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ADMINISTRATIVE HEARING  
BOARD OF ADMINISTRATION  
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM  
STATE OF CALIFORNIA

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In the Matter of the )  
Calculation of Final )  
Compensation of )  
CHRISTINE MONSEN, ) No. 2012-0289  
Respondent. )

Childrens Residential Regional Offices  
2580 North First Street, Room 304  
San Jose, California 95131

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Wednesday, March 5, 2014

9:00 a.m.

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Reported by: ERIC L. THRONE, CSR No. 7855, RPR, RMR, CRR

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A P P E A R A N C E S:

Administrative Law Judge: **MARY-MARGARET ANDERSON**  
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1 WEDNESDAY, MARCH 5, 2014, SAN JOSE, CALIFORNIA, 9:55 A.M.

2 **ADMINISTRATIVE LAW JUDGE ANDERSON:** We're on the  
3 record before the Board of Administration of the California  
4 Public Employees' Retirement System, in the matter of the  
5 Statement of Issues Against Christine Monsen, Respondent, and  
6 Alameda County Transportation Improvement Authority,  
7 Respondent, in Agency Case Number 2012-0289, and  
8 OAH Number 2014-010471.

9 Today's date is March 5, 2014, the hearing was set for  
10 9:30, it's about five to 10:00 right now, and we're at the  
11 San Jose location that was noticed for the hearing.

12 My name is Mary-Margaret Anderson, and I'm an  
13 Administrative Law Judge assigned to hear this matter.

14 I'll start by taking appearances of counsel, beginning  
15 with the agency please.

16 **MS. RODRIGUEZ:** Cynthia Rodriguez, attorney for  
17 California Public Employees' Retirement System.

18 **MR. WASSERMAN:** Zach Wasserman, of Wendell, Rosen,  
19 Black & Dean, representing Ms. Monsen and the Authority.

20 **ADMINISTRATIVE LAW JUDGE ANDERSON:** Thank you.

21 **MS. DANDEKAR-CLIFFORD:** I'm Anagha Dandekar-Clifford,  
22 of Wendell, Rosen, Black & Dean, representing Ms. Monsen and  
23 the Agency.

24 **ADMINISTRATIVE LAW JUDGE ANDERSON:** All right. Thank  
25 you. And I'm understanding Mr. Wasserman will be speaking --

1           **MR. WASSERMAN:** Correct.

2           **ADMINISTRATIVE LAW JUDGE ANDERSON:** -- today; correct?  
3           All right. So we'll just go ahead and say we'll start  
4 with marking of jurisdictional documents.

5           **MS. RODRIGUEZ:** Thank you, Your Honor.

6           I presented a packet of documents to the Court and to  
7 counsel for respondent and I'd like to, at this time, ask to  
8 number and admit into evidence the following documents.

9           First is the Statement of Issues, dated January 9,  
10 2014.

11           **ADMINISTRATIVE LAW JUDGE ANDERSON:** Okay. Exhibit 1  
12 admitted for jurisdictional purposes.

13           (Petitioner's Exhibit 1 was received in evidence.)

14           **MS. RODRIGUEZ:** Second is the Notice of Hearing and  
15 Proof of Service, dated January 21, 2014.

16           **ADMINISTRATIVE LAW JUDGE ANDERSON:** Okay. Exhibit 2  
17 admitted for jurisdictional purposes.

18           (Petitioner's Exhibit 2 was received in evidence.)

19           **MS. RODRIGUEZ:** Third is the Service Retirement  
20 Election Application, dated October 26, 2010, of Christine  
21 Monsen.

22           **ADMINISTRATIVE LAW JUDGE ANDERSON:** Exhibit 3 is  
23 admitted.

24           (Petitioner's Exhibit 3 was received in evidence.)

25           **MS. RODRIGUEZ:** Fourth is a Letter of Denial from

1 CASSI (sic), dated October 28, 2011, informing the respondent  
2 that -- mine has an error, sorry -- that we would not accept  
3 the information within her application.

4 **ADMINISTRATIVE LAW JUDGE ANDERSON:** Okay. Letter of  
5 Denial, I guess, we would say; right?

6 **MS. RODRIGUEZ:** Yes.

7 **ADMINISTRATIVE LAW JUDGE ANDERSON:** Okay. Exhibit 4  
8 is admitted.

9 (Petitioner's Exhibit 4 was received in evidence.)

10 **MS. RODRIGUEZ:** Exhibit 5 is a Letter of Denial to the  
11 Agency, dated October 28, 2011.

12 **ADMINISTRATIVE LAW JUDGE ANDERSON:** Okay. Exhibit 5  
13 is admitted.

14 (Petitioner's Exhibit 5 was received in evidence.)

15 **MS. RODRIGUEZ:** And Exhibit 6 is the Letter of Appeal  
16 from Mr. Wasserman on behalf of Ms. Monsen, and it also  
17 includes some statements, memoranda, et cetera. We are  
18 requesting to admit it only for jurisdictional purposes, not  
19 for the truth of the matters attached.

20 **ADMINISTRATIVE LAW JUDGE ANDERSON:** Okay. Exhibit 6  
21 is admitted for jurisdiction.

22 (Petitioner's Exhibit 6 was received in evidence.)

23 **MS. RODRIGUEZ:** That's all we have at this time.

24 **ADMINISTRATIVE LAW JUDGE ANDERSON:** Okay, all right.  
25 Mr. Wasserman, it being the respondent's burden of

1 proof, do you have an opening statement this morning?

2 **MR. WASSERMAN:** I do.

3 **ADMINISTRATIVE LAW JUDGE ANDERSON:** All right.

4 **MR. WASSERMAN:** The fundamental -- and in certain  
5 respects simple but in other respects not so simple an issue  
6 today before you -- issue is whether the amount of \$20,500,  
7 which was subsequently increased by approximately \$1,500,  
8 which prior to October of 2007, in the year '02 proceeding,  
9 had been paid by the agency on Ms. Monsen's behalf to a 457  
10 account as deferred compensation; and after October, 2007, by  
11 action of the board, was shifted to Ms. Monsen as part of her  
12 salary and therefore her pay rate, which she chose to  
13 contribute to her 457 account, is in fact appropriately  
14 considered in her pay rate for PERS calculation of retirement  
15 benefits. In simple terms or common parlance, whether that  
16 amount was PERSable, but pay rate is the actual language.

17 We're going to put on a member of the board from 2007,  
18 Mark Green, and Ms. Monsen herself, as witnesses. We believe  
19 they will demonstrate that over Ms. Monsen's employment with  
20 the Agency -- I need to take a pause there, I apologize --  
21 Ms. Monsen was hired by an agency called the Alameda County  
22 Transportation Authority. That agency was succeeded by the  
23 Alameda County Transportation Improvement Authority, which  
24 was the agency from which she retired in 2007.

25 **MS. CLIFFORD:** '10.

1           **MR. WASSERMAN:** '10, I'm sorry, 2010.

2           **ADMINISTRATIVE LAW JUDGE ANDERSON:** That's one. No  
3 more.

4           **MR. WASSERMAN:** Okay.

5           The agency today is called the Alameda County  
6 Transportation Commission, and it is the lawful successor to  
7 ACTIA, the Transportation Improvement Authority. It was the  
8 result of a merger between that agency and the Alameda County  
9 Congestion Management Agency, and that merger occurred in  
10 2010.

11           So we have got three agencies. There is no terrible  
12 relevance here to the issues before you, but there are those  
13 three different agencies and three different sets of initials  
14 and acronyms.

15           The action in 2007, we will show, was the result of a  
16 negotiation between the board and Ms. Monsen, typical of  
17 negotiations that occurred each year that she was executive  
18 director. And because in fact the funds were part of her  
19 base salary and she had the option each year to contribute  
20 them to a 457 or not, that that \$20,500, as subsequently  
21 increased, was fully PERSable and was part of her pay rate.  
22 I think that's the basic case that we're going to show.

23           **ADMINISTRATIVE LAW JUDGE ANDERSON:** All right.

24           Ms. Rodriguez, did you have an opening statement at  
25 this time?

1           **MS. RODRIGUEZ:** No, not at this time.

2           **ADMINISTRATIVE LAW JUDGE ANDERSON:** All right.

3 Mr. Wasserman ....

4           **MR. WASSERMAN:** I would call Mark Green.

5           **ADMINISTRATIVE LAW JUDGE ANDERSON:** Okay. Mr. Green.

6           **MS. RODRIGUEZ:** Your Honor, before proceeding, we  
7 would ask to exclude other witnesses other than Ms. Monsen  
8 and Mr. Prama (sic), my program assistant.

9           **MR. WASSERMAN:** There are no other witnesses here.  
10 He's a member of the public and there will not be any other  
11 witnesses present.

12           **MS. RODRIGUEZ:** All right.

13           **ADMINISTRATIVE LAW JUDGE ANDERSON:** I'll enter the  
14 order such as it is, okay. So anyone who is going to  
15 testify, other than respondent and the witness here, is  
16 excluded.

17           All right. Good morning, sir.

18           **THE WITNESS:** Good morning.

19           **ADMINISTRATIVE LAW JUDGE ANDERSON:** Please raise your  
20 right hand to be sworn.

21   MARK GREEN,

22 called as a witness by and on behalf of the Respondent,  
23 having been first duly sworn, was examined and testified as  
24 follows:

25           **THE WITNESS:** Yes, I do.



1 Q. And how do you know Ms. Monsen?

2 A. I know Ms. Monsen because when I was a board member at  
3 ACTA, in the mid-'90s, I believe she was hired around right  
4 in that range as the deputy city manager by the then  
5 executive director, Vince Harris.

6 Q. You said "deputy city manager."

7 A. Well, "deputy executive director."

8 Q. Thank you.

9 A. Maybe I wish -- it was a Freudian slip -- she could  
10 have been a great city manager.

11 Q. And at some point, did Ms. Monsen become executive  
12 director --

13 A. Yes, she did.

14 Q. -- of ACTA?

15 Do you remember approximately when that was?

16 A. Well, let's see. Vince left in the late '90s, around  
17 2000, 2001, '2, somewhere in there, somewhere in that range.

18 Q. Thank you.

19 And so you were on the board when the board confirmed  
20 Ms. Monsen as the executive director?

21 A. I was on the board and then lobbied hard for her to  
22 become the executive director.

23 Q. I have been trying to ask this as a general question,  
24 more from a proficiency sake. Were there negotiations with  
25 Ms. Monsen each year about her compensation package?

1       **A.** Yes.

2       **Q.** And how were those negotiations conducted?

3       **A.** Well usually what's called the Finance & Personnel  
4 Committee of ACTA and/or ACTIA would make some kind of  
5 presentation to the full board, and then the full board would  
6 deliberate on compensation as well as evaluation of her  
7 performance.

8       **Q.** And what, generally speaking, were the factors that  
9 went into comprising her compensation package?

10       **A.** Well the compensation package was made up of with the  
11 standard items, I guess, that occurs across life: Salary,  
12 pensions, life insurance, medical, maybe some tokens, maybe  
13 not tokens, but a life insurance component.

14               So those are the major factors, I would say, that  
15 would go into that. Maybe a car allowance would be thrown in  
16 from time to time.

17       **Q.** Do you recall the discussions in 2007 about  
18 Ms. Monsen's salary?

19       **A.** I have some vague recollections about those  
20 discussions.

21       **Q.** Do you recall receiving a memorandum to the board  
22 concerning her performance and her salary?

23       **A.** Yes, I think that was forwarded on to us.

24       **MR. WASSERMAN:** I would like to show the witness a  
25 memorandum, dated July 19, 2007, to the board members from a

1 subcommittee and the executive director.

2 **ADMINISTRATIVE LAW JUDGE ANDERSON:** Okay.

3 Would you like to have that marked?

4 **MR. WASSERMAN:** I would as Exhibit A, please.

5 **ADMINISTRATIVE LAW JUDGE ANDERSON:** We neglected to  
6 address this document that you had, which was your --

7 **MR. WASSERMAN:** Oh.

8 **ADMINISTRATIVE LAW JUDGE ANDERSON:** -- reply.

9 **MR. WASSERMAN:** I apologize.

10 Do we need to make an exhibit?

11 **ADMINISTRATIVE LAW JUDGE ANDERSON:** Well, yeah, let's  
12 do that.

13 **MR. WASSERMAN:** Okay.

14 **ADMINISTRATIVE LAW JUDGE ANDERSON:** Let's make that  
15 Exhibit A.

16 **MR. WASSERMAN:** That would be our Statement of Issues.

17 **ADMINISTRATIVE LAW JUDGE ANDERSON:** Just a reply. So  
18 we'll just mark that for identification so that it's in the  
19 record, it goes with the administrative record. So that will  
20 be A, and we'll make this memorandum Exhibit B.

21 (Defendants' Exhibits A & B were received in  
22 evidence.)

23 **MS. RODRIGUEZ:** Do you have a copy of those that I  
24 could look at?

25 **MS. DANDEKAR-CLIFFORD:** It's in the packet.

1           **MR. WASSERMAN:** We have provided you the copies.

2           **MS. RODRIGUEZ:** Okay. So it's in this packet.

3           **MS. DANDEKAR-CLIFFORD:** It's in the packet attached to  
4 this reply.

5           **ADMINISTRATIVE LAW JUDGE ANDERSON:** Did you have  
6 another copy to show the witness or did you want this?

7           **MS. DANDEKAR-CLIFFORD:** Yeah, the witness can look at  
8 this.

9           **MR. WASSERMAN:**

10          **Q.** Do you recall receiving --

11          **MS. RODRIGUEZ:** I'm sorry. Can you hang on a moment?

12          **MR. WASSERMAN:** Oh, I apologize. Of course.

13          **MS. RODRIGUEZ:** Thank you. So it's one of the  
14 documents in this?

15          **MS. DANDEKAR-CLIFFORD:** It's Exhibit 4 attached to  
16 that. It's the very last document in Exhibit 4, right,  
17 before it. That would be it. The first page should say  
18 "closed session." There you go.

19          **MR. WASSERMAN:**

20          **Q.** Directing your attention to page 3 of that exhibit and  
21 the last paragraph on that page, do you recall discussing the  
22 contents of that paragraph?

23          **A.** Yes.

24          **Q.** And was that Ms. Monsen's request for a pay raise --  
25 I'm sorry -- an increase in her compensation?

1           **A.** Yes.

2           **Q.** And what was the request?

3           **A.** She was requesting a 6 percent salary increase  
4 effective July 1, 2007, and also have the contributions  
5 toward her 457 or collected as total compensation for PERS  
6 under the current contract as contribution.

7           **ADMINISTRATIVE LAW JUDGE ANDERSON:** Okay.

8           Mr. Green --

9           **THE WITNESS:** Yeah. Too fast again?

10          **ADMINISTRATIVE LAW JUDGE ANDERSON:** -- because you are  
11 reading and we all read fast. So slow down, please.

12          **THE WITNESS:** Okay. Where do you want me to go back  
13 to?

14                 Under my current contract, this contribution increases  
15 to \$20,500, since I turned 50 this year, and IRS allows a  
16 catch up retribution of --

17          **MS. RODRIGUEZ:** Objection, Your Honor. So is the  
18 witness testifying from his recollection or is he reading  
19 someone else's writings? Because he's not the I, I presume.  
20 So at this point I don't think it's proper.

21          **MR. WASSERMAN:** I'll rephrase the question.

22          **Q.** Looking at that, do you now recall what Ms. Monsen  
23 requested as an increase?

24          **A.** Yes.

25          **Q.** And what did she request?

1       **A.** She requested a 6 percent salary increase, and her 457  
2 contribution reflected as total compensation for PERS, which  
3 was \$20,500, the contribution.

4       **Q.** And do you recall -- I'm sorry -- do you recall  
5 whether, do you recall receiving that document as part of the  
6 closed session discussions?

7       **A.** Yes.

8       **Q.** And do you recall receiving similar documents in other  
9 years when Ms. Monsen's compensation was negotiated?

10       **A.** Yes.

11       **Q.** And turning your attention -- I'm sorry, strike that.

12               Do you recall whether as part of that package there  
13 was a -- there were charts, comparing Ms. Monsen's salary to  
14 comparable positions with other agencies?

15       **A.** Yes.

16       **Q.** And do you recall specifically what those reported?

17       **A.** Well I don't recall every exact number, but if you are  
18 looking for a general accounting, they can usually be  
19 compared to salary and/or total compensation against other  
20 executive directors or comparable positions around the Bay  
21 Area, and perhaps even in the State of California.

22       **Q.** And directing your attention to page 7 of that  
23 memorandum.

24       **A.** I see. Okay, all right.

25       **Q.** Do you remember where Ms. Monsen's salary was roughly

1 in comparison to the other positions on that chart?

2 **A.** In this particular chart it was in the bottom third.

3 **Q.** And directing your attention --

4 **MS. RODRIGUEZ:** I object, Your Honor.

5 **ADMINISTRATIVE LAW JUDGE ANDERSON:** Uh-huh.

6 **MS. RODRIGUEZ:** This is not appropriate refreshment of  
7 recollection. I mean he hasn't asked him a question, he's  
8 having him read from a chart that he didn't produce or  
9 introduce as something that he knows the accuracy of or --

10 **MR. WASSERMAN:** Well in terms of the introduction, I  
11 would now ask on the basis of Mr. Green's testimony that this  
12 be admitted as Exhibit B, as the report that was submitted to  
13 the board in closed session regarding Ms. Monsen's  
14 compensation.

15 **ADMINISTRATIVE LAW JUDGE ANDERSON:** Well, that's two  
16 different things. So you are objecting as what? What is  
17 your objection?

18 **MS. RODRIGUEZ:** My objection is that it's an improper  
19 refreshment of recollection. Instead of asking whether he  
20 remembers the numbers of the position that it is, he's asking  
21 him to look at this document and tell him what he now knows  
22 in looking at this document is replacement in the chart. Any  
23 of us could testify to where her placement is in the chart,  
24 once we look at the chart.

