



**Board of Administration**  
California Public Employees' Retirement System

---

**Agenda Item 8a**

September 17, 2014

**ITEM NAME:** Proposed Decision – In the Matter of the Calculation of Final Compensation of CHRISTINE MONSEN, Respondent, and ALAMEDA COUNTY TRANSPORTATION IMPROVEMENT AUTHORITY, Respondent.

**PROGRAM:** Customer Account Services Division

**ITEM TYPE:** Action

**PARTIES' POSITIONS**

Staff argues that the Board of Administration should decline to adopt the Proposed Decision and should conduct a full Board Hearing.

Respondent argues that the Board of Administration should adopt the Proposed Decision.

**STRATEGIC PLAN**

This item is not a specific product of either the Strategic or Annual Plans. The determination of administrative appeals is a power reserved to the Board of Administration.

**PROCEDURAL SUMMARY**

Respondents Christine Monsen and Alameda County Transportation Authority submitted an appeal from CalPERS' determination to deduct \$1708.34 from Respondent Monsen's monthly reported final compensation and to calculate her pension accordingly. The matter was heard by the Office of Administrative Hearings on March 5, 2014, and on June 13, 2014. A Proposed Decision was issued on June 30, 2014, granting the appeal.

**ALTERNATIVES**

- A. For use if the Board decides to adopt the Proposed Decision as its own Decision:

RESOLVED, that the Board of Administration of the California Public Employees' Retirement System hereby adopts as its own Decision the Proposed Decision dated June 30, 2014, concerning the appeal of Christine Monsen; RESOLVED FURTHER that this Board Decision shall be effective 30 days following mailing of the Decision.

**Agenda Item 8a  
Board of Administration  
September 17, 2014  
Page 2 of 3**

- B. For use if the Board decides not to adopt the Proposed Decision, and to decide the case upon the record:**

**RESOLVED**, that the Board of Administration of the California Public Employees' Retirement System, after consideration of the Proposed Decision dated June 30, 2014, concerning the appeal of Christine Monsen, hereby rejects the Proposed Decision and determines to decide the matter itself, based upon the record produced before the Administrative Law Judge and such additional evidence and arguments that are presented by the parties and accepted by the Board; **RESOLVED FURTHER** that the Board's Decision shall be made after notice is given to all parties.

- C. For use if the Board decides to remand the matter back to the Office of Administrative Hearings for the taking of further evidence:**

**RESOLVED**, that the Board of Administration of the California Public Employees' Retirement System, after consideration of the Proposed Decision dated June 30, 2014, concerning the appeal of Christine Monsen, hereby rejects the Proposed Decision and refers the matter back to the Administrative Law Judge for the taking of additional evidence as specified by the Board at its meeting.

- D. Precedential Nature of Decision (two alternatives; either may be used):**

- 1. For use if the Board wants further argument on the issue of whether to designate its Decision as precedential:**

**RESOLVED**, that the Board of Administration of the California Public Employees' Retirement System requests the parties in the matter concerning the appeal of Christine Monsen, as well as interested parties, to submit written argument regarding whether the Board's Decision in this matter should be designated as precedential, and that the Board will consider the issue whether to designate its Decision as precedential at a time to be determined.

- 2. For use if the Board decides to designate its Decision as precedential, without further argument from the parties.**

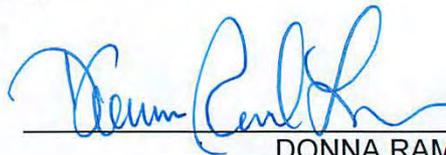
**RESOLVED**, that the Board of Administration of the California Public Employees' Retirement System, hereby designates as precedential its Decision concerning the appeal of Christine Monsen.

Agenda Item 8a  
Board of Administration  
September 17, 2014  
Page 3 of 3

**BUDGET AND FISCAL IMPACTS:** Not applicable

**ATTACHMENTS**

Attachment A: Proposed Decision  
Attachment B: Staff's Argument  
Attachment C: Respondent(s) Argument(s)



---

DONNA RAMEL LUM  
Deputy Executive Officer  
Customer Services and Support

**ATTACHMENT A**  
**THE PROPOSED DECISION**

BEFORE THE  
BOARD OF ADMINISTRATION  
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

In the Matter of the Calculation of Final  
Compensation of:

CHRISTINE MONSEN,

Respondent,

and

ALAMEDA COUNTY TRANSPORTATION  
IMPROVEMENT AUTHORITY,

Respondent.

