The total amount of payments received up until your death will be used to compute the Option 1 lump

sum death benefit payment of unused contributions.

- If you elected the Unmodified Allowance and Survivor Continuance is not payable, no benefit or beneficiary is created by your option selection, so no one is required to continue payments. The total amount of payments received up until your death will not be refunded to anyone when the Unmodified Allowance was selected.

How does the additional credit impacting retirement option choices?

This service is treated like any other type of service credit for the purposes of computing benefits.

If I purchase this credit and pay the cost in a lump sum, will my beneficiary be entitled to the lump sum balance in contributions?

If you die before retirement and a monthly pre-retirement death benefit allowance is not payable, then the entire amount will be paid to your beneficiary as part of the lump sum death benefits. If a monthly allowance is payable, the money will not be refunded since the calculation of that benefit is based in part on the additional service credit.

If you die after retirement under Option 1 and Survivor Continuance is not payable, then the unused amount paid by you will be included in the death benefit payment of unused contributions. This is the only post retirement death benefit which provides a return of the Additional Retirement Service credit contributions.

Does this service apply toward eligibility for health benefits or increase my employer's share of the premium?

No, the law specifically states that this service credit option cannot be used to qualify for health, retirement, or any other benefits.

Can this service credit be awarded to my ex-spouse in a divorce?

CalPERS believes that all community property, including the issue of elective service credit, should be specifically addressed in the court order. This applies to both the method of separation of accounts and the division of benefits (time rule) formula. Unless otherwise provided for in the order, any elective service credit and contributions will be divided according to when that service and contributions were credited and paid to your account. For example, if you earned military service credit prior to your marriage, but elected and paid for that service during your marriage, we would divide the service and contributions proportionately to both yourself and your "nonmember" ex-spouse.

In those situations where the issue of elective service credit is not addressed in the court order, our practice is that any service purchased or redeposited after separation would be your separate property.

Second Tier State Member FAQs

New Service Credit Option - Additional Retirement Service Credit (AirTime)

Other FAQs

As a State Second Tier member, am I eligible for Additional Retirement Service Credit?

Second Tier members who are reported for compensated employment and have at least five years of earned service credit are eligible to purchase the additional service credit.

Do I have to have 10 years of service credit before I can elect the additional credit?

No, you're only required to have five years of earned service credit, just like other eligible members.

I don't pay retirement contributions as a Second Tier member. If I want this service credit option will I have to pay for it.

As a Second Tier member, normal member contributions are not required, however, your employer does contribute toward your future retirement benefits. The payment you'll be required to make is intended to offset any employer liability.

I have both State Second Tier and First Tier service but I am currently reported as Second Tier. Can I purchase the additional service credit as First Tier?

No, the purchase cost and service posting will be based on your current benefit formula.

Will my payments be credited to my account or to my employer?

All of your payments will be posted to your account. Should you later terminate your CalPERS membership and elect the option to refund your retirement contributions, the payment for the additional service credit will be included in the refund.

If I elect the purchase now, then later want to convert my State Second Tier service to the First Tier, can I also convert the Additional Retirement Service credit?

This service credit would automatically be included in the cost to convert to the First Tier retirement formula.

If I already have five years of service credit and elect to purchase another five years, will I then be vested as a State Second Tier member?

No, this service credit cannot be used to qualify for retirement benefits. You would need to earn an additional five years of service to be eligible to retire. However, your retirement benefit would be calculated on a total of 15 years of service credit.



Member Services Division
P.O. Box 942704
Sacramento, CA 94229-2704
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March 16, 2004

AGENDA ITEM 5

**TO: MEMBERS OF THE BENEFITS AND PROGRAM ADMINISTRATION
COMMITTEE**

**I. SUBJECT: PRESENT VALUE TYPE SERVICE PURCHASES -
COMPENSATION USED IN CALCULATIONS AND
INTEREST RATE ON INSTALLMENT PAYMENTS**

II. PROGRAM: Retirement

III. RECOMMENDATION:

Staff recommends, for all service purchases under Government Code section 21052 (the present value method), the following be adopted with an effective date of January 1, 2004:

- Include both special compensation and the member's payrate to compute the cost of the service credit purchase.
- Calculate interest on installment payment plans for credit purchases under section 21052 using the same rate as used to discount the benefit liability and determine the lump sum cost due.

IV. ANALYSIS:

Since Assembly Bill 719 passed last year, CalPERS staff have been researching issues related specifically to the new Additional Retirement Service Credit (ARSC) purchase type provided by the bill and generally to other service credit purchase types also costed under Government Code section 21052.

Section 21052 provides the calculation methodology for all service credit purchase types which by law are intended to be fully member funded. The calculation method used is referred to as 'present value' or 'full present value'. Popular credit types costed as present value include Military, Maternity/Paternity, Peace Corps, and the new ARSC. This method requires that the purchase payment be "... an amount equal to the increase in employer liability, using the payrate and other factors affecting liability on the date of the request for costing

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March 16, 2004

of the service credit." No employer liability is intended. This law also requires that the methodology for calculating the amount of the contributions shall be determined by the Chief Actuary and approved by the Board.

Payrate Components in the Present Value Calculation

Benefits and Program Administration Committee Agenda Item 6A, approved by the Board in December 2003, addressed issues related to the selection of a payrate which would provide the best estimate of the potential future Final Compensation figure usable at retirement for purposes of calculating the present valued cost in compliance with this employer cost neutral requirement. This Agenda Item addresses one of the other factors that affect liability, the amount of special compensation that the member is receiving. Special compensation includes but is not limited to such items as:

- Monetary value, as determined by the Board, of living quarters, board, lodging, fuel, laundry, and other advantages of any nature furnished to a member by his or her employer in payment for the member's services.
- Any compensation for performing normally required duties, such as holiday pay, bonuses (for duties performed on regular work shift), educational incentive pay, maintenance and non-cash payments, out-of-class pay, marksmanship pay, hazard pay, motorcycle pay, paramedic pay, emergency medical technician pay, POST certificate pay, and split shift differential.
- Compensation for uniforms, except as provided in section 20632.
- Any other payments the Board may determine to be within "special compensation."

Special compensation reported for safety and miscellaneous members ranges from 0% to more than 50% of base pay. Special compensation is more prevalent for safety members. By not taking special compensation into account in the present value calculation, a member's payment would be less than the increase in the employer's liability by the same percentage, resulting in the employer liability section 21052 prohibits.

Special compensation is significantly different from base pay in a number of respects. Inclusion of special compensation in the cost calculation will significantly increase the complexity of the calculation. A member can be receiving many different forms of special compensation. For example, one employer is known to report more than 130 types of special compensation to CalPERS. In order to determine what special compensation to use, it will be

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necessary to sum many compensation records. This added complexity will result in higher administration costs and may require modest to substantial computer system changes.

Staff is now requesting Board approval to include special compensation with payrate to compute present value calculations.

Interest Rate in Installment Payment Plans

A member or retiree who elects a service credit purchase type that is costed as present value has several payment options including complete payment through a single lump sum payment, establishing an installment payment plan, or a combination of the two. When an installment plan is selected, interest is charged through completion of payments but fixed at the interest rate in effect at election. The appropriate interest rate to apply to such installment plans has recently been questioned.

Research into the use of interest in installment plans found that the CalPERS member interest crediting rate has been used for all credit purchase types since, at least, the early 1970's. This rate continued to be used for service purchases costed as present value when the first such credit type legislation passed in 1987. The member interest crediting rate is what the member is credited on his or her contributions. It was codified in section 20178 as 6% effective July 1, 1991, and remains at that rate today. Documentation related to interest is sketchy; nothing was found questioning the appropriateness of the interest crediting rate for present value installment payments.

The actuarial rate of interest is also used in the present value cost calculations. Under the present value method, the future benefit liability for the additional service credit is determined using the same actuarial probability factors and assumptions used to insure all our benefit programs are adequately funded. The liability is then discounted from a point in the future to the present based on the rate it is assumed a lump sum payment will earn once deposited. At this time, the actuarial rate of 8.25% is used for that discount.

Thus, the total credit purchase cost is computed under the expectation of earning 8.25% but only 6% is actually earned as the payments are incrementally received. The employer is essentially picking up the 2.25% difference.

To better comply with section 21052 requirements, staff recommends using the actuarial interest rate to both discount the benefit liability and to calculate the installment payment amounts for all present value type credit purchases effective January 1, 2004. It should be noted that future changes to the actuarial rate, as adopted by the Board, would then change the installment payment rate for such present value purchases. However, in accordance with section 20132, future

Members of the Benefits and Program Administration Committee
March 16, 2004

rate changes would only apply to credit elections received on and after the effective date of the new actuarial interest rate.

These issues, analysis, and recommendations, if approved, will also apply to present value cost calculations under the Judges' Retirement System (JRS), the Judges' Retirement System II (JRS II), and the Legislators' Retirement System (LRS). The Judges' Retirement Law and the Judges Retirement Law II do not specifically provide an interest rate for installment payments. But these Laws do defer to the Public Employees' Retirement Law for guidance whenever specific authority is lacking, except for allowance or benefit payment issues or when doing so would result in a conflict. JRS and JRS II currently follow CalPERS applying the 6% rate in their installment plans. Although, LRS does not currently have a present value type service purchase, it is included herein to provide consistent guidelines should it get such a purchase type in the future.