25 If he's introducing it for Mr. Green's familiarity

1 with it or his -- it provoked his reaction or his vote, or  
2 whatever came from it, that's not proper refreshment of  
3 recollection.

4 **ADMINISTRATIVE LAW JUDGE ANDERSON:** Okay. Well I  
5 don't see it as trying to refresh his recollection, it wasn't  
6 presented that way. The objection is overruled.

7 And you're offering Exhibit B. Do you have any  
8 objection to the admission of Exhibit B?

9 **MS. RODRIGUEZ:** Foundation.

10 **ADMINISTRATIVE LAW JUDGE ANDERSON:** Exhibit B is  
11 admitted.

12 (Respondent's Exhibit B was received in evidence.)

13 **MR. WASSERMAN:** Thank you.

14 **Q.** Do you remember where Ms. Monsen's overall  
15 compensation was in 2007, based on the information you  
16 received then?

17 **ADMINISTRATIVE LAW JUDGE ANDERSON:** Okay. Mr. Green,  
18 what I suggest is if you could put the document down, okay --  
19 sorry, it's a little pedantic, but that's how we do these  
20 things, okay?

21 **THE WITNESS:** All right.

22 **ADMINISTRATIVE LAW JUDGE ANDERSON:** And if you can  
23 remember, just say "yes" and you remember; if you can't  
24 remember, just say "no," and it's back to Mr. Wasserman.  
25 Okay?

1           **THE WITNESS:** Could you rephrase the question?

2           **MR. WASSERMAN:**

3           **Q.** Do you remember where her overall compensation was in  
4 comparison to the other positions listed on the chart that  
5 was in that document?

6           **A.** My recollection would be for me to believe it may be  
7 somewhat comparable to what that chart says, probably in the  
8 no more above half way and probably in the lower half.

9           **Q.** Thank you.

10           And do you remember what the board decided in terms of  
11 her compensation?

12           **A.** We did not grant the 6 percent raise. I believe it  
13 was like 3, but I do believe we went ahead with the request  
14 on the compensation, the deferred compensation request.

15           **Q.** And do you recall whether there was any discussion as  
16 to whether -- with that change in the treatment of her, the  
17 contribution to the 457 account -- that Ms. Monsen would have  
18 the ability to make the contribution or not?

19           **A.** Yes, there was some discussion about flexibility that  
20 she would have to do, make the contribution or choose not to.

21           **Q.** And do you recall anything else about that particular  
22 discussion?

23           **A.** I think that was the major part about the  
24 compensation, the flexibility of her being there.

25           **Q.** Do you recall whether that question came up

1 specifically by any board member?

2 **A.** I doubt if it was by me. It may have been by another  
3 board member.

4 **Q.** Do you remember it being discussed in that?

5 **A.** I do remember it being discussed about this aspect of  
6 flexibility on the part of the executive director.

7 **Q.** Thank you.

8 Based on any discussions that took place at that time,  
9 do you have any sense of why Ms. Monsen was requesting that  
10 change?

11 **MS. RODRIGUEZ:** Objection. Knowledge, hearsay, why  
12 he's going to testify about what Ms. Monsen wanted.

13 **MR. WASSERMAN:** I'm not asking for her --

14 **MS. RODRIGUEZ:** Speculation.

15 **MR. WASSERMAN:** No. I'm not asking for speculation or  
16 what was in her mind, I'm asking whether there was an express  
17 discussion about it. And I'm not asking for the truth of the  
18 matter asserted, but whether there was a discussion.

19 **MS. RODRIGUEZ:** I'm sorry. I didn't hear  
20 "discussion."

21 **MR. WASSERMAN:** Let me try again.

22 **Q.** Do you recall any discussion with Ms. Monsen about why  
23 she wanted that change, in particular the shift of the manner  
24 in which the contribution was made to her 457 Plan?

25 **A.** Again, I think it gave her the flexibility to do with

1 whatever she wanted to with that money. If she wanted to  
2 contribute she could, and if she didn't, she didn't.

3 **Q.** In 2007, to your knowledge, was there any concern by  
4 the board that she was on the verge of retirement?

5 **A.** I don't think there was any concern by the board about  
6 her retiring at that time. I think that it would actually be  
7 quite the contrary to that. Many of us, and certainly  
8 myself, would be hopeful that she would be working for many  
9 years to come.

10 **Q.** And what was the evaluation of her performance in  
11 2007, if you recall?

12 **A.** What I recall about every performance of the dozen or  
13 ten, or whatever the number was that she was involved in when  
14 I was at the agency, they were all very positive performance  
15 evaluations, she did an excellent job as an executive  
16 director.

17 **Q.** And did that have any impact on the decision about  
18 her, the benefit to her of her overall compensation package?

19 **A.** It certainly did. I mean we tried to retain  
20 competent -- or in her case -- way beyond competent employees  
21 at the agency, recognizing that there are always snipers, as  
22 I would say, out there trying to pick-off the good people at  
23 other agencies. So we would certainly try our best, given  
24 the limitations we had in trying to retain a person of her  
25 quality.

1 Q. When did Mrs. Monsen retire, if you recall?

2 A. In 2010.

3 Q. And do you know how that came about?

4 A. Unfortunately, I do.

5 Q. And how did it come about?

6 A. Yours truly was the principal person in trying to --  
7 at least from the elected officials -- of merging agencies  
8 together, ACTIA and the CMA being the principal ones at that  
9 particular time and she was director at one of those  
10 agencies.

11 And the board went through a -- decided to go through  
12 a process of having an open application for a new executive  
13 director of the two merged agencies. I repeatedly tried to  
14 get her to apply for that position and I was repeatedly,  
15 unfortunately, denied her doing so.

16 So, consequently, since she did not apply for that  
17 position and the board needed an executive director, we had  
18 to hire an executive director. But she was an excellent one  
19 I would say parenthetically, and consequently, subsequently,  
20 Christine Monsen retired.

21 Q. And you said that she didn't apply.

22 Did she express any desire to be the executive  
23 director of the merged agency?

24 A. Yes, she did.

25 Q. And do you remember what that was?



1 of many people on the full board, and a 6 percent salary  
2 increase, a flat 6 percent salary increase, was seen by many  
3 people as being something that would be troublesome to take  
4 to the home front.

5 I don't know how this board is comprised of; but at  
6 the time it was 11 members, if I recall, five supervisors and  
7 six council members/mayors from around the county, and taking  
8 a percentage -- I'm just going 6 because that's the number  
9 that was put out there -- that that 6 percent would be seen  
10 as something that would put many of us under extreme pressure  
11 in the home jurisdiction to come up with something comparable  
12 to that for, you know, city manager, police chief, on, and  
13 on, and on across the county.

14 So even the many that might have thought that that, in  
15 theory, was warranted to go to 6 percent, that the number at  
16 that time didn't have any, it wasn't politically palatable.

17 **Q.** Did you see it as a better alternative to pay some of  
18 the money into the deferred comp than to give it as a direct  
19 salary increase?

20 **A.** Well I think that the deferred comp part again was her  
21 choice as to ultimately what to do with it, it was her  
22 flexibility.

23 And I guess as you can read there in the document, the  
24 subcommittee wanted not only to do that, but to give her a 6  
25 percent increase. I was not on that subcommittee. And again

1 that was reigned in, if you want to call it that way, to 3  
2 percent.

3 **Q.** Do you remember -- oh, thank you.

4 Do you remember at that board meeting that Ms. Monsen  
5 suggested that a reasonable solution to the political  
6 inappropriateness of a large raise at the time of an economic  
7 downturn, that a reasonable solution was to change how her  
8 457 contribution was determined?

9 **A.** Well I think that had been expressed in her letter as  
10 before any of the political palatability came up by any of  
11 the board members.

12 **Q.** And so the purpose of that, though, was to hopefully  
13 make more palatable a large recompense to Ms. Monsen, despite  
14 the atmosphere of belt tightening that was around in those  
15 years?

16 **A.** Well I think she came up with that, you know, that was  
17 her request. She usually made a request every year, I'd like  
18 to have A, B, or C. And I don't think that political  
19 palatability was from her standpoint, but I do know when it  
20 got to the board what the political palatability was, and  
21 that's why it was reigned down.

22 **Q.** But would it be accurate to say that Ms. Monsen  
23 suggested -- and the board agreed -- that it was more  
24 reasonable to picture this as a 457 payment than as a salary  
25 increase?

1       **A.** I don't think so. I mean I think that, again, this  
2 deferred comp, you know, the board went to a full amount  
3 there. I think in other years it had been in place, in a  
4 lower amount. So there wasn't, in a sense, breaking new  
5 ground.

6               But again it's a hard for people to fathom that  
7 haven't been in office, but it's a huge, you know, 3 to 6 is  
8 a doubling on paper. And that was the crux of it right  
9 there, reducing that 6 down to 3.

10       **Q.** And at this meeting, session, whatever it was called,  
11 it was a closed meeting; is that correct?

12       **A.** The personnel matters are, generally speaking, held in  
13 closed session.

14       **Q.** So the memoranda from ACTIA, which is marked as B,  
15 Exhibit B -- which I don't see where the official one is --  
16 there it is, I believe it matches this one.

17       **A.** Do I get to look at this now?

18       **Q.** Well, I'm just going to ask you one question about it.

19       **A.** Okay.

20       **Q.** So it's your understanding that memorandum reflects  
21 that this is a closed meeting; is that accurate?

22       **A.** Yes, it says "closed session" right across the top.

23       **Q.** So who would have been present?

24       **A.** At the meeting you would have had --

25       **Q.** You don't have to name every person.

1       **A.** Okay.

2       **Q.** But in general, who are the people?

3       **A.** In a closed session, you would have the members on the  
4 ACTIA Board, had they been present there. Ms. Monsen would  
5 have been in for some of it, she would have talked about  
6 she'd like to do this, and giving her own sales pitch of what  
7 she had done over the past year, legal counsel would be in  
8 there, and that would be it.

9       **Q.** So the public was not invited to those sessions?

10       **A.** That's why it's called a closed session, that's  
11 correct.

12       **Q.** So materials that are discussed there are not  
13 published, so to speak, before the public?

14       **A.** Well ultimately there is a publishment, I guess you  
15 would call it, because the salaries are ultimately published.

16       **Q.** And where was the salary published?

17       **A.** I believe it's listed in the budgets. I mean again  
18 you wouldn't take a headline out of the Oakland Tribune  
19 saying this is what happened, but you can go through the  
20 agency documents to get those.

21       **Q.** So it's acquirable by anybody in the public?

22       **A.** As far as getting to the -- well right now I believe  
23 it's on the public, you can go in the Web site to get  
24 salaries of people across the state.

25       **Q.** Of course, we're interested in whether or not the

1 public could access this in 2007.

2 A. I'm not sure how far back that goes to be honest with  
3 you, as far as that Web site accessibility on salary.

4 Q. So you don't have any information about how or if this  
5 was published?

6 A. On a Web site, I can't say that I was at that point,  
7 but I know that's up there now. Again, I don't know if the  
8 law went back that far or not.

9 Q. Okay. So you are unable to demonstrate to us how that  
10 might have been published?

11 A. At this point, that's correct.

12 MS. RODRIGUEZ: Okay. I have nothing further of this  
13 witness.

14 ADMINISTRATIVE LAW JUDGE ANDERSON: Okay.

15 Mr. Wasserman ....

16 MR. WASSERMAN: A couple of questions.

17 REDIRECT EXAMINATION

18 BY MR. WASSERMAN:

19 Q. After that closed session in 2007 --

20 A. Uh-huh.

21 Q. -- did the board go into open session?

22 A. Yes.

23 Q. And do you recall whether there was an announcement  
24 about the decision on her salary in open session?

25 A. Yes, I believe there always is an announcement of --

1 this is what took place.

2 Q. And do you recall whether that statement included the  
3 full action of the board at that time, the 3 percent plus the  
4 switch of the --

5 A. I'd have to say that it did.

6 MR. WASSERMAN: I don't have any other questions.

7 ADMINISTRATIVE LAW JUDGE ANDERSON: Recross?

8 RECCROSS-EXAMINATION

9 BY MS. RODRIGUEZ:

10 Q. You would have to say that because you think it or  
11 because you know it?

12 A. Yes. Historically being from for 20 years and having  
13 the same attorney there for 20 years, what happens at the end  
14 of a closed session when items in closed session are voted on  
15 that are ultimately -- you know, an action taken, is not a  
16 further continuation or that's what happens and then an  
17 announcement is made as to what took place in closed session.

18 Q. So your answer is as to the general process, not that  
19 you recall hearing that stated at that meeting?

20 A. Well I'm not going to sit here and say that I have a  
21 direct recollection of every closed session announcement in  
22 the 21 years that I was in public office.

23 MS. RODRIGUEZ: That's all.

24 ADMINISTRATIVE LAW JUDGE ANDERSON: Okay.

25 MR. WASSERMAN: I have no other questions.

1           **ADMINISTRATIVE LAW JUDGE ANDERSON:** Thank you very  
2 much, Mr. Green.

3           **MS. RODRIGUEZ:** Thanks, Mr. Green.

4           **THE WITNESS:** Uh-huh.

5           **ADMINISTRATIVE LAW JUDGE ANDERSON:** You are excused or  
6 welcome to stay.

7           Okay. Are you ready to start with --

8           **MR. WASSERMAN:** Yes. Ms. Monsen, we would call  
9 Christine Monsen.

10           **ADMINISTRATIVE LAW JUDGE ANDERSON:** All right. If  
11 Ms. Monsen will just scoot over. Good morning, Ms. Monsen.

12           **THE WITNESS:** Good morning.

13           **ADMINISTRATIVE LAW JUDGE ANDERSON:** Please raise your  
14 right hand to be sworn.

15                                   **CHRISTINE MONSEN,**  
16 called as a witness by and on behalf of the Respondent,  
17 having been first duly sworn, was examined and testified as  
18 follows:

19           **THE WITNESS:** I do.

20           **ADMINISTRATIVE LAW JUDGE ANDERSON:** Please state your  
21 name and spell it.

22           **THE WITNESS:** Christine Monsen, C-H-R-I-S-T-I-N-E,  
23 M-O-N-S-E-N.

24           **ADMINISTRATIVE LAW JUDGE ANDERSON:** Thank you.  
25 Mr. Wasserman ....

DIRECT EXAMINATION

BY MR. WASSERMAN:

Q. Ms. Monsen, when were you first hired by ACTA?

A. I was hired, I believe, in February, 1995.

Q. And what was your position?

A. I was the deputy director for project development or projects.

Q. And how old were you then?

A. Thirty-seven.

Q. And did ACTA have any retirement plans at that time?

A. They only had the PERS retirement plan, they didn't have any supplemental plans.

Q. And by "supplemental," you are you referring to the 457 Plan?

A. Yes.

Q. And did you do anything about the fact that they didn't have a 457 Plan?

A. Yes. I pushed quite forcefully for the agency to implement a 457 Plan with California PERS.

Q. And did they do that?

A. They did.

Q. And at that time, did the agency make any contributions to those plans?

A. They did not, they came from the employee's salary.

Q. And did you make a contribution from your salary, at

1 that time?

2 **A.** I did. The first opportunity was in December of that  
3 year, and I contributed my full salary about for December so  
4 that I could contribute the maximum amount that year.

5 **Q.** And was that the first time you had ever made a  
6 contribution from your own salary to a 457 Plan or any  
7 similar plan in private industry?

8 **A.** It was the first time that I had made one to a  
9 457 Plan. When I graduated from graduate school, my employer  
10 was a public -- a private sector employer and they had a  
11 profit-sharing plan, and they matched the contributions to  
12 that and I did contribute to it as soon as I got that job.

13 **Q.** So before the 457 Plan was created in ACTA, you did  
14 not contribute to a 457 PERS Plan?

15 **A.** I didn't. My employer, prior to ACTA, had just  
16 implemented one. But since I had just bought a house, I  
17 really didn't have much discretionary income.

18 **Q.** Thank you.

19 And when did you become executive director of ACTA?

20 **A.** In 1998.

21 **Q.** When you became executive director, how was your  
22 compensation package determined?

23 **A.** It was a negotiation each year. I believe that year I  
24 asked for the salary and benefits that had been provided to  
25 the previous executive director.

1 Q. And at that time, was the agency itself making any  
2 contribution to the executive director's 457 Plan?

3 A. No.

4 Q. After that initial package was approved, at some point  
5 in the subsequent year did the issue of contributions from  
6 the agency come up in your negotiations?

7 A. Yes, a few times. I believe -- I can't recall which  
8 year it was -- but the board was wrestling with how to  
9 provide me additional compensation. And as Mayor Green  
10 alluded to in his testimony, it was always an issue  
11 politically to reflect substantial increases. So at some  
12 point, the board contributed half of my 457.

13 Q. Do you remember when that was?

14 A. I don't recall when it was, I'm sorry.

15 Q. And when that change occurred, did you contribute the  
16 other half of the maximum amount?

17 A. I did. I had been contributing the full amount since  
18 I, since my first year there.

19 Q. And when, at any subsequent point, did the agency  
20 increase its contribution to your 457 account?

21 A. Yes. I can't recall which year, but they decided  
22 to -- again, in lieu of an increasing my percentage salary --  
23 give me the full contributions to the 457 Plan.

24 Q. Excuse me just a moment.

25 And when that change was made, that is from half to

1 whole, did you make that suggestion?

2 **A.** I don't recall whether I made the suggestion to help  
3 ease the angst during the board discussions or whether a  
4 board member suggested it.

5 **Q.** But that issue was a common discussion in your annual  
6 compensation package negotiations?

