

ATTACHMENT C
RESPONDENT(S) ARGUMENT(S)

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Via FedEx and Facsimile: 916-795-3972

Members of the CalPERS Board
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Received

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CalPERS Board Unit

**Re: In the Matter of the Calculation of the Final Compensation of WILLIAM SAVKO, Respondent, and the CITY OF EL CERRITO, Respondent
Ref No. 2012-0658**

Dear Members of the CalPERS Board:

I. Introduction

Respondent City of El Cerrito ("City") submits this written argument for the Board's consideration regarding the Corrected Proposed Decision issued by Honorable Michael C. Cohn ("Proposed Decision"). The Proposed Decision was issued in the City's appeal of a determination by CalPERS staff that a portion of William Savko's final compensation did not constitute reportable compensation for purposes of determining his final payrate.

The City strongly urges the Board to modify the Proposed Decision to conclude that Mr. Savko's payrate for purposes of determining his pension should be based on his actual final payrate of \$42.94 per hour. The evidence at the hearing definitively demonstrated that the service credit that Mr. Savko received that CalPERS staff has challenged was not provided to Mr. Savko as an incentive to retire or to circumvent the PERL's restrictions on final settlement pay. Rather, it was made to avoid penalizing Mr. Savko and any similarly situated Police Officers that retired during a period when the City's Police union agreed to defer a contractually guaranteed wage increase.

Police Officers such as Mr. Savko were required to receive a 14% salary increase on July 1, 2010, pursuant to a properly adopted collective bargaining agreement. The City is confident that when the Board considers the actual facts of this case, you will conclude that Mr. Savko's final payrate should include the 14% increase. CalPERS staff has mistakenly

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deflated his final payrate with an irrational reading of its regulations that completely ignores the unique facts and circumstances in this case.

Mr. Savko's 31 years of service should not be undervalued because his union was willing to assist the City during difficult economic times. Accordingly, the City strongly urges you to modify the proposed decision and conclude that Mr. Savko's final payrate was \$42.94 per hour for purposes of calculating his pension benefits.

II. Argument

A. Mr. Savko's Retirement Benefits Should be Based on His Final Payrate of \$42.94 Per Hour Versus the Improperly Deflated Rate Applied by CalPERS

Mr. Savko is a retiree of the El Cerrito Police Department that spent over 30 years protecting its citizens. He retired from the City on December 31, 2011. In the first pay period in July 2010, Mr. Savko and all the other Police Officers for the City were owed a salary increase that was based on the results of salary survey that was to be conducted in early 2010. That increase was owed pursuant to the express provisions of the Memorandum of Understanding between the City and the El Cerrito Police Employees' Association ("MOU"). Prior to July 2010 Mr. Savko was at the top step of the salary scale and was receiving base pay of \$6,493 per month.

The City conducted the salary survey and was required by the MOU to provide all Police Officers (including Mr. Savko) with a 14% percent salary increase. Under the MOU this salary increase was due during the first pay period in July 2010. That salary increase would have brought Savko's salary up to \$7,403 per month (or \$42.71 per hour).

The salary increase was due at a time when the City was facing an approximate \$1 million budget deficit. The City requested that the Police union agree to delay and defer wage increases in four stages for any Officer that did not retire before July 2012. Specifically, rather than receive the full 14% increase at one time in July 2010 as was required by the MOU, the City wanted to implement in 4 stages of 3.5% increases every six months starting on July 2010 and ending January 2012.

The Police Union agreed, but the parties did not want to penalize Police Officers that retired before July 2012 by not giving them the benefit of the full 14% increase that they were owed in July 2010. Accordingly, the incremental salary increases were only implemented for Officers that did not retire prior to January 2012. This was not designed to spike the salaries of retirees, but to make sure that their lifetime retirement benefit was not impacted by their union's agreement to assist the City in dire financial times. Importantly, this honored the 14% pay raise that was required to be provided to Officers pursuant to the MOU. The El Cerrito City Council took action and approved this deferral for Police Officers that did not retire on July 9, 2010.

In an argument that at best amounts to form over substance, CalPERS staff has taken the position that Mr. Savko's final payrate should not include the full 14% increase he was owed in July 2010. Rather, their position is that because Police Officers that did not retire in December 2011 only received incremental raises bringing their salary up to \$6,956 monthly (\$40.13 per hour) when Mr. Savko retired, that is what Mr. Savko's payrate should be based on for purposes of calculating his pension.¹

Mr. Savko's pay was actually \$7,442.41 monthly at the time he retired as a result of the City honoring its obligation to make sure that any retiree received the benefit of the 14% increase. The mechanism for making sure that was honored for any Officer that retired during the deferral period is included in the side letter of agreement with the Police union. Specifically, section 13.8 of the side letter contained a service credit for any Police Officers that retired during the deferral period that made the Officers whole and ensured that they received the full benefit if the 14% increase they were owed.

