

ATTACHMENT C

**RESPONDENT'S ARGUMENT REGARDING THE
PETITION FOR RECONSIDERATION**

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August 4, 2014

By Priority U.S. Mail

Ms. Cheree Swedensky, Assistant to the Board
Executive Office, CalPERS
P.O. Box 942701
Sacramento, Calif. 94229-2701

Re: Hansen / City of Eureka
Case No. 2011-0991 / OAH No. 2011110365

Dear Ms. Swedensky:

Enclosed for filing in this matter is **RESPONDENT HANSEN'S OPPOSITION TO RESPONDENT CITY OF EUREKA'S PETITION FOR RECONSIDERATION.**

Please file this document in anticipation of the board's consideration of this matter at its upcoming hearing on August 20.

Please also date stamp the enclosed copy of the face page of this document and return that stamped copy in the enclosed posted envelope directed to my office.

Thank you very much for your assistance.

Very truly yours,



Alan Goldberg

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3 (707) 268-3898

4 Attorney for Respondent
TAWNIE L. HANSEN
5



6
7 BOARD OF ADMINISTRATION
8 CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
9

10 In The Matter Of:) CASE NO. 2011-0991
11 TAWNIE L. HANSEN,) OAH NO. 2011110365
12 Respondent,)
13 and) RESPONDENT HANSEN'S OPPOSITION
14 CITY OF EUREKA,) TO RESPONDENT CITY OF EUREKA'S
15 Respondent.) PETITION FOR RECONSIDERATION
16) Hearing Dates: **January 22-23, 2014**
17) Place: Eureka, Calif.
18)

18 INTRODUCTION

19 In its petition seeking reconsideration of the board's decision in favor of Respondent
20 Hansen, Respondent City of Eureka ("Eureka") raises two arguments:

21
22 (1) the effect of the release entered by Hansen in her prior
23 litigation with Eureka has not yet been addressed by an ALJ; and
24

25 (2) Hansen's claim for additional CalPERS service credit is
26 barred by Government Code section 20305(a).¹
27

28 ¹ All further references to a "section" are to the Government Code.

1 That latter contention, however, is simply a rehash of Eureka's closing arguments in this
2 appeal, with nothing new added to demonstrate an error in Judge Benjamin's statutory analysis.
3 Even more significant is the fact that – as was true of its prior arguments – Eureka again fails to
4 acknowledge the impact of section 20305(b), which Judge Benjamin cited in his Proposed Decision
5 [at p. 8] because it entirely defeats Eureka's position.

6 As for Eureka's first point regarding the release, it likewise is invalid since it not only
7 ignores the procedural posture of this appeal – that is, the limitation on the issues to be addressed –
8 it avoids any mention of the critical fact that Eureka never argued that Hansen's claim to additional
9 CalPERS service credit was barred by the release. Thus, as will be further shown below, for both
10 of these reasons Eureka's reconsideration petition must be denied.

11
12 SINCE EUREKA NEVER CONTENDED BEFORE THIS APPEAL THAT
13 HANSEN'S CLAIM TO ADDITIONAL SERVICE CREDIT WAS BARRED BY
14 THE RELEASE, THAT ISSUE MAY NOT BE ADJUDICATED NOW

15 Eureka's own petition shows that it never argued prior to the appeal hearing that Hansen's
16 effort to seek additional CalPERS service credit was precluded by the release she entered when
17 settling a prior civil lawsuit against Eureka. Instead, as depicted both in the body of its petition and
18 in its attached pre-trial brief, Eureka only contended that the release barred Hansen from seeking
19 penalties against Eureka (petition, p. 2, lines 17-22, and **Exhibit A, section II. C.** [beginning at
20 unnumbered p. 3]). Moreover, in response to this argument, Judge Sarli ordered that the issue of
21 imposing "penalties" under section 20283 was premature and "not ripe for adjudication" (petition
22 **Exhibit B** [p. 2, para. 6]). Thus, it was not to be an issue in this appeal.

23 As a result, Eureka's claim that the penalties were barred by the release also was not an
24 appeal issue, as reflected by their omission from the ensuing Statement of Issues submitted by
25 CalPERS (petition **Exhibit C, section XXII** [p. 8]). Notably, Eureka never challenged the appeal's
26 procedural posture resulting from Judge Sarli's order. Thus, it may not now do so simply because
27 its position did not prevail. Moreover, as it is not presently known whether the penalty and release
28 issues will ever need to be determined, they remain "not ripe for adjudication."

