

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

## STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Keith Lewinger (Respondent) was employed by Fallbrook Public Utility District (District) as a General Manager until he retired in July 2011. Upon review of his final compensation, CalPERS determined that an \$825.17 monthly vehicle allowance included in his monthly pay rate should not be included in the final calculation of his retirement allowance. Respondent appealed and a hearing was completed on February 12, 2013.

The sole issue for determination was whether the vehicle/auto allowance reported by the District, and reflected as an increase in Respondent's pay rate during his last years of employment, could be included in his final compensation for purposes of calculating his retirement allowance.

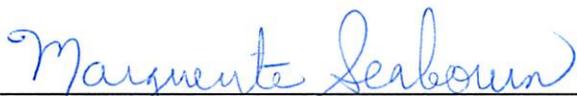
CalPERS presented evidence regarding why Respondent's auto allowance did not meet the statutory definition of "pay rate": (1) it was not paid to similarly situated members, and (2) it was not paid pursuant to a publicly available salary schedule. CalPERS had reviewed Respondent's employment contracts, and determined that the conversion of the auto allowance to pay rate was improper because it is a "non-reportable" item of compensation under the California Public Employees' Retirement Law (PERL). Moreover, CalPERS had provided three "Reportable Compensation:" pamphlets to the District, where "items which are **NOT** reportable to CalPERS," are listed. Auto Allowance is specifically prohibited in each pamphlet.

Finally, the Administrative Law Judge (ALJ) took Official Notice of CalPERS' Precedential Decision No. 12-01 (*In the Matter of the Final Compensation of Craig F. Woods*). The ALJ found the issue in this case to be identical to *Woods*; consequently the *Woods* detailed and well-articulated analysis and conclusion that "respondent's compensation earnable for purposes of calculating his retirement benefits cannot include amounts previously paid to respondent as auto allowance" was dispositive of the identical issue presented here.

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

Because the Proposed Decision applies the law to the salient facts of this case, the risks of adopting the Proposed Decision are minimal. The member may file a Writ Petition in Superior Court seeking to overturn the Decision of the Board.

August 21, 2013

for   
ELIZABETH YELLAND  
Senior Staff Attorney