Agency Case No. 2012-0289

OAH No. 2014010471

**PROPOSED DECISION**

Administrative Law Judge Mary-Margaret Anderson, Office of Administrative Hearings, State of California, heard this matter in San Jose on March 5, and Oakland, California, on June 13, 2014.

Cynthia Rodriguez, Senior Staff Counsel, represented Petitioner Karen DeFrank, Division Chief, Customer Account Services Division, California Public Employees' Retirement System (CalPERS).

R. Zachary Wasserman, Attorney at Law, and Anagha Dandekar Clifford, Attorney at Law, Wendel, Rosen, Black and Dean, LLP, represented Respondent Christine Monsen (Respondent) and Respondent Alameda County Transportation Improvement Authority (ACTIA).

The record closed on June 13, 2014.

**ISSUE**

Whether Respondent's final compensation for pension purposes should be \$17,104.92 per month.

CALIFORNIA PUBLIC EMPLOYEES'  
RETIREMENT SYSTEM  
FILED July 17, 2014  
C. Rodriguez

## FACTUAL FINDINGS

1. ACTIA was a public agency that contracted with CalPERS for retirement benefits for its eligible employees. The provisions of ACTIA's contract with CalPERS are contained in the Public Employees' Retirement Law (the PERL). (Gov. Code, § 20000 et seq.<sup>1</sup>) In 2010, ACTIA merged with the Alameda County Transportation Authority to form the Alameda County Transportation Commission (ACTC).

2. In 1995, ACTIA hired Respondent as Deputy Director for Special Projects. In 1998, she became Executive Director. On October 26, 2010, she signed an application for service retirement. Respondent retired for service effective December 31, 2010, with 26.641 years of service credit and has been receiving a retirement allowance since that date.

3. CalPERS is a defined benefit plan. Benefits for its members are funded by member and employer contributions, and by interest and other earnings on those contributions. The amount of a member's contributions is determined by applying a fixed percentage to the member's compensation.

4. The amount of a member's service retirement allowance is calculated by applying a percentage figure, based upon the member's age on the date of retirement, to the member's years of service, and to the member's "final compensation." In computing a member's retirement allowance, CalPERS staff may review the salary reported by the employer for the member to ensure that only those items allowed under the PERL will be included in the member's "final compensation" for purposes of calculating the retirement allowance.

5. ACTIA reported to CalPERS that as of October 2007, Respondent's monthly payrate was \$17,104.92.

6. By letters dated October 28, 2011, Tomi Jimenez, Manager, Compensation & Employer Review, Customer Account Services Division, notified ACTIA and Respondent of the decision that \$20,500 would be removed from Respondent's yearly payrate for retirement benefit calculation purposes. Jimenez wrote

Compensation reported to CalPERS and information from the approved ACTIA salary schedule shows that in October of 2007, ACTIA increased the compensation for the Executive Director by adding deferred compensation in the amount of \$20,500 annually to your salary and reporting a monthly pay rate of \$17,104.92 which included \$1,708.34 for deferred compensation.

---

<sup>1</sup> All statutory references are to the Government Code.

Jimenez further wrote that “deferred compensation does not meet the definition of reportable compensation under California Government Code (GC) § 20636” and “as defined in GC § 20630.” ACTIA and Respondent timely appealed, and this hearing followed.

7. At hearing, CalPERS raised an additional reason for refusal to accept the reported payrate as final compensation, asserting that the amount of Respondent’s salary was not “publically available” as required by the PERL.

8. Respondent’s compensation package with ACTIA was negotiated each year. In 2007, she requested an increase of six percent, based in part on a salary survey which revealed that her salary was on the low end of comparable positions. The ACTIA Board gave her a raise of three percent, and the additional amount of \$20,500, which was identified as deferred compensation. It represented the maximum annual amount Respondent could legally defer, but she retained the choice of whether to contribute that sum or any other amount, to her 457 account. In other words, if she chose, Respondent could contribute \$1,708.34 each month, or \$20,500 each year, to a deferred compensation plan. ACTIA did not deposit any amount directly into a deferred compensation plan on Respondent’s behalf. Respondent did so choose, deferring that amount and directing its deposit to a 457 account.