A common sense review of the above facts can lead to only one conclusion – that Mr. Savko's payrate of \$42.94 per hour does not include any final settlement pay. The service credit at issue in this appeal was compensation earnable pursuant to the required 14% increase in the MOU that was due more than a year before Mr. Savko retired. Accordingly, it was not awarded in connection with a separation from employment and must be utilized to determine Mr. Savko's pension benefits.

B. In the Unlikely Event that the Board Does Not Conclude that Mr. Savko's Final Pay Rate Should be \$42.94 Per Hour, It Must Conclude that His Pension is Based on the \$41.53 Per Hour in Effect in July 2010

The Proposed Decision indicates that the \$40.13 per hour pay rate that was used by CalPERS staff to calculate Mr. Savko's pension may have been too low and concludes that the rate should be re-evaluated by CalPERS. The decision further indicates that "it is unclear why [Mr.] Savko would not have been given credit for the \$41.53 per hour pay rate that was in effect for the last five and a half months of this career. Use of that rate would provide Savko a final year's payrate averaging about \$40.83 per hour."

In the unlikely event that the Board does not modify the Proposed Decision to conclude that Mr. Savko's final payrate was \$42.94 per hour, it must be re-calculated based upon the \$41.53 per hour rate that was in effect as of July 2011. We have attached a copy of the City publicly available pay schedule for your ease of review in this matter. (See Exhibit A at page 3, providing a monthly salary of \$7,199 per hour at Step 5 which equals \$41.53 per hour).

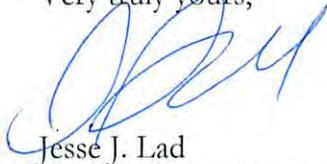
¹ As noted in Section B, the payrate for City Police Officers that did not retire in December 2011 was actually \$7,199 per month (\$41.53 per hour) effective July 2010 versus the \$6,956 monthly (\$40.13 per hour) used by CalPERS staff. At a minimum Mr. Savko's final payrate must be modified to account for the payrate that was in effect during his final year of employment. (See Exhibit A).

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III. Conclusion

For the reasons stated herein, the City strongly urges the Board to modify the Proposed Decision to increase Mr. Savko's final payrate for purposes of his pension benefit.

