

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Town of Mammoth Lakes (Respondent) is a local public agency that has contracted with CalPERS to provide retirement benefits for its employees. Respondent entered into Memorandums of Understanding (MOUs) with its managerial and general employees, represented respectively, by the Mammoth Lakes Management Employee Association (MLMEA) and the Mammoth Lakes General Employees Association (MLGEA). The MOUs authorized an optional 5 percent irrevocable increase in base pay in lieu of leave accrual. CalPERS Office of Audit Services conducted an audit of Respondent. In relevant part, in the Audit Report, Respondent was advised that "the optional increase to base pay in lieu of comprehensive leave included in the employee's salary and reported to CalPERS does not meet the definition of regular earnings" under Government Code section 20636(b)(1). The Audit Report also concluded that the in lieu pay did not come within the definition of "special compensation" outlined in California Code of Regulations, title 2, section 571. Respondent disagreed with the Audit Report findings and wrote to the Compensation Review Unit, arguing that the irrevocable five percent pay increase in lieu of comprehensive leave fell within the definition of "payrate" and was properly reported as "compensation earnable." Staff rejected Respondent's arguments and responded that the Audit Report findings would not be changed. Respondent appealed CalPERS' determination and a hearing was held on July 24, 2013.

At the hearing, Respondent agreed that the dispute involved the interpretation of "payrate" under Government Code section 20636(b)(1), and that there was no issue of whether the in lieu pay qualified as "special compensation." Government Code section 20636(b)(1), which is part of the California Public Employees' Retirement Law (PERL), defines "payrate" as "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, pursuant to publicly available pay schedules."

Respondent did not present any witnesses at the hearing. Copies of relevant documents were submitted, pursuant to Stipulation, to the Administrative Law Judge (ALJ).

A Staff Services Manager I (SSM I) in the Compensation and Employer Review Unit testified that he was familiar with Respondent's appeal, had reviewed all relevant and related documents, including the Audit Report and correspondence between Respondent and CalPERS, and was familiar with relevant provisions of the PERL. He testified that Respondent's in lieu pay did not come within the meaning of "payrate" as defined in section 20636 for two reasons. First, because the in lieu pay occurs only as a result of an election by an individual employee to convert a leave benefit into compensation, the increased pay is not paid uniformly to a group or class of similarly situated employees. Second, because employees could wait until they were close to

retirement before making the election to convert a leave benefit into compensation, the creation of an increased salary in the final year or two of their employment could lead to an unfunded liability.

The ALJ found that the CalPERS Board is charged with the duty of interpreting and applying the PERL, a complex statutory scheme. The ALJ found that the Board's interpretation of a statute under the PERL is entitled to great weight and deference. The ALJ found that Respondent had the burden of establishing that CalPERS' interpretation of section 20636(b)(1), as it applies to the in lieu pay provisions of Respondent's MOUs and its subsequent reporting of in lieu pay as compensation was not correct under the PERL. The ALJ found that "The testimony of CalPERS' witness at hearing was uncontradicted, and Respondent failed to meet its burden of proof."

The ALJ took the separate and distinct elements of section 20636(b)(1) and applied the evidence to such elements (See Legal Conclusions No. 8 – 13), and then stated:

"In summary, CalPERS interpretation of section 20636, subdivision (b)(1), is persuasive. The five percent additional monthly compensation received by respondent's employees who elected the in lieu option was not properly reported as 'compensation earnable.' The additional amount paid in cash each month did not satisfy the definition of 'payrate' set forth in section 20636, subdivision (b)(1), because it was not the normal monthly rate of pay or base pay paid to similarly situated members of the same group or class of employment."

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 Town of Mammoth Lakes may file a Writ Petition in Superior Court seeking to overturn the Decision of the Board.

November 20, 2013



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