

ATTACHMENT A
THE PROPOSED DECISION

BEFORE THE
BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
STATE OF CALIFORNIA

In the Matter of the Denial of Election to
Purchase Additional Retirement Service
Credit by:

KENNETH E. RULON,

Respondent.

CASE NO. 2012-0581

OAH Nos. 2013061129

PROPOSED DECISION

Carla L. Garrett, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter on October 22, 2013, in Glendale, California.

Elizabeth Yelland, Senior Staff Attorney, represented the Petitioner, California Public Employees' Retirement System (CalPERS). Respondent Kenneth Rulon (Respondent) appeared at hearing and represented himself.

Oral and documentary evidence was received, the record was closed, and the matter was submitted for decision on October 22, 2013.

FINDINGS OF FACT

1. On June 28, 2013, Karen DeFrank, in her official capacity as Chief of the Customer Account Services Division, Board of Administration, CalPERS, filed a Statement of Issues, Case No. 2012-0581, against Respondent, claiming that Respondent failed to timely submit, with his election document, proper payment of \$214,797.85 to purchase five years of Additional Retirement Service Credit (ARSC). On October 9, 2013, Ms. DeFrank, in her official capacity, filed an Amended Statement of Issues against Respondent to correct an erroneous date listed on the initial Statement of Issues.

2. Respondent became a police officer when he was 21-years-old, and in 2003, he became the Chief of Police for the City of Colton. In 2007, Respondent left the employ of the City of Colton, and entered the private sector. In 2010, the City of Montebello hired Respondent as its Chief of Police. By virtue of his employment, Respondent was a local

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safety member of CalPERS. Effective July 15, 2010, Respondent permanently separated from employment with the City of Montebello. As a result of his permanent separation, Respondent became an inactive member of CalPERS.

3. Michelle Gann, a Retirement Program Specialist 2 in the ARSC department at CalPERS since July 2011, provided testimony concerning Respondent's CalPERS file as a business record, as well as the ARSC process. Respondent's CalPERS file showed that on July 14, 2010, one day before Respondent's permanent separation from the employ of the City of Montebello, Respondent called CalPERS and inquired about purchasing ARSC, as he was considering his retirement options. Specifically, Respondent was considering whether he should retire under Industrial Disability Retirement (IDR) or not.

4. On December 29, 2010, a CalPERS representative spoke with Respondent, who was 47 years old at the time, and advised him that if he retired under IDR before the age of 50 years, the purchase of ARSC would not benefit Respondent. Respondent advised the representative that was not planning on retiring under IDR, and then requested an ARSC packet.

5. On December 29, 2010, CalPERS sent Respondent an ARSC packet, which included information concerning the lump sum amounts he would need to pay if he wanted to purchase one year, two years, three years, four years, or five years of ARSC. The letter stated that if Respondent was interested in purchasing ARSC, he would need to complete, sign, and return the attached Confirmation of Intent to Purchase Service Credit form within 30 days. In addition, the letter stated that if Respondent retired on disability, the ARSC may not serve as a benefit to him.

6. On January 27, 2011, Respondent completed, signed, and returned the Confirmation of Intent to Purchase ARSC, indicating he wished to purchase five years of ARSC for \$214,797.85.

7. On March 8, 2011, CalPERS sent Respondent an ARSC cost packet, stating that Respondent was eligible to purchase five years of ARSC for a lump sum of \$214,797.85. The cost packet included the following forms as attachments: (1) Explanation of Payment Options; (2) Installment Payment Guidelines; (3) Choose Your Installment Payment; (4) Employment Certification and Your Payment Options; (5) Disclosure related to Transfers from 403(b) or 457 plans for the purchase of ARSC; (6) Election to Purchase ARSC; and (7) Rollover/Transfer Information and Certification Forms.