7 **A.** I think the board looked at my compensation as one.  
8 They didn't necessarily look at a contribution to the 457 as  
9 different from my salary, because to them it was just  
10 compensating me.

11 **Q.** But I think you've referred to it when you heard  
12 Mr. Green refer to the sensitivity of percentage increases?

13 **A.** Yes, I think it was a way to compensate me, again as I  
14 said, without showing that larger percentage increase to my  
15 salary.

16 **Q.** In 2007, did that arrangement of the Agency  
17 contributing to your 457 change?

18 **A.** Yes.

19 **Q.** And how did that come about?

20 **A.** I requested it during my meetings with the  
21 subcommittee that was evaluating my compensation package, and  
22 I requested instead of the board contributing to my 457, that  
23 they increase my salary by that amount and allow me the  
24 flexibility to use it as I wish.

25 **Q.** And what did the board ultimately do?

1       **A.** The board recommended, as Mayor Green has testified,  
2 to increase my salary by 3 percent, and also include the  
3 maximum allowable that they had been contributing to my 457  
4 as part of my salary package --

5       **Q.** And --

6       **A.** -- and salary itself.

7       **Q.** -- was that specific subject raised in your  
8 discussions with the board, that change that you just  
9 described?

10       **A.** Yes, I believe it was.

11       **Q.** And that occurred in closed session?

12       **A.** Yes, I believe it did.

13       **Q.** And --

14       **A.** Well it occurred during the salary negotiation of the  
15 subcommittee, and then also at the administrative committee,  
16 and then I believe also at the board level.

17       **Q.** And when the -- and I'm going to cover this for  
18 Ms. Rodriguez.

19       **MS. RODRIGUEZ:** I don't understand that comment.

20       **MR. WASSERMAN:** Strike it. Sorry.

21       **Q.** The subcommittee, that you just described, was not a  
22 public meeting; is that correct?

23       **A.** I don't believe so.

24       **Q.** And the committee meeting, was the salary discussed in  
25 open session or closed session, do you recall?

1       **A.** I don't recall.

2       **Q.** Okay.

3       **A.** I don't recall that specific day. I do recall that if  
4 they went into closed session and took an action, it would  
5 then have been reported in open session once the closed  
6 session was completed.

7       **Q.** You are talking about general procedures?

8       **A.** General procedures. And since I put that in my memo  
9 to the board, that that was a recommendation to the  
10 administrative committee, I believe it would have needed to  
11 be announced in public session for me to make that statement.

12       **Q.** Going back for a moment to the closed session at the  
13 board meeting.

14               Was the issue of the consequences of making this  
15 change in the \$20,500 contribution to the 457 expressly  
16 discussed?

17       **A.** Yes. In closed session, one of the board members said  
18 "What happens if she doesn't contribute it to her 457"?

19       **Q.** And was that question answered?

20       **A.** The question was answered as "That's her decision."

21       **Q.** And do you recall whether the decision of the board,  
22 in closed session, in that 2007 closed session we are  
23 referring to, was then recorded in open session?

24       **A.** In all honesty, I can't recall. As I said, the  
25 process was to announce any action the board took in closed

1 session in public session, once the closed session was  
2 completed, and I see no reason for legal counsel to have done  
3 anything different that day.

4 Q. After -- excuse me. One moment, please.

5 After that action was taken, did you issue any  
6 directives or make any request to staff about that \$20,500?

7 A. I generally spoke to my finance manager so that he  
8 could implement any sort of retroactive changes to my salary  
9 or staff salary.

10 Q. Do you recall specifically talking to him about that  
11 \$20,500 that was part of your salary?

12 A. Yes.

13 Q. And what did you direct him to do, what did you  
14 request of him?

15 A. I told him the amount that had been previously  
16 contributed by the board to my 457 was now included as part  
17 of my salary, and that's how my pay stubs should come and  
18 that's what would be paid to CalPERS in the future.

19 I don't know if I was that coherent at the time, but  
20 that was the gist of it and that's what they implemented.

21 Q. All right. I better do that again.

22 And after that change was made, did you consider any  
23 other uses that you might put that \$20,500 to?

24 A. As I had done since the beginning, I contributed the  
25 maximum to my 457. But it did allow me the flexibility, if I

1 needed to buy a larger house, if I needed to purchase a  
2 different car, if I needed to spend it in some other way it  
3 did allow me that flexibility.

4 Q. In 2007, did you start thinking more about retirement  
5 than you had before?

6 A. Well as I said in the memo, that was the year I turned  
7 50. Since my '20s, I had been planning for retirement at  
8 some future date. As an unmarried woman, it's very important  
9 to think about it. At that time, I wasn't considering  
10 retiring.

11 Q. When did you start thinking specifically about  
12 retiring?

13 A. Well, I got serious thinking about retirement in 2010,  
14 after the board had chosen to merge the two agencies and  
15 decided to do a public search for an executive director.

16 Q. And did you talk to the board in any manner about  
17 choosing you as the executive director of the merged agency?

18 A. I did. Prior to the action where they chose to do an  
19 open search for executive director, I sent each board member  
20 a letter requesting that they appoint me as executive  
21 director to implement the merging of the two agencies.

22 Q. And they declined to make that direct appointment; is  
23 that correct?

24 A. They chose, in a subsequent board meeting, to  
25 implement an open search for an executive director.

1       **Q.** And is there a reason you didn't apply for the  
2 position?

3       **A.** Yes. And I told the board members about this, even  
4 though Mayor Green mentioned they lobbied me to apply. I  
5 felt very strongly if it was an open search, it should be an  
6 open search. If I applied, many people who would be very  
7 qualified would not apply, if they knew I had applied.

8               And so I decided that it made more sense, if they were  
9 conducting an open search, to step out and let others apply.  
10 And in fact, my deputy would not have applied if I had  
11 applied. He was subsequently hired as the executive director  
12 and is doing a stellar job in that position, as the mayor had  
13 stated.

14       **Q.** When you decided on your actual retirement date, did  
15 you seek to purchase additional retirement credit?

16       **A.** Ah, yes. Once I knew I was probably going to be  
17 retiring sometime in 2010, I applied to purchase service  
18 credit.

19       **Q.** And can you briefly describe the process of that  
20 request?

21       **A.** First you go on-line and you put in your pay scale and  
22 it tells you what the estimated costs would be, then you  
23 submit that to CalPERS as a formal recommendation, and they  
24 tell you what the additional pension payment would be based  
25 on your pay scale when you retire and the cost of it.

1 Q. And did you ultimately purchase additional service  
2 credit?

3 A. I did.

4 Q. How much did you purchase, if you recall?

5 A. I purchased four years of service credit.

6 Q. And do you recall how much you paid for that?

7 A. Painfully.

8 Q. How much?

9 A. \$170,000.

10 MR. WASSERMAN: We have previously provided -- but I  
11 have a copy here for Ms. Rodriguez -- I would like this  
12 marked as Exhibit C.

13 ADMINISTRATIVE LAW JUDGE ANDERSON: Okay.

14 THE WITNESS: And I paid that from my 457, just to  
15 clarify.

16 MR. WASSERMAN: I don't know about your process.  
17 That's actually a set of documents that I think should be  
18 treated as a whole. You don't need the exhibit page, sorry.

19 ADMINISTRATIVE LAW JUDGE ANDERSON: Okay. So we'll  
20 mark this as Exhibit C. I'm not entirely clear what the  
21 relevance of this is.

22 MR. WASSERMAN: I'll try to bring the relevance in  
23 quickly.

24 ADMINISTRATIVE LAW JUDGE ANDERSON: Okay. And just so  
25 you know I'm very familiar with this, because I bought some

1 myself.

2 **THE WITNESS:** And how many years did you buy?

3 **ADMINISTRATIVE LAW JUDGE ANDERSON:** I bought five  
4 years, I bought the maximum.

5 **THE WITNESS:** Smart woman.

6 **ADMINISTRATIVE LAW JUDGE ANDERSON:** I had good advice.  
7 I, myself, don't know about this stuff.

8 All right. So marked as Exhibit C, the service credit  
9 document.

10 (Respondent's Exhibit C was marked for  
11 identification.)

12 **ADMINISTRATIVE LAW JUDGE ANDERSON:** Do you need to  
13 take a look at it?

14 **MS. RODRIGUEZ:** Thanks.

15 **MR. WASSERMAN:** Previously, that's in the package that  
16 we submitted to Ms. Rodriguez.

17 **Q.** Showing you what is Exhibit C, can you identify that?

18 **A.** Yes. It is a copy of my request for purchasing  
19 additional service credit, my request and my election to  
20 purchase the service credit.

21 **Q.** Is there a third page there as well?

22 **A.** Yes. That's a copy of the check that I had to turn  
23 over to CalPERS to purchase four years of service credit.

24 **Q.** And that calculation was based on your pay rate,  
25 including the contributions you have made to the 457 --

1       **A.** Yes.

2       **Q.** -- is that correct?

3       **A.** As far as I know. That's what I put in the computer  
4 and I assume that's what CalPERS used.

5       **Q.** Was that the first time you had explored buying  
6 service credit?

7       **A.** No.

8       **Q.** When was the first time you explored buying service  
9 credit?

10       **A.** I didn't recall; but I was informed, when I met with  
11 the CalPERS personnel, that I had applied in 2005, and had I  
12 done it then I would have made half as much.

13       **Q.** Well we're all sorry for that, I'm sure.

14               You did not apply or explore service credit in 2007;  
15 is that correct?

16       **A.** No, I don't believe I did. And CalPERS says they  
17 don't have any record of it.

18       **Q.** And do you have any record?

19       **A.** I don't recall doing it, no.

20       **Q.** And how did you decide how much credit you would  
21 purchase in 2010?

22       **A.** It was based on cost. \$170,000 was a large chunk from  
23 my 457. If I felt comfortable I would have purchased five  
24 years, but I didn't feel comfortable using -- either I didn't  
25 have enough in my 457 or I didn't want to use that much more

1 of my 457. Somewhere I think it tells me how much more it  
2 would have been, but not in this document.

3 Q. And when you went through this process and looked at  
4 the alternatives of the different years of service you  
5 achieved, did you explore with Caltrans how much difference  
6 that would make in your pension payments?

7 A. I didn't talk with Caltrans, I talked with CalPERS.

8 Q. CalPERS.

9 A. I'm sorry. Could you repeat the question?

10 Q. Sure, I apologize. I do apologize in dealing with the  
11 agencies, I'm a little more used to Caltrans than CalPERS.

12 When you interacted with CalPERS about how much  
13 service credit to buy, did you explore with them the  
14 difference at the different levels and costs, the difference  
15 that you would actually receive because of that purchase in  
16 your pension?

17 A. It wasn't a discussion, they sent me a document that  
18 said this would be the costs for this many years and this  
19 would be the change to my pension salary.

20 Q. And that change was increased in your pension salary?

21 A. Right, the additional amount that the service credit  
22 purchased would provide to my pension.

23 Q. And if your pay rate for that calculation had been  
24 \$20,500 or \$22,000 less at that time, would that have  
25 affected your decision?

1       **A.** Yes, it would have been substantially less expensive  
2 to purchase the service credit.

3       **Q.** And would it have changed how much service credit you  
4 bought?

5       **A.** It probably would have. I mean I didn't have the  
6 number, they used my current pay rate which included my  
7 contribution to my 457.

8       **Q.** Okay. Now we're going to see how many of these  
9 documents we can authenticate to avoid a continuance.

10           I would ask that these four pages, beginning with  
11 Notification of Remittance be marked as Exhibit D.

12           And you have those in your package?

13       **MS. DANDEKAR-CLIFFORD:** In that package?

14       **MS. RODRIGUEZ:** In here?

15       **MS. DANDEKAR-CLIFFORD:** Uh-huh, all attached to the  
16 declaration.

17       **MR. WASSERMAN:** And here's another copy just to look  
18 at.

19       **ADMINISTRATIVE LAW JUDGE ANDERSON:** All right. I will  
20 mark that as Exhibit D.

21           (Respondent's Exhibit D was marked for  
22 identification.)

23       **ADMINISTRATIVE LAW JUDGE ANDERSON:** If in the future  
24 you can show the exhibit first to Ms. Rodriguez --

25       **MR. WASSERMAN:** Sure.

1           **ADMINISTRATIVE LAW JUDGE ANDERSON:** -- and do it the  
2 normal way, that would be helpful.

3 **MR. WASSERMAN:**

4           **Q.** Looking at a copy of Exhibit D and the first page, do  
5 your initials appear on that page?

6           **A.** They do. It's a little scribble at the very bottom.

7           **MS. RODRIGUEZ:** So this is -- I'm sorry -- this is an  
8 8-page, D is eight pages?

9           **MR. WASSERMAN:** I'm sorry. Let's do it this way:  
10 This is the four pages, here's the four pages.

11           **Q.** And is this a record that you regularly -- is this the  
12 type of record you regularly reviewed?

13           **A.** Yes.

14           **Q.** Do you remember this particular record?

15           **A.** Well, my initial is at the bottom of the page 1 and my  
16 signature is on the check. I think I did this at least once  
17 a month, but I don't remember each one.

18           **Q.** But this was a regular process that you went through?

19           **A.** Yes.

20           **Q.** And do you know the purpose of this record?

21           **A.** Yes. This is a Notice of Remittance, Notification of  
22 Remittance of the 457 contributions from employees, and on  
23 this particular one the employer contribution on my behalf.

24           **MR. WASSERMAN:** I would ask that Exhibit D be admitted  
25 as a business record.

1           **ADMINISTRATIVE LAW JUDGE ANDERSON:** Okay. Well, I  
2 don't know if it needs to be admitted as a business record.  
3 She's identified it.

4           **MR. WASSERMAN:** That's fine.

5           **ADMINISTRATIVE LAW JUDGE ANDERSON:** Ms. Rodriguez, did  
6 you have an objection to this document?

7           **MS. RODRIGUEZ:** Well the only objection I have is that  
8 she's identified the first page and the last page, but I  
9 don't have any idea what the two middle pages are.

10          **THE WITNESS:** Well the two middle pages are a summary  
11 of the contribution, because as you see on page 1 there are  
12 two different accounts for the contribution; page 2 just  
13 identifies it as one contribution; page 3 summarizes the  
14 contribution made by the agency, shown on pages 1 and 2, by  
15 participant name, contribution amount; and page 4 is the  
16 check which is the same amount reflected on page 1, pages 1  
17 and 2; and probably if you sum up the contributions on page 3  
18 it will reflect that amount as well.

19          **ADMINISTRATIVE LAW JUDGE ANDERSON:** Well, I have  
20 questions that don't have a date. I don't have a problem  
21 with authenticating the document, I still don't really  
22 clearly know what it is because I don't speak your language  
23 and I also don't really know the relevance. I guess it's to  
24 show that she contributed to this --

25          **THE WITNESS:** Actually --

1           **ADMINISTRATIVE LAW JUDGE ANDERSON:** Let's let  
2 Mr. Wasserman --

3           **THE WITNESS:** Okay.

4           **ADMINISTRATIVE LAW JUDGE ANDERSON:** -- ask you a  
5 question.

6           **THE WITNESS:** Okay.

7           **MR. WASSERMAN:** What the purpose of this and the next  
8 document are --

9           **ADMINISTRATIVE LAW JUDGE ANDERSON:** Uh-huh.

10          **MR. WASSERMAN:** -- is to show that the change in the  
11 way the \$20,500 was treated is reflected directly in the  
12 records, provided to CalPERS.

13           Exhibit D is the period before the change, Exhibit E  
14 is going to be the period after the change, and the  
15 difference is very clearly that the contributions are for  
16 Ms. Monsen in Exhibit E are shown as an employer contribution  
17 and in Exhibit E will be shown, are shown, were shown as the  
18 employee contribution.

19          **ADMINISTRATIVE LAW JUDGE ANDERSON:** All right. So  
20 it's just to show the contrast between the two.

21          **MR. WASSERMAN:** Correct.

22          **THE WITNESS:** Yes.

23          **ADMINISTRATIVE LAW JUDGE ANDERSON:** The other thing  
24 is, is there a date on this document?

25          **THE WITNESS:** Yes. There's a scribble above my

1 scribble on the first page, it's 10/4/07.

2 **ADMINISTRATIVE LAW JUDGE ANDERSON:** Oh.

3 **MS. RODRIGUEZ:** Is it 10/1/07 it looks?

4 **THE WITNESS:** It looks like "4" to me, but on the  
5 page 3 it's for pay period ending September 30, 2007.

6 **ADMINISTRATIVE LAW JUDGE ANDERSON:** Okay, I get that.

7 **MR. WASSERMAN:** And the check is dated 10/5/2007.

8 **ADMINISTRATIVE LAW JUDGE ANDERSON:** Okay, all right.  
9 Any objection to Exhibit D other than --

10 **MS. RODRIGUEZ:** Just what I already said, Your Honor,  
11 I still am not clear on this.

12 **THE WITNESS:** Would you like --

13 **ADMINISTRATIVE LAW JUDGE ANDERSON:** Well --

14 **THE WITNESS:** -- me to explain a little bit more?

15 **ADMINISTRATIVE LAW JUDGE ANDERSON:** No. She can  
16 question you when it's her time.

17 **THE WITNESS:** Okay.

18 **ADMINISTRATIVE LAW JUDGE ANDERSON:** We're just talking  
19 about the admission of it right now. So Exhibit D is  
20 admitted. Did you wish to offer Exhibit C?

21 **MR. WASSERMAN:** I do, and I'm giving Ms. Rodriguez a  
22 copy and giving the Court a copy.

23 **ADMINISTRATIVE LAW JUDGE ANDERSON:** Well, I'm talking  
24 about Exhibit C. Do you wish to offer Exhibit C?

25 **MR. WASSERMAN:** Oh, yes, I would offer Exhibit C into

1 evidence.

2 **ADMINISTRATIVE LAW JUDGE ANDERSON:** Thank you.