9. Respondent had no plans to retire in 2007, and there was no evidence that the raise was given in contemplation of retirement. She decided to retire in 2010, because the agency was merging with the Alameda County Transportation Authority and she did not wish to apply for the position of executive director of the newly constituted agency.

10. It was the policy and practice of ACTIA to post an agenda for each Board meeting and the minutes from that meeting on its website. The agenda, Board packet, minutes, and other documents were available on the website until 2013, when the website was taken down. The information is still available by request from the clerk of ACTC.

11. The issue of Respondent’s compensation was on the ACTIA Board’s publicly posted and available agenda for the July 2007 Board meeting. After the ACTIA Board decided Respondent’s salary matter in closed session, their decision was announced in open session. In addition to the 2007 and other regular postings, in 2008 the Board contracted with a consulting firm to conduct a salary compensation survey for all its employees, including the executive director position. An analysis was prepared and a schedule with the findings was published on the ACTIA website, in conjunction with a Board agenda item. The schedule included Respondent’s entire salary. There was no evidence of intent by anyone to hide the amount of Respondent’s salary from the public at any time.

## LEGAL CONCLUSIONS

1. The burden of proof in this appeal from CalPERS’s decision not to include a portion of Respondent’s salary as final compensation rests with Respondents.

2. As defined by section 20636, subdivision (b)(1), the “payrate” for a member who is not in a group or class of employees, such as the executive director of an agency,

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 . . . .

4. The Statement of Issues issued by CalPERS alleges that “CalPERS reviewed [Respondent’s] request to include deferred compensation and determined that deferred compensation is not eligible to be included in the calculation of final compensation.” This statement somewhat misstates the law.

It is correct that employer payments to a member’s deferred compensation account are excluded from payrate. (§ 20636, subd. (g)(4)(E).) Amounts that a member directs be diverted from salary for participation in a deferred compensation plan, however, are not considered “employer payments,” and *are* included in a member’s payrate. (§ 20636, subd. (b)(2)(A).)

5. At hearing, CalPERS alleged that the \$20,500 is properly excluded because Respondent’s salary in 2007 was not published and did not meet the definition of a publicly available pay schedule in CalPERS regulations. California Code of Regulations, title 2, section 570.5, states:

(a) For purposes of determining the amount of “compensation earnable” . . . payrate shall be limited to the amount listed on a pay schedule that meets all of the following requirements:

(1) Has been duly approved and adopted by the employer’s governing body in accordance with requirements of applicable public meetings laws;

(2) Identifies the position title for every employee position;

(3) Shows the payrate for each identified position, which may be stated as a single amount or as multiple amounts within a range;

(4) Indicates the time base, including, but not limited to, whether the time base is hourly, daily, bi-weekly, monthly, bi-monthly, or annually;

(5) Is posted at the office of the employer or immediately accessible and available for public review from the employer

during normal business hours or posted on the employer's internet website;

(6) Indicates an effective date and date of any revisions;

(7) Is retained by the employer and available for public inspection for not less than five years; and

(8) Does not reference another document in lieu of disclosing the payrate.

The evidence showed that Respondent's salary of \$17,104.92 per month was publically available as required by the PERL.

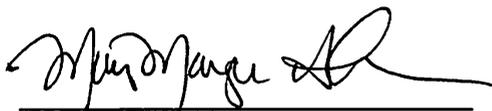
6. Complainant cites CalPERS Precedential Decision 12-01 (*Craig F. Woods, Respondent and Tahoe Truckee Sanitation Agency, Respondent*) as support for its position. The facts in that case, however, are very different from the facts here; the amounts in question were paid as an automobile allowance and as *employer paid* deferred compensation. In addition, in that case the agency's Board intended to include two portions of Woods's salary that they knew were disallowed, into his final base payrate.

7. As the evidence demonstrated that Respondent's salary of \$17,104.92 did not include deferred compensation paid by her employer and was publicly available, her appeal will be granted.