V. STRATEGIC PLAN:

This item supports:

Goal II by providing high quality customer service and education that enables members and employers to make informed and timely retirement and health decisions;

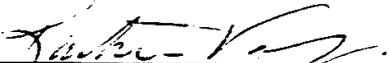
Goal III by designing, developing, and administering benefit programs and business processes that are innovative, effective, efficient, and valued by our members, employers, and stakeholders, and

Goal IV by assuring that sufficient funds are available to pay benefits.

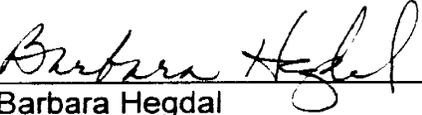
Members of the Benefits and Program Administration Committee
March 16, 2004

VI. RESULTS/COSTS:

Workload impacts will be assessed and considered during future budget cycle reviews.



Kathie Vaughn, Chief
Member Services Division



Barbara Hegdal
Assistant Executive Officer
Member and Benefit Services



Ronald L. Seeling
Chief Actuary
Actuarial and Employer Services

BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

In the Matter of the Appeal for Calculation of Benefits Pursuant to The Employer's Report of Final Compensation,)	CASE NO. 2640
)	
)	
ROY T. RAMIREZ,)	OAH NO. L-2000050022
)	
Respondent,)	PRECEDENTIAL DECISION
)	00-06
and)	
)	EFFECTIVE: December 20, 2000
CITY OF INDIO,)	
)	
Respondent.)	

PRECEDENTIAL DECISION

RESOLVED, that the Board of Administration of the California Public Employees' Retirement System hereby adopts as its own decision the Proposed Decision dated September 18, 2000, concerning the application of Roy T. Ramirez; hereby designates its decision as precedential; RESOLVED FURTHER that this Board decision shall be effective 30 days following mailing of the decision.

* * * * *

I hereby certify that on November 15, 2000, the Board of Administration, California Public Employees' Retirement System, made and adopted the foregoing Resolution, and I certify further that the attached copy of the administrative law judge's Proposed Decision is a true copy of the decision adopted by said Board of Administration in said matter.

BOARD OF ADMINISTRATION, CALIFORNIA
PUBLIC EMPLOYEES' RETIREMENT SYSTEM
JAMES E. BURTON, CHIEF EXECUTIVE OFFICER

Dated: November 20, 2000 BY _____
BARBARA HEGDAL
ASSISTANT EXECUTIVE OFFICER

**BOARD OF ADMINISTRATION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM**

In the Matter of the Appeal of the Calculation
Of Benefits Pursuant to Employer's Report of
Final Compensation Related to

ROY T. RAMIREZ,

Respondent,

And

CITY OF INDIO,

Respondent.

CalPERS Case No. 2640

OAH No. L-2000050022

PROPOSED DECISION

James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on July 20, 2000, in San Bernardino, California.

Fernando De Leon, Staff Counsel, represented petitioner James Burton, Chief Executive Officer, Public Employees' Retirement System, State of California.

Kasey Christopher Clark, Attorney at Law, represented Roy T. Ramirez, who was present throughout the administrative proceeding, and the City of Indio.

The matter was submitted on August 21, 2000, following the filing of written briefs.

ISSUE

Should the compensation Roy T. Ramirez received during his last year of employment with the City of Indio when working as the interim City Manager should be treated as "final compensation" for the purpose of calculating his CalPERS' service retirement benefits.

FACTUAL FINDINGS

Ramirez' Membership in CalPERS

1. Roy T. Ramirez (hereafter Ramirez) was born on October 22, 1946.

Ramirez became a member of CalPERS as a result of his employment with the Coachella Valley Water District in the mid 1960s. He maintained that employment for about two and one-half years. Ramirez thereafter extended his CalPERS membership by virtue of approximately five years of employment with the City of Coachella in the late 1960s and early 1970s as a law enforcement officer.

In October 1973, Ramirez began working as a patrol officer with the City of Indio. He remained a patrol officer until 1976, when he was promoted to Sergeant. He was promoted to Lieutenant in 1989 and was promoted to Captain in 1993.

In 1993 Ramirez became the Chief of Police, City of Indio. He remained the Chief of Police until his retirement on October 29, 1998. Ramirez' employment with the City of Indio was credited to his CalPERS membership.

2. Ramirez was a career law enforcement officer with the City of Indio who enjoyed the utmost respect of the Indio City Council. Ramirez was instrumental in maintaining and improving morale within the City of Indio Police Department, particularly with the rank and file.

Ramirez earned \$89,000 in salary in his last year of employment as the Chief of Police. He worked well over forty hours a week.

3. On April 15, 1998, Ramirez was at home preparing to attend a City Council meeting. He received a telephone call from Donna French (hereafter French), a Deputy City Clerk with the City of Indio. French invited Ramirez to attend a closed, executive City Council meeting that was taking place.

When Ramirez arrived at the meeting, he was told that the City Manager had just resigned and there was a need to fill the City Manager position on an interim basis. The City Council asked Ramirez to become the interim City Manager pending the appointment of a permanent City Manager. Ramirez agreed to act as the interim City Manager for four months provided that he be permitted to continue acting as the Chief of Police. The City Council agreed.

Almost as an afterthought, the City Council asked Ramirez how much he wanted to be paid as the interim City Manager. Ramirez had not given the matter any thought. One

member of the City Council proposed that Ramirez be given an additional \$2,500 per month. Ramirez agreed. Neither Ramirez nor the City Council considered the impact such additional compensation might have on the retirement benefits Ramirez would receive if he were to retire.

The agreement was not immediately reduced to writing.

4. Ramirez' appointment as the interim City Manager was announced that evening. Ramirez immediately began working as the interim City Manager and he continued working as the Chief of Police. After his appointment as interim City Manager, Ramirez increased his workload to more than sixty hours per week.

5. When Ramirez was appointed interim City Manager, many difficult financial and political issues faced the City of Indio. There was an approximate \$1,000,000 per year operating deficit, work on the 1998 municipal budget had not begun (yet had to be filed within sixty days), morale within the municipal staff was extremely low, there was a need to annex an auto mall into the City of Indio, there was significant litigation pending against the City of Indio with a great deal of exposure which needed to be resolved and there were numerous redevelopment issues.

Ramirez went right to work. He restructured many municipal departments and functions, he downsized the municipal staff, he balanced the budget, he supervised the new annexation project, he assisted in the development of a new municipal golf course, he attended numerous City Council meetings and staff meetings and he continued to meet his responsibilities as Chief of Police.

According to then Mayor Michael H. Wilson (hereafter Mayor Wilson), Ramirez "accomplished more in six and a half months to move this City forward than did the previous City Manger in four years."

6. The outgoing City Manager, Allyn S. Waggle (hereafter Waggle), had earned \$85,000, together with other benefits including an automobile allowance, insurance, paid vacation and sick leave.

The written employment agreement between the City of Indio and Waggle also provided that "in addition to the City's share, the City shall contribute seven percent (7%) of Waggle's contribution to the Public Employees Retirement System (PERS) for Waggle's behalf."

Waggle was a miscellaneous member of CalPERS, not a local safety member.

The Memorandum of Agreement

7. On August 6, 1998, Mayor Wilson signed a Memorandum of Agreement. The agreement concerned “the length of time of the agreement and the premium pay for serving in the upgraded position of Interim City Manager.”

Item 1 memorialized the agreement concerning Ramirez’ service as interim City Manager from April 15, 1998, through August 12, 1998, and the agreement that Ramirez would receive an additional \$2,500 “special compensation” per month in consideration for serving as interim City Manager. Item 1 of the agreement stated the “special compensation constituted premium pay because Mr. Ramirez was requested to work in an upgraded position.”

Item 2 extended the original agreement for an additional 60 days at the “premium pay of \$2,500 per month” and provided “the City Council also agreed to provide an additional \$5,000 of special compensation to recognize the continuing efforts of Mr. Ramirez in the upgraded position of Interim City Manager.”

The memorandum of agreement between the City of Indio and Ramirez was signed *after* Ramirez filed his application for retirement benefits with CalPERS. The compensation Ramirez earned as interim City Manager was not intentionally designed to “spike” the amount of CalPERS retirement benefits Ramirez would receive if he retired although it certainly had that effect.

Ramirez’ Decision to Retire

8. When Ramirez accepted the interim City Manager position, he had no intention to retire as Chief of Police after a permanent City Manager was appointed. In June 1998, when the City of Indio offered “golden handshakes” to its long-term municipal employees, including Ramirez, Ramirez first considered retiring. He discussed the matter with his family and with their counsel and blessing he decided to take advantage of what might be a one-time opportunity.

On June 22, 1998, Ramirez advised the City Council of his intention to retire as the Chief of Police and to resign as interim City Manager as soon as replacements were found and a transition was accomplished.

Ramirez’ Application for CalPERS Retirement Benefits

9. On July 22, 1998, Ramirez signed an Application for Service Retirement which was filed with CalPERS shortly thereafter. In that application, Ramirez stated that he

was employed by the City of Indio as the Chief of Police. He stated his last day of service would be October 29, 1998.

10. Item 17 of the retirement application requested Ramirez to select a "final compensation" period. In that regard, the application stated:

"FINAL COMPENSATION TO BE USED: "Final Compensation" is the highest average compensation earnable by you during a one year or three consecutive year period of employment, whichever your agency has contracted for, immediately preceding the effective date of your retirement, or the date of your last separation from employment, if earlier, or during any other period specified by you in this application. Unless a different period is specified by you, your final compensation will be calculated based upon the one year or three year period immediately preceding your retirement or separation date."