1 EUREKA HAS NEVER IDENTIFIED A DIRECT CLAIM HANSEN HAD
2 AGAINST IT THAT COULD BE ENCOMPASSED BY THE RELEASE

3 Even if the release were an issue in this appeal – and even if Hansen’s claim for additional
4 CalPERS service credit, in addition to a penalty, had been argued by Eureka to be precluded by it –
5 the fact remains that Eureka has never shown how either claim is one Hansen could have directly
6 asserted against Eureka and, therefore, is encompassed by the release. The reason for this omission
7 is simple – Hansen’s appeal raises no claim that she could assert directly against Eureka. Instead,
8 her only recourse was against CalPERS alone.

9 Thus, in arguing as it does, Eureka fails to recognize that whatever liability it ultimately
10 may have in this proceeding is solely the result of its statutory duties and contractual obligations
11 flowing from its status as a CalPERS employer. It has no direct obligation to Hansen either for the
12 additional service credit she seeks or for any penalties that may later be imposed. Only CalPERS
13 can grant such service credit, and only CalPERS can impose such penalties.

14 Consequently, the release in the prior litigation between Hansen and Eureka – which, again,
15 can only pertain to claims between them – is immaterial to the issues in this appeal. Therefore,
16 Eureka’s reliance upon the release as a basis for seeking reconsideration of the board’s decision is
17 entirely misplaced and must be rejected.

18
19 EUREKA’S REHASHED ARGUMENTS UNDER SECTION 20305(A) AGAIN
20 FAILS TO RECOGNIZE THE ADVERSE IMPACT OF SECTION 20305(B)

21 As it did in its closing arguments, Eureka contends in its reconsideration petition that
22 because its contract with CalPERS barred hourly employees such as Hansen from receiving service
23 credit for work performed under that pay basis, Hansen’s claim to such credit must be rejected. In
24 doing so, it repeated its closing arguments, citing 20305(a)(1) as support. However, while now
25 recognizing the existence of key section 20305(b) – which it had not done before – Eureka still fails
26 to acknowledge the adverse impact that section has on its position.

27 Section 20305(b) states that it “shall supersede any contract provision excluding persons in
28 any temporary . . . employment basis” [as Hansen was designated] and that “no contract or contract

1 amendment . . . shall contain any provision excluding persons on an irregular employment basis.”
2 Thus, the Eureka - CalPERS contract provision governing temporary hourly employees – which
3 Eureka claims bars CalPERS service credit for Hansen during the time in question – must take a
4 back seat to section 20305. And, as Judge Benjamin found, Hansen met the exception under
5 section 20305(a)(3)(B) to the general service credit exclusion for irregular employees stated under
6 section 20305(a).

7 Significantly, Judge Benjamin also found [at pp. 8 - 9, paras. 3 - 7] that Eureka never
8 disputed the section 20305(a)(3)(B) applicability to Hansen’s employment. Neither does Eureka
9 attempt to do so in its reconsideration petition. Instead, Eureka simply ignores Judge Benjamin’s
10 rationale for his decision [again, at pp. 8 - 9, paras. 3 - 7] and fails to address the absurd results he
11 found would result were he to adopt Eureka’s position [p. 9, para. 5].

12 Consequently, Eureka has made no showing that Judge Benjamin’s ruling was wrong and
13 must be reconsidered. Therefore, its petition seeking as much must be denied.

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DATED: August 4, 2014

LAW OFFICE OF ALAN GOLDBERG

BY: 

Alan Goldberg
Attorney for Respondent
TAWNIE L. HANSEN

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PROOF OF SERVICE

I, Alan Goldberg, declare and certify:

I am an active member of the State Bar of California, no. 93850. I am not a party to this action. My business address is 937 6th Street, Eureka, California 95501.

On August 4, 2014, I served the foregoing document described as **RESPONDENT HANSEN'S OPPOSITION TO RESPONDENT CITY OF EUREKA'S PETITION FOR RECONSIDERATION** on the interested parties in this action by enclosing copies in sealed envelopes addressed to the addressees stated below:

Renee Salazar
Senior Staff Attorney
CalPERS Legal Office
P.O. Box 942707
Sacramento, Calif. 94229-2707

Cyndy Day-Wilson
City Attorney, City of Eureka
531 K Street
Eureka, Calif. 95501

Executed on August 4, 2014 at Marshall, Wisconsin.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

ALAN GOLDBERG
Printed Name


Signature