#### ORDER

The appeal of Respondents Christine Monsen and the Alameda County Transportation Improvement Authority is granted. Respondent's final compensation for pension purposes is \$17,104.92 per month.

DATED: June 30, 2014



MARY-MARGARET ANDERSON  
Administrative Law Judge  
Office of Administrative Hearings

**ATTACHMENT B**  
**STAFF'S ARGUMENT**

## STAFF'S ARGUMENT TO DECLINE TO ADOPT THE PROPOSED DECISION

### Overview

CalPERS staff argues that the Board should decline to adopt the Proposed Decision, in favor of its own Decision, after conducting a full Board Hearing in accordance with its policies. Staff's argument is based on the following:

- I. The Proposed Decision incorrectly rejects the reasoning in the Board's Precedential Decision 12-01, *Craig F. Woods, Respondent and Tahoe Truckee Sanitation Agency, Respondent*, which held that employer-paid deferred compensation is properly excluded as "compensation earnable" for the purpose of calculating retirement benefits because it is specifically excluded by the California Public Employees' Retirement Law (PERL) (Government Code section 20636, subd.(g)(4)(E)).
- II. The Proposed Decision does not correctly analyze the law pertaining to "publicly available pay schedules" (Government Code section 20636(b)(1), California Code of Regulations, title 2, section 570.5).
- III. The Proposed Decision does not address whether the excluded compensation is "final settlement pay" and therefore cannot be included in the calculation of Christine Monsen's (Respondent) pension.

### Legal and Factual Background

Respondent was originally hired by Respondent Alameda County Transportation Improvement Authority (ACTIA) as the Deputy Director for Special Projects, and later became the ACTIA Executive Director. Respondent, by virtue of this employment, is a miscellaneous member of CalPERS.

Upon Respondent's application for service retirement in 2010, CalPERS determined that Respondent was not entitled to credit her employer-paid deferred compensation as "compensation earnable."<sup>1</sup> The employer-paid deferred compensation was in the form of payment to a 457 deferred compensation plan which Respondent held. In the early years of her employment, the employer paid 50% of the funds which went into the 457 account. These funds were paid directly to the 457 account and were not included in her payrate. Later, ACTIA directly paid, into Respondent's 457 account, 100% of the maximum amount allowable, without including this amount in payrate. Respondent, as the Executive Director, instructed the Board and Financial Unit how to pay her compensation, both earnable and other. After 2007, with agreement from the ACTIA

---

<sup>1</sup> "Compensation earnable", by a member, means the payrate and special compensation of the member... "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, pursuant to publicly available pay schedules... (Gov. Code §20636)

Attachment B

Board, Respondent informed the Financial Unit that they should roll the amount of the employer-paid deferred compensation into her payrate.

CalPERS program staff reviewed the reported compensation and noted that ACTIA and Respondent intentionally added the exact amount of employer-paid deferred compensation to Respondent's payrate for the purpose of increasing Respondent's final settlement pay three years prior to her retirement, and eliminated the employer-paid deferred compensation benefit. CalPERS determined that adding this amount to payrate did not make it compensation earnable, and that ACTIA had over-reported the compensation earnable of Respondent (in the amount of the employer-paid deferred compensation which had been rolled into payrate). Respondent and ACTIA filed a timely appeal of this determination.

A hearing was held on March 5, 2014 and June 13, 2014, on the issue of whether deferred compensation can be included in the calculation of Respondent's final compensation. In other words, the Administrative Law Judge (ALJ) was asked to decide whether Respondent's payrate could legally include the employer-paid deferred compensation after it was rolled, for that purpose, into Respondent's payrate. Witnesses were heard and documentary evidence was presented.

At the hearing ACTIA and Respondent presented evidence that ACTIA paid Respondent a payrate as well as a separately listed benefit of an employer-paid deferred compensation. ACTIA decided in 2007 to re-characterize the employer-paid deferred compensation as payrate, and added the amount of the employer-paid deferred compensation to Respondent's payrate. ACTIA then added that specific amount of \$20,500 yearly, to Respondent's annual salary.