Very truly yours,



Jesse J. Lad
Attorney for the City of El Cerrito

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Exhibit A

CITY OF EL CERRITO
MONTHLY SALARY GRADES
EFFECTIVE JULY 10, 2011

MISCELLANEOUS - 2.5% EFFECTIVE 7/12/09

JOB CODE	JOB CLASS	STEP 1	STEP 2	STEP 3	STEP 4	STEP 5
687	ASSISTANT ENGINEER	5,383	5,662	5,935	6,231	6,543
685	ASSOCIATE PLANNER	5,014	5,264	5,528	5,805	6,096
682	RECYCLING OPERATIONS SUPERVISOR	5,012	5,263	5,526	5,802	6,092
681	MAINT SVCS SUPERVISOR	5,012	5,263	5,526	5,802	6,092
680	RECREATION PROGRAM SUPERVISOR II	5,012	5,263	5,525	5,802	6,092
555	BUILDING PLAN CHECKER II	4,733	4,970	5,218	5,480	5,754
553	BUILDING INSPECTOR II	4,733	4,970	5,218	5,480	5,754
660	WASTE PREVENTION SPECIALIST	4,375	4,594	4,823	5,065	5,318
650	PROGRAM SUPERVISOR	4,375	4,594	4,823	5,064	5,317
665	ASSISTANT PLANNER	4,359	4,578	4,806	5,046	5,298
556	ENGINEERING TECHNICIAN	4,285	4,499	4,725	4,962	5,209
554	BUILDING PLAN CHECKER I	4,285	4,499	4,725	4,962	5,209
552	BUILDING INSPECTOR I	4,285	4,499	4,725	4,962	5,209
540	BUILDING PERMIT TECHNICIAN III	4,238	4,450	4,672	4,905	5,151
538	INFORMATION SYSTEMS TECHNICIAN	4,152	4,360	4,579	4,808	5,049
537	ACCOUNTANT I	3,984	4,184	4,393	4,613	4,843
635	ASSISTANT PROGRAM SUPERVISOR	3,898	4,093	4,298	4,513	4,739
631	MAINT SVCS/RECY/CUST/ LEADWORKER	3,685	3,869	4,063	4,266	4,479
536	MANAGEMENT ASSISTANT	3,633	3,815	4,005	4,205	4,415
535	BUILDING PERMIT TECHNICIAN II	3,633	3,815	4,005	4,205	4,415
610	COMMUNITY SERVICES COORDINATOR	3,434	3,605	3,786	3,976	4,174
530	BUILDING PERMIT TECHNICIAN I	3,397	3,568	3,746	3,933	4,129
524	ACCOUNT CLERK TECHNICIAN	3,351	3,519	3,746	3,933	4,129
630	MAINT WRKR/RECY MAINT WORKER	3,351	3,519	3,694	3,880	4,074
604	MAINT WRK-ENTRY/RECY WKR-ENTRY	2,978	3,127	3,283	3,447	3,618
522	ACCOUNT CLERK	2,954	3,102	3,257	3,420	3,591
521	ADMINISTRATIVE CLERK-SPECIALIST	2,954	3,102	3,257	3,420	3,591
520	ADMINISTRATIVE CLERK	2,813	2,954	3,102	3,257	3,420
443	FORKLIFT OPERATOR	2,514	2,639	2,771	2,910	3,056
442	CUSTODIAN	2,514	2,639	2,771	2,910	3,056
518	ACCOUNT CLERK-80%	2,363	2,481	2,605	2,736	2,873
445	CHILDCARE TEACHER	2,303	2,438	2,584	2,723	2,869
467	RECREATION REGISTRAR/ASST	2,286	2,400	2,520	2,646	2,779

CITY OF EL CERRITO
MONTHLY SALARY GRADES
EFFECTIVE JULY 10, 2011

CONFIDENTIAL - 2.5% EFFECTIVE 7/12/09

JOB CODE	JOB CLASS	STEP 1	STEP 2	STEP 3	STEP 4	STEP 5
543	ACCOUNTANT II	4,782	5,021	5,272	5,535	5,812
716	FIRE SECRETARY	3,933	4,110	4,296	4,492	4,697
529	PERSONNEL TECHNICIAN	4,063	4,267	4,481	4,706	4,941

CITY MANAGER - 2.5% EFFECTIVE 7/12/09

JOB CODE	JOB CLASS	FLAT RATE
980	CITY MANAGER	14,614

MANAGEMENT - 2.5% EFFECTIVE 7/12/09

JOB CODE	JOB CLASS	BOTTOM ¹	CONTROL PT ²	TOP ³
948	PUBLIC WORKS DIRECTOR/CITY ENGINEER	9,588	11,985	14,981
950	COMMUNITY DEVELOPMENT DIRECTOR	9,485	11,856	14,820
924	ADMINISTRATIVE SERVICES DIRECTOR/CITY TREASURE	9,472	11,840	14,800
949	RECREATION DIRECTOR	9,400	11,750	14,688
935	ASSISTANT CITY MANAGER	8,926	11,158	13,948
910	INFORMATION SYSTEMS MANAGER	8,569	10,711	13,389
921	EMPLOYEE SERVICES MGR.	8,569	10,711	13,389
928	SENIOR ENGINEER (with PE Reg)	8,026	10,033	12,541
926	BUILDING OFFICIAL	7,662	9,578	11,973
914	SENIOR ENGINEER	7,644	9,555	11,944
915	PLANNING MANAGER	7,226	9,033	11,291
925	ECONOMIC DEV/REDEV MGR	7,030	8,788	10,985
918	MAINT AND ENGR SERVICES MGR	6,850	8,563	10,704
916	ENVIRONMENTAL SERVICES MANAGER	6,850	8,563	10,704
900	SENIOR PROGRAM MANAGER (Formerly Sr Project Mgr)	6,329	7,911	9,889
912	ASSOCIATE ENGINEER	6,164	7,705	9,631
690	ACCOUNTING SUPERVISOR	6,074	7,593	9,491

¹ Bottom is the equivalent to Step 1

² Control Pt (Point) is the equivalent to Step 5

³ Top is exceptional performance (between the control point and top)