8. The Election to Purchase ARSC form included language stating that the election form had to be returned to CalPERS within 60 days of March 8, 2011 (by May 7, 2011), and if Respondent failed to return the election form within that timeframe, Respondent would be required to submit a new request for ARSC cost information, which could affect Respondent's eligibility and the cost to purchase the service credit. In addition, the election form also stated that Respondent was required to accompany his election form with a payment of \$214,797.85 when submitting the election form with CalPERS. The

Explanation of Payment Options included similar language stating that CalPERS must receive the payment with the election form, and indicated that the payment should be made in the form of a check or money order made payable to CalPERS. The election form advised that the election, once made, was irrevocable.

9. The "Using a Plan-to-Plan Transfer or Rollover for the Purchase of Additional Retirement Credit" form included in the ARSC packet advised that CalPERS did not initiate the transfer of funds or complete the documents for members who wished to draw from their funds. The form further stated that the CalPERS members were responsible for obtaining certification from their plan administrators that their plan was an eligible retirement plan. As such, the form advised that members should contact their plan administrator prior to starting the transfer or rollover process to confirm the fund type, and, if eligible, obtain their distribution request document. The form instructed members, after requesting the plan administrator for distribution and completion of the CalPERS certification forms, to ask that the plan administrator make the check payable to CalPERS for the benefit of the member, and have the check, along with the completed certification form mailed directly to the member, and not to CalPERS. The form reiterated that CalPERS could not make such a request for members. The form then instructed members that upon receipt of the check and the completed certification form, to mail to CalPERS the check with the completed rollover/transfer certification, the Election to Purchase ARSC form, and the Employment Certification form.

10. On May 9, 2011, after the expiration of the 60 day deadline for the return of his election form, Respondent called CalPERS and made a verbal request for an extension. Denise Copher, who was hired by CalPERS on September 2, 2008 as a retirement program specialist, answered Respondent's call, and advised Respondent that she could extend the time to May 31, 2011. Respondent advised that he needed more time, because he wanted to first learn the outcome of his concurrent IDR appeal against the City of Colton. In addition, Respondent advised that he was awaiting his rollover check from his 457 plan, which he expected to receive within 30 days. Ms. Copher advised Respondent that he should keep his packet and wait until he received his 457 plan check before sending in his election form, because his packet would be returned as incomplete if his election form failed to include his rollover check. Respondent advised that he would submit a written request for more time beyond the May 31, 2011 deadline.

11. On May 9, 2011, Respondent faxed a letter to CalPERS requesting a 180 day extension to submit his Election to Purchase ARSC. Respondent explained in his letter that he was dealing with his pending IDR matter, and was, in essence, still considering the information that CalPERS had previously conveyed to him. Specifically, Respondent stated the following:

"As pointed out by PERS and others it would be a waste of my money . . . \$214,797.85 dollars to purchase 5 additional years if I retired on an IDR. With this being said I do not know the timelines of the IDR being resolved. I do know the other legal

matter is set for trial the first week of November. I am willing to pay the interest rate as stated by PERS from this date forward until these matters are resolved.”

12. On May 11, 2011, Respondent returned his election form to CalPERS where he checked the “Lump Sum Payment Option” box, indicating he wished to elect to purchase and receive additional service credit, and that he enclosed a \$214,797.85 payment. However, Respondent’s election form included no \$214,797.85 payment. Respondent also checked the box for “Plan-to-Plan Transfer or Rollovers,” indicating he had included the appropriate plan-to-plan/rollover certification documents with his election. However, Respondent’s election form included no such certification. At hearing, Respondent explained that when he checked the “Plan-to-Plan Transfer or Rollovers” box, he believed CalPERS would take the lump sum funds directly from Respondent’s CalPERS Supplemental Income Plan (CalPERS Supplemental), specifically his 457 plan, as a straight rollover or transfer, as he believed CalPERS and CalPERS Supplemental were a part of the same entity, given the commonality of their names, their logos, and information about CalPERS Supplemental on CalPERS’ website.

