

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Steven L. Hallam ("Respondent Hallam") worked as the Manager for City of Oakdale ("Respondent City") which contracts with CalPERS for retirement benefits. Respondent Hallam submitted an application for service retirement on June 9, 2011, which led to a dispute with CalPERS over his pension benefit calculation.

Respondent Hallam worked under an individual employment contract beginning on November 27, 2006. Pursuant to his individual contract, he was paid a salary, an auto allowance, employer-paid deferred compensation, and other benefits. Respondent City reported both the salary and auto allowance as "payrate."

Relevant sections of Respondent's November 27, 2006, contract are set forth below:

A. Compensation & Required Employer Costs

(1) **Base Salary**

(a) The annual salary for the position of City Administrator shall initially be **\$132,000**. The City agrees to increase the base salary compensation of the City Administrator six months after appointment as City Administrator to **\$137,000**.

.....
(e) The City agrees to increase compensation each year by the minimum of the average across the board cola [sic] increases granted to other employee units of the City.
.....

B. Basic Benefits
.....

(3) **Automobile**

The City Administrator shall be provided a monthly automobile allowance of \$500.00 in exchange for making a vehicle available for the City Administrator's own use and for City-related business and/or functions during, before and after normal work hours. By the City Administrator making the City Administrator's personal automobile available for use, the City Administrator is not precluded from using City vehicles for City business during, before and after the normal workday on occasion, when appropriate. **At the City Administrator's option, the automobile allowance may be eliminated and the monthly stipend rolled into the base salary.** If this option is selected by Administrator, then the City is under no further obligation to offer the City Administrator an automobile allowance through the term of this contract. ¹*(Bolding added.)*

¹ The bolding of certain words or phrases hereinafter has been added for emphasis.

During a routine compensation review process, CalPERS staff determined Respondent City had erroneously reported the auto allowance as "payrate" for Respondent Hallam. The auto allowance did not meet the definition of "compensation earnable" under Government Code section 20636 because it is not "payrate" or "special compensation." In addition, the pay listed on the City's publicly available pay schedule for the City Administrator was \$500 less than was reported to CalPERS.

CalPERS approved a payrate of \$12,461 plus special compensation for employer-paid member contributions of \$466.09 per month. Respondent City had reported a payrate of \$12,961 and special compensation of \$466.09. Respondent Hallam and Respondent City appealed CalPERS determination.

Prior to the hearing CalPERS staff explained the administrative process to Respondent Hallam and documents were exchanged.

A hearing was held on July 2, 2014. Respondent Hallam represented himself. Respondent Hallam's individual employment contract and personnel documents relating to the raises he received were introduced and admitted as evidence.

At hearing, Respondent Hallam and former City Administrator Michael Botto testified about the contract and the publicly available pay schedule.

Mr. Botto testified that the amount on the publicly available pay schedule was a mistake and should have been \$500 more. Respondent Hallam testified that he took the option of eliminating the auto allowance and rolling it into his salary. Written documents from Respondent City showed that auto allowances were eliminated for all other employees and no other employee received this conversion of the auto allowance to salary.

Government Code section 20636 subdivision (b) (1) defines "payrate" as follows:

(b)(1) "Payrate" means the normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours. "Payrate," for a member who is not in a group or class, means the monthly rate of pay or base pay of the member, paid in cash and pursuant to publicly available pay schedules, for services rendered on a full-time basis during normal working hours, subject to the limitations of paragraph (2) of subdivision (e).

At hearing, a CalPERS staff member explained why the auto allowance does not qualify as "payrate" nor "special compensation," and therefore could not be "compensation earnable." He also explained that all the documents CalPERS received from Respondent City showed that the auto allowance had not been converted to base pay. For example, numerous raises were calculated from a base pay that did not include the \$500. In addition, CalPERS cannot allow a payrate that is higher than the publicly

available pay schedule. In this case, the reported pay was exactly \$500 higher than the publicly available pay schedule, and equal to the amount of the auto allowance.

CalPERS staff also testified to the anti-spiking purpose of the requirement of a "publicly available pay schedule" and why it was important to adhere to the figures in that schedule.

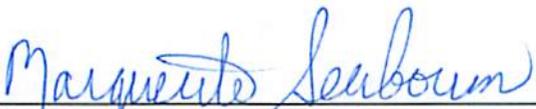
The parties submitted extensive briefing in the matter and the Administrative Law Judge (ALJ) took official notice of the legislative history for Government Code section 20636 offered by CalPERS, which section was amended in 1993 to prevent "spiking."

The ALJ found that the evidence established that the \$500 per month pay increase was not part of Respondent Hallam's payrate. The ALJ further found that Respondent Hallam's base salary did not include the \$500 per month increase. Respondent Hallam's base pay was consistently reduced by the \$500 auto allowance for purposes of calculating his COLAS and step increases. The ALJ also found that the additional \$500 per month does not constitute "special compensation" as that term is defined in Government Code section 20636 (c).

The ALJ explained that she was guided in reaching her decision by principles in the recent precedential decision, *In the Matter of the Appeal Regarding Calculation of Final Compensation of Craig F. Woods, Respondent, and Tahoe-Truckee Sanitation Agency, Respondent.*

The ALJ denied the appeal of Respondents Hallam and City to include a \$500 per month automobile allowance into Respondent Hallam's final compensation for purposes of calculation of his retirement allowance. The Proposed Decision is supported by the law and the facts. Staff argues that the Board should adopt the Proposed Decision.

If the Board adopts the proposed decision as its own, the Respondents may file a Writ Petition in Superior Court seeking to overturn the Decision of the Board. Because the Proposed Decision applies the law to the salient facts of this case, the risks of adopting the Proposed Decision are minimal.

for 
JEANLAURIE AINSWORTH
Senior Staff Attorney