

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO DENY PETITION FOR RECONSIDERATION

The hearing on this case took place January 22 and 23, 2014. Subsequent to the hearing, the parties submitted written closing and reply briefs. Thus, the record was closed, and the matter was submitted for decision to the Administrative Law Judge (ALJ) on March 11, 2014. The two issues for hearing were: (1) whether Respondent Tawnie Hansen is allowed to purchase service credit for her Maternity Leave of Absence; and (2) whether Ms. Hansen is allowed to receive service credit for the time she worked in a part-time position as an hourly paid employee for Respondent City of Eureka (the City). On the second day of hearing, Ms. Hansen withdrew issue (1), thus the only issue to be decided was her eligibility for service credit while she was an hourly paid employee.

Following the hearing, a Proposed Decision was issued on April 14, 2014. The Proposed Decision found in favor of Ms. Hansen's request to receive service credit for the time period that she worked in a part-time position as an hourly paid employee. The Board voted to adopt the Proposed Decision on June 18, 2014. The City submitted a Petition for Reconsideration dated July 23, 2014.

Ms. Hansen was employed by the City in a full-time salaried position when she established her CalPERS membership on June 25, 1990. In September of 1996, Ms. Hansen became a part-time hourly paid employee with the City's police department. The City's contract with CalPERS excludes employees paid on an hourly basis from CalPERS membership. Therefore, the City stopped reporting Ms. Hansen's service credit to CalPERS while she worked in her part-time hourly paid position. On or about January 16, 2006, Ms. Hansen returned to a full-time salaried position with the City, at which time the City resumed reporting her service credit to CalPERS.

In 2009, after being approved for disability retirement, Ms. Hansen requested additional service credit for the time she worked as a part-time employee with the City. CalPERS determined she could not receive service credit for her part-time hourly compensated employment with the City due to the California Public Employees' Retirement Law (PERL), Government Code section 20305 (a)(1) and the City's contract, which specifically excludes employees who are compensated on an hourly basis from participating in CalPERS.

At the hearing, CalPERS presented evidence regarding its denial of the additional service credit requested by Ms. Hansen. CalPERS witnesses testified that pursuant to PERL section 20305 (a)(1), part-time employees whose appointments do not fix a term of more than six months are excluded from the system unless they are members at the time they render the service and are not otherwise excluded by a provision of a contract. Since the City's contract with CalPERS excludes employees paid on an hourly basis, CalPERS concluded that Ms. Hansen did not qualify to receive service credit for the time that she was paid on an hourly basis while working for the City.

The City's former director of personnel (director) testified at the hearing that the City's personnel department advised all the departments in the City not to allow temporary employees to work more than 999 hours per year, pursuant to the PERL section 20305 (a)(3)(B). According to the director's testimony, the personnel department wanted the police department to obtain an allocated position if it needed to use a temporary employee for more than 999 hours per year. The City's police department did not follow the personnel department's advice, and thus allowed Ms. Hansen to work more than 999 hours in various years of employment between 1996 and 2006.

The ALJ granted Ms. Hansen's appeal to receive service credit for her hourly employment with the City because the ALJ determined that Ms. Hansen met the criteria outlined in PERL section 20305 (a)(3)(B). The ALJ based his decision on the fact that when Ms. Hansen worked as an hourly employee, her employment was on a limited-term, on-call, emergency, intermittent, substitute or other irregular basis; was compensated and she completed 1,000 hours, or more, of service between fiscal years 1998 and 2005.

The ALJ explained that, although the City's contract with CalPERS expressly excludes hourly employees, the City's contract exclusion of employees paid on an hourly, daily or weekly basis was intended to apply to employees who work on a "temporary, seasonal, extra help or intermittent" basis and do not hold allocated positions. Pursuant to PERL section 20305 (a)(3)(B), such employees become members of CalPERS after they complete 1,000 hours of service in a fiscal year. Further, the ALJ noted that PERL section 20305 (b) provides that "this provision supercedes local agency contracts that would exclude such employees from membership."

The ALJ also found that during Ms. Hansen's employment as an hourly paid employee, the City knew she would be entitled to retirement benefits if she worked 1,000 hours or more in a fiscal year. Despite this knowledge, the City did not enforce that limitation on Ms. Hansen's service. Therefore, the ALJ concluded that Ms. Hansen is entitled to service credit for her hourly employment as authorized by PERL section 20305 (a)(3)(B).

A second basis for reconsideration presented by the City was its disagreement with how the ALJ handled the waiver issue that had been briefed and addressed in a Pre-hearing Conference with a different ALJ. In its Petition for Reconsideration, the City re-submitted briefs and the order that issued from the Pre-hearing Conference. The city capably and fully presented its case and documentary evidence at hearing.

With respect to the City'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 the City. The City has not raised any new evidence or change in circumstances which would warrant reconsideration of the ALJ's conclusion that, under PERL section 20305 (a)(3)(B), Ms. Hansen is entitled to service credit for the time she worked as an hourly employee for the City.

For the reasons stated above, staff argues the Board should deny the Petition for Reconsideration and uphold the Board's Decision of June 18, 2014.

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.

August 20, 2014

A handwritten signature in blue ink, appearing to read "Renee Salazar", is written above a horizontal line.

RENEE SALAZAR
Senior Staff Attorney