13. On July 18, 2011, CalPERS returned Respondent’s election form, and advised in an accompanying letter that it was unable to process his election. The letter stated that when selecting a lump-sum payment option, CalPERS must receive the payment with the election document. The letter further stated that if Respondent wished to use a rollover or a transfer of pre-tax funds as payment for his service credit purchase, CalPERS must receive the election document, rollover check, and a completed rollover certification form. The letter requested Respondent to return all of the requested information so that CalPERS could process Respondent’s packet.

14. On August 11, 2011, Respondent called CalPERS and advised that he had requested an extension, but never received an answer to his request. Respondent advised that he was in the midst of a legal trial for his IDR, and that he would not know if it would be beneficial for him to purchase ARSC or not until he learned the outcome of his IDR matter. The representative advised Respondent that he would have the matter reviewed, and that someone from CalPERS would call Respondent within 10 business days.

15. On August 24, 2011, CalPERS analyst, Lisa Dong, called Respondent and left a message advising that CalPERS could not grant him an extension, because he had 60 days to submit a valid election, but failed to do so. Ms. Dong noted that, according to CalPERS’ records, Respondent stated on May 9, 2011 that he was going to send a rollover check within 30 days, but when they received his election, it was invalid because it did not include a payment. Ms. Dong advised that because Respondent was no longer an active member of CalPERS, he could no longer submit another request to purchase ARSC.

16. At hearing, Respondent explained that, thereafter, he learned that CalPERS and CalPERS Supplemental were different entities. Respondent then made arrangements for CalPERS Supplemental to send him a rollover check in the amount of \$214,797.85.

CalPERS sent Respondent a check dated September 8, 2011, made payable to CalPERS Member Services for \$214,797.85, and included a notation indicating that the check was for the benefit of Respondent.

17. On September 21, 2011, CalPERS received from Respondent an election form to purchase ARSC, as well as a rollover check in the amount of \$214,797.85, which were collectively scanned into CalPERS system on October 4, 2011. However, CalPERS determined that the election to purchase ARSC was no longer valid, and that payment could not be accepted. As such, on October 4, 2011, CalPERS sent Respondent a letter advising of the same, and enclosed Respondent's rollover check with the letter.

18. On October 19, 2011, Respondent sent CalPERS a letter requesting CalPERS to reconsider its finding that his election to purchase ARSC was no longer valid.

19. On October 26, 2011, a representative from CalPERS called Respondent and left a voice message informing him that CalPERS would not grant him another extension on his request for ARSC, as they had previously advised him on August 24, 2011, as well as by letter on October 4, 2011.

20. On November 16, 2011, Respondent contacted CalPERS and expressed his concern about CalPERS decision not to permit him to purchase ARSC. The representative, Kerry Griffin, who noted that Respondent was an inactive member and not eligible to simply reapply, advised Respondent that he would need to discuss his concerns with a manager, and that she would personally give her manager Respondent's information so that the manager could call Respondent directly. Ms. Griffin gave the file to her manager, Sharon Hobbs.

21. According to Respondent, during his conversation with Ms. Griffin, Ms. Griffin advised him that he had been "ill-advised" by Ms. Copher on May 9, 2011, in that the Ms. Copher should not have told Respondent to hold on to his ARSC package and wait for his rollover check, given the impending deadline in which Respondent was required to act. Ms. Griffin also advised that Ms. Copher was a new employee, which, in essence, contributed to her mistake in telling Respondent to hold on to his ARSC packet. Ms. Griffin further stated that Respondent should have submitted the package even if he did not have the check in hand, and then immediately send CalPERS his rollover check immediately upon his receipt of it. Respondent asked if his file reflected the notes from all of his phone calls made to CalPERS, to which Ms. Griffin replied that from May 31, 2011 to September 19, 2011 (111 days), CalPERS computer systems underwent a transfer from the old system to the new system, and that during this timeframe, CalPERS had no ability to access members' accounts and check on status issues, corrections, and such. Ms. Griffin advised that if the system would have been available, the confusion and delays could have been avoided. Ms. Griffin did not testify at hearing, and the hearsay statements Respondent attributed to her were not corroborated by any other witness, or by any documentary evidence presented at hearing. As such, this hearsay testimony is afforded minimal weight.