Not surprisingly, Ramirez selected the period October 29, 1997, to October 29, 1998, the year in which he enjoyed his greatest earnings.

CalPERS Response to Ramirez' Application for Retirement Benefits

11. CalPERS requested the City of Indio to provide information related to Ramirez' compensation in his last year of service. The City of Indio provided the requested information. It was established that the amount of compensation Ramirez received in his last year of employment with the City of Indio far exceeded the compensation he received previously. Obviously, this increase was by reason of the additional compensation Ramirez received for serving as the interim City Manager.

12. By letter dated October 20, 1998, Rebecca Bolin (hereafter Bolin), a Retirement Program Specialist II with CalPERS, wrote to Ramirez and to the City of Indio to determine if Ramirez' final year of compensation was reported in accordance with California's Public Employees' Retirement Law (hereafter PERL). Bolin wrote:

"I understand the significant increase in your special compensation was due to the fact that you were acting City Manager for that period of time. However, because I may still need additional documentation to determine if this item was reported in accordance with the PERL and the fact that your retirement is so near, CalPERS will temporarily calculate your retirement compensation using the compensation listed below. This is being done in order to delays in the processing of your retirement application."

In its temporary calculation of Ramirez' service retirement benefits, CalPERS used Ramirez' reported payrate of \$6,7885.89 per month (his salary as Chief of Police) and his "special compensation" of \$299.52 per pay period (Ramirez' uniform allowance and

longevity pay). CalPERS did *not* include in its temporary calculation of Ramirez' service retirement benefits any additional compensation he received as a result of serving as the interim City Manager.

13. Mayor Wilson wrote to Bolin to explain the circumstances surrounding Ramirez' additional compensation as the interim City Manager. He outlined the difficulties the City of Indio had experienced, Ramirez' appointment as interim City Manager by the City Council and Ramirez' dedicated and successful response to an enormous challenge. Mayor Wilson wrote:

“Clearly, we have the authority to pay the salary we felt was appropriate with the responsibility we assigned. It appears to us that you are questioning our authority and responsibility as it pertains to negotiating salaries with our employees. We had an emergency that developed...and we took appropriate action to deal with it. At no time did we act on the salary issue to circumvent PERS rules or processes...”

14. By letter dated November 17, 1998, David F. Tatlock (hereafter Tatlock), Supervisor of CalPERS' Membership and Payroll Review, advised Ramirez that CalPERS “cannot accept this special compensation item” for serving as the interim City Manager for a variety of reasons. Tatlock advised that “the acting pay reported to CalPERS for you [as interim City Manager] cannot be included in your financial compensation calculation.” Ramirez was advised that his service retirement benefits would be based on a payrate of \$6,785.89 per month and on special compensation of \$299.52 per pay period.

Tatlock advised Ramirez of the right to appeal CalPERS' decision.

15. By letter dated December 17, 1998, Brian P. Dolan (hereafter Dolan), Attorney at Law, requested an administrative hearing. Numerous factual and legal issues were raised.

CalPERS accepted the letter as an appeal.

16. On June 2, 2000, Ken W. Marzon, Chief, Actuarial and Employer Services Division, signed the Amended Statement of Issues on behalf of complainant James Burton, Chief Executive Officer of the Public Employees' Retirement System.

The Amended Statement of Issues and other required jurisdictional documents were served on Ramirez and his attorneys.

On July 20, 2000, the record was opened and jurisdictional documents were presented. An opening statement was given on Ramirez' behalf. CalPERS waived the

giving of an opening statement. Various stipulations, sworn testimony and documentary evidence were received thereafter.

The parties' motion to leave the record open through the close of business on August 18, 2000, to permit the simultaneous filing of closing argument was granted.

Written closing arguments were received at the close of business on August 18, 2000. CalPERS' closing argument was marked as Exhibit 12 for identification. Ramirez' closing argument was marked as Exhibit 13 for identification.

On August 21, 2000, the record was closed and the matter was submitted.

Rebecca Bolin's Testimony

17. Relevant information was established through Rebecca Bolin's credible testimony. CalPERS is a pre-funded, defined benefit retirement program. Retirement benefits are paid to CalPERS members according to a formula that includes the retiring member's length of service, a percentage figure based on the member's age on the date of retirement and the member's "final compensation."

Most state employees and all employees of local public agencies which contract with CalPERS are members of CalPERS. Local public agencies contracting with CalPERS are subject to the Public Employees' Retirement Law and all amendments thereto. State and local safety members are eligible for greater retirement benefits under the system than are miscellaneous CalPERS members.

The City of Indio contracted with CalPERS for a "one year final compensation" period. The City of Indio contracted with CalPERS to use a "2% at 50" formula for local safety members and a "2% at 55" formula for miscellaneous members.¹ Rates were charged on that basis.

18. According to Bolin, after CalPERS reviewed the information submitted by Ramirez and the City of Indio, it concluded that certain compensation Ramirez' received in his final year of employment with the City of Indio did not qualify as "final compensation" under pertinent statutes and regulations. CalPERS excluded the \$5,000 performance bonus and the \$2,500 per month paid to Ramirez for services rendered as interim City Manager.

¹ Under this formula, a local safety member's service retirement benefit is 2% of the local safety member's final compensation multiplied by the number of years of his or her CalPERS membership if the employee retires at age 50 years. If the employee is a miscellaneous member, he or she is entitled to 2% of his or her final compensation times the number of years of his or her CalPERS membership upon retirement at age 55 years.

The bonus was rejected because it was not awarded on the attainment of formal goals and objectives and similar bonuses were not available to other municipal employees in Ramirez' class, i.e. other managers employed by the City of Indio.

CalPERS rejected the \$2,500 per month payments that Ramirez received when acting as the interim City Manager because such compensation was negotiated and no person in the same class as Ramirez was eligible to receive similar payments. Under these circumstances, CalPERS was prohibited from concluding that Ramirez' unique monthly payments were includable as "final compensation"² because applicable statutes and regulations do not permit a class consisting of one person.

Finally, serving as the interim City Manager was not a part of Ramirez' normally required job duties as the Chief of Police. Ramirez' compensation in his last year of employment was not historically consistent with the payments previously made to him. The payments made to Ramirez as interim City Manager appeared to be in the nature of "overtime" pay, a type of compensation which does not qualify as "final compensation" for purposes of determining service retirement benefits.

19. Bolin testified that a significant increase in special compensation at or near a member's retirement creates an "unfunded liability" which may increase not only the rates charged by CalPERS to the last employer, but also the rates CalPERS charges to any previous public employers who contract with CalPERS. Some actuarial problems would exist if the compensation Ramirez received as interim City Manager, a miscellaneous status, were included in his "final compensation" as a local safety member.

While Bolin was not an actuary, she had considerable training, knowledge and experience in the determination of retirement service benefits and the manner in which such benefits were funded. There was no testimony to the contrary.

The Disputed Payments to Ramirez Were Made In Good Faith

20. At issue in this matter is the additional compensation Ramirez received from the City of Indio when he provided services as its interim City Manager. These payments exceeded Ramirez' pay rate of \$6,785.89 per month and his additional special compensation of \$299.52 per pay period as Chief of Police. This additional compensation totals \$18,932 and is referred to as the "disputed payments."

² It was established that Harold L. Schilling (hereafter Schilling) became the permanent City Manager after Ramirez' tenure as interim City Manager. Schilling was paid \$95,000 per year.

21. Ramirez established that the disputed payments received from the City of Indio were made in good faith and for valuable services he rendered as the interim City Manager. Ramirez established that the disputed payments were not made in anticipation of his retirement.

LEGAL CONCLUSIONS

The Constitutional Mandate

1. Article XVI, section 17 of the California Constitution provides as follows: “The assets of a public pension or retirement system are trust funds and shall be held for the exclusive purpose of providing benefits to participants...and defraying reasonable expense of administering the system.”

Administration of the Retirement Fund

2. The CalPERS retirement fund was established as a trust, to be administered in accordance with the provisions of the Public Employees Retirement Law solely for the benefit of the participants. Government Code section 20170. The management and control of the retirement system is vested in the CalPERS Board of Administration. Government Code section 20123. The CalPERS Board of Administration has the exclusive control of the administration and investment of the Retirement Fund. Government Code section 20171.

The Nature of the Fund and Determination of Service Benefits

3. As noted in *Hudson v. Board of Administration* (1997) 59 Cal.App.4th 1310, 1316, the Public Employees’ Retirement Law (PERL) establishes a retirement system for employees of the State of California and participating local public agencies. CalPERS determines employees’ retirement benefits based on years of service, final compensation and age at retirement. The system is funded by employer and employee contributions calculated as a percentage of employee compensation. CalPERS determines employer contribution rates based on compensation figures and actuarial assumptions. CalPERS periodically adjusts employers’ rates to compensate for any inaccuracy in those actuarial assumptions. Employee rates, in contrast, are fixed by statute.

4. In a similar vein *Pomona Police Officers’ Assn. v. City of Pomona* (1997) 58 Cal.App.4th 578, 584, noted that CalPERS is a defined benefit plan which sets an employee’s retirement benefit upon the factors of retirement age, length of service and final compensation. Retirement allowances are therefore partially based upon an employee’s compensation. An employee’s compensation is not simply the cash remuneration received,

but is exactly defined to include or exclude various employment benefits and items of pay. The scope of compensation is also critical to setting the amount of retirement contributions, because PERS is funded by employer and employee contributions calculated as a percentage of employee compensation.

