

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO DENY PETITION FOR RECONSIDERATION

The hearing on this case was completed October 22, 2013. The sole issue for hearing was whether Kenneth Rulon (Respondent) failed to timely submit proper payment of \$214,797.85 and certification forms, for purchase of five years of Additional Retirement Service Credit (ARSC). Following the hearing, a Proposed Decision was issued on December 2, 2013. The Proposed Decision found in favor of CalPERS denial of Respondent's request to purchase ARSC, given his repeated failure to comply with the instructions set forth in his ARSC packet. The Board voted to adopt the Proposed Decision on February 20, 2014. Respondent submitted this Petition for Reconsideration on March 20, 2014.

Respondent was employed by the 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 ARSC.

On December 29, 2010, CalPERS sent Respondent an ARSC packet. 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. CalPERS told Respondent that he had 60 days (until May 7, 2011) to return the election form and full payment. If Respondent failed to return the election form and full payment by May 7, 2011, he would be required to submit a new request for ARSC.

On May 11, 2011, Respondent returned his election form to CalPERS without payment and without certification documents. 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.

On August 11, 2011, Respondent called to ask about an extension. On August 24, 2011, CalPERS returned his call and informed him that CalPERS would 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 another election form to purchase ARSC from Respondent, 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 CalPERS determined that Respondent's election to purchase ARSC was no longer valid, and that payment could not be accepted.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 documents and check to 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.

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.

At the hearing, 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, and would give Respondent a status or right to which he would not otherwise be entitled as an inactive member, in contradiction to Government Code section 20160 provisions.

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 all documents 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 concluded that Respondent's appeal should be denied.

Respondent's grounds for reconsideration in his petition are based on disagreement with the ALJ's findings. Respondent gives no evidentiary support for his petition.

With respect to Respondent's disagreement with the ALJ's findings and analysis, it is clear from the Proposed Decision that evidence was taken, and numerous exhibits were submitted. Evidence was taken on the underlying facts and documentary evidence was admitted. The ALJ simply found against Respondent. Respondent has not raised any new evidence or change in circumstances which would warrant reconsideration.

For all of the reasons stated above, staff argues the Board deny the Petition for Reconsideration and uphold its decision.

Because the Decision applies the law to the salient facts of this case, the risks of denying the Petition for Reconsideration are minimal. Respondent may file a writ petition in superior court seeking to overturn the decision of the Board.

April 16, 2014

for 
ELIZABETH YELLAND
Senior Staff Attorney