

**ATTACHMENT C**

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August 26, 2013

**VIA FACSIMILE (916) 795-3659**

CalPERS Legal Office  
Attention: Wesley Kennedy, Sr. Staff Attorney  
400 Q Street, Rm LPN 3340  
Sacramento, CA 95811

Re: In the Matter of the Final Calculation of the Final Compensation of  
Pier Angela Spaccia/ Agency Case No. 2011-0789/ Precedential  
Designation

Dear Mr. Kennedy:

Pursuant to your letter of August 2, 2013 in the above-referenced matter, CITY OF BELL (hereafter "Bell" or "City") hereby suggests that the CalPERS Board designate the Final Decision in the above-referenced matter *precedential*.

The Final Decision addresses two significant legal issues: one, what constitutes a "publicly available pay schedule;" and two, whether employers may purchase "air time" for their employees. As to the former, the Final Decision makes clear that final compensation may *not* be based, in whole or in part, on secret, unclear, or unauthorized employment contracts. Because nearly all public agencies in California retain top management personnel via employment agreements, the Final Decision will have statewide application and provide upper management with incentive to ensure that their contracts are proper. This is profound and in the public interest.

As to the latter issue, it is the City's understanding that there are currently ten (10) more pending appeals where the propriety of Bell's purchase of "air time" for its employees is at issue. By designating the Final Decision as precedential, the administrative law judges, future Boards, appellants' and their counsel will have guidance on this issue, thereby promoting settlement, consistent administrative decisions, and conservation of resources. In particular, Ms. Spaccia has recently petitioned the superior court for review of the Final Decision, and a "precedential designation," although not binding on the courts, will be persuasive as CalPERS' official "take" on the law regarding this issue.

Accordingly, the Final Decision satisfies the two considerations set forth in your August 2, 2013 letter for a decision to be deemed "precedential"---it contains two significant legal determinations of general application and likely to recur, and it includes a clear and complete analysis of the "publicly available pay schedule" and "employer-purchased 'air time'" issues.

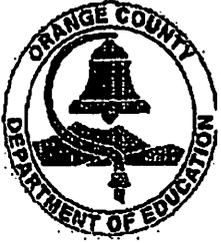
Wesley Kennedy  
August 26, 2013  
Page 2

On behalf of the City of Bell, we thank you in advance for your consideration. Please let us know of the Board's decision in this regard.

Very truly yours,

A handwritten signature in black ink, appearing to read "S. Onstot", written over a horizontal line.

Stephen R. Onstot  
Partner



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August 13, 2013

Wesley Kennedy, Senior Staff Attorney  
CalPERS Legal Office  
400 Q Street, Rm LPN 3340  
Sacramento, CA 95811

Dear Mr. Kennedy,

This letter is in response to a request for public comments dated August 2, 2013 regarding a recent decision involving the pension of a former City of Bell employee (Ref. No. 2011-0789). The questions posed in the memorandum and our responses follow.

**Does the decision contain a significant legal or policy determination of general application that is likely to recur?**

Yes, we believe that the CalPERS Board decision contains several points which would be considered significant legal or policy determinations.

The Board decision establishes a definition for "publicly available" in reference to salary schedules and provides the criteria to be used to in determining compliance with this requirement (Decision, Item 40, p. 16). The decision establishes a clear prohibition on employer-funded "air time" (Decision, Items 52-53, p. 19).

**Does it include 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?**

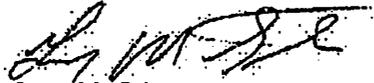
Yes, however there is one area where clarification is required concerning increases in compensation. In section of the Board decision dealing with "Similarly Situated Members" (Decision, Item 9, p. 22), the following statement is made:

*A pay increase must be part of a publicly available pay schedule in order to qualify as "compensation earnable."*

While we understand the intent of this statement, it may raise questions concerning other payments such as off-schedule bonuses, shift-differential, and other types of payments. These payments are generally considered "compensation earnable" as long as they meet certain criteria. In order to avoid such confusion, we would suggest that the statement clarify that increases in pay rate or salary must be part of a publicly available pay schedule.