22. At hearing, Ms. Gann advised that CalPERS' computer systems underwent a change for a two week period immediately preceding September 19, 2011, and for this two week period, CalPERS representatives could not access member information. Computer systems were not unavailable for 111 days.

23. Also on November 16, 2011, Respondent sent CalPERS a letter listing seven concerns: (1) Respondent gave CalPERS notice of his intent to purchase ARSC back in July 2010, evidenced by his conversations with CalPERS representatives back then; (2) Respondent and his family would suffer irreparable harm to their future financial stability if CalPERS refused to allow him to purchase ARSC; (3) Respondent received erroneous information when he called CalPERS on May 9, 2011, when the representative told him to hold on to his ARSC packet until he received his rollover check, given the fact that Respondent could soon "time out" of his election to purchase ARSC; (4) Respondent waited eight to nine months for a reply from CalPERS concerning the status of his purchase of ARSC; (5) The July 18, 2011 letter from CalPERS that requested Respondent to resubmit the requested information so that CalPERS could process his packet, included no time limit, and Respondent erroneously believed that CalPERS would take the lump sum funds directly from his CalPERS Supplemental Income Plan (CalPERS Supplemental), specifically his 457 plan, as a straight rollover or transfer; (6) CalPERS computer system was down for long periods of time when he called on multiple occasions to discuss his ARSC request, which resulted in the representatives' inability to open Respondent's file; and (7) Respondent's rollover money had been allocated to CalPERS. Based on his seven concerns, Respondent asked CalPERS to reconsider its decision not to allow him to purchase ARSC.

24. According to Respondent, approximately one week later, Ms. Griffin's manager, Ms. Hobbs, called Respondent who agreed that he had been "ill-advised" by Ms. Copher, but that Ms. Hobbs could not override anything. Ms. Hobbs did not testify at hearing, and the statements Respondent attributed to her were not corroborated by any other witness, or by any documentary evidence presented at hearing. As such, this hearsay testimony is afforded minimal weight.

25. On January 27, 2012, CalPERS sent Respondent a letter stating that Respondent's IDR proceedings could not affect the timelines involving his interest in purchasing ARSC. The letter further stated that the ARSC packet CalPERS had sent Respondent included detailed instructions on how to pay for service credit using a "plan to plan" transfer, yet when CalPERS received Respondent's election form on May 11, 2011, the form indicated that Respondent wished to elect the "lump sum" purchase option, using a "plan to plan" transfer, but the election form included no payment from a qualified pre-tax plan. As such, Respondent's ARSC request was invalid. Moreover, the letter advised that to be eligible to purchase ARSC, a member must be in compensated employment at the time of the request, per California Public Employees' Retirement Law section 20909, subdivision (e)(1). Consequently, because Respondent was no longer in compensated employment, he was ineligible to make a new request.

26. On February 23, 2012, Respondent sent CalPERS a letter in reply to its January 27, 2012 letter. Respondent reiterated the points set forth in his November 16, 2011 letter to CalPERS, and requested that an executive manager or CalPERS' legal department review the facts surrounding his matter. Respondent also stated he wished to exhaust all administrative appeals.

27. At hearing, Ms. Gann explained that CalPERS' denial was based on two California Public Employees' Retirement Law sections: 20909, which governed the purchase of ARSC, and 20160, which governed the correction of mistakes. CalPERS determined that it had made no mistake that resulted in Respondent failing to file his documentation within the deadlines prescribed, and failing to include the \$214,797.85 check with his election documentation as instructed, and therefore, Respondent could not avail himself of a correction pursuant to section 20160. If CalPERS allowed Respondent to purchase ARSC, it would violate section 20909, result in an unfunded liability to the City of Montebello, and would give Respondent a status or a right to which he would not otherwise be entitled as an inactive member.