3 Any objection to Exhibit C?

4 **MR. WASSERMAN:** Exhibit C is the air credit purchase  
5 form.

6 **ADMINISTRATIVE LAW JUDGE ANDERSON:** Okay. Exhibit C  
7 is admitted.

8 (Respondent's Exhibit C was received in evidence.)

9 **MR. WASSERMAN:** Thank you. I appreciate that.

10 **ADMINISTRATIVE LAW JUDGE ANDERSON:** All right.

11 Did you want me to mark another exhibit?

12 **MR. WASSERMAN:** Yeah. I would ask that -- it's  
13 another Notice of Remittance, but this has the date at the  
14 bottom 11/1/07 -- and I ask it be marked as Exhibit E.

15 **ADMINISTRATIVE LAW JUDGE ANDERSON:** Okay.

16 (Respondent's Exhibit E was marked for  
17 identification.)

18 **MS. RODRIGUEZ:** You gave me another set of this one,  
19 which I think is Exhibit D. You gave me this one and then  
20 you gave me that one.

21 **MR. WASSERMAN:** Oh, sorry. That's D, and the other  
22 one is C.

23 **MS. RODRIGUEZ:** Oh, okay. That's why I couldn't  
24 follow before, you didn't give me this.

25 **MR. WASSERMAN:** Sorry.

1           **MS. RODRIGUEZ:** This is E and this is D.

2           **MR. WASSERMAN:**

3           **Q.** Looking at Exhibit E, again, are your initials on it?

4           **A.** They are.

5           **Q.** And where are they?

6           **A.** The scribble at the bottom.

7           **Q.** And the date on that is?

8           **A.** An a niece stated it November 1, 2007.

9           **Q.** And?

10           **MS. RODRIGUEZ:** I'm sorry, you know what, could we  
11 have just a moment to review this --

12           **MR. WASSERMAN:** Sure.

13           **MS. RODRIGUEZ:** -- because you had given me the wrong  
14 exhibit? So when I was talking about D, I was actually  
15 looking at E. So if I could just go through that to see  
16 what's in it. Okay.

17           **MR. WASSERMAN:**

18           **Q.** Looking at Exhibit E, you said your initials are at  
19 the bottom --

20           **A.** Yes.

21           **Q.** -- and the date is 11/1/07?

22           **A.** Yes.

23           **Q.** And, again, what is this document?

24           **A.** The document is the Notification of Remittance showing  
25 the 457 contributions from employees. Page 1 shows the full

1 amount coming from one account from the agency, page 2 shows  
2 the sum, and page 3 is a summary of the contribution from  
3 employees, and page 4 is the check dated 11/1/2007.

4 **MR. WASSERMAN:** I would offer Exhibit E into evidence.

5 **ADMINISTRATIVE LAW JUDGE ANDERSON:** Exhibit E.

6 **MR. WASSERMAN:** Which has the date 11/1/07.

7 **ADMINISTRATIVE LAW JUDGE ANDERSON:** Yeah, and the  
8 subsequent months --

9 **MR. WASSERMAN:** Correct.

10 **ADMINISTRATIVE LAW JUDGE ANDERSON:** -- as a set of  
11 documents. Okay. Exhibit E is admitted.

12 (Respondent's Exhibit E was received in evidence.)

13 **MR. WASSERMAN:**

14 **Q.** And what's the difference between that affects you  
15 between Exhibit D and Exhibit E?

16 **A.** With respect to me it's shown on page 3 of that  
17 exhibit, and it shows my employee contribution, my employee  
18 contribution amount to the my 457.

19 **Q.** I'm handing Ms. Rodriguez a copy of an Earnings  
20 Statement from ADP, regarding a check dated 12/31/07.

21 **MS. RODRIGUEZ:** It is not part of D or E?

22 **MR. WASSERMAN:** No. I would ask that marked as  
23 Exhibit F.

24 (Respondent's Exhibit F was marked for  
25 identification.)

1 **MR. WASSERMAN:**

2 Q. In looking at Exhibit F, Ms. Monsen, do you recognize  
3 what that is?

4 **MS. RODRIGUEZ:** So I have a copy of that somewhere, is  
5 that what you are saying?

6 **MS. DANDEKAR-CLIFFORD:** Yes, it's within that.

7 **MS. RODRIGUEZ:** Within this?

8 **MR. WASSERMAN:** No.

9 **MS. DANDEKAR-CLIFFORD:** That packet right there.

10 **MS. RODRIGUEZ:** This?

11 **MS. DANDEKAR-CLIFFORD:** Yes.

12 **THE WITNESS:** It's my Earnings Statement.

13 **MS. RODRIGUEZ:** Could we wait until --

14 **THE WITNESS:** Yes.

15 **MS. RODRIGUEZ:** -- I'm able to review it?

16 **MS. DANDEKAR-CLIFFORD:** The page right before that  
17 one, yeah.

18 **MR. WASSERMAN:**

19 Q. Do you recognize that exhibit?

20 A. I do.

21 Q. And what is it?

22 A. It's my Earnings Statement dated 12/31/2007, for the  
23 pay period 12/16 to 12/31/2007.

24 Q. And does it reflect your base salary?

25 A. It does.

1           **MR. WASSERMAN:** Excuse me. One moment, please.

2           **Q.** And do you have an understanding of whether that  
3 \$20,500 that we referred to is included in that monthly  
4 amount?

5           **A.** Yes. And if you refer to the second column on the  
6 right, taxes and deductions, it shows that a total of \$645.83  
7 and \$208.34 were deducted from my salary and contributed into  
8 my 457.

9           To the right of that you will see the year-to-date,  
10 and that reflects the amounts that had been contributed  
11 subsequent to the board's action on my evaluation and  
12 compensation and so it reflects partial distribution to my  
13 457 from my pay stub.

14           For that year, the full amount allowable by law was  
15 contributed to my 457, and this reflects that only a portion  
16 of that came from my salary.

17           **Q.** So in 2007, the agency paid some, and then after  
18 October it came out of your salary?

19           **A.** Yes.

20           **Q.** And in subsequent years, did all of the 457  
21 contributions come out of your salary?

22           **A.** They did.

23           **Q.** I'm handing Ms. Rodriguez an additional document which  
24 is also from ADP Easy Pay, with a date indicating period  
25 covered 12/16 to 12/31/08. And I would ask that this be

1 marked as Exhibit --

2 **ADMINISTRATIVE LAW JUDGE ANDERSON:** G.

3 **MR. WASSERMAN:** -- G.

4 (Respondent's Exhibit G was marked for  
5 identification.)

6 **MR. WASSERMAN:** Thank you.

7 **Q.** Do you recognize that document?

8 **A.** This is -- it looks like it's a summary of my drains  
9 from our vendor that completed the payroll, ADP.

10 **Q.** And is this the kind of document that was regularly  
11 produced?

12 **A.** Probably for accounting. I'm not sure I've ever seen  
13 one.

14 **Q.** But this one has your name on it; correct?

15 **A.** My name is shown, and I'm the only one that is  
16 summarized in this report.

17 **Q.** And does this report -- what period does this report  
18 cover?

19 **A.** Let's see.

20 **Q.** I would direct your attention to the bottom right of  
21 the columns.

22 **A.** It's December 16, 2008, to December 31, 2008, and it's  
23 for the check dated December 31, 2008.

24 **Q.** And does this also show a gross salary?

25 **A.** It does.

1 Q. And does it show deductions for 457, and 457 catch up?

2 A. It does.

3 Q. And those are in the fourth -- those deductions are in  
4 the fourth column over?

5 A. They are.

6 Q. And is it your recollection that these are the  
7 accurate reporting of your salary and deductions?

8 A. Yes.

9 MR. WASSERMAN: I would ask that this be admitted.

10 MS. RODRIGUEZ: I would object on foundation. I  
11 believe the witness testified she had never seen this before.

12 MR. WASSERMAN: She's also testified that that's her  
13 accurate information about her salary and deductions.

14 THE WITNESS: I have another way of showing it, if  
15 you'd like.

16 ADMINISTRATIVE LAW JUDGE ANDERSON: Well, isn't it  
17 duplicative of the other document anyway?

18 MR. WASSERMAN: It is showing 2008 --

19 ADMINISTRATIVE LAW JUDGE ANDERSON: Oh.

20 MR. WASSERMAN: -- as opposed to the 2007 period.

21 ADMINISTRATIVE LAW JUDGE ANDERSON: Uh-huh.

22 MR. WASSERMAN: And so it's showing the full year's  
23 deduction instead of the partial year. That's the  
24 significant difference. So the total of the 457 accounts are  
25 the \$20,500, less about \$0.08.

1           **ADMINISTRATIVE LAW JUDGE ANDERSON:** Okay. Well given  
2 she was the executive director and she's verifying that the  
3 amounts are correct, I'll admit Exhibit G. Exhibit F is also  
4 admitted, if I didn't say so before.

5           (Respondent's Exhibits F & G were received in  
6 evidence.)

7           **MR. WASSERMAN:** I have shown Ms. Rodriguez a set of  
8 three pages showing salary deductions for Ms. Monsen starting  
9 in 2005 and ending in 2010, and I would ask this be marked  
10 Exhibit H.

11           (Respondent's Exhibit H was marked for  
12 identification.)

13           **ADMINISTRATIVE LAW JUDGE ANDERSON:** Do you need to  
14 show it to her or do you have it?

15           **MR. WASSERMAN:** Yeah, I'm sorry. May I borrow this  
16 just to show it to her? Thank you.

17           **Q.** Showing you Exhibit H.

18           Do you know what that document is?

19           **A.** It looks as if it's a summary of my payroll pay rate,  
20 earnings, hours worked, special compensation, paid  
21 contributions, tax deferred contributions, interest,  
22 calculated service credit, and employer name, survivor fund  
23 contribution, and the dates of each line.

24           **Q.** Before today, do you recall seeing that document or  
25 one essentially like that?

1       **A.** I believe it was submitted as part of the packet sent  
2 to the CalPERS attorney.

3       **Q.** Other than part of the proceedings leading to this  
4 hearing, do you have any recollection of seeing that before?

5       **A.** No.

6       **Q.** Looking at the salary figures -- and take a moment if  
7 you need it -- do those look to you to be accurate reporting  
8 of what your salary was in the various period starting in  
9 2005? I'm not asking to verify each and every one.

10       **A.** I would say -- I mean without getting out my pay stubs  
11 and comparing them it looks to be accurate.

12       **Q.** That's fine, that's enough, thank you. I'm not  
13 offering it at this time.

14               So commencing in October, 2007, your salary was  
15 approximately \$205,000 a year?

16       **A.** Yeah. I mean, I again would have to look up my pay  
17 stub to verify that, but ....

18       **Q.** And that increased somewhat before you retired in  
19 2010?

20       **A.** Yes.

21       **Q.** And to your knowledge was that salary listed anywhere?

22       **A.** Listed anywhere.

23       **Q.** Listed, published, reported, put out ....

24       **A.** It was reported to CalPERS, certainly, it's a public  
25 agency. I believe it was probably reported out of closed

1 session once it was adjusted, and as a public agency anyone  
2 could request what my salary was and in fact some had.

3 Q. When you say "some had," can you tell us what you mean  
4 by that?

5 A. There was a gentleman who felt I was overpaid, and he  
6 requested to know what my salary was.

7 Q. Do you recall roughly when that was?

8 A. I think it was in 2008.

9 Q. So after this increase?

10 A. After this increase.

11 Q. And do you know whether that gentleman received that  
12 information?

13 A. I believe so.

14 Q. What's the basis of your belief?

15 A. That he made a formal requested public information and  
16 we replied.

17 **MR. WASSERMAN:** I have no further questions.

18 **ADMINISTRATIVE LAW JUDGE ANDERSON:** All right.

19 Ms. Rodriguez ....

20 **CROSS-EXAMINATION**

21 **BY MS. RODRIGUEZ:**

22 Q. Do you recall the board meeting that we discussed  
23 earlier with Mr. Green in closed session?

24 A. Yes.

25 Q. And do you recall whether or not you suggested, and

1 the board agreed, that a reasonable solution was to change  
2 the method of determining your contribution to the 457  
3 account in order to quiet political issues about fiscal, the  
4 fiscal condition of the agency or the public interest agency?

5 **A.** Actually, I believe they did that in prior years. In  
6 2007, they chose to do the opposite of that.

7 **Q.** What did they do?

8 **A.** They chose.

9 **MR. WASSERMAN:** Wait a second.

10 Objection. What did they do when? Question simpler.

11 **MS. RODRIGUEZ:**

12 **Q.** You just testified they chose to do the opposite.

13 Can you describe who did what when that was opposite?

14 **A.** If you are referring to my review in 2007, the board  
15 chose to change from making contributions into my 457 to  
16 instead pay me that amount that they had been contributing  
17 previously and allowed me the opportunity to contribute to my  
18 457 or to do something else with it.

19 **Q.** And so you don't recall that the board was impressed  
20 you were entitled to a raise, but that you and the board were  
21 concerned about whether a significant raise was politically  
22 appropriate at that time?

23 **A.** In previous years, that was the case.

24 **Q.** But not that year?

25 **A.** In 2007, at my request, the board overcame that

1 political concern and instead reflected the 457 contribution  
2 as part of my salary.

3 Q. So if I were to tell you that it's been reported that  
4 in 2007 this suggestion was made by you because there was  
5 concern from the board, you would think that that was  
6 inaccurate?

7 A. I'm sorry. Could you repeat that again?

8 Q. If I were to tell you that someone at the meeting  
9 reported that that was exactly what happened, that the board  
10 was concerned about the political ramifications and that you  
11 and the board together discussed having the contributions go  
12 to your 457 account instead of being reflected in your  
13 salary.

14 A. In 2007?

15 Q. Yes.

16 A. In 2007, the action that they took was to instead of  
17 contributing to my 457, to contribute the funds to me. Prior  
18 to 2007, they were concerned about that and that's how they  
19 had chose -- and that's how they had reflected their  
20 appreciation for my work by contributing to my 457.

21 In 2007, I requested specifically that they stopped  
22 contributing to my 457 and increased my salary by the amount  
23 that they had previously contributed to my 457, and they  
24 agreed to do so.

25 Q. Was that the 3 percent?

1       **A.** That was 3 percent on the salary that they had paid me  
2 prior to this. And so the action that they took at that  
3 board was to increase my salary that was previous to this  
4 meeting by 3 percent, and then also to increase my salary by  
5 the maximum amount allowable for me to contribute to my 457.

6       **Q.** And how much was that amount?

7       **A.** I believe it was \$20,500 for that year. It varied  
8 each year --

9       **Q.** As it --

10       **A.** -- as the IRS increased it.

11       **Q.** What was the 3 percent amount?

12       **A.** The 3 percent was based on the salary that they had  
13 paid me prior to the action that they took.

14       **Q.** And how much was that amount?

15       **A.** The 3 percent?

16       **Q.** Yes.

17       **A.** I would need to calculate it. I don't have it off the  
18 top of my head.

19       **Q.** Do you know if it's more than the 20,000?

20       **A.** Is the 3 percent more than 20,000? I don't think so.  
21 What's 20 percent of 185?

22       **MR. WASSERMAN:** I would offer to stipulate that 3  
23 percent is approximately \$5,000.

24       **THE WITNESS:** Thank you.

25       ///

1 **MS. RODRIGUEZ:**

2 Q. So your original request had been for 6 percent, which  
3 3 percent 5,000, 6 percent is approximately 10,000 --

4 A. Right.

5 Q. -- and when that was turned down, it was felt that you  
6 deserved that; is that correct?

7 A. I believe so.

8 **MR. WASSERMAN:** Objection. That's a compound  
9 question.

10 **ADMINISTRATIVE LAW JUDGE ANDERSON:** Sustained. Please  
11 rephrase the question.

12 **MS. RODRIGUEZ:**

13 Q. So you originally asked for 6 percent?

14 A. I asked for 6 percent, plus the board to no longer  
15 contribute to my 457, but instead include that within my  
16 salary.

17 Q. So they didn't want to give you 6 percent, it's your  
18 understanding, because of the political ramifications of that  
19 number as the increase of 6 percent.

20 A. I can't speak to the board's feelings and I don't  
21 recall specifically, but 6 percent -- and they had given me 6  
22 percent in past years.

23 This year they chose not to request, not to agree with  
24 what I had requested or what the salary committee had  
25 suggested, recommended or what the administration committee

1 had recommended. They chose instead to increase my salary  
2 that was before 2007 by 3 percent, and also give me the funds  
3 that they had previously been contributing to my 457. That's  
4 the action that they took.

5 Q. So they cut the 6 percent in half --

6 A. Uh-huh.

7 Q. -- from approximately \$10,000 to approximately \$5,000,  
8 and then they also gave you \$20,500?

9 A. They did.

10 Q. And \$20,500, I believe, is approximately 12 or 13  
11 percent?

12 A. I won't argue with that. I don't have it in my head.

13 Q. So essentially you add those two amounts together, the  
14 3 percent and the 25, and so you got about a 15 percent raise  
15 that year?

16 A. No, that's not accurately reflecting the action of the  
17 board.

18 Q. What accurately reflects it, the action of the board?

19 A. That they gave me a 3 percent increase in what they  
20 had previously paid me, a salary, and instead of contributing  
21 the \$20,500 that they had been contributing into my 457, they  
22 instead gave that to me as salary. I -- well, that's what  
23 they did. So the net increase to the board was the 3 percent  
24 increase in my salary that they gave me before they made the  
25 switch in the 457.

1 Q. And how many years did you work after that?

2 A. That was in 2007. I worked three years more.

3 Q. When did you -- what month did you retire?

4 A. At the end of 2010.

5 Q. So it was '08, '09, '10?

6 A. Yes.

7 Q. Do you know how CalPERS receives information about  
8 what your salary is?

9 A. I believe it comes from the finance group.

10 Q. From the employer?

11 A. From the employer, specifically from the finance  
12 director or one of her accountants.

13 Q. And you worked closely with the finance director  
14 because you signed checks and things like that; is that  
15 correct?

