

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Ofelia Pettengill (Respondent) was employed by Respondent San Bernardino County Superintendent of Schools (Superintendent). Superintendent contracted with CalPERS to provide retirement benefits to its employees. By virtue of her employment, Respondent was a local miscellaneous member of CalPERS. Respondent submitted an application for service retirement.

CalPERS staff reviewed Respondent's file and the applicable statutes and regulations. Staff determined that a five percent longevity bonus that Superintendent had paid to Respondent could not be included in Respondent's final compensation for purposes of calculating her service retirement benefit. Respondent appealed staff's determination and a hearing was held on June 24, 2014.

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. CalPERS answered Respondent's questions and clarified how to obtain further information on the process.

An individual's "final compensation" is comprised of the employee's "payrate" and any allowable "special compensation." (Gov. Code, sec. 20636.) At issue in this case is whether the claimed "longevity pay" qualified as special compensation.

"Special compensation of a member includes a payment received for special skills, knowledge, abilities, work assignment, workdays, or hours, or other work conditions" and "shall be limited to that which is received by a member pursuant to a labor policy or agreement...to similarly situated members of a group or class of employment that is in addition to payrate." (Gov. Code Section 20636(C)(1),(2).)¹

The board has also promulgated regulations that delineate specifically and exclusively what constitutes "special compensation" (see California Code of Regulations, title 2, section 571.)

The category of "special compensation" that Respondent is claiming applied in this case is "Incentive Pay" and is defined as follows:

(1) INCENTIVE PAY

Longevity Pay – Additional compensation to employees who have been with an employer, or in a specified job classification, for a certain minimum period of time exceeding five years.

¹ Government Code section 20636.1 also contains the same language for school members.

The regulations further require that “The Board has determined that all items of special compensation listed in subsection (a) are:

- (b) (1) Contained in a written labor policy or agreement as defined at Government Code section 20049...
- (2) Available to all members in a group or class...
- (d) If an item of special compensation ...is out of compliance with any of the standards in subsection (b) as reported for an individual, then it shall not be used to calculate final compensation for that individual.”

Respondent testified, describing her employment with different local public agencies that contracted with CalPERS. In her last position with Superintendent, Respondent was a member of the San Bernardino Public Employees’ Association (SBPEA). The Memorandum of Understanding (MOU) between SBPEA and Superintendent provided, in relevant part:

“Longevity....employees who have served five (5) years of satisfactory work performance at the ‘E’ step in the same position classification or same salary range will receive a longevity stipend award of five percent (5%) added to their base salary in that year and continuing in subsequent years if they maintain satisfactory work performance evaluations....”

A Retirement Program Specialist II (RPS II) working in the Compensation Review Unit (CRU), testified that he was familiar with the statutes and regulations pertaining to allowable items of special compensation.

CalPERS staff had reviewed Respondent’s file, the MOU, and the controlling statutes and regulations. He testified that the longevity stipend paid by Superintendent to Respondent did not comply with Government Code section 20636 or California Code of Regulations section 571 because – by virtue of the conditions for payment (i.e., attaining ‘E’ step salary status or maintaining a satisfactory work performance evaluation) – it was not available to all members of the group or class. Accordingly, the “longevity stipend” could not be included in Respondent’s final compensation.

After considering all of the documentary evidence and testimony of the witnesses, the Administrative Law Judge (ALJ) concluded that CalPERS’ determination, that the longevity stipend could not be included in Respondent’s final compensation, was correct, and that the appeal should be denied.

As noted by the ALJ in Legal Conclusion No. 10, “The compensation paid by the County Superintendent to [Respondent]...was conditioned upon her status at the ‘E’ salary step and her satisfactory performance evaluations. A longevity stipend awarded on this basis cannot be included in determining ‘compensation earnable’ when calculating her

service retirement allowance. The 'E' step salary status and the possibility that some members of the class might not maintain satisfactory work performance evaluations made the award of a longevity stipend unavailable to all members in [Respondent's] class." (Emphasis added.)

The ALJ concluded that Respondent's appeal 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

for Marquette Seaborn
RORY J. COFFEY
Senior Staff Attorney