

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Lisa Handwerker (Respondent) is employed by the California State University, East Bay (CSU East Bay) as a temporary faculty member. CSU East Bay uses a year-round quarter system. Throughout her temporary employment with CSU East Bay, Respondent worked in various time bases. In the fall of 2005, she began working at a time base of more than half-time, and thereafter worked three consecutive quarters at half-time or more. After working three consecutive quarters at half-time or more, Respondent's next consecutive quarter at half-time or more was in the summer of 2006. Consequently, CalPERS staff determined that Respondent's CalPERS membership date began June 19, 2006, which reflected the next consecutive quarter after she had worked three consecutive quarters at half-time or more.

Respondent contacted CalPERS, asking that it determine whether she qualified for earlier CalPERS membership in the winter of 2004. CalPERS staff reviewed the documentation provided by Respondent and applicable statutes regarding membership for temporary faculty members of the California State University, and determined that she qualified for membership on June 19, 2006. CalPERS informed Respondent that pursuant to Section 20305 of the California Public Employees' Retirement Law (PERL), CalPERS membership for temporary faculty at CSU East Bay is based upon working three consecutive quarters at half-time or more, including the summer quarter.

Section 20305(a) 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 pursuant to this article, in which case, membership shall be effective with the start of the next consecutive semester or quarter if the appointment requires service of half-time or more.

Respondent appealed CalPERS' determination because she believed she was entitled to an earlier membership date. A hearing was held on June 18, 2014. The issue at hearing was whether Respondent should be granted a membership date prior to June 19, 2006.

Prior to hearing, CalPERS explained the hearing process to Respondent and the need to support her case with witnesses and documents. CalPERS provided Respondent with a copy of the administrative hearing process handbook.

Respondent was present at the hearing, and she was represented by a non-attorney representative.

After considering all the evidence presented, the Administrative Law Judge (ALJ) found that because Respondent worked less than half-time in the summer of 2003, she did not qualify for membership in 2003. Additionally, in the spring, summer and fall of 2004, Respondent worked less than half-time so she did not qualify for membership in 2004. In the spring and summer of 2005, she also worked less than half-time. As a result, Respondent did not qualify for membership in 2005.

The ALJ found that Respondent qualified for membership in 2006 when she worked more than half-time in three consecutive quarters: fall of 2005, winter of 2006, and spring of 2006. The ALJ found that Respondent met the requirements of CalPERS membership beginning June 19, 2006, pursuant to Section 20305. As the ALJ noted, Respondent had to teach three consecutive quarters at half-time or more, and then became eligible for membership at the next consecutive quarter in which she worked half-time or more, as required by Section 20305(a)(4)(A). Consequently, CalPERS was correct in its determination that Respondent was not eligible for membership prior to June 19, 2006.

The ALJ dismissed Respondent's argument that the summer quarter should not be included as part of the consecutive quarters for establishing membership. As the ALJ explained, Government Code section 20305 does not make an exception for the summer quarter.

The ALJ concluded that June 19, 2006, is the correct membership date. Therefore, the ALJ concluded that Respondent's appeal of the effective date of her CalPERS membership should be denied.

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.

September 17, 2014



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