LEGAL CONCLUSIONS

Respondent's appeal must be denied, as set forth below:

1. "Additional retirement service credit" (ARSC) means time that does not qualify as public service, military service, leave of absence, or any other time recognized for service credit by the retirement system. (Gov. Code § 20909, subd. (c).) Prior to retirement, any member "who has at least five years of credited state service, may elect, by written notice filed with the board, to make contributions pursuant to this section and receive not less than one year, nor more than five years, in one-year increments, of additional retirement service credit in the retirement system." A member may not elect additional retirement service credit under this section more than once. (Gov. Code § 20909, subds. (a), (b).) Purchasing ARSC only applies to members while employed in state service at the time of the ARSC election. (Gov. Code § 20909, subd. (e)(1).)

2. Government Code section 20160, subdivision (a), authorizes the Board of Administration of the Public Employees' Retirement System (board) to exercise its discretion to "correct the errors or omissions of any active or retired member, or any beneficiary of an active or retired member," upon any terms the board "deems just." To qualify for such a correction, all of following facts must exist:

(1) The request, claim, or demand to correct the error or omission is made by the party seeking correction within a reasonable time after discovery of the right to make the correction, which in no case shall exceed six months after discovery of this right.

(2) The error or omission was the result of mistake, inadvertence, surprise, or excusable neglect, as each of those terms is used in Section 473 of the Code of Civil Procedure.

(3) The correction will not provide the party seeking correction with a status, right, or obligation not otherwise available under this part.

Failure by a member or beneficiary to make the inquiry that would be made by a reasonable person in like or similar circumstances does not constitute an "error or omission" correctable under this section.

(b) Subject to subdivisions (c) and (d), the board shall correct all actions taken as a result of errors or omissions of the university, any contracting agency, any state agency or department, or this system.

(c) The duty and power of the board to correct mistakes, as provided in this section, shall terminate upon the expiration of obligations of this system to the party seeking correction of the error or omission, as those obligations are defined by Section 20164.

(d) The party seeking correction of an error or omission pursuant to this section has the burden of presenting documentation or other evidence to the board establishing the right to correction pursuant to subdivisions (a) and (b).

(e) Corrections of errors or omissions pursuant to this section shall be such that the status, rights, and obligations of all parties described in subdivisions (a) and (b) are adjusted to be the same that they would have been if the act that would have been taken, but for the error or omission, was taken at the proper time. However, notwithstanding any of the other provisions of this section, corrections made pursuant to this section shall adjust the status, rights, and obligations of all parties described in subdivisions (a) and (b) as of the time that the correction actually takes place if the board finds any of the following:

(1) That the correction cannot be performed in a retroactive manner.

(2) That even if the correction can be performed in a retroactive manner, the status, rights, and obligations of all of the parties described in subdivisions (a) and (b) cannot be adjusted to be the same that they would have been if the error or omission had not occurred.

(3) That the purposes of this part will not be effectuated if the correction is performed in a retroactive manner.

3. The party seeking correction of an error or omission pursuant to section 20160 “has the burden of presenting documentation or other evidence to the board establishing the right to correction pursuant to subdivisions (a) and (b).” (Gov. Code § 20160, subd. (d).)

4. *Equitable Estoppel*: In *Driscoll v. City of Los Angeles* (1967) 67 Cal.2d 297, the California Supreme Court established the relevant factors to be considered when estoppel is asserted against a public agency. Generally speaking, four elements must be present: (1) the party to be estopped must be apprised of the facts; (2) the party must intend that its conduct shall be acted upon, or must so act that the party asserting estoppel had a right to believe it was so intended; (3) the party asserting estoppel must have been ignorant of the true state of facts; and (4) that party must have relied upon the conduct to his injury. (*Driscoll, supra* at 305.) Although estoppel is generally a question of fact, when the evidence is not in conflict and is susceptible of only one reasonable inference, the existence of an estoppel is a question of law. (*Id.* at 305; *Crumpler v. Board of Administration, PERS* (1973) 32 Cal.App. 3d 567, 581 [citing *Driscoll*].) Although equitable estoppel may be applied against the government, this principle has its limits. It is well-established that estoppel will not be applied if to do so would nullify a strong rule of policy enacted for public benefit, or if to do so would result in expanding an agency’s powers. (*Fleice v. Chualar Union Elementary School District* (1988) 206 Cal. App.3d 886, 893.)

