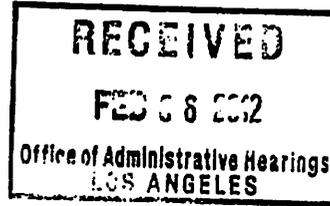


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Employees' Retirement System
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9 BOARD OF ADMINISTRATION
10 CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

11 In re the Matter of Applicability of Government
Code Section 20638 to Member Fred Guido

CalPERS No. 9711

OAH No. TBD

12
13 FRED GUIDO,

STATEMENT OF ISSUES

14 Respondent,

15 CITY OF CUDAHY,

16 Respondent.
17

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19 PARTIES

- 20 1. Petitioner is the California Public Employees' Retirement System ("CalPERS").
21 CalPERS presents this Statement of Issues in its official capacity and not otherwise. CalPERS
22 administers a defined benefit retirement plan for qualified employees of the state of California and
23 other contracting state and local agencies. Benefits for its members are funded through member and
24 employer contributions and investment earnings on those contributions.
- 25 2. Respondent Fred Guido ("Guido") is a retired member of CalPERS.
- 26 3. Guido's membership in CalPERS is based on the service he provided to Respondent
27 City of Cudahy ("City"), which participates in CalPERS as a contracting local agency.
28

1 based on his service on the City Council prior to the effective date of the amendments to the
2 participation agreement between the City and CalPERS.

3 10. In or about March 1973, while still serving on the City Council, Guido also became
4 employed by the Los Angeles County Sheriff's Department. By reason of his employment with the
5 Sheriffs' Department, Guido became a member of the Los Angeles County Employees' Retirement
6 Association ("LACERA") and was classified as a local safety member. He remained a Los Angeles
7 County employee until or about November 1977, at which time he separated from service.

8 11. After Guido terminated employment with the Los Angeles County Sheriff's
9 Department, he was employed in the private sector for approximately nineteen years

10 12. Guido's tenure as a City Council member ended in or about April 1982, at which time
11 he ceased to be an active member in CalPERS. Guido left his retirement contributions on deposit
12 with CalPERS. Guido had approximately 12 years of service credit in CalPERS and his highest pay
13 while serving on the City Council was \$150 per month.

14 13. Over nineteen years after separating from service with the County of Los Angeles,
15 Guido returned to employment with the County in or about December 1996. In that capacity he
16 returned to membership in LACERA as a general (i.e., not safety) member. He remained a Los
17 Angeles County employee until his termination of employment and retirement from the County on
18 or about June 1, 2009.

19 14. Under the plain terms of sections 20638 and 20355, Guido would be entitled to the
20 advantage of section 20638 only if he had entered into employment with the County of Los Angeles
21 within six months after discontinuing his service with the City as an elected member of the City
22 Council. Due to the more than 14-year gap between his last service on the City Council and his
23 employment with County of Los Angeles, by law Guido was not entitled to the advantage of
24 Government Code section 20638.

25 15. On several occasions between 2003 and 2008, Guido requested that CalPERS staff
26 generate retirement allowance estimates for him. In response, CalPERS' staff generated retirement
27 allowance estimates, which were partially based on information that Guido provided to CalPERS
28 staff. Those estimates were based on the mistaken assumption that Guido's CalPERS retirement

1 allowance would be calculated using amounts that he earned while he was employed by the County
2 of Los Angeles. Based on information provided by Guido, CalPERS staff used salaries as high as
3 \$11,838 per month, as of October 20, 2008, to generate Guido's retirement allowance estimates,
4 which resulted in an unmodified retirement allowance estimate of over \$3,300 per month. Guido
5 claims that he made a variety of employment decisions based on his belief that he was entitled to the
6 advantage of Government Code section 20638.

7 16. On April 7, 2009, Guido filed a Service Retirement Election Application with
8 CalPERS. He indicated that he intended to retire concurrently from LACERA and CalPERS
9 effective June 1, 2009.

10 17. By letter dated June 30, 2009 (which was the culmination of several communications
11 between Guido and CalPERS staff), CalPERS staff informed Guido that he was not entitled to the
12 advantage of Government Code section 20638 because the time between his employment with the
13 City and his subsequent employment with the County of Los Angeles exceeded six months.
14 Accordingly, his CalPERS retirement benefit would be based on the \$150 per month of
15 "compensation earnable" that he earned when he was a member of the City Council some 27 years
16 earlier, resulting in a benefit of approximately \$70 per month. CalPERS staff also advised Guido of
17 his right to appeal its determination.

18 18. On July 29, 2009, Guido filed an appeal from CalPERS' determination.

19 19. Notwithstanding Guido's receipt of retirement allowance estimates with inaccurate
20 information, CalPERS must follow a proper interpretation of its governing law. Under CalPERS'
21 governing law, Guido is not entitled to the advantage of Government Code section 20638. No
22 principle of law or equity allows CalPERS to grant Guido the advantage of Government Code
23 section 20638, because he has not satisfied the requirements of section 20638.

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ISSUE FOR DETERMINATION

This appeal is limited to the issue of whether Guido is entitled to have his "compensation earnable" based on his "average monthly salary during any period of service" as a member of LACERA, for the purposes of calculating the "final compensation" used to determine his retirement allowance from CalPERS, pursuant to Government Code section 20638.

DATED: January 24, 2012.

CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT
SYSTEM



Karen DeFrank, Chief of Customer Account Services Division

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PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is REED SMITH LLP, 101 Second Street, Suite 1800, San Francisco, CA 94105-3659. On February 3, 2012, I served the following document(s) by the method indicated below:

STATEMENT OF ISSUES

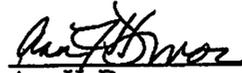
by placing the document(s) listed above in a sealed envelope(s) and consigning it to an express mail service for guaranteed delivery on the next business day following the date of consignment to the address(es) set forth below. A copy of the consignment slip is attached to this proof of service.

by transmitting via email to the parties at the email addresses listed below:

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City of Cudahy
Hector Rodriguez
City Manager
City of Cudahy, City Hall
5220 Santa Ana St.
Cudahy, CA 90201
Telephone: 323-773-5143

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on February 3, 2012, at San Francisco, California.



Ann H. Devor

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