Thank you for allowing CalPERS Contracting Agencies the opportunity to provide input in this important matter. If you should require any additional information or need clarification of points made, please..... contact Gary Stine at (714) 966-4253 or via email at [gstine@ocde.us](mailto:gstine@ocde.us).

Sincerely,



Gary M. Stine  
Director, Support Services



CHARLES PARKIN  
City Attorney

MICHAEL J. MAIS  
Assistant City Attorney

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September 11, 2013

CalPERS Legal Office  
Attn: Wesley Kennedy, Senior Staff Attorney  
400 Q Street, Rm LPN 3340  
Sacramento, CA 95811

RE: **In the Matter of Pier' Angela Spaccia**  
**Case No. 2011-0789; OAH No. 2102020198**

Dear Mr. Kennedy:

The City strongly objects to the Board of Administration of the California Public Employees' Retirement System ("Board") making precedential the Angela Spaccia case which arose out of the City of Bell.

In accordance with the March 19, 1997, California Public Employees' Retirement System Board of Administration Resolution No: LEG-97-01, which governs precedential decision, the Board indicated that in order for a decision to be considered precedential the Board must find that "[t]he 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." The above decision does not contain a legal or policy determination of general application that is likely to recur.

The City of Long Beach is of the opinion that the situation in Bell, namely the abuse of the CalPERS pension system, was unique and that the issues contained within that decision would not be applicable to the City of Long Beach or other agencies which adhere to the constraints of the Government Code, cooperate with CalPERS in its audits, and endeavor to ensure that it properly follows the laws and regulations governing CalPERS and its contracting members. Long Beach has not engaged in fraudulent or inappropriate conduct in any way, nor has it abused the pension system in order to provide an inflated pension for any of its employees. On the basis that the facts of the above case are so singular and unique and that the likelihood of recurrence is slim, the City objects to it having precedential application in future cases with agencies other than the City of Bell. To apply the findings of the above case would be inconsistent with PERS Resolution No: LEG-97-01, and should not be permitted.

In addition, the City objects to having CalPERS retroactively apply statutes or codes that are adopted after an event occurs, as was done in the above case with the retroactive application of Regulation 570.5 to Spaccia's pension calculation. Retroactive application of the law is not permitted and CalPERS should not be exempt from this legal tenant. "New statutes are presumed to operate only prospectively absent some clear indication that the Legislature intended otherwise." (Elsner v. Uveges (2004) 34 Cal.4th 915, 936.) Departure from the presumption of prospectivity is warranted only by clear legislative intent. (Californians for Disability Rights v. Mervyn's, LLC (2006) 39 Cal.4th 223, 229-230.) Thus, "in the absence of an express retroactivity provision, a statute will not be applied retroactively unless it is very clear from extrinsic sources that the Legislature or the voters must have intended a retroactive application." (Evangelatos v. Superior Court (1988) 44 Cal.3d 1188, 1209.) Retroactive application is particularly problematic in that the agency subject to retroactive application has no way of knowing that it should perform in any particular manner, as the statute or code is not in existence at the time of performance. As such, the City object to CalPERS giving precedential value to a case which permits retroactive application of a code.

In sum, please note the City's objections and include them with any other objections you have received. Thank you in advance for your consideration.

Very truly yours,

CHARLES PARKIN, City Attorney

By:

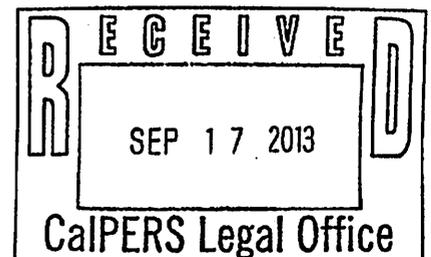
  
CHRISTINA L. CHECEL  
Senior Deputy City Attorney

CLC:kjm

A13-01820

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cc: John Gross, Director of Financial Management





## Westlands Water District

3130 N. Fresno Street, P.O. Box 6056, Fresno, California 93703-6056, (559) 224-1523, FAX: (559) 241-6277

August 30, 2013

Wesley E. Kennedy  
Senior Staff Attorney  
CalPERS Legal Office  
400 Q Street, Lincoln Plaza North Room 3340  
Sacramento CA 95811

SEP - 4 2013

Re: Request for Comments, Precedential Designation of CalPERS Board of Administration Decision in the Matter of Pier 'Angela Spaccia, CalPERS Case No. 2011-0789, OAH No. 2102020198.

