ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Michael Fitzgerald (Respondent) was a firefighter/paramedic for the City of Anaheim (City). By virtue of this employment, Respondent is a safety member of CalPERS. Respondent filed a Request for Service Credit Cost information (Request) for Additional Retirement Service Credit (ARSC), in order to consider purchase of more service time in October 2011, prior to retirement. On April 26, 2012, CalPERS responded with the Confirmation of Intent to Purchase (Confirmation) to Respondent. For actuarial purposes, this Confirmation required member response within 30 days, as clearly stated in the Confirmation. On June 26, 2012, Respondent returned a signed Confirmation. CalPERS declined to honor the Confirmation as untimely and notified Respondent that he would have to pay a newly calculated amount upon re-application. Respondent filed a timely appeal of this determination.

A hearing was held on May 15, 2014, on the issue of whether Respondent was entitled to purchase ARSC at the rate he was informed of in April 2012. The Administrative Law Judge (ALJ) was asked to decide whether the length of time it took CalPERS to perform cost calculations and the confusion Respondent claimed, over his telephone conversations, entitled Respondent to respond untimely to the Confirmation.

Respondent presented evidence through his own testimony that he had contacted CalPERS more than once between October 2011 and when he received the letter of Confirmation in April 2012. He testified that the CalPERS staff that he spoke to told him it would be many months until they issued a Confirmation, as late as a few weeks before the Confirmation arrived. When the Confirmation arrived, he opened it but did not read the contents and set it aside. He read the contents in June 2012 when he was contacted by CalPERS and told that he had missed the deadline for returning it.

CalPERS presented documentary and testimonial evidence. CalPERS presented the contemporaneous notations of Respondent's telephone inquiries to CalPERS, which did not show that he was told it would be many months before the CalPERS Confirmation. CalPERS program staff testified that the amounts charged for additional service credit were dependent on actuarial issues that changed sometimes swiftly over time, and would result in fiscal losses to the employer if they were not timely assessed.

The ALJ issued a Proposed Decision on June 19, 2014, approving the decision by CalPERS in denying Respondent's appeal of the CalPERS' determination. The ALJ concluded that Respondent was not excused from timely response to the CalPERS Confirmation requirements. The Proposed Decision also found that Respondent was responsible for, and not reasonably hampered from, reading mail sent to him by CalPERS and responding timely. The ALJ found that the Respondent had clearly received the Confirmation from CalPERS, and that his decision not to read the contents, which is what caused his late response, was not reasonable. Respondent could have timely responded except for the fact that he did not read the Confirmation that was sent to him, a fact Respondent does not dispute. Due to this finding,

Respondent is required to pay the updated amount for those who re-apply in the time period Respondent re-applied.

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.

August 20, 2014

CYNTHIA A. RODRIGUEZ
Senior Staff Attorney