“Statutory definitions delineating the scope of PERS compensation cannot be qualified by bargaining agreements.” [Citation.] Nor can the PERS Board characterize contributions as compensation or not compensation under the PERL, those determinations are for the Legislature. [Citation.]” *Pomona Police Officers’ Assn. v. City of Pomona* (1997) 58 Cal.App.4th 578, 585.

Determining “Final Compensation”

5. The analytical approach used to determine whether disputed payments should be included in a member’s “final compensation” has been consistent.

Disputed payments are evaluated in light of relevant code provisions and the Legislative scheme. Where a particular statute is ambiguous, the intent of the act prevails over the letter, and the letter will, if possible, be so read as to conform to the spirit of the act. Using this approach, a determination is made concerning the inclusion or exclusion of the disputed payments.³

³ Using this approach, it was determined that a city resolution permitting an eligible city employee to convert employer-paid benefits (such as life and health insurance) to salary increases if the eligible employee retired within twelve months was “final settlement pay” and was properly excluded by CalPERS as “special compensation” in determining the employees’ final compensation. See, *Hudson v. Board of Administration* (1997) 59 Cal.App.4th 1310.

Using this approach, it was determined that a retirement conversion option contained in a collective bargaining agreement between a municipality and a police officers’ association which violated the PERL was unenforceable. The trial court determined, and the appellate court affirmed, that the retirement conversion option was an attempt to recharacterize excluded compensation into included compensation for retirement purposes at no substantial cost to the employer and the employees and would have allowed local government employers and their employees to engage in blatant pension abuse at the expense of CalPERS and its other members. See, *Pomona Police Officers’ Assn. v. City of Pomona* (1997) 58 Cal.App.4th 578.

Using this approach, it was determined in *Oden v. Board of Administration* (1994) 23 Cal.App.4th 194 that tax-deferred, employer-paid contributions made on behalf of CalPERS members did not constitute “compensation” within the meaning of the PERL although the contributions met the literal, common definition an employer “pick up” and employer contribution under Government Code section 20022. In reaching this decision it was noted that “Courts ‘must consider the consequences that might flow from a particular construction and should construe the state so as to promote rather than defeat the statute’s purpose and policy.’” *Ibid.*, at pp. 208-209.

Using this approach, it was determined that a federal act designating “overtime” for firefighters did not preclude the use of payment for the hours worked in excess of federal overtime in calculating service retirement benefits so long as the hours claimed were considered normal for the firefighters. Thus, it was held that the “premium does not constitute ‘overtime,’ that it is properly characterized as ‘compensation’ and that its

Pertinent Statutory Authority

6. Government Code section 20630 provides in pertinent part:
“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*... 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.”
(Emphasis added.)

7. Government Code section 20636 provides in pertinent part:

(a) ‘*Compensation earnable*’ by a member means the payrate and special compensation of the member, as defined by subdivisions (b), (c), and (g), and as limited by Section 21752.5.

(b)(1) ‘*Payrate*’ means the normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours. “*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)...

(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*

characterization as such does not distort the compensation base or the legislative scheme.” See, *City of Sacramento v. Public Employees Retirement System* (1991) 229 Cal.App.3d 1470, cited portion at 1484.

Using this approach, it was determined that a retired state employee was not entitled to have his service retirement benefits adjusted to a higher amount by CalPERS even though he successfully established before the State Board of Control that he had performed the duties of higher classification during the last four years of his public employment and that he was entitled to more compensation from his employer than he was paid. The appellate court held that the State Board of Control had no authority over CalPERS and that the additional compensation granted to the retiree by the State Board of Control was not “compensation earnable” under the PERL. See, *Snow v. Board of Administration* (1987) 87 Cal.App.3d 484.

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).

(3) Special compensation shall be for services rendered during normal working hours...

...

(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...

...

(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 any 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.

(f) As used in this part, "final settlement pay" means any pay or cash conversions of employee benefits that are in excess of compensation earnable, that are granted or awarded to a member in connection with or in anticipation of a separation from employment. The board shall promulgate regulations that delineate more specifically what constitutes final settlement pay..." (Emphasis added.)

8. Government Code section 20042 provides in pertinent part:

“On the election of a contracting agency...“final compensation” for a local member employed by that agency whose retirement is effective or whose death occurs after the date of the election and with respect to benefits based on service to the agency shall be computed under Section 20037 but with the substitution of the period of one year for three consecutive years...”

9. Government Code section 20635 provides in pertinent part:

“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.*

If a member concurrently renders service in two or more positions, one or more of which is full time, service in the part-time position shall constitute overtime. If two or more positions are permanent and full time, the position with the highest payrate or base pay shall be reported to this system. This provision shall apply only to service rendered on or after July 1, 1994.” (Emphasis added.)

Pertinent Regulatory Authority

10. Title 2, California Code of Regulations, section 571 defined “special compensation” in pertinent part as follows:

“(a) The following list exclusively identifies and defines special compensation items for members employed by contracting agency...that must be reported to CalPERS if they are contained in a written labor policy or agreement:

...

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.

...

Management Incentive Pay – Compensation granted to management employees in the form of...extra pay due to the unique nature of their job. Employees within the group cannot have the option to ...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...

...

(b) The [CalPERS] 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."*

Respondents' Contentions

11. Ramirez and the City of Indio raised several contentions, most of which focused on the quality of Ramirez' performance as interim City Manager, the right of the Indio City Council to set Ramirez' pay, its right to reward his superior performance and the parties' good faith in setting Ramirez' compensation as interim City Manager.

Did Ramirez do a good job when he was acting as both Chief of Police and as interim City Manager in his final year of employment with the City of Indio?

No. He did a great job. He more than earned what he was paid. However, service retirement benefits are not based on a formula involving the value of the services provided by an employee.

Did the Indio City Council have the authority to set Ramirez' compensation as its interim City Manager and to award him premium pay for superior performance?

Of course. CalPERS does not dispute the Indio City Council's authority to determine how its employees should be compensated. But, CalPERS cannot calculate service retirement benefits based on compensation when compensation does not qualify as "final compensation" under applicable statutes and regulations.

Did Ramirez and the City Council act in good faith in setting the additional compensation Ramirez was to receive for the valuable services he rendered when he was acting as both Chief of Police and as interim City Manager?

Yes. There is no evidence that such compensation was designed to spike Ramirez' service retirement benefit. However, the issues of questionable intent and good faith are not involved in the statutory and regulatory determination of what constitutes "final compensation."

Was Ramirez' additional compensation for "overtime?"

Sort of. While it is true that Ramirez was not, by virtue of the nature of his employment, subject to federal laws concerning the payment of overtime, that matter does not fully resolve the question. It is clear that Ramirez' additional compensation was earned for taking on additional responsibilities of interim City Manager and for the time required of him to meet those responsibilities.

Ramirez' Compensation as Interim City Manager Should Not Be Included in Calculating Ramirez' Service Retirement Benefits

12. Ramirez was appointed as *interim* City Manager. The Indio City Council did not establish a permanent position of City Manager/Chief of Police. It did not set a payrate for the position of City Manager/Chief of Police.

It was understood that Ramirez' services as interim City Manager would be temporary. Ramirez was compensated for the additional hours he was required to work *beyond his normal working hours as Chief of Police* in order to meet the added but temporary responsibilities of the position.

Ramirez received the payrate, uniform allowance and longevity pay he was entitled to as Chief of Police when he received the additional compensation for acting as the interim City Manager. The monthly compensation Ramirez received as interim City Manager was not pursuant to any labor policy or agreement and it was not available to other City of Indio employees who were similarly situated. It was earned for the valuable services Ramirez provided in excess of the hours he normally worked as Chief of Police.⁴

The performance bonus Ramirez received as interim City Manager was not pursuant to any labor policy or agreement and it was not available to other similarly situated City of Indio employees. It was earned during his final compensation period and it was not awarded as a result of meeting formal goals and objections previously identified. It was earned for services Ramirez provided in excess of the hours he normally worked as Chief of Police.

The compensation Ramirez received as interim City Manager – both the monthly payments and the performance bonus – were for services provided in excess of the hours Ramirez served as Chief of Police. An unfunded liability over and above PERS' actuarial assumptions would exist if Ramirez' were to receive a service retirement benefit based in

⁴ Government Code section 20635 provides in pertinent part:

"If a member concurrently renders service in two or more positions, one or more of which is full time, service in the part-time position shall constitute overtime. If two or more positions are permanent and full time, the position with the highest payrate or base pay shall be reported to this system."

part on the compensation he earned as interim City Manager in his final year of employment with the City of Indio.

*Good Cause Exists to Sustain CalPERS' Decision to Exclude
from the Calculation of Ramirez' Retirement Benefit Allowance
All Compensation Ramirez Received as Interim City Manager*

13. Good cause exists to sustain the Chief Executive Officer's determination that the disputed payments made to Roy T. Ramirez in connection with his service as the interim City Manager, City of Indio, be excluded from the calculation of his service retirement benefit allowance.

This conclusion is based on all Factual Findings and on all Legal Conclusions.

ORDER

The Chief Executive Officer's determination that the disputed payments made to Roy T. Ramirez in connection with his service as the interim City Manager, City of Indio, be excluded from the calculation of his service retirement benefit allowance is sustained.