CITY OF EL CERRITO
MONTHLY SALARY GRADES
EFFECTIVE JULY 10, 2011

MANAGEMENT - 2.5% EFFECTIVE 7/12/09

JOB CODE	JOB CLASS	BOTTOM ₁	CONTROL PT ₁	TOP ₁
545	ASSISTANT TO THE CITY MANAGER	6,026	7,533	9,416
905	SENIOR PLANNER	5,866	7,332	9,165
551	CITY CLERK	5,712	7,140	8,925
550	MAINTENANCE SERVICES SUPERINTENDENT (1/18/11)	5,641	7,051	8,814
549	PROGRAM MANAGER (Formerly Project Mgr)	5,641	7,051	8,814
548	ADMINISTRATIVE ANALYST III	5,641	7,051	8,814
547	ADMINISTRATIVE ANALYST II	5,129	6,411	8,014
546	ADMINISTRATIVE ANALYST I	4,662	5,827	7,284

PUBLIC SAFETY MANAGEMENT - EFFECTIVE 7/12/09

JOB CODE	JOB CLASS	BOTTOM ₁	CONTROL PT ₂	TOP ₁
952	FIRE CHIEF (2%)	10,515	13,144	16,430
951	POLICE CHIEF (3% - 7/10/11)	10,857	13,571	16,964
933	POLICE CAPTAIN (8/17/09)	10,020	12,526	15,657
947	BATTALION CHIEF/TRAINING OFFICER (2%)	8,832	11,040	13,799
931	POLICE LIEUTENANT (8/17/09)	8,520	10,650	13,312
930	BATTALION CHIEF (2%)	8,029	10,036	12,545

POLICE (SWORN) - EFFECTIVE 7/10/11

JOB CODE	JOB CLASS	STEP 1	STEP 2	STEP 3	STEP 4	STEP 5
861	POLICE SERGEANT/DET/MOTOR/ADMIN ASSIGN. (3%)	7,789	8,155	8,541	8,946	9,370
860	POLICE SERGEANT (3%)	7,418	7,767	8,134	8,520	8,924
842	POLICE CORPORAL/DETECTIVE ASSIGN. (3.5%)	6,977	7,302	7,645	8,005	8,382
841	POLICE CORPORAL (3.5%)	6,645	6,954	7,281	7,624	7,983
840	POLICE OFFICER - DETECTIVE / MOTOR ASSIGN (3.5%)	6,299	6,592	6,899	7,221	7,559
830	POLICE OFFICER (3.5%)	5,999	6,278	6,570	6,877	7,199

¹ Bottom is the equivalent to Step 1

² Control Pt (Point) is the equivalent to Step 5

³ Top is exceptional performance (between the control point and top)

CITY OF EL CERRITO
 MONTHLY SALARY GRADES
 EFFECTIVE JULY 10, 2011

POLICE (NON-SWORN) - 2% EFFECTIVE 1/09/11

JOB CODE	JOB CLASS	STEP 1	STEP 2	STEP 3	STEP 4	STEP 5
820	POLICE RECORDS SUPERVISOR	4,577	4,787	5,006	5,238	5,480
818	PARKING ENFORCEMENT REPRESENTATIVE (40 hr)	4,175	4,365	4,563	4,772	4,991
817	PROPERTY AND EVIDENCE SPECIALIST (40 hr)	4,430	4,652	4,885	5,130	5,386
816	POLICE EXECUTIVE ASSISTANT (40 hr)	4,301	4,495	4,698	4,913	5,137
810	SENIOR POLICE RECORDS SPECIALIST	3,733	3,899	4,074	4,259	4,452
805	POLICE OFFICER RECRUIT (40 hr)	3,837				
804	POLICE RECORDS SPECIALIST	3,455	3,607	3,768	3,937	4,114

FIRE - EFFECTIVE 7/10/11

JOB CODE	JOB CLASS	STEP 1	STEP 2	STEP 3	STEP 4	STEP 5
770	CAPTAIN/FPO (5.63%)	8,447	8,869	9,313	9,779	10,267
761	CAPTAIN/PARAMEDIC ASSIGN. (5.63%)	8,447	8,869	9,313	9,779	10,267
760	CAPTAIN (5.63%)	7,679	8,062	8,465	8,886	9,333
741	ENGINEER/PARAMEDIC ASSIGN. (9%)	7,371	7,739	8,127	8,532	8,956
740	ENGINEER (9%)	6,700	7,036	7,387	7,756	8,146
721	FIREFIGHTER/PARAMEDIC ASSIGN. (8.22%)	6,857	7,199	7,560	7,937	8,335
720	FIREFIGHTER (8.22%)	6,234	6,545	6,873	7,216	7,576