16 A. Yes.

17 Q. And the information that CalPERS would have received  
18 on what your pay rate was came from your department; correct?

19 A. It came from our agency, yes.

20 Q. Did CalPERS have any other way of determining what  
21 your pay rate was, did you report it somewhere else?

22 **MR. WASSERMAN:** Objection. Compound question, what  
23 CalPERS knew and whether it was known anywhere else.

24 **ADMINISTRATIVE LAW JUDGE ANDERSON:** Sustained. Please  
25 rephrase the question.

1 **MS. RODRIGUEZ:**

2 Q. Did you report your salary in some other way to  
3 CalPERS?

4 **MR. WASSERMAN:** Objection. I'm not sure this witness  
5 is competent to testify how CalPERS would get information.

6 **ADMINISTRATIVE LAW JUDGE ANDERSON:** Well, that would  
7 be the objection to the first question. The objection is  
8 sustained as speculation, which she then asked another  
9 question that now I don't recall.

10 Do you want to restate the last question you asked?

11 **MS. RODRIGUEZ:**

12 Q. Did you report your pay rate to CalPERS in any other  
13 way except through your agency?

14 A. I don't know that I personally reported to CalPERS  
15 what my pay rate was, other than when I went on to calculate  
16 what my pension would be from CalPERS or what the costs of my  
17 purchasing service credit would be, and I believe CalPERS  
18 independently verified that.

19 Q. How do you ascertain that, that they independently  
20 verified that?

21 A. Well, I don't. I said I would hope as a public  
22 employee you would verify that.

23 Q. Through something other than through your own agency?

24 A. No, through what the agency provided.

25 **MS. RODRIGUEZ:** I don't have anything else.

1           **ADMINISTRATIVE LAW JUDGE ANDERSON:** Okay.

2           Mr. Wasserman ....

3           **MR. WASSERMAN:** Just one moment, please.

4           **ADMINISTRATIVE LAW JUDGE ANDERSON:** Okay.

5           **MR. WASSERMAN:** I don't have any further questions.

6           **ADMINISTRATIVE LAW JUDGE ANDERSON:** All right. Thank  
7 you, Ms. Monsen. You can go back over there.

8           **MR. WASSERMAN:** Before I rest, we need to have a  
9 little discussion.

10          **ADMINISTRATIVE LAW JUDGE ANDERSON:** By we, you mean  
11 whom?

12          **MR. WASSERMAN:** I'm happy to do it in open session and  
13 it should be.

14               The issue has been raised this morning about where  
15 Ms. Monsen's salary was reported, where it was published that  
16 is not statement in the Statement of Issues by CalPERS. I  
17 would either object to it or in the alternative ask to  
18 continue with the hearing, and I believe she has a witness.

19               But we have not been notified and are prepared for  
20 this issue of her salary being independently verified or  
21 noticed or published, and would request time to respond to  
22 that issue if in fact it's going to be raised as a  
23 justification of CalPERS' actions.

24          **ADMINISTRATIVE LAW JUDGE ANDERSON:** Okay. Well, one  
25 step at a time on that because I don't, right now, see the

1 relevancy of that. But you didn't object, so we went forward  
2 with the questions. It doesn't mean that that doesn't make  
3 it relevant you didn't object. But, you know, I'm sure  
4 Ms. Rodriguez had a good reason for asking the question and  
5 maybe it will be apparent.

6 But let me just tell you my job is to provide a fair  
7 hearing and it's not to produce some sort of gotcha thing.

8 **MR. WASSERMAN:** Yeah, right.

9 **ADMINISTRATIVE LAW JUDGE ANDERSON:** Okay? So if at  
10 the conclusion of today people need time to do whatever, they  
11 can tell me that and justify that and we'll take --

12 **MR. WASSERMAN:** That's fine.

13 **ADMINISTRATIVE LAW JUDGE ANDERSON:** -- action at that  
14 time.

15 **MR. WASSERMAN:** Then with that being noted, we don't  
16 have any further evidence or witnesses at this time.

17 **ADMINISTRATIVE LAW JUDGE ANDERSON:** Okay.

18 **MS. RODRIGUEZ:** Well, I'm not sure what to say at this  
19 point, except to initially respond to Mr. Wasserman's comment  
20 on page 3 of the Statement of Issues at the bottom.

21 **ADMINISTRATIVE LAW JUDGE ANDERSON:** Uh-huh.

22 **MS. RODRIGUEZ:** We cite from Code Section 30626 in  
23 pertinent part, compensation earnable, (b) (1). Pay rate  
24 means the normal monthly and pay and cash to similarly  
25 situated members of the same group of class, and then the

1 last three words on that page are pursuant to a publicly  
2 available pay rate schedule.

3 That's always an issue in CalPERS pay rate matters, as  
4 this is a pay rate matter. So that's just to answer that, we  
5 did cite to the code.

6 **ADMINISTRATIVE LAW JUDGE ANDERSON:** So that's an  
7 explanation for that. Okay, thank you.

8 **MS. RODRIGUEZ:** And I have one witness, Mr. Camacho,  
9 from the CalPERS program.

10 **ADMINISTRATIVE LAW JUDGE ANDERSON:** Okay, all right.

11 Mr. Camacho, can you step down there to the other  
12 chair, please, so we can see you full face? All right.

13 **MS. RODRIGUEZ:** Your Honor, is it okay if I inquire  
14 who is in the audience?

15 **ADMINISTRATIVE LAW JUDGE ANDERSON:** Actually, no,  
16 because the public is open and welcome to attend our  
17 hearings. You can ask him later and he can tell you or not,  
18 but --

19 **MS. RODRIGUEZ:** Okay.

20 **ADMINISTRATIVE LAW JUDGE ANDERSON:** -- not as part of  
21 the public record.

22 Although you know what, I think we should have a  
23 little break. I think we probably will take a lunch break,  
24 but regardless let's just take ten minutes right now until a  
25 quarter to 12:00, and --

1           **MS. RODRIGUEZ:** I was going to say I don't think  
2 Mr. Camacho will, unless you have a lot for him, I don't have  
3 a lot for him.

4           **MR. WASSERMAN:** I don't know how much I have for him.  
5 I would appreciate at least a five-minute break.

6           **MS. RODRIGUEZ:** I'm not trying to defer the break.

7           **ADMINISTRATIVE LAW JUDGE ANDERSON:** Okay.

8           **MS. RODRIGUEZ:** I just don't think --

9           **ADMINISTRATIVE LAW JUDGE ANDERSON:** All right. We're  
10 off the record.

11           (Recess.)

12           **ADMINISTRATIVE LAW JUDGE ANDERSON:** All right. We're  
13 back on the record. So PERS is going to start their case.

14           Ms. Rodriguez, are you going to waive an opening  
15 statement?

16           **MS. RODRIGUEZ:** I am, Your Honor.

17           **ADMINISTRATIVE LAW JUDGE ANDERSON:** All right.

18           **MS. RODRIGUEZ:** We call Sam Camacho from CalPERS.

19           **ADMINISTRATIVE LAW JUDGE ANDERSON:** Good morning,  
20 Mr. Camacho. Please raise your right hand to be sworn.

21                               **SAMUEL CAMACHO,**  
22 called as a witness by and on behalf of the Petitioner,  
23 having been first duly sworn, was examined and testified as  
24 follows:

25           **THE WITNESS:** Yes, I do.



1 Q. And in the employer and comp review unit, what is the  
2 purpose of that unit?

3 A. To protect the CalPERS fund against any unfounded  
4 liabilities primarily, and specifically focused on the  
5 reportability or reportable compensation of members to  
6 CalPERS from the public agencies that they work for.

7 Q. And are you responsible for the file of Ms. Monsen?

8 A. Yes, currently.

9 Q. And in looking at pay rate compensation, can you  
10 explain what pay rate is?

11 A. Pay rate is defined in Government Code 20636 where it  
12 talks about compensation earnable and being two parts: One  
13 part pay rate, the other part special compensation.

14 Q. And what is special compensation?

15 A. Special compensation is payments to members for  
16 special skills, duties, work assignments, work schedules or  
17 any other special conditions.

18 Q. And is deferred compensation or 457 payments included  
19 as special compensation?

20 A. No, because in the Government Code or the California  
21 Code of Regulations 571 is an exclusive list that identifies  
22 each reportable special compensation.

23 Q. So only the types of compensation there would be  
24 listed there in the regulation and would be included as  
25 allowable special compensation?

1       **A.** Right.

2       **Q.** Can a member use their pay rate for deferred  
3 compensation?

4       **A.** The pay rate is basically a normal monthly rate of pay  
5 or base pay for services rendered on a full-time basis and  
6 pursuant to a public salary schedule.

7               And in the Government Code it refers to deferred  
8 compensation in the fact that a reportable pay rate cannot be  
9 reduced because of the, because of deductions like different  
10 comp, 401(k), 401(a) contributions.

11       **Q.** Is that because of deductions from the pay rate of  
12 that amount?

13       **A.** From the base pay rate or pay rate that is outlined  
14 Government Code 20636.

15       **Q.** And that pay rate is money referred to as cash; is  
16 that correct?

17       **A.** Paid in cash, yes.

18       **Q.** And what does that mean, "paid in cash," dollars  
19 and --

20       **A.** In Government Code 20630, it talks about compensation  
21 and it's funds that are controlled by the employer or the  
22 agency that are paid to the member or members.

23       **Q.** If a member receives a vehicle allowance, is that part  
24 of the pay rate?

25       **A.** According to Government Code 20636, it's not

1 considered pay rate or special compensation.

2 **Q.** So it's some extra that is not part of your pay rate?

3 **A.** That's correct. It's not reportable.

4 **Q.** How is final compensation determined?

5 **A.** Final compensation is determined by looking at a  
6 member's total payroll history and finding the one-year or  
7 three-year highest compensation period in any time of that  
8 payroll history.

9 **Q.** And then that number is used to calculate what their  
10 retirement benefit will be?

11 **A.** That is correct.

12 **Q.** And prior to the past three years, there is an  
13 unusually high change in pay rate.

14 Does that garner any interest from CalPERS?

15 **A.** It does. We get reviews triggered by the reported pay  
16 rates and special compensations to CalPERS. So if there's an  
17 increase or a spike, then a case can be reviewed because of  
18 that.

19 **Q.** So if there was an increase precisely three years  
20 prior to the retirement, would that be a triggering event for  
21 review?

22 **A.** It would, because the final settlement pay outlined in  
23 20636, again it directs us to look at the final compensation  
24 period plus the two years preceding that, so a total of three  
25 years what we look at.

1 Q. Is it your understanding that a pay rate must be  
2 publicly published?

3 A. Yes.

4 Q. And what is that based on?

5 A. That's based primarily on Government Code 20636, where  
6 it says that the pay rate has to be pursuant to a public  
7 salary schedule, and then the definition of a public salary  
8 schedule is defined in the California Code 570.5.

9 Q. And can you tell us what that requires?

10 A. 570.5, I don't know all the specific requirements by  
11 heart, but there's a specific list of requirements in 570.5  
12 that must be met in order for it to be considered a publicly  
13 available pay schedule or otherwise reportable pay rate with  
14 CalPERS.

15 Q. What is the result of an unfunded liability?

16 MR. WASSERMAN: Objection, relevance.

17 ADMINISTRATIVE LAW JUDGE ANDERSON: What's that go to,  
18 counsel?

19 MS. RODRIGUEZ: It's what his job is, as he said, to  
20 protect unfunded liabilities, and I think it explains the  
21 processes that relate to this case.

22 MR. WASSERMAN: Is there any allegation there's an  
23 unfunded liability in relation to Ms. Monsen's salary in this  
24 case?

25 MS. RODRIGUEZ: I think there's specific discussion of

1 it, but an unfunded liability is an issue in all pension  
2 determinations.

3 **ADMINISTRATIVE LAW JUDGE ANDERSON:** Well the evidence  
4 objection is overruled. But I think for it to have any  
5 meaning, you need to ask him what the unfunded liability is  
6 first.

7 **MS. RODRIGUEZ:**

8 **Q.** Can you explain to us what an unfunded liability is?

9 **A.** An unfunded liability is basically CalPERS determines  
10 a cost relating to the employer, what their cost is going to  
11 be towards their member's future retirement.

12 So in determining that cost for the agencies, it's a  
13 percentage usually, they look at public salary schedules,  
14 MOU's, and they make a determination.

15 I'm not an actuary. But they use that information to  
16 determine and project the costs of the retirement benefits  
17 that they are going to be provided, that CalPERS is going to  
18 be paying out to the members when they retire.

19 So an unfunded liability would be where if the records  
20 and the documents that CalPERS is looking at to determine the  
21 cost of their pensions in the future, if there is information  
22 that's not provided or not publicly available, then it could  
23 become an unfunded liability where CalPERS has not taken that  
24 into consideration for the future benefit costs.

25 **Q.** How does CalPERS gain information about its members'

1 pay rates?

2 A. Through publicly approved documents.

3 Q. And where do those documents come from?

4 A. Usually they come from the agencies, through the Web  
5 sites, and we can make requests for the documents.

6 Q. Does CalPERS accept public agencies information about  
7 salary -- excuse me -- pay rates as sent in?

8 A. No.

9 Q. What --

10 A. Go ahead.

11 Q. Go ahead.

12 A. As it's sent in, we accept it as it's reported. When  
13 a case comes under review for an audit or a member review and  
14 when they go to retire or they purchase service credit, we,  
15 at that point, depending if there's a spike or an anomaly in  
16 the pay history, there could be a reason for us to go in  
17 there and look at the pay issue.

18 Q. But is every pay rate that's submitted to CalPERS  
19 reviewed?

20 A. No.

21 Q. Do you have any idea what percentage is?

22 A. The percentage I don't know, but I know that we  
23 receive about 6 million lines of payroll every month. So we  
24 have parameters set up in the system where they can troll  
25 payroll histories to find anomalies, spikes or payroll errors

1 that would then trigger a compensation review.

2 Q. But if there is nothing that triggers a review, a  
3 salary may be accepted just from the employer's statement to  
4 CalPERS?

5 A. There could be errors made where the pay rate that was  
6 reported was used to make determinations on costs or  
7 retirement benefits.

8 Q. If an employer pays a pay rate to an employee and then  
9 the employer separately pays into a savings account, for  
10 example a 457, is that part of their pay rate?

11 MR. WASSERMAN: Objection. It's unclear as to what  
12 "separately" means.

13 ADMINISTRATIVE LAW JUDGE ANDERSON: Well, do you  
14 understand the question?

15 THE WITNESS: Yeah, kind of.

16 ADMINISTRATIVE LAW JUDGE ANDERSON: Okay. The  
17 objection is overruled.

18 THE WITNESS: We won't look at somebody's payroll  
19 stuff or something like that. We will primarily focus and  
20 look for the publicly available document that states what  
21 that person, that member's salary is.

22 And if anything is higher than that amount that was  
23 publicly approved, that's where we will take into  
24 consideration to make a determination, if that helps.

25 MS. RODRIGUEZ: I have nothing further.

1           **ADMINISTRATIVE LAW JUDGE ANDERSON:** Okay.

2           Mr. Wasserman ....

3   **CROSS-EXAMINATION**

4   **BY MR. WASSERMAN:**

5           **Q.** Mr. Camacho, do you know what process caused  
6 Ms. Monsen's retirement amount to be brought to the  
7 attention -- was it brought to your attention first?

8           **A.** No.

9           **Q.** Whose attention was it brought to?

10          **A.** It was brought to the attention of our unit, which was  
11 before I started working in that unit. So it was brought to  
12 our attention, I believe, in March of 2010.

13          **Q.** And do you know how that occurred?

14          **A.** It was through an audit of the agency.

15          **Q.** And that was an audit of the agency as a whole, not  
16 something simply Ms. Monsen?

17          **A.** It was an audit of the agency as a whole, as it  
18 pertains to the retirement and pension benefits, health  
19 benefits, any contracted benefits with CalPERS.

20          **Q.** And -- I'm sorry -- that was March of 2010?

21          **A.** Yeah.

22          **Q.** And what happened after it was brought -- what  
23 happened after March of 2010?

24          **A.** A final draft of the audit is sent out to the agency  
25 which identifies certain risks, specific risks and findings,

1 and then a dialogue is set up between the agency and CalPERS,  
2 our specific unit to make those corrections and bring the  
3 agency into compliance with those specific findings.

4 Q. And do you know when the final audit was set to ACTIA?

5 A. March, 2010. I don't know the exact date, but that  
6 was the final draft.

7 Q. Oh, I'm sorry. When you said March, 2010, that was  
8 the date of the final audit?

9 A. Yes.

10 Q. Do you recall when the review process started or do  
11 you know when it first started?

12 A. No.

13 Q. Would it have been some time before that?

14 A. Yes.

15 Q. And do you know what happened after that final audit  
16 was sent to ACTIA?

17 A. I have a little bit of knowledge of it where I recall  
18 our management in our specific unit was working with the  
19 agency, with the financial director at that agency to bring  
20 those findings and those risks into compliance.

21 Q. And do you know what the result of that was by ACTIA?

22 A. I only know the result of one of the findings  
23 specifically, and it's risk number 1 where it was specific to  
24 the salary and pay rate of Christine Monsen.

25 Well basically, we made a determination in October of

1 2011, to send out a formal determination to the agency and to  
2 Ms. Monsen outlining the determination that we made about the  
3 pay rate.

