

ATTACHMENT A
THE PROPOSED DECISION

BEFORE THE
BOARD OF ADMINISTRATION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM
STATE OF CALIFORNIA

In the Matter of the Effective Date of
CalPERS Membership of:

LISA HANDWERKER,
Respondent.

and

CALIFORNIA STATE UNIVERSITY,
EAST BAY,
Respondent.

Agency No. 2011-0524

OAH No. 2013080276

PROPOSED DECISION

Administrative Law Judge Ruth S. Astle, State of California, Office of Administrative Hearings, heard this matter in Oakland, California on June 18, 2014.

Renee Salazar, Staff Counsel, represented the Public Employees' Retirement System.

There was no appearance by or on behalf of the California State University, East Bay.

Respondent Lisa Handwerker was present and represented by Mark Karplus, a non-attorney representative.

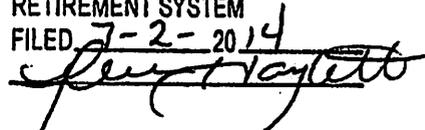
Upon proof of compliance with Government Code section 11505 and 11509, the matter proceeded as a default against California State University, East Bay, pursuant to Government Code section 11520.

The matter was submitted on June 18, 2014.

FACTUAL FINDINGS

1. Karen DeFrank, Chief, Customer Account Services Division signed the statement of issues in her official capacity.

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2. Lisa Handwerker (respondent) is an employee of respondent California State University, East Bay (CSUEB), formerly known as California State University, Hayward. By virtue of her employment respondent is a member of CalPERS.

3. Based on her employment history with CSUEB, respondent was originally granted a CalPERS membership date of June 19, 2006. On May 8, 2009, respondent called the CalPERS Customer Service and Education Division inquiring about her membership date, which prompted CalPERS to conduct a review of her membership eligibility.

4. CalPERS reviewed documentation provided by respondent, her employment records, and applicable laws and regulations, and determined that respondent qualifies for a CalPERS membership date of March 27, 2006.

5. By letter dated February 14, 2011, respondent was notified of CalPERS' determination that her membership date would be adjusted from June 19, 2006 to March 27, 2006. Respondent was also advised of her appeal rights. Upon subsequent review CalPERS determined that June 19, 2006, was the correct membership date.

6. Respondent filed a timely appeal by letter dated March 11, 2011, and requested a hearing. The appeal is limited to the issue of whether respondent should be granted a CalPERS membership date prior to June 19, 2006.

7. Respondent contends that her membership date should be winter quarter 2004. CSUEB is on a year-round quarter system. To become a member, respondent must teach for three consecutive quarters for half-time or more. The summer of 2003, respondent worked less than half-time. She was not qualified for membership in 2003. The spring, summer and fall of 2004, respondent worked less than half-time. She did not qualify for membership in 2004. The spring and summer of 2005, respondent worked less than half-time. She did not qualify for membership in 2005. Respondent qualified by working more than half-time in the fall of 2005, winter of 2006, and spring of 2006. She was eligible for membership as of summer 2006, since she worked more than half-time that quarter.

8. Respondent also contends that the summer quarter should be treated differently. There are fewer students enrolled in summer quarter. However, the Government Code that applies to CalPERS does not make an exception for summer quarter. Respondent also believes that this is discriminatory because schools on the semester system do not have to work during the summer. That does not change the requirement for CSUEB teachers. It is necessary for respondent to have worked three consecutive quarters including summer quarter to qualify for membership.

LEGAL CONCLUSIONS

1. Government Code section 20125 provides that the Board "shall determine who are employees and is the sole judge of the conditions under which persons may be admitted to and continue to receive benefits under this system."

2. Government Code section 20305 provides that:

(a) An employee whose appointment or employment contract does not fix a term of full-time, continuous employment in excess of six months is excluded from this system unless: (4) He or she is a temporary faculty member of the California State University and meets one of the following conditions: (A) He or she works two consecutive semesters or three consecutive quarters at half-time or more, and is not otherwise excluded . . . membership shall be effective with the start of the next consecutive semester or quarter if the appointment requires service of half-time or more.

3. Respondent met the requirements of the Government Code for membership in CalPERS beginning June 19, 2006.

4. The Education Code and the Rules and Regulations pursuant to the Education Code, including California Code of Regulations, title 5, section 42751, do not apply to this determination.

ORDER

The appeal of the effective date of CalPERS membership of Lisa Handwerker is denied. The date of June 19, 2006 is the correct membership date.

DATED: 6/30/14



RUTH S. ASTLE
Administrative Law Judge
Office of Administrative Hearings