CalPERS presented testimony and documentary evidence that the ACTIA payrate increases were an attempt to change the characterization of payments (employer-paid deferred compensation) that were not compensation earnable. Testimony of all witnesses established that ACTIA transferred that amount, upon direction of the Respondent, into payrate, in order to reclassify it as compensation earnable. This re-characterization attempted to cloak the identity of the funds that were previously paid for many years as ineligible CalPERS compensation. CalPERS staff testified that this change was insufficient to keep CalPERS from determining the real nature of the payments. CalPERS Precedential Decision 12-01 *Craig F. Woods, Respondent and Tahoe Truckee Sanitation Agency, Respondent*, settled that employer-paid deferred compensation is not compensation earnable, and cannot be included in final compensation nor in the calculation of a member's pension.

The ALJ issued a Proposed Decision on June 30, 2014, granting the appeal by Respondent and striking down the determination by CalPERS denying Respondent's claim to employer-paid deferred compensation as part of compensation earnable. In the Proposed Decision, the ALJ held that the evidence showed that Respondent's salary of \$17,104.92 per month was "publicly available" as required by the PERL. However, she did not specify what evidence supported her ruling. The ALJ also

rejected the reasoning of CalPERS Precedential Decision 12-01 *Craig F. Woods, Respondent and Tahoe Truckee Sanitation Agency, Respondent*, and held that Respondent's salary of \$17,104.92 did not include deferred compensation paid by her employer. The Proposed Decision concluded that Respondent was entitled to claim the additional amounts paid for employer-paid deferred compensation as compensation earnable once it was reclassified as payrate by the employer.

#### Why the Proposed Decision Should Be Rejected

The Board and CalPERS staff have a fiduciary duty not to pay benefits in excess of those authorized by the PERL. CalPERS staff contends that the Proposed Decision contains the following errors:

- I. The Proposed Decision incorrectly rejects the reasoning in the Board's Precedential Decision 12-01, *Craig F. Woods, Respondent and Tahoe Truckee Sanitation Agency, Respondent*, which held that employer-paid deferred compensation is properly excluded as "compensation earnable" for the purpose of calculating retirement benefits because it is specifically excluded by the PERL (Government Code section 20636, subd.(g)(4)(E)).

The ALJ should have applied the reasoning of the *Craig F. Woods* Precedential Decision to find that the amount of employer-paid deferred compensation that was rolled into Respondent's payrate was not compensation earnable, no matter how ACTIA and the Respondent tried to disguise the true nature of those funds. The ALJ in this case tried to distinguish the *Craig F. Woods* Precedential Decision on the basis that after 2007, the deferred compensation amount of \$1,708.34 per month was rolled into Respondent's pay and she directed that those funds be diverted from her salary into a deferred compensation plan. Thus, the ALJ decided these amounts are not considered "employer payments" and are included in a member's payrate. (Gov. Code sec. 20636, subd. (b)(2)(A)).

The ALJ also rejected the reasoning in the *Craig F. Woods* case because in that case, she asserted, the employer-paid deferred compensation was directly paid by the employer into the deferred compensation plan, and because the employer's board intended to include in final payrate two portions of Woods' salary that the board knew were disallowed. In addition to misstating the facts of the *Craig F. Woods* case, the ALJ's superficial analysis completely ignores the policy against spiking and elevates form over substance.

In *Craig F. Woods*, three of the Factual Findings, as follows, are pertinent to this discussion:

4. ...respondent and CalPERS staff engaged in numerous correspondence over CalPERS' exclusion of certain amounts **paid directly to respondent by TTSA in addition to his monthly base pay.** The additional

payments consisted of a monthly car allowance of \$800 and a **\$920 monthly allowance for his deferred compensation plan** (PERS 457 program)... (Emphasis added.)

6. ... (c) Paragraph six of Agreement #2 stated that TTSA **would pay respondent an additional \$920 per month “for deposit in Employee’s retirement fund, PERS 457 program, additional retirement service credit and/or similar retirement programs.”**... (Emphasis added.)

10. ...Hence, amendment #2 sought to delete all references to two components of respondent’s original compensation package: car allowance and deferred compensation, **and to subsume these components into one rate of pay.** (Emphasis added.)