4 Q. So in March of 2010, CalPERS sent to ACTIA a final  
5 audit in which you recall risk 1 was Ms. Monsen's pay rate?

6 A. Yes.

7 Q. And what transpired between March 10th -- March of  
8 2010 and October of 2011, regarding that issue?

9 A. Regarding that issue? Usually, our analysts would  
10 look at the payroll data for that specific member outlined in  
11 that risk or that finding, and then do a full review of that  
12 member's compensation history.

13 Q. Showing you Exhibit H. Does that look like the kind  
14 of review you just referred to?

15 A. Yes.

16 Q. Have you ever seen that document before or something  
17 very much like it?

18 A. Yes.

19 Q. And that's the kind of payroll review that you talked  
20 about for Ms. Monsen?

21 A. Yes. This is specifically the payroll data that we  
22 received and that we reviewed.

23 **MR. WASSERMAN:** I would ask that that be admitted.

24 **ADMINISTRATIVE LAW JUDGE ANDERSON:** Okay. Exhibit H  
25 is admitted.

1           **MR. WASSERMAN:** Thank you.

2           (Respondent's Exhibit H was received in evidence.)

3 **MR. WASSERMAN:**

4           **Q.** So other than that document, what else did you review?

5           **A.** I didn't make the original determination and the  
6 original review; but the case was given to me in March of  
7 2012, and then I did a review of the case as well.

8           **Q.** So -- and I apologize, it's just not clear to me.

9           In March of 2010, an audit was completed and sent to  
10 ACTIA, you said, and it identified risk number 1, involving  
11 Ms. Monsen's pay raise. Do you have that here with you?

12           **A.** I have a copy of the letter that was sent to the  
13 agency where it identifies the audit findings and the --

14           **Q.** That's the October, 2011, letter?

15           **A.** Yeah.

16           **Q.** You don't have anything -- do you have any documents  
17 between March 10th and October, 2011?

18           **A.** No.

19           **Q.** And the risk, what was the risk specifically  
20 identified? And this is in March, 2010.

21           **A.** It specifically identified that the pay rate reported  
22 to CalPERS included a base pay and an additional amount of  
23 deferred compensation, which was the \$20,500 amount. That  
24 amount combined was reported to CalPERS, that was the risk --

25           **Q.** And --

1       **A.** -- that we found.

2       **Q.** And do you have a copy of that document that was  
3 submitted that shows those two being done separately?

4       **A.** It was in that same letter sent in October, 2011.

5       **MR. WASSERMAN:** Excuse me one moment, please.

6               (Pause in proceedings.)

7       **MR. WASSERMAN:** May I or somebody, see the notice of  
8 submission of two exhibits, E and F, I believe? D and E,  
9 sorry, D and E. Thank you.

10       **Q.** Showing you Exhibit D.

11               Is that a document that's submitted to CalPERS?

12       **A.** It looks like a document that's submitted to the  
13 deferred compensation plan at CalPERS, according to the  
14 header.

15       **MS. RODRIGUEZ:** Objection. Speculation.

16       **MR. WASSERMAN:**

17       **Q.** You haven't seen --

18       **ADMINISTRATIVE LAW JUDGE ANDERSON:** Well, I'm not  
19 going to sustain an objection to an answer.

20       **MR. WASSERMAN:** Thank you.

21       **MS. RODRIGUEZ:** I would object it calls for  
22 speculation.

23       **ADMINISTRATIVE LAW JUDGE ANDERSON:** Well, it's  
24 overruled. Go ahead.

25       ///

1 **MR. WASSERMAN:**

2 Q. You haven't seen this document before?

3 A. In my reviews of the case, no.

4 Q. State Street is the contractor for CalPERS deferred  
5 compensation system; is that correct?

6 A. I don't know.

7 Q. And -- I'm sorry -- just to be thorough, looking  
8 briefly at Exhibit E, your answers would be the same, you  
9 didn't examine that?

10 A. No.

11 Q. Thank you.

12 A. I don't know if it was examined during the initial  
13 review or during the audit.

14 Q. So can you list for us, please, what documentation you  
15 did look at from the initial review or any other sources in  
16 reaching a determination that this was an improper spike?

17 **MS. RODRIGUEZ:** Objection. Misstates facts not in  
18 evidence.

19 **MR. WASSERMAN:** I'll rephrase.

20 Q. There was a determination made before you, the case  
21 was assigned to you, that there was something improper in  
22 Ms. Monsen's reported pay raise; is that correct?

23 A. Yes.

24 Q. And you examined documentation regarding that issue  
25 yourself; is that correct?

1       **A.** I was given the case to write up the request for legal  
2 assistance to our legal department when I did my review of  
3 the case as well and I was able to review those same  
4 documents.

5       **Q.** So what documents did you review at that time?

6       **A.** It was a good stack amount, about like that, of  
7 documents as part of the --

8       **Q.** Do you remember anything that was in it?

9       **A.** Payroll history.

10       **Q.** I'm sorry. Payroll history, like the exhibit you  
11 looked at, Exhibit H?

12       **A.** Kind of like that. I don't know if that was the  
13 specific pages that I looked at or ....

14       **Q.** But it looked like that, that was one of them?

15       **A.** Yes.

16       **Q.** What else?

17       **A.** We would look at the any documentation provided to us  
18 by the agency's finance department or the Human Resources  
19 Department, anything that they supplied to us via e-mail or  
20 they would have referred us to a Web site for documents that  
21 were signed and approved, so any documents that the agency  
22 provides to us.

23       **Q.** And you didn't request any documents from the agency?

24       **A.** No.

25       **Q.** And what's your understanding of where this process

1 stood? I apologize, I need to look at an exhibit to get a  
2 date. In August or September of 2010, where did the process  
3 stand?

4 **A.** That would be right before we sent out our formal  
5 determination.

6 **Q.** I apologize. I think you said March, 2010, was the  
7 formal determination?

8 **A.** Well March, 2010, was the audit final draft date.

9 **Q.** And the formal determination was in October of 2011?

10 **A.** Specific to Ms. Monsen, yes.

11 **Q.** I'm sorry. Was there any determinations, regarding  
12 the agency, made before then?

13 **A.** There could have been with regard to the findings, but  
14 I don't know if there was more than one finding at that  
15 agency.

16 **Q.** So that formal determination -- sorry, strike that.  
17 Ms. Monsen submitted her retirement application on  
18 October 27th of 2010. Do you know whether that was before  
19 the formal determination was made?

20 **A.** I don't know the exact date of the formal  
21 determination. I know it was in October, but I don't know  
22 the exact date.

23 **Q.** And is there any communication between the unit  
24 sending out that formal determination and the unit receiving  
25 the retirement application?

1       **A.** There would be maybe a phone call or documents  
2 provided through e-mail or by fax. Is that what you mean?

3       **Q.** Any communication back and forth.

4       **A.** Because of that audit finding, there was a lot of  
5 communication back and forth with the agency and our  
6 department in my unit.

7       **Q.** But I'm talking within CalPERS, not simply with ACTIA.  
8 That may have been what you were answering. I just want to  
9 be clear, and I'm not trying to confuse you here.

10           Ms. Monsen dealt with CalPERS at the end of October of  
11 2010, submitting her retirement election, which included the  
12 service time she had purchased in August -- no, she didn't  
13 purchase it in August. Sorry, strike that.

14           She purchased her service time in --

15           **ADMINISTRATIVE LAW JUDGE ANDERSON:** Well, whenever she  
16 did.

17           **MR. WASSERMAN:** Whenever she did.

18       **Q.** And she's testified they used the pay rate, including  
19 the \$20,500.

20           So what I am curious is between that unit which  
21 accepted her application and made a determination that her  
22 pay rate was \$8,500 per month, which included the \$20,500  
23 annually --

24       **A.** They never made a determination on the pay rate. They  
25 used the pay rate that was reported to determine the costs of

1 her service credit.

2 Q. And then they used the same amount when they started  
3 paying her retirement; is that correct?

4 A. No. We made the formal determination to reduce the  
5 amount that was reported to be used in her retirement  
6 calculation.

7 So in that formal denial, in October, 2010, we  
8 outlined the amounts that were excluding when determining her  
9 retirement calculation.

10 Q. And that's the basis on -- your understanding that's  
11 the basis on which her retirement payment has been made?

12 A. According to that letter in October, 2010, that's the  
13 determination we made to determine her retirement benefit,  
14 yes.

15 Q. I may come back to that; I'm going to move on, though.  
16 And I apologize, I'm going to jump around a little bit in  
17 your testimony. Does ACTIA have any unfunded liability?

18 A. I couldn't say that specifically because that's not my  
19 job to make a determination like that.

20 Q. You've testified that one of the reasons the review  
21 that was made here is generally made is because of unfunded  
22 liability.

23 A. Our unit was created at CalPERS to help protect  
24 against unfunded liabilities. It's just one of the  
25 protections that were put in place. It's kind of like a last

1 line of defense, so to speak, when protecting the fund --

2 **Q.** But you don't have any -- I apologize for that.

3 Finish your statement.

4 **A.** -- for the members and the agency that are paying into  
5 the funds. So it's a protection that's put in place to help  
6 protect against the unfunded liability.

7 **Q.** To your knowledge -- you have no knowledge whether  
8 ACTIA is unfunded or not?

9 **A.** No.

10 **Q.** Okay. I'm going to shift to a slightly differently  
11 subject matter.

12 Payments to 457 deferred comp accounts can be made in  
13 fundamentally two different ways, an employer can pay it or  
14 an employee can pay it out of their salary; is that correct?

15 **A.** I believe so, but I'm not an expert on that.

16 **Q.** In your experience of reviews, are there instances  
17 that you have seen where an employer makes the 457 account  
18 and the contribution is not included in the pay rate?

19 **A.** My job, when we review pay rates and make  
20 determinations on pay rates, we don't take that into  
21 consideration who pays the deferred comp, whether it be the  
22 member or the agency. We look at if the pay rate is publicly  
23 approved and it's on a salary scale publicly approved,  
24 stamped, dated, and signed.

25 **Q.** So for your analysis, who pays it is irrelevant, the

1 only question is whether it's public. Let me break it up.

2 From your perspective who pays it, employer an  
3 employee, is irrelevant?

4 **A.** When it comes to determining the pay rate?

5 **Q.** Yes.

6 **A.** I wouldn't say it's irrelevant because the Government  
7 Code states that anything that can be reported to CalPERS, or  
8 the only items of compensation that can be reported have to  
9 be controlled by the agency and paid in cash to the member  
10 from the agency.

11 So I think it's relevant that it depends on where it  
12 comes from, but it can't come from some outside source. We  
13 won't accept it if it comes from a private contract or  
14 something like that. I don't know if that explains it.

15 **Q.** So I appreciate you're not an expert. But under the  
16 laws that you have cited if the agency is correctly reporting  
17 pay raise, according to that law, isn't there a difference as  
18 to whether the agency pays it or the employer pays it out of  
19 his or her salary?

20 **A.** Pays for what?

21 **Q.** The contributions to the 457 account.

22 **A.** When we determined somebody's retirement benefit, we  
23 don't look at the specific breakdown of deferred  
24 compensation. That's not considered because it is --

25 **Q.** I do apologize, but you are confusing me.

1           The Government Code and regulations you've cited treat  
2 participation in deferred compensation plans differently as  
3 to whether they are included in pay rates or not; isn't that  
4 correct?

5           **A.** Government Code 20636 does mention deferred  
6 compensation, along with 401(a) plans and 401(k) plans.

7           **Q.** I appreciate that, but we're focusing on 457.

8           So that code section specifically says that an  
9 employee's contribution to a deferred compensation plan is to  
10 be considered in pay rate?

11          **A.** Yes.

12          **Q.** But if all you're looking at is the published rate,  
13 you tell them you don't care whether the law is followed or  
14 not? I'm not trying to put you on the spot, it just doesn't  
15 make sense to me.

16          **MS. RODRIGUEZ:** Objection. Argumentative.

17          **ADMINISTRATIVE LAW JUDGE ANDERSON:** Sustained.

18          **MR. WASSERMAN:**

19          **Q.** If the employer, the agency makes the contribution to  
20 the deferred payment plan and the employee has no choice over  
21 whether it's made or not, but the employer chooses to report  
22 that in a published pay rate, would you then rely on the  
23 published pay rate?

24          **MS. RODRIGUEZ:** Objection. Improper hypothetical.

25          **ADMINISTRATIVE LAW JUDGE ANDERSON:** Well, I'm going to

1 sustain the objection as irrelevant. It gets to the point  
2 where, you know, his opinions with, you know, apologies are  
3 just not relevant --

4 **MR. WASSERMAN:** I appreciate that.

5 **ADMINISTRATIVE LAW JUDGE ANDERSON:** -- to issues that  
6 I am to resolve.

7 **MR. WASSERMAN:** I appreciate that, Your Honor.

8 **Q.** If I am understanding you correctly, to determine --  
9 strike that.

10 You have said both generally and in this case what  
11 sparks a review or triggers a review is if there appears to  
12 be a significant increase in compensation in the last few  
13 years before retirement?

14 **MS. RODRIGUEZ:** Objection. Misstates the testimony.

15 **ADMINISTRATIVE LAW JUDGE ANDERSON:** I think it's  
16 pretty close.

17 **MS. RODRIGUEZ:** I think it's one of many things that  
18 sparks it. I don't think that's the only thing.

19 **ADMINISTRATIVE LAW JUDGE ANDERSON:** Oh, I see, okay.

20 **MR. WASSERMAN:**

21 **Q.** In Ms. Monsen's case, is there anything other than  
22 that increase in salary that sparked the review?

23 **MS. RODRIGUEZ:** I would object again as misstating the  
24 testimony.

25 **MR. WASSERMAN:** I asked him whether there was anything

1 else other than that increase.

2 **MS. RODRIGUEZ:** Well, I again object as misstates the  
3 testimony. The audit was separate and what sparked the audit  
4 is not anything to do with what Mr. Camacho did in the  
5 account.

6 **ADMINISTRATIVE LAW JUDGE ANDERSON:** Well, the  
7 objection is overruled. The question was proper.

8 **THE WITNESS:** Can you restate it? I'm sorry.

9 **MR. WASSERMAN:** I'll try.

10 **Q.** What triggered the review of Ms. Monsen's pay raise  
11 was this increase in the three years before she retired?

12 **A.** What triggered her review was probably when the  
13 auditors went out to the agency and gathered documentation  
14 and looked at it and made a determination or started to  
15 process a determination about what compensation and whether  
16 it was reportable or not.

17 **Q.** Following the audit, there was a determination that  
18 the pay rate the agency had reported on her was not correct;  
19 is that right?

20 **A.** That's part of the audit finding. Our unit at CalPERS  
21 reviewed the pay history and wrote up the determination about  
22 the pay rate.

23 **Q.** Was there any reason -- strike that.

24 If Ms. Monsen's pay rate publicly stated salary --  
25 sorry, strike that.

1           If Ms. Monsen's salary was published, publicly stated  
2 as the amount, including the \$20,500, is there any basis for  
3 CalPERS to question it or take the position they are  
4 currently taking?

5           **A.** Usually a published salary schedule from an agency  
6 will have a base salary amount or range and it won't break  
7 down any specific amounts in that pay rate that was publicly  
8 approved.

9           **Q.** So if there's a publicly approved rate that has what  
10 might appear to be an unusual increase but it's in that  
11 published schedule, CalPERS wouldn't question it?

12           **A.** If the pay rate that was reported to us falls within  
13 the publicly approved amount or range that's on the salary  
14 schedule, then it would be okay.

15           **Q.** And when you say that, when you say "publicly  
16 approved," you mean approved in a manner that, in some  
17 fashion, is disclosed to the public?

18           **A.** Yes. Usually the governing body, counsel, through  
19 public meeting laws.

20           **Q.** And have you looked at very many city manager or  
21 executive director of agencies salaries in your experience?

22           **A.** Yes.

23           **Q.** So those are not usually part of the generally  
24 published pay range; is that correct?

25           **A.** There are some agencies that don't publish that

1 amount; but according to the Government Code, they are  
2 supposed to, and that's the only amount that can be used --

3 Q. No, I --

4 A. -- for retirement.

5 Q. -- I appreciate that.

6 Most agencies have a schedule of salaries, particular  
7 position, usually a range, and that's often standing alone a  
8 public document. Is that correct in your experience?

9 A. Some agencies.

10 MS. RODRIGUEZ: I don't understand. I can't tell if  
11 this is a question or a statement.

12 MR. WASSERMAN: I was trying to make it a question,  
13 and he seemed to answer it.

14 Q. Is it your experience that sometimes city managers or  
15 executive directors, the top person or more than the top  
16 person, is dealt with separately and differently from that  
17 schedule of pay, that range?

18 A. I have seen that before, yeah.

19 Q. That's not unusual. Is that fair?

20 A. Can you repeat the question?

21 Q. I'll rephrase the question.

22 In your experience, have you seen executive directors'  
23 salaries or managers' salaries be set by contract?

24 A. Yes.

25 Q. And that's separate for the range set for other

1 employees?

2 **MS. RODRIGUEZ:** It's vague. Are we talking about in  
3 publications or in how the salary is set? I don't understand  
4 what he's comparing. You're asking him to compare --

5 **MR. WASSERMAN:** Well, part of the problem is you have  
6 chosen one witness who is relying -- and I'm going to get to  
7 this -- who is relying on other stuff.

8 **ADMINISTRATIVE LAW JUDGE ANDERSON:** Counsel, stop. If  
9 you want to --

10 **MR. WASSERMAN:** I'm sorry.

11 **ADMINISTRATIVE LAW JUDGE ANDERSON:** -- respond to the  
12 objection, respond to me. I guess the objection is that it's  
13 vague?

14 **MS. RODRIGUEZ:** Yes.

15 **ADMINISTRATIVE LAW JUDGE ANDERSON:** Okay. Can you  
16 respond to that, or do you want to rephrase the question, or  
17 what do you want to do?