Dated: September 18, 2000

JAMES AHLER
Administrative Law Judge
Office of Administrative Hearings



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November 15, 2000

AGENDA ITEM 17B

TO: MEMBERS OF THE BOARD OF ADMINISTRATION

- I. SUBJECT:** Proposed Decision -- In the Matter of the Application for Enhanced Final Compensation of ROY T. RAMIREZ, Respondent, and CITY OF INDIO, Respondent, Case No. 2640
- II. PROGRAM:** Actuarial and Employer Services Division
- III. RECOMMENDATION:** Staff recommends that the Board of Administration adopt the Proposed Decision, denying the appeal for calculation of benefits pursuant to the employer's report of final compensation of Roy T. Ramirez. Staff further recommends that the decision be designated precedential.

RESOLVED, that the Board of Administration of the California Public Employees' Retirement System hereby adopts as its own decision the Proposed Decision dated September 18, 2000, concerning the application of Roy T. Ramirez; RESOLVED FURTHER that this Board decision shall be effective 30 days following mailing of the decision.

RESOLVED, that the Board of Administration of the California Public Employees' Retirement System, hereby designates as precedential its decision concerning the application of Roy T. Ramirez.

IV. ANALYSIS:

Roy T. Ramirez was employed as the Chief of Police by the City of Indio. At the time of his service retirement, Mr. Ramirez was performing the duties of Chief of Police and interim City Manager. Staff reviewed Mr. Ramirez's reported final compensation and excluded that portion of his final compensation made in connection with his service retirement as the interim City Manager. Mr. Ramirez appealed that decision.

Members of the Board of Administration
November 15, 2000

- Attachment A: Staff's argument that the Board should adopt the Proposed Decision.
- Attachment B: Respondents' arguments to the Board regarding the Proposed Decision.
- Attachment C: The Proposed Decision.

V. STRATEGIC PLAN:

This item is not a specific product of either the Strategic or Annual Plans, but is part of the regular and ongoing workload of the Legal Office.

VI. ALTERNATIVES:

- A. For use if the Board decides not to adopt the Proposed Decision, but hear the matter on the record.

RESOLVED, that the Board of Administration of the California Public Employees' Retirement System, after consideration of the Proposed Decision dated September 18, 2000, concerning the application of Roy T. Ramirez, hereby determines to decide the matter itself; RESOLVED FURTHER that the Board's decision shall be made after notice is given to all parties, based upon the record produced before the administrative law judge and written and oral argument presented by the parties.

* * *

- B. For use if the Board decides to remand the matter back to the Office of Administrative Hearings for the taking of further evidence.

RESOLVED, that the Board of Administration of the California Public Employees' Retirement System, after consideration of the Proposed Decision dated September 18, 2000, concerning the application of Roy T. Ramirez, hereby determines to refer the matter back to the administrative law judge for the taking of additional evidence.

* * *

Members of the Board of Administration
November 15, 2000

- C. For use if the Board wants further argument on the issue of whether to designate its decision as precedential.

RESOLVED, that the Board of Administration of the California Public Employees' Retirement System requests the parties in the matter concerning the application of Roy T. Ramirez, as well as interested parties, to submit written argument regarding whether the Board's decision in this matter should be designated as precedential, and that the Board will consider the issue whether to designate its decision as precedential at a time to be determined by its General Counsel.



FERNANDO DE LEON
Staff Counsel



RONALD L. SEELING
Chief Actuary

**BOARD OF ADMINISTRATION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM**

In the Matter of the Appeal of the Calculation
Of Benefits Pursuant to Employer's Report of
Final Compensation Related to

ROY T. RAMIREZ,

Respondent,

And

CITY OF INDIO,

Respondent.

CalPERS Case No. 2640

OAH No. L-2000050022

PROPOSED DECISION

James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on July 20, 2000, in San Bernardino, California.

Fernando De Leon, Staff Counsel, represented petitioner James Burton, Chief Executive Officer, Public Employees' Retirement System, State of California.

Kasey Christopher Clark, Attorney at Law, represented Roy T. Ramirez, who was present throughout the administrative proceeding, and the City of Indio.

The matter was submitted on August 21, 2000, following the filing of written briefs.

ISSUE

Should the compensation Roy T. Ramirez received during his last year of employment with the City of Indio when working as the interim City Manager be treated as "final compensation" for the purpose of calculating his CalPERS' service retirement benefits.

PUBLIC EMPLOYEES RETIREMENT SYSTEM
FILED September 22 2000
Linda Long

FACTUAL FINDINGS

Ramirez' Membership in CalPERS

1. Roy T. Ramirez (hereafter Ramirez) was born on October 22, 1946.

Ramirez became a member of CalPERS as a result of his employment with the Coachella Valley Water District in the mid 1960s. He maintained that employment for about two and one-half years. Ramirez thereafter extended his CalPERS membership by virtue of approximately five years of employment with the City of Coachella in the late 1960s and early 1970s as a law enforcement officer.

In October 1973, Ramirez began working as a patrol officer with the City of Indio. He remained a patrol officer until 1976, when he was promoted to Sergeant. He was promoted to Lieutenant in 1989 and was promoted to Captain in 1993.

In 1993 Ramirez became the Chief of Police, City of Indio. He remained the Chief of Police until his retirement on October 29, 1998. Ramirez' employment with the City of Indio was credited to his CalPERS membership.

2. Ramirez was a career law enforcement officer with the City of Indio who enjoyed the utmost respect of the Indio City Council. Ramirez was instrumental in maintaining and improving morale within the City of Indio Police Department, particularly with the rank and file.

Ramirez earned \$89,000 in salary in his last year of employment as the Chief of Police. He worked well over forty hours a week.

3. On April 15, 1998, Ramirez was at home preparing to attend a City Council meeting. He received a telephone call from Donna French (hereafter French), a Deputy City Clerk with the City of Indio. French invited Ramirez to attend a closed, executive City Council meeting that was taking place.

When Ramirez arrived at the meeting, he was told that the City Manager had just resigned and there was a need to fill the City Manager position on an interim basis. The City Council asked Ramirez to become the interim City Manager pending the appointment of a permanent City Manager. Ramirez agreed to act as the interim City Manager for four months provided that he be permitted to continue acting as the Chief of Police. The City Council agreed.

Almost as an afterthought, the City Council asked Ramirez how much he wanted to be paid as the interim City Manager. Ramirez had not given the matter any thought. One member of the City Council proposed that Ramirez be given an additional \$2,500 per month.

Ramirez agreed. Neither Ramirez nor the City Council considered the impact such additional compensation might have on the retirement benefits Ramirez would receive if he were to retire.

The agreement was not immediately reduced to writing.

4. Ramirez' appointment as the interim City Manager was announced that evening. Ramirez immediately began working as the interim City Manager and he continued working as the Chief of Police. After his appointment as interim City Manager, Ramirez increased his workload to more than sixty hours per week.

5. When Ramirez was appointed interim City Manager, many difficult financial and political issues faced the City of Indio. There was an approximate \$1,000,000 per year operating deficit, work on the 1998 municipal budget had not begun (yet had to be filed within sixty days), morale within the municipal staff was extremely low, there was a need to annex an auto mall into the City of Indio, there was significant litigation pending against the City of Indio with a great deal of exposure which needed to be resolved and there were numerous redevelopment issues.

Ramirez went right to work. He restructured many municipal departments and functions, he downsized the municipal staff, he balanced the budget, he supervised the new annexation project, he assisted in the development of a new municipal golf course, he attended numerous City Council meetings and staff meetings and he continued to meet his responsibilities as Chief of Police.

According to then Mayor Michael H. Wilson (hereafter Mayor Wilson), Ramirez "accomplished more in six and a half months to move this City forward than did the previous City Manger in four years."

6. The outgoing City Manager, Allyn S. Waggle (hereafter Waggle), had earned \$85,000, together with other benefits including an automobile allowance, insurance, paid vacation and sick leave.

The written employment agreement between the City of Indio and Waggle also provided that "in addition to the City's share, the City shall contribute seven percent (7%) of Waggle's contribution to the Public Employees Retirement System (PERS) for Waggle's behalf."

Waggle was a miscellaneous member of CalPERS, not a local safety member.

The Memorandum of Agreement

7. On August 6, 1998, Mayor Wilson signed a Memorandum of Agreement. The agreement concerned "the length of time of the agreement and the premium pay for serving in the upgraded position of Interim City Manager."

Item 1 memorialized the agreement concerning Ramirez' service as interim City Manager from April 15, 1998, through August 12, 1998, and the agreement that Ramirez would receive an additional \$2,500 "special compensation" per month in consideration for serving as interim City Manager. Item 1 of the agreement stated the "special compensation constituted premium pay because Mr. Ramirez was requested to work in an upgraded position."

Item 2 extended the original agreement for an additional 60 days at the "premium pay of \$2,500 per month" and provided "the City Council also agreed to provide an additional \$5,000 of special compensation to recognize the continuing efforts of Mr. Ramirez in the upgraded position of Interim City Manager."

The memorandum of agreement between the City of Indio and Ramirez was signed *after* Ramirez filed his application for retirement benefits with CalPERS. The compensation Ramirez earned as interim City Manager was not intentionally designed to "spike" the amount of CalPERS retirement benefits Ramirez would receive if he retired although it certainly had that effect.