The facts in this case are practically identical to those in the *Woods* Precedential Decision. Here, the ACTIA Board in 2007 gave Respondent a three percent raise and the additional amount of \$20,500, which was identified as “deferred compensation.” ACTIA did not deposit any amount directly into a deferred compensation plan on Respondent’s behalf. However, neither did TTSA in the *Woods* case. In *Woods*, as here, the contract amendment combined into one hourly rate Woods’ base salary, \$800 per month for an auto allowance, and \$920 per month for deferred compensation. As the ALJ bluntly stated in *Woods*, “The restructuring of components of compensation does not alter the nature of the pay. The law does not respect form over substance.” As such, Mr. Woods was not allowed to include employer-paid deferred compensation, which had been rolled into his base pay and reflected in an increased hourly rate, for purposes of calculating his service retirement. The same analysis applies equally to the instant case.

If the Proposed Decision in this case were allowed to stand, it will provide CalPERS members a simple road map for accomplishing a type of pension spiking that the law has been designed to prevent. Any employer could merely inflate the base pay of any employee to account for the amount of deferred compensation that the employer agreed to pay. This would be legal, according to the ALJ in this case, because the employer would not be DIRECTLY paying the amount into a deferred compensation plan on behalf of the employee. Surely, this would be elevating form over substance, which the law abhors.

II. The Proposed Decision does not correctly analyze the law pertaining to “publicly available pay schedules” (Government Code sec. 20636(b)(1), California Code of Regulations, title 2, section 570.5).

The ALJ should have determined that there was no publicly available pay schedule, as required by Government Code section 20636 subd.(b)(1) and California Code of Regulations, title 2, section 570.5. The now defunct agency, ACTIA, did not present at

the hearing any credible proof of publication of its pay schedules. To the contrary, testimony at the hearing by witnesses for ACTIA and Respondent actually supported CalPERS' determination that there were no publicly available pay schedules. Testimony established that Respondent's payrate was discussed in closed sessions of the ACTIA Board. The amount of payrate and changes to payrate were occasionally reported, but no witness could point to a process or requirement that pay schedules be made publicly available. An agency's mere willingness to respond with such information, if asked, is not public availability. The most that this testimony established was that subsequent entities, which supplanted ACTIA, created websites which contained Respondent's payrate information.

Additionally undermining Respondent's testimony on this point, both Respondent and her witness testified that neither could verify publishing her payrate information during the time the pay schedule was in effect, and they admitted they did not want the public to know the payrate details due to concerns the public would react negatively to this information. While ACTIA and Respondent wanted to provide Respondent with a six percent pay increase, the testimony from the Mayor of Union City and Respondent was that a larger increase was not politically palatable, so they reduced the raise to three percent and boosted the employer contribution to deferred compensation (previously only half of the maximum 457 contribution) to 100 percent of the maximum 457 contribution. This was an attempt to conceal the pay increases by awarding them through a vehicle other than payrate.

Thus, there is no credible evidence in the record to support the assertions that Respondent's pay schedules were published. To the contrary, there is plentiful testimony that both ACTIA and Respondent were trying to disguise the true total remuneration paid to Respondent. This lack of credible evidence could explain why the ALJ flatly concluded that Respondent's payrate information had been publicly available, without citing to any evidence to support that conclusion.

Employer-paid deferred compensation is not compensation earnable. ACTIA, having taken elaborate steps to conceal from the public the amount of pay increase it gave to Respondent, should be legally constrained from then re-characterizing the employer-paid deferred compensation as an increase in base pay.

III. The Proposed Decision does not address whether the excluded compensation is "final settlement pay" and therefore cannot be included in the calculation of Respondent's pension.

The ALJ did not make any findings addressing the issue of "final settlement pay."<sup>2</sup> Respondent presented evidence from two witnesses that although she did not intend to

---

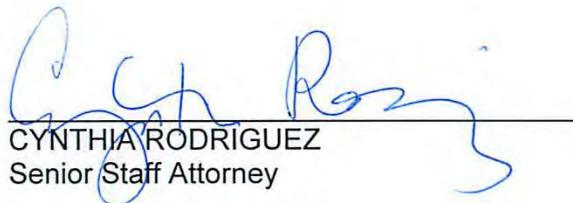
<sup>2</sup> "Final settlement pay" means any pay or cash conversions of employee benefits in excess of compensation earnable, that are granted or awarded to a member in connection with or in anticipation of a separation from employment...final settlement pay is excluded from payroll reporting to PERS, in either payrate or compensation earnable...it is generally, but not always paid during the period of final compensation...(California Code of Regulations, title 2, section 570.)