18 **MR. WASSERMAN:** I'll rephrase the question.

19 **Q.** Salaries for public employees can be published in a  
20 variety of ways; is that correct?

21 **A.** Sure, yes.

22 **Q.** And in Ms. Monsen's case, what are you relying on as  
23 her published salary?

24 **MS. RODRIGUEZ:** Objection. Misstates the evidence.  
25 He hasn't said he relied on anything other than the documents

1 submitted by the agency.

2 **ADMINISTRATIVE LAW JUDGE ANDERSON:** Okay.

3 **MS. RODRIGUEZ:** I guess I don't understand.

4 **MR. WASSERMAN:** It's a multiple question.

5 **ADMINISTRATIVE LAW JUDGE ANDERSON:** Well, the  
6 objection is overruled. If you understand the question, you  
7 can answer.

8 **THE WITNESS:** Can you rephrase it --

9 **MR. WASSERMAN:** Sure.

10 **THE WITNESS:** -- or say it over again?

11 **MR. WASSERMAN:**

12 **Q.** What document, or documents, are you relying on as  
13 stating Ms. Monsen's published salary?

14 **A.** Specifically, again, I can tell you that we would look  
15 for publicly approved salary schedules, MOU's, any  
16 documentation that's provided by the agency or by the member;  
17 the member can provide documentation that's publicly approved  
18 as well.

19 **Q.** So do you know what anybody at CalPERS relied on  
20 specifically to determine her published salary?

21 **A.** From what I recall in the file that was really thick,  
22 memos, public salary schedules or lack of public salary  
23 schedules maybe, or any of the documents in her file that  
24 were provided by the agency.

25 **Q.** But those aren't here; is that correct?



1 WEDNESDAY, MARCH 5, 2014, SAN JOSE, CALIFORNIA, 1:38 P.M.

2 **ADMINISTRATIVE LAW JUDGE ANDERSON:** Back on the  
3 record. Mr. Wasserman ....

4 **MR. WASSERMAN:** Thank you.

5 **CROSS-EXAMINATION (Resumed)**

6 **BY MR. WASSERMAN:**

7 **Q.** Mr. Camacho, a couple of more questions or a few more.  
8 It won't be much longer.

9 In your analysis of Ms. Monsen's salary and whether  
10 there was a spike in it, did you do any examination of  
11 information about her peers' salaries?

12 **A.** No.

13 **Q.** And you don't remember seeing any examination of that  
14 in any of the documents you reviewed?

15 **A.** The only one I can recall is maybe some budget  
16 documents where there were different items or positions or  
17 names maybe that might have had --

18 **Q.** Within the agency itself?

19 **A.** Right.

20 **Q.** When generally -- no, strike that. I'm going back to  
21 some area we were exploring just before the lunch break,  
22 where I don't believe I got an answer.

23 What specific document can you refer to that showed  
24 Ms. Monsen's published rate, salary rate?

25 **A.** From what I recall in the file, we looked at copies of

1 memos, a memo, some budget documentation -- I believe that's  
2 what I can remember.

3 Q. And showing you Exhibit B.

4 Is that the memo I think you are referring to?

5 A. Yes.

6 Q. You didn't ask for any public documents from the  
7 agency?

8 A. I didn't, no.

9 Q. And you don't have any of those documents here?

10 MS. RODRIGUEZ: Any of what documents?

11 MR. WASSERMAN:

12 Q. Any of the documents that you referred to that you  
13 looked at, other than what I just showed you.

14 A. I don't have any documents other than ....

15 Q. And you were involved in the preparation of the  
16 October 28, 2011, letter; is that correct?

17 This is in tab 4 --

18 A. No.

19 Q. -- in that --

20 A. I wasn't involved in that writing.

21 Q. You have reviewed that letter?

22 A. Yes.

23 Q. And that letter states the basis of CalPERS'  
24 determination, that this \$20,500 should not be considered in  
25 Ms. Monsen's pay raise; is that correct?

1           **A.** That's correct.

2           **ADMINISTRATIVE LAW JUDGE ANDERSON:** For the record, is  
3 that Exhibit 4?

4           **MR. WASSERMAN:** Yes. I'm sorry. That is, yes, tab 4,  
5 in --

6           **MS. DANDEKAR-CLIFFORD:** Yes, that is Exhibit 4.

7           **ADMINISTRATIVE LAW JUDGE ANDERSON:** Exhibit 4, that's  
8 all I'm asking.

9           **MR. WASSERMAN:** Yes, it is Exhibit 4.

10          **Q.** You don't know when Ms. Monsen started receiving her  
11 pension payments, do you?

12          **A.** No, I don't know the exact date, no.

13          **Q.** The approximate date?

14          **A.** It's usually within 60 to 90 days from the retirement  
15 date that they request, that's usually our backlog.

16          **Q.** And you don't in fact know the basis of the payments  
17 she's been receiving, do you?

18          **A.** I know what's outlined in the letter that refer to the  
19 pay rate --

20          **Q.** And that's a letter, the letter in Exhibit 4 that we  
21 just talked about, October 28th --

22          **A.** -- yes.

23          **Q.** -- 2011?

24          **A.** Sure.

25          **Q.** And are you aware that a retirement date was 12/31/10?

1       **A.** Yes.

2       **Q.** So this letter is well after she would have started  
3 receiving her payments?

4       **A.** Yes.

5       **Q.** So presumably this letter had no effect on her  
6 payments?

7       **A.** Usually if somebody is retired with a benefit that had  
8 been reviewed and it's reviewed after the fact, we could send  
9 out a predeclaration letter with appeal rights.

10       **Q.** And have you sent out that letter in this case?

11       **A.** Not that I am aware of. This is the only formal  
12 determination that we have sent out, but the audit review was  
13 also sent out in March of 2010.

14       **Q.** Which is not here?

15       **A.** The audit?

16       **Q.** Correct.

17       **A.** No, but it's referenced.

18       **MR. WASSERMAN:** Just a moment, Your Honor. This is  
19 what you provided to us.

20       **MS. DANDEKAR-CLIFFORD:** Without my notations.

21       **MS. RODRIGUEZ:** Okay.

22       **MR. WASSERMAN:** I would like to introduce it to see if  
23 he recognizes it.

24       **MS. RODRIGUEZ:** Okay. Do you have a copy for me? I  
25 can go through my records.

1           **MR. WASSERMAN:** You gave it to us, so it's in the  
2 records. I apologize. I'm happy to have you look at it  
3 again.

4           **MS. RODRIGUEZ:** Are you going to introduce a copy with  
5 your attorney notes on it?

6           **MR. WASSERMAN:** Yes, unless there's a copier where I  
7 can do a quick clean. Is that yours?

8           **MS. DANDEKAR-CLIFFORD:** Yeah, that is mine. I can  
9 scratch it off.

10           **MR. WASSERMAN:** I would ask this be marked as  
11 Exhibit I, I believe.

12                   (Respondent's Exhibit I was marked for  
13 identification.)

14           **MR. WASSERMAN:**

15           **Q.** Mr. Camacho, looking at Exhibit I, do you recall in  
16 reviewing that whether that would have been one of the other  
17 documents you were referring to the terms of reported --

18           **A.** I remember seeing something like this, yeah, in our  
19 files.

20           **Q.** And is that one of the documents -- a document like  
21 that one of the bases for your determination?

22           **MS. RODRIGUEZ:** Objection. Misstates the testimony.

23           **MR. WASSERMAN:**

24           **Q.** To the best of your knowledge was that document that  
25 you reviewed, as part of the case file that was given to you,

1 part of the basis for the determination that the \$20,500  
2 should not be counted as part of Ms. Monsen's pay rate?

3 A. I believe this is one of the documents.

4 Q. And did this one have any particular significance to  
5 the best of your knowledge?

6 A. The only thing I can see that's significant is the  
7 line item of deferred comp --

8 Q. Uh-huh.

9 A. -- the amount.

10 Q. And would that have sort of stuck out for you or for  
11 CalPERS based on the procedures you have outlined?

12 A. It would have stuck out, yes.

13 Q. The top figure on the left-hand column, what's the  
14 amount?

15 A. Under --

16 Q. And I apologize. I'm just trying to be clear.

17 A. The line behind executive director?

18 Q. Right.

19 A. It looks like that could be a monthly amount or --

20 Q. Say the two amounts.

21 A. \$8,552.46, and the amount to the right of it is  
22 \$205,259.

23 Q. And the two amounts under that, please.

24 A. Car allowance, \$7,020; 457 contribution, \$20,500.

25 Q. And it's the \$20,500 on that line that should not be

1 counted; is that correct?

2 **A.** That's correct.

3 **Q.** But the top line should be counted as a pay rate, a  
4 reported pay rate?

5 **A.** Yes.

6 **MR. WASSERMAN:** Okay. I have no further questions.  
7 I would ask that this be admitted.

8 **ADMINISTRATIVE LAW JUDGE ANDERSON:** I'm not sure what  
9 it is. What are we calling it?

10 **MR. WASSERMAN:** Well, I'm going to -- I apologize.  
11 Let me ask one more question that I think would be relevant  
12 to that.

13 **Q.** Do you know where that document came from?

14 **A.** It was in the file that I received when the case was  
15 given to me to write up a request for a legal assistance from  
16 the legal department.

17 **Q.** And is it your understanding that came from the  
18 agency?

19 **A.** That's what I assume, yeah.

20 **MR. WASSERMAN:** Thank you. I'd ask that it be  
21 admitted. But I also would ask that I be allowed, when we  
22 are finished with this witness, to call Ms. Monsen to address  
23 that document.

24 **ADMINISTRATIVE LAW JUDGE ANDERSON:** Okay. Exhibit I  
25 is admitted. I'll just call it "approved salary schedule."

1 (Respondent's Exhibit I was received in evidence.)

2 **ADMINISTRATIVE LAW JUDGE ANDERSON:** So you are  
3 finished?

4 **MR. WASSERMAN:** I'm done with questions of  
5 Ms. Camacho.

6 **ADMINISTRATIVE LAW JUDGE ANDERSON:** Ms. Rodriguez, do  
7 you have any redirect?

8 **REDIRECT EXAMINATION**

9 **BY MS. RODRIGUEZ:**

10 **Q.** Ms. Camacho, when you were testifying before lunch,  
11 you were testifying about the date that the audit was -- I  
12 think the term was finalized -- and I believe you testified  
13 that was October, 2010; is that correct?

14 **A.** March, I think.

15 **Q.** March, 2010.

16 **A.** March.

17 **Q.** And what happened in October, 2010, is that when she  
18 applied for retirement?

19 **A.** Yes. According to the chronology that I remember, she  
20 applied for retirement in October of 2010, somewhere around  
21 there.

22 **Q.** And then you also testified that we sent a letter,  
23 CalPERS sent a letter of denial in October of 2010.

24 Is that correct?

25 **MR. WASSERMAN:** I object. I think that's

1 mischaracterizing the testimony.

2           **ADMINISTRATIVE LAW JUDGE ANDERSON:** You know, I wrote  
3 that down too, and I thought I had it wrong.

4           **THE WITNESS:** Is it wrong?

5           **ADMINISTRATIVE LAW JUDGE ANDERSON:** It's 2011.

6           **THE WITNESS:** 2011.

7           **MS. RODRIGUEZ:** I just wanted to clarify it.

8           **THE WITNESS:** Because the appeal was a month after,  
9 which had to be made within 30 days.

10           **ADMINISTRATIVE LAW JUDGE ANDERSON:** Right.

11 **MS. RODRIGUEZ:**

12           **Q.** So the denial was actually in October of 2011, when  
13 the denial letter went out?

14           **A.** Yes.

15           **MS. RODRIGUEZ:** Thank you. I have nothing further.

16           **ADMINISTRATIVE LAW JUDGE ANDERSON:** Okay.

17           Mr. Wasserman?

18           **MR. WASSERMAN:** I have no further questions.

19           **ADMINISTRATIVE LAW JUDGE ANDERSON:** Okay, because  
20 we're talking about Exhibit 4, I think. Right?

21           **MR. WASSERMAN:** Correct.

22           **MS. RODRIGUEZ:** Yes.

23           **ADMINISTRATIVE LAW JUDGE ANDERSON:** So it's on there.

24           **MR. WASSERMAN:** Well that's an interesting issue.

25           Exhibit 4, at the moment, is only for jurisdictional

1 issues; is that correct?

2 **ADMINISTRATIVE LAW JUDGE ANDERSON:** No.

3 **MR. WASSERMAN:** It's in?

4 **ADMINISTRATIVE LAW JUDGE ANDERSON:** Uh-huh.

5 **MR. WASSERMAN:** Okay, that's fine.

6 I have no further questions.

7 **ADMINISTRATIVE LAW JUDGE ANDERSON:** All right. Thank  
8 you, sir. You can resume your seat.

9 Ms. Rodriguez, anything further?

10 **MS. RODRIGUEZ:** I have nothing further, Your Honor.

11 So did you wish to recall Ms. Monsen?

12 **MR. WASSERMAN:** I would request to recall Ms. Monsen.

13 **ADMINISTRATIVE LAW JUDGE ANDERSON:** Okay.

14 **CHRISTINE MONSEN,**

15 recalled as a witness by and on behalf of the Respondent,  
16 having been first duly sworn, was further examined and  
17 testified as follows:

18 **DIRECT EXAMINATION**

19 **BY MR. WASSERMAN:**

20 **Q.** Ms. Monsen, showing you Exhibit I, the approved salary  
21 schedule, are you familiar with that document?

22 **A.** Yes.

23 **Q.** Do you know who prepared it?

24 **A.** I believe I did.

25 **Q.** And will you explain to us what the figures in the

1 left hand columns, both monthly and annual, mean?

2 **A.** The first column I think I did. Anese may have done  
3 it, but I think I did it.

4 The first column is, I think, the monthly pay rate,  
5 the second column is the annual pay rate.

6 **Q.** And what are those amounts?

7 **A.** For me, it's \$8,552.46 and \$205,259.

8 **Q.** And were those the amounts that you received as  
9 salary?

10 **A.** In 2008, yeah. It looks like this was retroactive  
11 back to July 1, 2008.

12 **Q.** And there are two figures for you now below that; is  
13 that correct?

14 **A.** Uh-huh.

15 **Q.** And what are they?

16 **A.** A car loan for \$7,200, and 457 contribution for  
17 \$20,500.

18 **Q.** Did the \$205,000 figure include the \$20,500 that had  
19 been switched over to an employee contribution pursuant to  
20 the 2007 board action?

21 **A.** It should have.

22 **Q.** Was that the amount that --

23 **A.** That I got paid? I would need to refer to some of my  
24 pay stubs to make sure that is -- sorry. I ....

25 **Q.** I could potentially help you with --

1           **MS. DANDEKAR-CLIFFORD:** G.

2           **MR. WASSERMAN:** -- Exhibit G.

3           **MS. RODRIGUEZ:** Your Honor, the witness has already  
4 stated she has a way to refresh her recollection.

5           **MR. WASSERMAN:** That's fine.

6           **THE WITNESS:** Yes. In 2000, towards the end of 2008,  
7 after this adjustment, my pay rate was \$205,900.53. I don't  
8 know exactly what that is, but it's a rounding error. And  
9 also in this pay stub it reflects my deduction to my 457 from  
10 that amount. Would you like to see this pay stub?

11           **MS. RODRIGUEZ:** I'd like to see all the documents that  
12 she just referred to.

13           **MR. WASSERMAN:** Sure.

14           **THE WITNESS:** This is the document that I referred to,  
15 and this is the exhibit.

16           **MS. RODRIGUEZ:** I'd like to see all the documents that  
17 she paged through.

18           **THE WITNESS:** I paged through them to get to that one.  
19 That's the only one I looked at.

20           **MR. WASSERMAN:** I'll look at them. I don't --

21           **THE WITNESS:** I mean I have a lot of notes, personal  
22 notes.

23           **MR. WASSERMAN:** You are not asking for the whole  
24 notebook, whole file, are you?

25           **MS. RODRIGUEZ:** I'm asking for anything she brought

1 here that she reviewed to prepare for her testimony.

2 **ADMINISTRATIVE LAW JUDGE ANDERSON:** Well --

3 **MR. WASSERMAN:** I object.

4 **ADMINISTRATIVE LAW JUDGE ANDERSON:** -- I'm not going  
5 to grant that at this time. You can look at what she used to  
6 refresh her memory.

7 **THE WITNESS:** It's right there in front of you.

8 **MR. WASSERMAN:** And since she thumbed through this  
9 set, I don't know what you are looking at.

10 **THE WITNESS:** No, it's on top.

11 **MR. WASSERMAN:** Sorry.

12 **THE WITNESS:** The rest, I think, are just pay stubs.  
13 I only wanted to get to 2008, because that's the only one  
14 relevant to --

15 **MR. WASSERMAN:** You are welcome to look at it.

16 **MS. RODRIGUEZ:** Thanks.

17 **MR. WASSERMAN:** When you are done, I have a couple of  
18 more questions about this.

19 (Pause in proceedings.)

20 **MR. WASSERMAN:**

21 **Q.** Looking at Exhibit I, if the \$205,000 figure included  
22 the \$20,500 adjusted to you and that you contributed, why is  
23 there a second entry of \$20,500 below that?

24 **A.** Because this is the form that I had used in past years  
25 and I probably just continued to use it.

1 Q. So --

2 A. I should have deleted it from this spreadsheet.

3 Q. So in that period that that covers, from the 2008/2009  
4 period, you didn't receive that additional \$20,500?

5 A. No, I did not. It was just a carryover from past  
6 years when I used this form.

7 Q. Was it a mistake?

8 A. Yes.

9 Q. And was that prepared by you or in Anese Azad for  
10 anything other than internal purposes?

11 A. It was -- no, it was for internal purposes.

12 Q. But it was part of the general file for salaries; is  
13 that correct?

14 MS. RODRIGUEZ: Leading the witness.

15 MR. WASSERMAN:

16 Q. Was it a part of any general file other than your own  
17 personal file?

18 A. Yes. This was the document I used after I awarded  
19 raises to employees, and this was a document I used so that  
20 people would be paid accordingly after a salary adjustment,  
21 and it would also be the document that I used to prepare what  
22 the board adjusted my salary to.