5. Here, Respondent failed to sustain his burden of demonstrating that CalPERS or its employees made an error or omission that was a result of mistake, inadvertence, surprise, or excusable neglect, that would support his argument that CalPERS should, in essence, be estopped from denying him an opportunity to purchase ARSC. While Respondent contends that he was ill-advised by Ms. Copher on May 9, 2011 to hold on to his ARSC packet until he received his rollover check, the evidence showed that such advice was consistent with the instructions CalPERS provided Respondent when CalPERS sent Respondent his ARSC packet on March 8, 2011. Specifically, the packet included very clear language on the Election to Purchase ARSC form that Respondent was required to accompany his election form with a payment of \$214,797.85, and that the election form and payment needed to be submitted to CalPERS within 60 days of March 8, 2011. Similarly, the Explanation of Payment Options included similar language stating that CalPERS must receive the payment with the election form, and indicated that the payment should be made in the form of a check or money order made payable to CalPERS. Even though Respondent failed to submit the required documentation within 60 days as instructed, CalPERS granted Respondent an extension to May 31, 2011 to submit the documentation. In that time, irrespective of the “ill-advised” information Respondent contends he received, Respondent submitted his election form on May 11, 2011, though without the required \$214,797.85 check.

6. Similarly, Respondent’s contention that CalPERS committed an error when it failed to respond timely to his May 9, 2011 request for a 180 day extension to submit his election and payment, is equally unpersuasive. In his request, Respondent explained that he was dealing with his pending IDR matter, and was, in essence, still considering the information that CalPERS had previously conveyed to him; namely, that it would not be

beneficial for him to purchase ARSC if he retired under IDR. Despite Respondent's previous declaration to CalPERS on December 29, 2010 that he did not intend to retire under IDR, his letter demonstrated otherwise. In other words, Respondent's letter evidenced his desire to hedge his bets and see how his IDR matter turned out before committing to an irrevocable \$214,797.85 purchase of ARSC. The evidence shows that CalPERS contacted Respondent on August 24, 2011 and advised that it could not grant him the extension he was seeking. While Respondent contends that CalPERS failed to respond in a timely fashion, even if true, such a failure does not constitute any error that impacted Respondent, especially given Respondent's intent and actions indicating he wished to await the outcome of his IDR matters regardless, as evidenced by his unreasonable request to be allowed to submit the required ARSC documentation more than 180 days after the 60 day deadline.

7. While Respondent contends that the period in which CalPERS' computer systems impacted the ability to access his file and thus, contributed to the errors that occurred in his matter, the Respondent's cited period of unavailability, namely May 31, 2011 through September 19, 2011, occurred after the 60 day deadline of May 7, 2011. While there is no doubt that Respondent wanted to avail himself of the ARSC purchase if his IDR matter did not work out in his favor, even during the period in which CalPERS' computer systems underwent their conversion, the lack of effort on Respondent's part to comply with the deadlines set forth in the ARSC packet occurred long before any computer accessibility issues.