Dear Mr. Kennedy:

Westlands Water District, a CalPERS contracting agency, is pleased to submit the following comments concerning precedential designation of the above-entitled decision ("Spaccia") of the CalPERS Board of Administration ("Board").

**1. The decision should not be designated as precedential.**

The Board's policy about precedential designation is set forth in Resolution No. LEG-97-01, March 19, 1997. The policy provides that a decision may be designated as precedential if the decision meets two criteria:

- a. the decision contains a significant legal or policy determination of general application that is likely to recur and
- b. 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.

A decision must meet both criteria to be designated precedential.

**2. The Spaccia decision fails the first criteria.**

This decision fails to meet the first criterion of the board's policy for precedential designation. The

decision involved a member employed by the city of Bell in the midst of one of the worst municipal finance scandals in California history. This was an extraordinary series of events. The Board clearly acted from that perspective. This is evident from the inclusion of facts in the opinion related to the city of Bell scandals. The individual respondent, Ms. Spaccia, seems, from the Board's own recitation of the facts, to be implicated in some respect in the scandal.

The extraordinary nature of the events concerning compensation for officials in the city of Bell demonstrates that this decision does not "contain a significant legal or policy determination of general application that is likely to recur." The Board itself seems to have recognized this fact by its decision to reconsider precedential designation less than a month after that designation. It may be inferred from that decision on July 16, 2013, that there was some doubt among the members of the Board about the general applicability of the Spaccia decision.

**3. The decision does not meet the second criterion.**

The decision does not "contain 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."

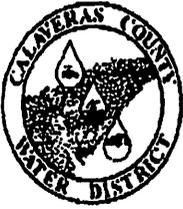
The decision fails to analyze the 2012 amendments to Government Code section 20636, leaving unclear whether those amendments apply to this case. Thus, interested parties cannot know whether those amendments generally apply retroactively or prospectively and what those terms mean in this context. This is particularly important because the decision points out that the prior amendments to section 20636 were adopted in 2006, and that the CalPERS regulation interpreting that section [title 2, California Code of Regulations, section 570.5] was adopted in 2011. Furthermore, the decision is not clear as to the references to Senate Bill 53 (1993-1994) since that bill as enacted does not contain the provisions relied upon as legislative history in the decision.

Westlands Water District thanks the Board for the opportunity to comment on the precedential nature of this matter.

Sincerely,

A handwritten signature in black ink that reads "Craig Manson". The signature is written in a cursive, flowing style.

Craig Manson



## CALAVERAS COUNTY WATER DISTRICT

120 Toma Court • Post Office Box 846 • San Andreas, CA 95249 • Main Line (209) 754-3543

August 12, 2013

CalPERS Legal Office  
Attn: Wesley Kennedy, Senior Staff Attorney  
400 Q Street, RM LPM 3340  
Sacramento, CA 95811

FAXED TO 916.795.3659

RE: Public Comment on Precedential Designation of Board Decision in the Matter of Pier 'Angela Spaccia, Case No. 2011-0789; OAH No. 2102020198

To Whom This May Concern:

On behalf of the District would like to take this opportunity to comment on the whether the Board's decision in the matter of Pier 'Angela Spaccia, Case No. 2011-0789; OAH No. 2102020198 should be precedential.

The District believes that this decision should not be precedential. Instead, decisions of this magnitude should be determined on a case by case basis. Given the restrictions on pensions due to PEPRA, an employer should be able to purchase service credit on the behalf of an employee for recruitment and/or retention.

Thank You,

Stacey Lollar, PHR  
Human Resources Manager