

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Kenneth Rulon (Respondent) was employed by Respondent City of Montebello for two days as Chief of Police until he permanently separated from employment on July 15, 2010. During those two days, he applied to purchase Additional Retirement Service Credit (ARSC).

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, two, three, four or five years of ARSC. The letter stated that if he was interested in purchasing ARSC, he needed to complete, sign and return the Confirmation of Intent to Purchase Service Credit form within 30 days.

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

On March 8, 2011, CalPERS sent Respondent an ARSC cost packet, stating that he could purchase five years of ARSC for a lump sum of \$214,797.85. The ARSC form included language stating that he had 60 days (until May 7, 2011) to return the election form. If Respondent failed to return the election form by May 7, 2011, he would be required to submit a new request for ARSC. The form also stated that Respondent was required to include his payment of \$214,797.85 when submitting his election form. The form also told Respondent that CalPERS did not initiate the transfer of funds or complete the documents for members.

On May 9, 2011, after expiration of the 60 day deadline for returning his election forms, Respondent called CalPERS and made a verbal request for extension. He was given until May 31, 2011 to return his forms and payment.

On May 11, 2011, Respondent returned his election form to CalPERS. He checked the "Lump Sum Payment Option" box indicating that he enclosed his \$214,797.85 payment. His election form contained no such payment. He also checked the box for "Plan to Plan Transfer or Rollovers" indicating that he enclosed his certification documents. His election form contained no such certification.

On July 18, 2011, CalPERS returned his election form, and advised that it was unable to process his election because it was late, without payment, and without certification. The letter requested Respondent to return all requested information to process his ARSC packet. No due date was given for return of the documents.

On August 11, 2011, Respondent called to ask about the status of an extension. On August 24, 2011, CalPERS returned his call and informed him that CalPERS could not grant him another extension because his election packet was late, incomplete, and since he was no longer an active member of CalPERS, he could no longer submit another request to purchase ARSC.

On September 21, 2011, CalPERS received an election form to purchase ARSC, with a rollover check in the amount of \$214,797.85. CalPERS determined that Respondent's election to purchase ARSC was no longer valid, and that payment could not be accepted. On October 4, 2011, CalPERS returned the check to Respondent.

On October 26, 2011 and November 16, 2011, CalPERS discussed the invalid ARSC purchase with Respondent.

On January 27, 2012, CalPERS sent its Determination Letter to Respondent, informing him that the cost packet included detailed instructions on how to pay for ARSC using plan to plan transfer, yet the election form included no payment. As such Respondent's ARSC request was invalid. The letter also advised that because Respondent was no longer in compensated employment, he was ineligible to make a new request.

On February 23, 2012, Respondent appealed and requested a hearing.

Prior to hearing, CalPERS explained the hearing process to Respondent and the need to support his case with witnesses and documents. CalPERS provided Respondent with a copy of the administrative hearing process handbook. CalPERS answered Respondent's questions, and provided him with information on how to obtain further information on the process.

A hearing was conducted on October 22, 2013. The sole issue for hearing was whether Respondent failed to timely submit proper payment of \$214,797.85, for purchase of five years of ARSC with his Election Document.

CalPERS presented evidence regarding the ARSC election documents sent to Respondent, including information regarding the time limits, required documentation, and certification information. CalPERS asserted that Respondent's attempt to purchase ARSC was invalid under Government Code sections 20909 (governing ARSC purchases) and 20160 (the "Mistake Statute"). CalPERS' evidence established that it made no mistake that resulted in Respondent failing to file his documentation within the deadlines prescribed, and failing to include his check with his election documents as instructed, and therefore, Respondent could not avail himself of a correction pursuant to Government Code section 20160. If CalPERS allowed Respondent to purchase ARSC, it would violate Government Code section 20909, result in an unfunded liability to the City of Montebello, and would give Respondent a status or right to which he would not otherwise be entitled as an inactive member.

Respondent claimed that he thought CalPERS would take the lump sum funds directly from his 457 plan, and complete the rollover. Respondent also claimed that he was "ill-advised" by various CalPERS representatives during the processing of his ARSC application.

The Administrative Law Judge (ALJ) found that Respondent failed to sustain his burden of proof to show that CalPERS made an error or omission that was the result of

mistake, inadvertence, surprise, or excusable neglect that would support his argument that CalPERS should be estopped from denying him an opportunity to purchase ARSC.

The ALJ was not swayed by Respondent's contention that he was "ill-advised" by CalPERS, because the evidence showed that such advice was consistent with the instructions sent to Respondent with his ARSC packet. Specifically, the packet had clear language that he was required to include a payment of \$214,797.85, and that the entire election form had to be submitted to CalPERS within 60 days. Since the forms were clear, and Respondent failed to submit the required documents within 60 days, his argument failed.

The ALJ also found that Respondent was attempting to "hedge his bets" before committing to an irrevocable \$214,797.85 purchase of ARSC. The ALJ reasoned that "any detriment Respondent experienced was due to his own practice and pattern of delaying compliance as it pertained to ARSC purchases."

The ALJ found that CalPERS acted appropriately when it denied Respondent's request to purchase ARSC, given his repeated failure to comply with the instructions set forth in his ARSC packet. The ALJ held that Respondent failed to establish that CalPERS should be estopped from sustaining its denial. The ALJ denied Respondent's appeal.

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

February 20, 2014



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