Ramirez' Decision to Retire

8. When Ramirez accepted the interim City Manager position, he had no intention to retire as Chief of Police after a permanent City Manager was appointed. In June 1998, when the City of Indio offered "golden handshakes" to its long-term municipal employees, including Ramirez, Ramirez first considered retiring. He discussed the matter with his family and with their counsel and blessing he decided to take advantage of what might be a one-time opportunity.

On June 22, 1998, Ramirez advised the City Council of his intention to retire as the Chief of Police and to resign as interim City Manager as soon as replacements were found and a transition was accomplished.

Ramirez' Application for CalPERS Retirement Benefits

9. On July 22, 1998, Ramirez signed an Application for Service Retirement which was filed with CalPERS shortly thereafter. In that application, Ramirez stated that he was employed by the City of Indio as the Chief of Police. He stated his last day of service would be October 29, 1998.

10. Item 17 of the retirement application requested Ramirez to select a "final compensation" period. In that regard, the application stated:

"FINAL COMPENSATION TO BE USED: "Final Compensation" is the highest average compensation earnable by you during a one year or three consecutive year period of employment, whichever your agency has contracted for, immediately preceding the effective date of your retirement, or the date of your last separation from employment, if earlier, or during any other period specified by you in this application. Unless a different period is specified by you, your final compensation will be calculated based upon the one year or three year period immediately preceding your retirement or separation date."

Not surprisingly, Ramirez selected the period October 29, 1997, to October 29, 1998, the year in which he enjoyed his greatest earnings.

CalPERS Response to Ramirez' Application for Retirement Benefits

11. CalPERS requested the City of Indio to provide information related to Ramirez' compensation in his last year of service. The City of Indio provided the requested information. It was established that the amount of compensation Ramirez received in his last year of employment with the City of Indio far exceeded the compensation he received previously. Obviously, this increase was by reason of the additional compensation Ramirez received for serving as the interim City Manager.

12. By letter dated October 20, 1998, Rebecca Bolin (hereafter Bolin), a Retirement Program Specialist II with CalPERS, wrote to Ramirez and to the City of Indio to determine if Ramirez' final year of compensation was reported in accordance with California's Public Employees' Retirement Law (hereafter PERL). Bolin wrote:

"I understand the significant increase in your special compensation was due to the fact that you were acting City Manager for that period of time. However, because I may still need additional documentation to determine if this item was reported in accordance with the PERL and the fact that your retirement is so near, CalPERS will temporarily calculate your retirement compensation using the compensation listed below. This is being done in order to delays in the processing of your retirement application."

In its temporary calculation of Ramirez' service retirement benefits, CalPERS used Ramirez' reported payrate of \$6,7885.89 per month (his salary as Chief of Police) and his "special compensation" of \$299.52 per pay period (Ramirez' uniform allowance and longevity pay). CalPERS did *not* include in its temporary calculation of Ramirez' service retirement benefits any additional compensation he received as a result of serving as the interim City Manager.

13. Mayor Wilson wrote to Bolin to explain the circumstances surrounding Ramirez' additional compensation as the interim City Manager. He outlined the difficulties the City of Indio had experienced, Ramirez' appointment as interim City Manager by the City Council and Ramirez' dedicated and successful response to an enormous challenge. Mayor Wilson wrote:

“Clearly, we have the authority to pay the salary we felt was appropriate with the responsibility we assigned. It appears to us that you are questioning our authority and responsibility as it pertains to negotiating salaries with our employees. We had an emergency that developed...and we took appropriate action to deal with it. At no time did we act on the salary issue to circumvent PERS rules or processes...”

14. By letter dated November 17, 1998, David F. Tatlock (hereafter Tatlock), Supervisor of CalPERS' Membership and Payroll Review, advised Ramirez that CalPERS “cannot accept this special compensation item” for serving as the interim City Manager for a variety of reasons. Tatlock advised that “the acting pay reported to CalPERS for you [as interim City Manager] cannot be included in your financial compensation calculation.” Ramirez was advised that his service retirement benefits would be based on a payrate of \$6,785.89 per month and on special compensation of \$299.52 per pay period.

Tatlock advised Ramirez of the right to appeal CalPERS' decision.

15. By letter dated December 17, 1998, Brian P. Dolan (hereafter Dolan), Attorney at Law, requested an administrative hearing. Numerous factual and legal issues were raised.

CalPERS accepted the letter as an appeal.

16. On June 2, 2000, Ken W. Marzon, Chief, Actuarial and Employer Services Division, signed the Amended Statement of Issues on behalf of complainant James Burton, Chief Executive Officer of the Public Employees' Retirement System.

The Amended Statement of Issues and other required jurisdictional documents were served on Ramirez and his attorneys.

On July 20, 2000, the record was opened and jurisdictional documents were presented. An opening statement was given on Ramirez' behalf. CalPERS waived the giving of an opening statement. Various stipulations, sworn testimony and documentary evidence were received thereafter.

The parties' motion to leave the record open through the close of business on August 18, 2000, to permit the simultaneous filing of closing argument was granted.

Written closing arguments were received at the close of business on August 18, 2000. CalPERS' closing argument was marked as Exhibit 12 for identification. Ramirez' closing argument was marked as Exhibit 13 for identification.

On August 21, 2000, the record was closed and the matter was submitted.

Rebecca Bolin's Testimony

17. Relevant information was established through Rebecca Bolin's credible testimony. CalPERS is a pre-funded, defined benefit retirement program. Retirement benefits are paid to CalPERS members according to a formula that includes the retiring member's length of service, a percentage figure based on the member's age on the date of retirement and the member's "final compensation."

Most state employees and all employees of local public agencies which contract with CalPERS are members of CalPERS. Local public agencies contracting with CalPERS are subject to the Public Employees' Retirement Law and all amendments thereto. State and local safety members are eligible for greater retirement benefits under the system than are miscellaneous CalPERS members.

The City of Indio contracted with CalPERS for a "one year final compensation" period. The City of Indio contracted with CalPERS to use a "2% at 50" formula for local safety members and a "2% at 55" formula for miscellaneous members.¹ Rates were charged on that basis.

18. According to Bolin, after CalPERS reviewed the information submitted by Ramirez and the City of Indio, it concluded that certain compensation Ramirez' received in his final year of employment with the City of Indio did not qualify as "final compensation" under pertinent statutes and regulations. CalPERS excluded the \$5,000 performance bonus and the \$2,500 per month paid to Ramirez for services rendered as interim City Manager.

The bonus was rejected because it was not awarded on the attainment of formal goals and objectives and similar bonuses were not available to other municipal employees in Ramirez' class, i.e. other managers employed by the City of Indio.

CalPERS rejected the \$2,500 per month payments that Ramirez received when acting as the interim City Manager because such compensation was negotiated and no person in the same class as Ramirez was eligible to receive similar payments. Under these circumstances, CalPERS was prohibited from concluding that Ramirez' unique monthly payments were

¹ Under this formula, a local safety member's service retirement benefit is 2% of the local safety member's final compensation multiplied by the number of years of his or her CalPERS membership if the employee retires at age 50 years. If the employee is a miscellaneous member, he or she is entitled to 2% of his or her final compensation times the number of years of his or her CalPERS membership upon retirement at age 55 years.

includable as “final compensation”² because applicable statutes and regulations do not permit a class consisting of one person.

Finally, serving as the interim City Manager was not a part of Ramirez’ normally required job duties as the Chief of Police. Ramirez’ compensation in his last year of employment was not historically consistent with the payments previously made to him. The payments made to Ramirez as interim City Manager appeared to be in the nature of “overtime” pay, a type of compensation which does not qualify as “final compensation” for purposes of determining service retirement benefits.

19. Bolin testified that a significant increase in special compensation at or near a member’s retirement creates an “unfunded liability” which may increase not only the rates charged by CalPERS to the last employer, but also the rates CalPERS charges to any previous public employers who contract with CalPERS. Some actuarial problems would exist if the compensation Ramirez received as interim City Manager, a miscellaneous status, were included in his “final compensation” as a local safety member.

While Bolin was not an actuary, she had considerable training, knowledge and experience in the determination of retirement service benefits and the manner in which such benefits were funded. There was no testimony to the contrary.

The Disputed Payments to Ramirez Were Made In Good Faith

20. At issue in this matter is the additional compensation Ramirez received from the City of Indio when he provided services as its interim City Manager. These payments exceeded Ramirez’ pay rate of \$6,785.89 per month and his additional special compensation of \$299.52 per pay period as Chief of Police. This additional compensation totals \$18,932 and is referred to as the “disputed payments.”

21. Ramirez established that the disputed payments received from the City of Indio were made in good faith and for valuable services he rendered as the interim City Manager. Ramirez established that the disputed payments were not made in anticipation of his retirement.

LEGAL CONCLUSIONS

The Constitutional Mandate

1. Article XVI, section 17 of the California Constitution provides as follows:

² It was established that Harold L. Schilling (hereafter Schilling) became the permanent City Manager after Ramirez’ tenure as interim City Manager. Schilling was paid \$95,000 per year.

“The assets of a public pension or retirement system are trust funds and shall be held for the exclusive purpose of providing benefits to participants...and defraying reasonable expense of administering the system.”

Administration of the Retirement Fund

2. The CalPERS retirement fund was established as a trust, to be administered in accordance with the provisions of the Public Employees Retirement Law solely for the benefit of the participants. Government Code section 20170. The management and control of the retirement system is vested in the CalPERS Board of Administration. Government Code section 20123. The CalPERS Board of Administration has the exclusive control of the administration and investment of the Retirement Fund. Government Code section 20171.