retire three years after she, as Executive Director, rolled her employer-paid deferred compensation into her payrate, she did retire at that time because she did not want to reapply for her position when ACTIA was absorbed into another agency. The testimony, proffered to refute the violation of the final settlement pay rules against raising pay in the final years of employment and therefore raising pension value, was neither logical nor credible. By holding a full Board Hearing, the Board can explore this issue fully and make a finding as to whether any remuneration to Respondent can be correctly classified as "final settlement pay" under the applicable statutes and regulations.

Proposed Board Action

Based on the serious flaws of the Proposed Decision's analysis, CalPERS staff urges the Board to reject the Proposed Decision and hold a full Board Hearing. Once the Board considers all the evidence and arguments in full context, the Board can then decide for itself whether the ALJ has analyzed the applicable law correctly. In short, the Board should grant a full Board Hearing so that the Board's final Decision, whatever it may be, is supported by a correct and reasonable application of law and the Board's Precedential Decision in *Woods*.

September 17, 2014



CYNTHIA RODRIGUEZ  
Senior Staff Attorney

**ATTACHMENT C**  
**RESPONDENT'S ARGUMENT**



1111 Broadway, 24<sup>th</sup> Floor  
Oakland, CA 94607-4036

T: 510-834-6600  
F: 510-808-4721

www.wendel.com  
zwasserman@wendel.com

August 6, 2014

**VIA OVERNIGHT DELIVERY**

Cheree Swedensky, Assistant to the Board  
CalPERS Executive Office  
P.O. Box 942701  
Sacramento, CA 94229



**Re: Agency Case No.2012-0289; OAH No. 2014010471**

Dear Ms. Swedensky:

We represent Respondent, Christine Monsen, in the above noted case. This letter is submitted in support of Administrative Law Judge Mary-Margaret Andersen's Proposed Decision in the aforementioned case stating that Ms. Monsen's final compensation was properly set at \$17,104.92 for pension purposes. Judge Andersen conducted a thorough one and a half day hearing. We respectfully request the Board affirm the well-reasoned decision.

We believe Judge Andersen's decision is thorough and comprehensive. The Proposed Decision finds that Ms. Monsen's salary was increased in 2007 by three percent plus \$20,500. The Proposed Decision also finds that Ms. Monsen retained the choice whether or not to contribute the \$20,500 each year, or any other lesser amount, to a deferred compensation plan. She could have spent it differently--while she chose to deposit that amount to a 457 account, she had the ability not to do so. As California Government Code section 20636(b)(2)(A) states, amounts that a member directs be diverted from salary for participation in a deferred compensation plan are included in a member's pay rate.

The Proposed Decision also found that the evidence demonstrated that Ms. Monsen's salary of \$17,104.92 per month was published and publically available as required by PERL.

Finally and perhaps most importantly, the Proposed Decision found that Ms. Monsen had no plans to retire in 2007 and there was no evidence to demonstrate that the raise was given in contemplation of retirement. This clearly distinguishes this matter from others that the Board has considered, including the published decision cited by the CalPers lawyer.

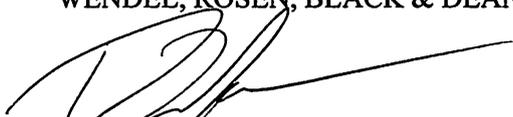
Cheree Swedensky, Assistant to the Board  
August 6, 2014  
Page 2

WENDEL, ROSEN, BLACK & DEAN LLP

On the facts and findings before the Board, we request the Board affirm the Proposed Decision. The evidence unequivocally demonstrates that Ms. Monsen's final compensation was correctly set at \$17,104.92.

Very truly yours,

WENDEL, ROSEN, BLACK & DEAN LLP

A handwritten signature in black ink, appearing to read 'R. Zachary Wasserman', with a long horizontal flourish extending to the right.

R. Zachary Wasserman

RZW/ADC