8. Finally, Respondent asserts that CalPERS' letter of July 18, 2011, which advised him that it could not process his ARSC election because he had failed to submit a payment with his election, worked to his detriment because it failed to include a deadline in which Respondent needed to resubmit his documentation. Respondent further asserts that the letter caused him to believe he was still entitled to purchase ARSC, despite his inactive status, and irrespective of the May 7, 2011 deadline and May 31, 2011 extension. However, this belief is inconsistent with his actions, as a reasonable person would have complied promptly with the letter's directive. However, Respondent did not attempt to comply with the July 18, 2011 directive until September 21, 2011, more than two months after the July 18, 2011 letter. This represented a 67 day response time, seven days more than the 60 day time period in which he was supposed to submit his documentation initially, and 137 days subsequent to original May 7, 2011 deadline. Respondent's delayed action seemed to support his plan to wait as long as possible to first learn the outcome of his IDR matter. A reasonable person, given the apparent resurrection of an opportunity to purchase ARSC after the expiration of the May 31, 2011 extension, would have promptly complied with the July 18, 2011 letter, irrespective of its lack of a stated deadline. Moreover, if Respondent had requested his rollover check and was expecting it within 30 days, as he had advised in his May 9, 2011 discussion with CalPERS, he certainly would have had the check in his possession by July 18, 2011 in order to promptly comply with the letter. The fact that he did not ultimately obtain a check until September 8, 2011, belies his declaration that he remained committed to purchasing ARSC, irrespective of any subsequent notion, as discussed in more detail below, that he assumed CalPERS and CalPERS Supplemental would affect an inter-

agency transfer of his funds within that time. Consequently, any detriment Respondent experienced was due to his own practice and pattern of delaying compliance as it pertained to ARSC purchases.

9. Respondent also failed to sustain his burden of demonstrating that he made an error or omission that was a result of mistake, inadvertence, surprise, or excusable neglect. Respondent asserts that his assumption that CalPERS and CalPERS Supplemental were one entity, and would perform an inter-agency transfer of his rollover funds to cover the ARSC payment, was justified, given the commonality of their names, logos, and the reference of the entities on each other's websites. However, given the clear and explicit instructions provided in Respondent's ARSC packet concerning plan-to-plan transfers, the assumption that CalPERS would initiate an inter-agency transfer was unreasonable. The evidence showed that the "Using a Plan-to-Plan Transfer or Rollover for the Purchase of Additional Retirement Credit" form included in the ARSC packet advised that CalPERS did not initiate the transfer of funds or complete the documents for a member to draw from his or her funds. The form further stated that the CalPERS member would be responsible for obtaining certification from his or her plan administrator that the plan was an eligible retirement plan, and instructed the member, after requesting the plan administrator for distribution and completion of the CalPERS certification forms, to ask that the plan administrator make the check payable to CalPERS for the benefit of the member, and have the check, along with the completed certification form mailed directly to the member, and not to CalPERS. The form reiterated that CalPERS could not make such a request for the member. The form then instructed the member that upon receipt of the check and the completed certification form, to mail to CalPERS the check with the completed rollover/transfer certification, the Election to Purchase ARSC form, and the Employment Certification form. Therefore, no matter how similar the names and logos of CalPERS and CalPERS Supplemental, the instructions clearly stated that CalPERS could not initiate any transfers, and delineated step-by-step instructions the member was required to follow. Respondent's failure to follow these clear instructions does not constitute a mistake requiring correction pursuant to Government Code section 20160.

10. As set forth in the Factual Findings and in the Legal Conclusions as a whole, CalPERS acted appropriately when it denied Respondent's request to purchase ARSC, given Respondent's repeated failure to comply with the instructions set forth in his ARSC packet. Respondent failed to establish that CalPERS should be equitably estopped from sustaining its denial, despite Respondent's contentions of error. Any such "correction" to this denial, according to the credible testimony of Ms. Gann, would result in an unfunded liability to the City of Montebello, and would have given Respondent a status or a right to which he would not otherwise be entitled.

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11. Because Respondent failed to meet his burden of establishing the right to correction pursuant to Government Code section 20160, Respondent's appeal must be denied.

ORDER

Respondent's appeal is denied.

Date: December 2, 2013

A handwritten signature in black ink, appearing to read 'Carla L. Garrett', written over a horizontal line.

CARLA L. GARRETT
Administrative Law Judge
Office of Administrative Hearings