The Nature of the Fund and Determination of Service Benefits

3. As noted in *Hudson v. Board of Administration* (1997) 59 Cal.App.4th 1310, 1316, the Public Employees' Retirement Law (PERL) establishes a retirement system for employees of the State of California and participating local public agencies. CalPERS determines employees' retirement benefits based on years of service, final compensation and age at retirement. The system is funded by employer and employee contributions calculated as a percentage of employee compensation. CalPERS determines employer contribution rates based on compensation figures and actuarial assumptions. CalPERS periodically adjusts employers' rates to compensate for any inaccuracy in those actuarial assumptions. Employee rates, in contrast, are fixed by statute.

4. In a similar vein *Pomona Police Officers' Assn. v. City of Pomona* (1997) 58 Cal.App.4th 578, 584, noted that CalPERS is a defined benefit plan which sets an employee's retirement benefit upon the factors of retirement age, length of service and final compensation. Retirement allowances are therefore partially based upon an employee's compensation. An employee's compensation is not simply the cash remuneration received, but is exactly defined to include or exclude various employment benefits and items of pay. The scope of compensation is also critical to setting the amount of retirement contributions, because PERS is funded by employer and employee contributions calculated as a percentage of employee compensation.

“Statutory definitions delineating the scope of PERS compensation cannot be qualified by bargaining agreements.” [Citation.] Nor can the PERS Board characterize contributions as compensation or not compensation under the PERL, those determinations are for the Legislature. [Citation.]” *Pomona Police Officers' Assn. v. City of Pomona* (1997) 58 Cal.App.4th 578, 585.

Determining "Final Compensation"

5. The analytical approach used to determine whether disputed payments should be included in a member's "final compensation" has been consistent.

Disputed payments are evaluated in light of relevant code provisions and the Legislative scheme. Where a particular statute is ambiguous, the intent of the act prevails over the letter, and the letter will, if possible, be so read as to conform to the spirit of the act. Using this approach, a determination is made concerning the inclusion or exclusion of the disputed payments.³

Pertinent Statutory Authority

6. Government Code section 20630 provides in pertinent part:

³ Using this approach, it was determined that a city resolution permitting an eligible city employee to convert employer-paid benefits (such as life and health insurance) to salary increases if the eligible employee retired within twelve months was "final settlement pay" and was properly excluded by CalPERS as "special compensation" in determining the employees' final compensation. See, *Hudson v. Board of Administration* (1997) 59 Cal.App.4th 1310.

Using this approach, it was determined that a retirement conversion option contained in a collective bargaining agreement between a municipality and a police officers' association which violated the PERL was unenforceable. The trial court determined, and the appellate court affirmed, that the retirement conversion option was an attempt to recharacterize excluded compensation into included compensation for retirement purposes at no substantial cost to the employer and the employees and would have allowed local government employers and their employees to engage in blatant pension abuse at the expense of CalPERS and its other members. See, *Pomona Police Officers' Assn. v. City of Pomona* (1997) 58 Cal.App.4th 578.

Using this approach, it was determined in *Oden v. Board of Administration* (1994) 23 Cal.App.4th 194 that tax-deferred, employer-paid contributions made on behalf of CalPERS members did not constitute "compensation" within the meaning of the PERL although the contributions met the literal, common definition an employer "pick up" and employer contribution under Government Code section 20022. In reaching this decision it was noted that "Courts 'must consider the consequences that might flow from a particular construction and should construe the state so as to promote rather than defeat the statute's purpose and policy.'" *Ibid.*, at pp. 208-209.

Using this approach, it was determined that a federal act designating "overtime" for firefighters did not preclude the use of payment for the hours worked in excess of federal overtime in calculating service retirement benefits so long as the hours claimed were considered normal for the firefighters. Thus, it was held that the "premium does not constitute 'overtime,' that it is properly characterized as 'compensation' and that its characterization as such does not distort the compensation base or the legislative scheme." See, *City of Sacramento v. Public Employees Retirement System* (1991) 229 Cal.App.3d 1470, cited portion at 1484.

Using this approach, it was determined that a retired state employee was not entitled to have his service retirement benefits adjusted to a higher amount by CalPERS even though he successfully established before the State Board of Control that he had performed the duties of higher classification during the last four years of his public employment and that he was entitled to more compensation from his employer than he was paid. The appellate court held that the State Board of Control had no authority over CalPERS and that the additional compensation granted to the retiree by the State Board of Control was not "compensation earnable" under the PERL. See, *Snow v. Board of Administration* (1987) 87 Cal.App.3d 484.

“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*...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.” (Emphasis added.)

7. Government Code section 20636 provides in pertinent part:

(a) *‘Compensation earnable’ by a member means the payrate and special compensation of the member, as defined by subdivisions (b), (c), and (g), and as limited by Section 21752.5.*

(b)(1) *‘Payrate’ means the normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours. “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)...*

(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).*

(3) *Special compensation shall be for services rendered during normal working hours...*

...

(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...*

...

(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 any 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.*

(f) As used in this part, "final settlement pay" means any pay or cash conversions of employee benefits that are in excess of compensation earnable, that are granted or awarded to a member in connection with or in anticipation of a separation from employment. The board shall promulgate regulations that delineate more specifically what constitutes final settlement pay..." (Emphasis added.)

8. Government Code section 20042 provides in pertinent part:

"On the election of a contracting agency..."final compensation" for a local member employed by that agency whose retirement is effective or whose death occurs after the date of the election and with respect to benefits based on service to the agency shall be computed under Section 20037 but with the substitution of the period of one year for three consecutive years..."

9. Government Code section 20635 provides in pertinent part:

“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.*

If a member concurrently renders service in two or more positions, one or more of which is full time, service in the part-time position shall constitute overtime. If two or more positions are permanent and full time, the position with the highest payrate or base pay shall be reported to this system. This provision shall apply only to service rendered on or after July 1, 1994.” (Emphasis added.)

Pertinent Regulatory Authority

10. Title 2, California Code of Regulations, section 571 defined “special compensation” in pertinent part as follows:

“(a) The following list exclusively identifies and defines special compensation items for members employed by contracting agency...that must be reported to CalPERS if they are contained in a written labor policy or agreement:

...

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.

...

Management Incentive Pay – Compensation granted to management employees in the form of...extra pay due to the unique nature of their job. Employees within the group cannot have the option to ...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...

...

(b) The [CalPERS] 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."*

Respondents' Contentions

11. Ramirez and the City of Indio raised several contentions, most of which focused on the quality of Ramirez' performance as interim City Manager, the right of the Indio City Council to set Ramirez' pay, its right to reward his superior performance and the parties' good faith in setting Ramirez' compensation as interim City Manager.

Did Ramirez do a good job when he was acting as both Chief of Police and as interim City Manager in his final year of employment with the City of Indio?

No. He did a great job. He more than earned what he was paid. However, service retirement benefits are not based on a formula involving the value of the services provided by an employee.

Did the Indio City Council have the authority to set Ramirez' compensation as its interim City Manager and to award him premium pay for superior performance?

Of course. CalPERS does not dispute the Indio City Council's authority to determine how its employees should be compensated. But, CalPERS cannot calculate service retirement benefits based on compensation when compensation does not qualify as "final compensation" under applicable statutes and regulations.

Did Ramirez and the City Council act in good faith in setting the additional compensation Ramirez was to receive for the valuable services he rendered when he was acting as both Chief of Police and as interim City Manager?

Yes. There is no evidence that such compensation was designed to spike Ramirez' service retirement benefit. However, the issues of questionable intent and good faith are not involved in the statutory and regulatory determination of what constitutes "final compensation."

Was Ramirez' additional compensation for "overtime?"

Sort of. While it is true that Ramirez was not, by virtue of the nature of his employment, subject to federal laws concerning the payment of overtime, that matter does not fully resolve the question. It is clear that Ramirez' additional compensation was earned for taking on additional responsibilities of interim City Manager and for the time required of him to meet those responsibilities.

Ramirez' Compensation as Interim City Manager Should Not Be Included in Calculating Ramirez' Service Retirement Benefits

12. Ramirez was appointed as *interim* City Manager. The Indio City Council did not establish a permanent position of City Manager/Chief of Police. It did not set a payrate for the position of City Manager/Chief of Police.

It was understood that Ramirez' services as interim City Manager would be temporary. Ramirez was compensated for the additional hours he was required to work *beyond his normal working hours as Chief of Police* in order to meet the added but temporary responsibilities of the position.

Ramirez received the payrate, uniform allowance and longevity pay he was entitled to as Chief of Police when he received the additional compensation for acting as the interim City Manager. The monthly compensation Ramirez received as interim City Manager was not pursuant to any labor policy or agreement and it was not available to other City of Indio employees who were similarly situated. It was earned for the valuable services Ramirez provided in excess of the hours he normally worked as Chief of Police.⁴

The performance bonus Ramirez received as interim City Manager was not pursuant to any labor policy or agreement and it was not available to other similarly situated City of Indio employees. It was earned during his final compensation period and it was not awarded as a result of meeting formal goals and objections previously identified. It was earned for services Ramirez provided in excess of the hours he normally worked as Chief of Police.

⁴ Government Code section 20635 provides in pertinent part:

"If a member concurrently renders service in two or more positions, one or more of which is full time, service in the part-time position shall constitute overtime. If two or more positions are permanent and full time, the position with the highest payrate or base pay shall be reported to this system."

