

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

William M. McCormick (Respondent) is an elected City Council member of the City of Vernon City Council (City). By virtue of this employment, Respondent is a miscellaneous member of CalPERS. Respondent applied for service retirement with a projected retirement date of July 1, 2011. CalPERS program review noted that Respondent did not have a consistent salary, nor was his salary accurately reflected in the pay rate listed in City resolutions. CalPERS determined that the City had over reported the compensation earnable of the City Council members by including additional payments for meeting attendance that did not qualify as compensation earnable. CalPERS conducted a public agency review for the City of Vernon, and requested that the City correct the monthly pay rate for Respondent from \$5671.00 to \$3,072.06 retroactive to the first pay period of December 2007, when the meeting payments were first rolled into the pay rate. Respondent filed a timely appeal of this determination.

A hearing was held on May 22, 2014, on the issue of the correct final compensation earnable of the Respondent City Council member. The Administrative Law Judge (ALJ) was asked to decide whether Respondent's pay rate could legally include the meeting allowance which was deliberately added to pay rate after CalPERS informed the City that meeting allowances were not allowable compensation earnable under the California Public Employees' Retirement Law (PERL). Witnesses were heard and documentary evidence was presented. The ALJ issued a Proposed Decision on June 13, 2014, approving the decision by CalPERS in denying Respondent's claim to the amount of the attendance allowance as part of compensation earnable.

Respondent presented as his case the fact that the City had passed Resolutions granting City Council members additional "pay" for attendance at meetings on behalf of the City. A City employee testified as to the Resolutions and Board decisions. Despite the fact that the Council members were full time employees based on their Council positions, they were paid additionally for each meeting they attended, and this was reported to CalPERS as part of their pay rate (under CalPERS' rules this would be unreportable overtime). When CalPERS informed the City that it could not report attendance allowance as compensation earnable, based on the definition of compensation earnable in the Government Code at section 20636, the City then pronounced that "longevity and attendance allowances have been incorporated into city councilmembers base pay." While longevity pay is an allowed class of "compensation earnable," by virtue of the fact that it is a category of "special compensation" under California Code of Regulations section 571(a)(1), "attendance allowance" is not. Both the PERL and the City of Vernon Code of Ordinances provide reasons why "attendance allowance" cannot be considered "special compensation" or pay rate, and therefore cannot be included in the computation of final compensation. Under the PERL, "attendance allowance" has not been affirmatively determined to be "special compensation," which is required under section 20636(c)(7)(C). Furthermore, under the City Code, there can be no base compensation increase in excess of cost of living adjustments.

CalPERS presented evidence that the City Resolutions were attempting to re-characterize (as compensation earnable) payments that the City knew were not eligible to be included as compensation earnable. For example, the City's attempt to void prior resolutions, in order to cloak the true identity of the moneys that were paid for many years under the guise of compensation earnable, was insufficient to keep CalPERS from determining the real identity of the payments.

The Proposed Decision concluded that Respondent was not entitled to claim the additional amounts paid for attendance allowance as compensation earnable, and was required to report compensation excluding the attendance allowance even after that pay was rolled into base pay. The Proposed Decision also found that the City's own charter and rules supported this position.

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 regarding the compensation earnable and its effect on final compensation.

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