The compensation Ramirez received as interim City Manager – both the monthly payments and the performance bonus – were for services provided in excess of the hours Ramirez served as Chief of Police. An unfunded liability over and above PERS' actuarial assumptions would exist if Ramirez' were to receive a service retirement benefit based in part on the compensation he earned as interim City Manager in his final year of employment with the City of Indio.

*Good Cause Exists to Sustain CalPERS' Decision to Exclude
from the Calculation of Ramirez' Retirement Benefit Allowance
All Compensation Ramirez Received as Interim City Manager*

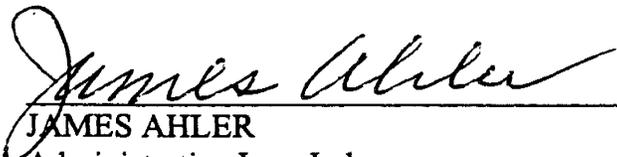
13. Good cause exists to sustain the Chief Executive Officer's determination that the disputed payments made to Roy T. Ramirez in connection with his service as the interim City Manager, City of Indio, be excluded from the calculation of his service retirement benefit allowance.

This conclusion is based on all Factual Findings and on all Legal Conclusions.

ORDER

The Chief Executive Officer's determination that the disputed payments made to Roy T. Ramirez in connection with his service as the interim City Manager, City of Indio, be excluded from the calculation of his service retirement benefit allowance is sustained.

Dated: September 18, 2000



JAMES AHLER
Administrative Law Judge
Office of Administrative Hearings

MEETING
STATE OF CALIFORNIA
PUBLIC EMPLOYEES' RETIREMENT SYSTEM
BOARD OF ADMINISTRATION

CROWNE PLAZA
5985 WEST CENTURY BOULEVARD
SALON A
LOS ANGELES, CALIFORNIA

WEDNESDAY, NOVEMBER 15, 2000

9:30 A.M.

JAMES F. PETERS CSR, RPR
CERTIFIED SHORTHAND REPORTER
LICENSE NUMBER 10063

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

1 administration, whichever it is. And we need to, in fact,
2 address any number of issues, not the least of which is
3 this prescription drug cost, Medicare, a number of other
4 factors affecting our membership. And it might be well to
5 think about scheduling that kind of activity next year.

6 PRESIDENT CRIST: Well, thanks, Mr. Valdes. I
7 think that's a good recommendation and we'll give this
8 some consideration and see how something that could be
9 constructive can be worked out -- worked into the
10 schedule.

11 BOARD MEMBER VALDES: I should also note that
12 from my own point of view, I'm going to be talking to
13 David tomorrow along with 400 other people.

14 PRESIDENT CRIST: Well, I hope we're not paying
15 for that conference call, frankly.

16 BOARD MEMBER VALDES: You're not.

17 (Laughter.)

18 PRESIDENT CRIST: I'm just teasing. I think,
19 Casey, that's it. Are there any questions of Mr. Young?

20 Okay, seeing none, thank you very much.

21 Well go on then to the agenda, the Proposed
22 Decisions of Administrative Law Judges. There are two
23 proposed decisions before you, each has a staff
24 recommendation. What's the pleasure?

25 Mr. Valdes.

1 BOARD MEMBER VALDES: I move the staff's
2 recommendation on all items except for those that may be
3 withdrawn.

4 BOARD MEMBER THOMAS: Second.

5 PRESIDENT CRIST: Are there either one of the two
6 items there before us that any member would wish to
7 withdraw for separate consideration?

8 All right, seeing no wish to withdraw either one
9 of the two items for separate consideration, we will take
10 the motion that's in order, which is to adopt the staff
11 recommendation on each of the ALJ proposed decisions for
12 David Thomas and Roy Ramirez.

13 Is there further debate?

14 Is the motion clear?

15 The motion being clear, I'm going to put the
16 question, all those in favor say aye?

17 (Ayes.)

18 PRESIDENT CRIST: Opposed say no?

19 The decisions as recommended by staff have been
20 adopted in both those cases.

21 We'll now go to Ms. Gillan for the General
22 Counsel's report.

23 GENERAL COUNSEL GILLAN: Yes, I have a written
24 report, which I will submit as presented. But I do also,
25 in your red folders, I have an announcement to make.



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Resolution on Precedential Board Decisions

March 19, 1997

California Public Employees' Retirement System

Board of Administration

Resolution

Subject: Precedential Decisions No: LEG-97-01

WHEREAS, In accordance with Government Code Sections 20120, 9353, 75005, and 50953, the Board of Administration of the California Public Employees' Retirement System (hereafter "the Board") is charged with the administration and management of the Public Employees' Retirement System, the Legislators' Retirement System, the Judges' Retirement System, and the Volunteer Firefighters' Length of Service Award System (hereafter collectively "the System");

WHEREAS, In accordance with Government Code Sections 20171, 9354.1, 75105, 50953, 21676, 22601, 22840, 22840.2, 21664, and 22880, the Board is also charged with the exclusive control of the administration and investment of the Public Employees' Retirement Fund, the Legislators' Retirement Fund, the Judges' Retirement Fund, the Volunteer Firefighters' Length of Service Award Fund, the Public Employees' Deferred Compensation Fund, the Old Age and Survivors' Insurance Revolving Fund, the Public Employees' Contingency Reserve Fund, the Public Employees' Health Care Fund, the Public Employees' Long-Term Care Fund, and the Annuitants' Health Care Coverage Fund (hereafter collectively "the Fund");

WHEREAS, In accordance with Article XVI, Section 17, of the California Constitution, the Board has plenary authority and fiduciary responsibility for the investment of moneys and administration of the System, the Board is charged with the sole and exclusive fiduciary responsibility over the assets of the System, and is granted the sole and exclusive responsibility for administering the System in a manner that will assure prompt delivery of benefits and related services to System members and beneficiaries;

WHEREAS, In accordance with Article XVI, Section 17, of the California Constitution, System assets are held in trust and must be used for the exclusive purposes of providing benefits to System members and their beneficiaries and defraying reasonable expenses of administering the System;

WHEREAS, In accordance with Government Code Sections 20134, 22815, 75005, and 9353, the Board has been delegated quasi-judicial authority to hear appeals in connection with the rights and obligations of the System toward its members and beneficiaries;

WHEREAS, The Board's hearings are evidentiary in nature, conducted in accordance with the Administrative Procedure Act (APA) at Government Code Section 11500 et seq. and the Board's procedural regulations (see Cal. Code Regs., Title 2, Secs. 555.1-555.4.);

WHEREAS, The Legislature has specifically granted quasi-judicial entities, such as the Board, the power to designate "precedential" appeal decisions pursuant to new Government Code Section 11425.60 in the APA;

WHEREAS, In accordance with Government Code Section 11425.60, the Board may designate any appeal decision as precedent if the Board determines that it contains a significant legal or policy determination of general application that is likely to recur; and, as implicitly authorized by that statute, the Board may consider if the decision contains a clear and complete analysis of the issues in sufficient detail so that interested parties can understand why the findings of fact were made, and how the law was applied;

WHEREAS, In accordance with Government Code Section 11425.60, the Board's decision to designate an appeal decision as precedent is not subject to rulemaking nor to judicial review;

Now, therefore be it resolved that:

A. The Board hereby adopts a policy for designating an appeal decision (or part of a decision) as precedent, pursuant to Government Code Section 11425.60, in accordance with the following procedures:

1. In determining whether to designate a decision as precedential, as requested or upon its own motion, the Board will apply the following standard of review:

"The decision contains a significant legal or policy determination of general application that is likely to recur, and also contains a clear and complete analysis of the issues in sufficient detail so that interested parties can understand why the findings of fact were made, and how the law was applied."

2. The availability of designating precedential effect will be noticed as part of each month's legal agenda item. This will allow interested parties to submit written comments for or against publication, in connection with their arguments for or against a Proposed Decision. Once a party requests publication, the Board may decide the issue immediately, or suspend action on that issue only, giving parties at least 30 days to submit their comments.
3. In accordance with Government Code Section 11425.60, the Board will maintain an index of its precedential decisions, to be updated at least once a year and made available to the public by subscription, as publicized in the California Notice Register.

In addition, the Board will publish the text of its precedential decisions, and make this text available to the public by subscription, and notice the availability of the text and indices thereto by various methods of communication with the membership and affected public.

4. Once an appeal decision has been designated as precedent, it will bind all future appeals to the extent that the disputed law and issues are the same - or until such time as the Board de-publishes the decision, thereby rescinding its designation as binding.
5. The availability of de-publication will be noticed and circulated in accordance with the procedure for designating precedent. This way, interested parties will be given notice and a chance to comment, as part of each month's legal agenda item.
6. This will allow interested parties to submit written requests for de-publication - and allow staff to provide a written recommendation. It will also provide a routine method for the Board to specify its reason(s) for de-publication.

B. The Board's Chief Executive Officer is hereby delegated authority as necessary to implement the procedural aspects of this Resolution.

C. This Resolution shall be effective as of July 1, 1997.

I hereby certify that on the 19th day of March, 1997, the Board of Administration of the California Public Employees' Retirement System, made and adopted the foregoing Resolution.

WILLIAM DALE CRIST, PRESIDENT
BOARD OF ADMINISTRATION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

I understand and accept this delegation.
JAMES E. BURTON, CHIEF EXECUTIVE OFFICER
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

Dated: 04-19-2012