23 Q. And if somebody had requested that pursuant to public  
24 records request, would you turn that over to them?

25 A. I would probably consult with my attorney to see if it

1 is a public document that I could release.

2 Q. Ah --

3 A. If someone requested salaries --

4 MS. RODRIGUEZ: Objection. No question pending.

5 ADMINISTRATIVE LAW JUDGE ANDERSON: Yeah.

6 MR. WASSERMAN: I'll bite.

7 Q. What would have happened if somebody would have  
8 requested salary information?

9 A. Our accounting staff probably would have prepared  
10 something just listing the salaries, not the adjustment and  
11 the midpoint and the ranges.

12 Q. And other than the one incident you testified to  
13 earlier when you remember somebody requesting your salary, do  
14 you have any recollection whether anybody requested those  
15 salaries or not?

16 A. I think other comparable agencies might have requested  
17 my salary when they were doing comparatives for their  
18 executive directors.

19 MR. WASSERMAN: I have no further questions.

20 ADMINISTRATIVE LAW JUDGE ANDERSON: Okay.

21 Any further questions, Ms. Rodriguez?

22 MS. RODRIGUEZ: I have nothing further.

23 ADMINISTRATIVE LAW JUDGE ANDERSON: All right. Thank  
24 you. Is there any other evidence --

25 MR. WASSERMAN: Excuse me.

1           **ADMINISTRATIVE LAW JUDGE ANDERSON:** -- to present  
2 today?

3           **MR. WASSERMAN:** I have no other witnesses to present.  
4           May I have just one moment. We have nothing further  
5 to submit.

6           **ADMINISTRATIVE LAW JUDGE ANDERSON:** All right. So  
7 both sides are finished presenting evidence; correct?

8           **MR. WASSERMAN:** Yes.

9           **MS. RODRIGUEZ:** Correct.

10          **ADMINISTRATIVE LAW JUDGE ANDERSON:** So how did you  
11 wish to proceed in terms of the closing argument, or are you  
12 going to submit written briefs or did you want to go ahead  
13 and argue it today?

14          **MS. RODRIGUEZ:** We're happy to conclude today.

15          **ADMINISTRATIVE LAW JUDGE ANDERSON:** Mr. Wasserman?

16          **MR. WASSERMAN:** That's fine.

17          **ADMINISTRATIVE LAW JUDGE ANDERSON:** Okay. All right.  
18           So, Mr. Wasserman, did you wish to start with your  
19 closing argument or would you like five minutes?

20          **MR. WASSERMAN:** I think I'm ready to go.

21          **ADMINISTRATIVE LAW JUDGE ANDERSON:** All right.  
22 Whenever you are ready.

23          **MR. WASSERMAN:** I think that there are three issues  
24 that have been raised in this area and I think two of them  
25 are ultimately relevant. One issue has been raised factually

1 but not in legal argument, and that is a due process and  
2 fairness argument. The alleged problem with Ms. Monsen's  
3 salary was concluded with, initially determined and concluded  
4 by CalPERS in March of 2010.

5 She applied for air service in August of 2010, got  
6 information later that year based on her salary at the  
7 \$205,900 level, which included the \$20,500. She applied for  
8 her retirement, she used the same figure, and indeed her  
9 retirement payments are based on that.

10 PERS, its procedures, didn't try to do anything about  
11 her retirement pay until 2011, and we are now sitting here in  
12 2014. At some point this process becomes unfair to the  
13 member, and I think that needs to be noted and taken into  
14 consideration.

15 Much more importantly, I don't think there's any basis  
16 for PERS' determination. The October 28th letter says -- and  
17 I'm quoting from the second and third paragraphs -- "The  
18 public agency review risk number 1 showed that ACTIA  
19 increased the base pay rate and regular earnings on your  
20 behalf by including employer paid deferred compensation in  
21 the amount of \$854.17 for semiannual period or \$20,500 per  
22 year, effective October 1, 2007.

23 "Deferred compensation does not meet the definition of  
24 reportable compensation under Government Code 26367. All  
25 compensation must meet the definition as defined in

1 Government Code Section 2630 and 2636 in order to qualify as  
2 reportable compensation for retirement purposes."

3 There is both a factual and a legal error in that  
4 statement. The factual statement is saying the \$20,500,  
5 after October 1, 2007, was an employer contribution.

6 You've heard from Mayor Green, you have heard from  
7 Christine Monsen, you have got numerous documents submitted  
8 into evidence showing that it was treated as and was  
9 legitimately an employee contribution.

10 PERS has submitted no evidence to contradict that.  
11 The legal error is the bald statement that deferred  
12 compensation does not meet the definition of reportable  
13 compensation under 2636.

14 Government Code Section 2636 defines pay rate to  
15 determine compensable earnings that calculated for retirement  
16 benefits, and Section (b) (2) of that Government Code  
17 section specifically says "Pay rate shall include an amount  
18 deducted from the member's salary for any of the following:  
19 (A), participation in a deferred compensation plan." That's  
20 what happened here.

21 The letter from Caltrans makes no distinction between  
22 employer or employee contribution -- CalPERS, sorry, a long  
23 time trailing. Let's just say PERS and I may get it right.

24 And they have introduced nothing here to say that's  
25 not the law. That's not the part of the law that Mr. Camacho

1 quoted, but it clearly is the law, and he has indeed  
2 acknowledged that in some instances deferred compensation is  
3 appropriately counted as part of pay rate. In truth,  
4 Caltrans, CalPERS, PERS has submitted no evidence to show  
5 that this is anything other than an employee contribution.

6           There has been testimony here -- and I am anticipating  
7 argument -- that somehow that amount, the \$205,900, including  
8 the \$20,500 of deferred compensation, was not part of  
9 Ms. Monsen's published pay rate and was not publicly made  
10 available.

11           Caltrans, CalPERS -- you know, you keep repeating it  
12 and I just won't change, I apologize for that mental track --  
13 PERS has submitted no evidence to that effect.

14           The evidence you have is per Mayor Green's testimony  
15 that generally salaries reported out -- he believes was done  
16 out of open session in 2007, that's Ms. Monsen's testimony.

17           Ms. Monsen further testified that her salary was  
18 available as a public record and at least on one occasion a  
19 member of the public requested and received it at the  
20 \$205,900 rate.

21           The only two documents that Mr. Camacho referred to  
22 are the memorandum which was submitted, in which it was clear  
23 and the testimony is made clear that the \$20,500 should be  
24 considered part of her salary, which she could contribute to  
25 the 457 or not in her discretion and the Exhibit I, per

1 salary schedule, showing as her salary the \$205,000.

2 Ms. Monsen has testified that the line item, the  
3 \$20,500 separately was a mistake. She wasn't paid that on  
4 top of the \$205,900, and the mistake was carried through.

5 That's never been any part of the agency's or her  
6 attempts to say her compensable salary should be \$20,000 to  
7 \$205 -- I'm sorry -- \$20,000 doubled, so \$220,000 plus.

8 That's not here. The \$205,000 is what was stated. Caltrans,  
9 CalPERS, misread it. There's no evidence of anything else:

10 There has been discussion about whether all of this  
11 was done for political reasons, and I think it's not  
12 unreasonable to conclude some of it was done for political  
13 reasons. Political reasons affect salary negotiations and  
14 all kinds of situations, all kinds of circumstances, all  
15 kinds of highly paid executive directors and city managers.

16 The fact that there were or were not political  
17 considerations doesn't affect whether it was compensable pay  
18 rate or PERSable under the law. The evidence shows it was  
19 intended to be part of her salary after October, 2007, if it  
20 was treated that way for all purposes, and she determined to  
21 make the contribution. It was publicly available and there's  
22 simply no evidence to the contrary of that.

23 We ask that you issue an order in respondent's favor,  
24 declaring her properly PERSable pay rate to be the one that  
25 she submitted and the one that she's being paid upon

1 currently.

2 **ADMINISTRATIVE LAW JUDGE ANDERSON:** Okay. Thank you.  
3 Ms. Rodriguez?

4 **MS. RODRIGUEZ:** Thank you, Your Honor.

5 Respondent has presented no evidence, despite the  
6 burden, of a published pay rate. The pay rate statute  
7 requires that in order for a pay rate to be credited to a  
8 member it needs to be publicly acknowledged.

9 In this case, specifically, we have information,  
10 testimony that there were concerns about the public's  
11 reception of such a pay rate. Whether they are concerns or  
12 not, the requirement is there for a reason and it has to be  
13 made public.

14 This was not -- different methods were undertaken to  
15 make it not transparent, including instead of the required  
16 cash payment to Ms. Monsen of her pay rate, this payment was  
17 made; she received one salary and then the employer  
18 separately paid the 457(k) from the employer, from the  
19 employer's funds; not from cash paid as compensation to  
20 Ms. Monsen, but specifically from the employer, directly to  
21 the 457.

22 That is not in line with what the requirement of the  
23 20636(b)(1), which requires it be part of the salary in order  
24 to be part of the pay rate. If it is paid separately and not  
25 paid to the member themselves, then that is not part of a pay

1 rate.

2 This is one of several methods that was used to keep  
3 this money from being, keep these funds from being part of a  
4 public, of a publicly available pay schedule.

5 I don't believe that respondent has made a case for  
6 this being appropriately part of their pay rate.

7 **ADMINISTRATIVE LAW JUDGE ANDERSON:** Okay. I'm a  
8 little confused just about the facts. And I apologize, but  
9 the problem is that, you know, I get the Statement of Issues  
10 and that's all I get, and so I have a general idea; but where  
11 it comes from, I don't know.

12 But it's my understanding that there really were two  
13 ways that this was done: First, it was parsed out and put  
14 right into a PERS administered 457; right?

15 **MS. RODRIGUEZ:** And not reported as pay rate.

16 **ADMINISTRATIVE LAW JUDGE ANDERSON:** Right.

17 **MS. RODRIGUEZ:** It was reported as a separate --

18 **ADMINISTRATIVE LAW JUDGE ANDERSON:** Yes.

19 **MS. RODRIGUEZ:** That's our understanding.

20 **ADMINISTRATIVE LAW JUDGE ANDERSON:** And then that  
21 changed.

22 **MS. RODRIGUEZ:** And that changed. But when it changed  
23 it was listed as a 3 percent raise, and I've always gotten  
24 this \$20,000. And so in our view, that was not published as  
25 part of her pay rate. And without a published pay rate -- we

1 can only rely on published pay rates because --

2 **ADMINISTRATIVE LAW JUDGE ANDERSON:** I understand --

3 **MS. RODRIGUEZ:** -- by statute --

4 **ADMINISTRATIVE LAW JUDGE ANDERSON:** I understand that.

5 I don't mean to interrupt, but I don't want to waste your  
6 time.

7 **MS. RODRIGUEZ:** No, that's fine.

8 **ADMINISTRATIVE LAW JUDGE ANDERSON:** So we have two  
9 separate situations.

10 **MS. RODRIGUEZ:** In an ongoing -- okay. First, it goes  
11 one way and then there's another way as a continuum.

12 **ADMINISTRATIVE LAW JUDGE ANDERSON:** Right. Over a  
13 period of time; right?

14 **MS. RODRIGUEZ:** And the continuum goes with the amount  
15 coming directly the employer. So it's not accredited to her  
16 until 2007, which is exactly at the three-year point prior to  
17 retirement, and then after that for the three years final  
18 it's credited to her pay rate in a manner that is not part of  
19 a published pay rate.

20 **ADMINISTRATIVE LAW JUDGE ANDERSON:** Right. I  
21 understand your argument, but I just wanted to make sure --

22 **MS. RODRIGUEZ:** Okay.

23 **ADMINISTRATIVE LAW JUDGE ANDERSON:** -- that we had one  
24 situation and then there was this change.

25 **MS. RODRIGUEZ:** Correct.

1           **ADMINISTRATIVE LAW JUDGE ANDERSON:** All right. So I  
2 don't know that there's any dispute that prior it was  
3 something separate because that's what it was, is there?

4           **MR. WASSERMAN:** There's no dispute that it's separate.  
5 There is this odd dispute that regardless of whether the  
6 employee is making the decision and having to document their  
7 salary or the employer is making it, it's all paid by the  
8 employer.

9           **ADMINISTRATIVE LAW JUDGE ANDERSON:** Right. And so  
10 that's another issue too. So just in figuring out there's  
11 all of these little issues.

12           **MR. WASSERMAN:** That's just universal through all of  
13 this. So the ones that are clearly the employees before  
14 2007 --

15           **ADMINISTRATIVE LAW JUDGE ANDERSON:** Right.

16           **MR. WASSERMAN:** -- were paid by the employer to the  
17 PERS 457, yeah.

18           **ADMINISTRATIVE LAW JUDGE ANDERSON:** Right. Well, I  
19 understand the idea is that if it's deferred compensation,  
20 your point of view is it's compensation and that's  
21 compensation and that's an easy way to look at it and CalPERS  
22 said not in that case, but in this way they are kind of  
23 getting around the roles and spiking the pay rate.

24           **MS. DANDEKAR-CLIFFORD:** Can I just make one comment?

25           **MR. WASSERMAN:** No. Whisper it in my ear.

1           **ADMINISTRATIVE LAW JUDGE ANDERSON:** That's okay. I'll  
2 let you have another chance at argument.

3           **MS. RODRIGUEZ:** That's fine, I appreciate that  
4 opportunity.

5           **ADMINISTRATIVE LAW JUDGE ANDERSON:** Okay. I had an  
6 actual question, so let's look at the Statement of Issues for  
7 a second. So page 4 where --

8           **MS. RODRIGUEZ:** Page --

9           **ADMINISTRATIVE LAW JUDGE ANDERSON:** -- of the  
10 Statement of Issues.

11           **MS. RODRIGUEZ:** Okay.

12           **ADMINISTRATIVE LAW JUDGE ANDERSON:** So CalPERS  
13 reviewed the request and determined that deferred  
14 compensation is not eligible to be included in the  
15 calculation of final compensation.

16           Now that's not literally correct though; correct?

17           **MS. RODRIGUEZ:** Okay.

18           **ADMINISTRATIVE LAW JUDGE ANDERSON:** Deferred  
19 compensation --

20           **MS. RODRIGUEZ:** That's correct. It should say "this  
21 deferred compensation," this specific deferred compensation  
22 in this case.

23           **ADMINISTRATIVE LAW JUDGE ANDERSON:** Okay.

24           **MS. RODRIGUEZ:** Because when people get deferred comp  
25 and it's part of your salary and you put it on as part of

1 your salary and it's no problem.

2 **ADMINISTRATIVE LAW JUDGE ANDERSON:** Which makes some  
3 of us nervous too.

4 **MS. RODRIGUEZ:** No. It's well recognized, it's  
5 actually in the code.

6 **ADMINISTRATIVE LAW JUDGE ANDERSON:** All right. And we  
7 see that in the code.

8 **MS. RODRIGUEZ:** Right.

9 **ADMINISTRATIVE LAW JUDGE ANDERSON:** So what you are  
10 saying is this was --

11 **MS. RODRIGUEZ:** Subterfuge.

12 **ADMINISTRATIVE LAW JUDGE ANDERSON:** Subterfuge. So  
13 let me ask actually my real super question.

14 So what does CalPERS -- I mean there's usually a code  
15 or reg for every question that I have -- but does CalPERS  
16 consider to be published? What's published mean?

17 **MS. RODRIGUEZ:** I can't recall if Mr. Camacho tried to  
18 comment on this. But like many things, you know, like the  
19 independent contractor test, it's not one single thing. It's  
20 a number of possibilities.

21 It can't just be you can ask me for it if you want it,  
22 it has to be some way of having records available, openly  
23 available to the public. A lot of people published a  
24 schedule in, you know, nowadays in a Web site or it used to  
25 be in newspapers or in public documents that they would make

1 available.

2           What we're looking for is some show of an attempt to  
3 do that, and we will accept all kinds of ways that people did  
4 that. And in this case, we don't have any way.

5           **ADMINISTRATIVE LAW JUDGE ANDERSON:** Well, what  
6 about -- don't public agencies all have budgets that are  
7 public? I mean they are not posted.

8           **MS. RODRIGUEZ:** They do. But some of them have  
9 budgets that say water department, you know, \$60,000; this  
10 department, X number. It also has to include pay scales and  
11 those jobs have to be publicly available, you know, they have  
12 to be, they have to have duty statements and they have to be,  
13 they have to be noticed so that people can see that these  
14 jobs exist in their city and that their funds are going to  
15 these positions at a certain level.

16           Hence the concern for why people would be upset if,  
17 you know, a dogcatcher makes \$80 million a year, people are  
18 concerned about things like that, but we will accept all  
19 kinds of ways of publishing pay rates.

20           **ADMINISTRATIVE LAW JUDGE ANDERSON:** So do you, in  
21 terms of these reviews, do you invite that --

22           **MS. RODRIGUEZ:** Yes.

23           **ADMINISTRATIVE LAW JUDGE ANDERSON:** -- to say we need  
24 these things from these people?

25           **MS. RODRIGUEZ:** Yes, we do.

1           **ADMINISTRATIVE LAW JUDGE ANDERSON:** Okay. If you  
2 don't have them, you do that?

3           **MS. RODRIGUEZ:** Yes, we do.

4           **ADMINISTRATIVE LAW JUDGE ANDERSON:** Okay, all right.  
5 Well that's interesting. Thank you.

6           Okay. Would you like to continue with your argument?

7           **MS. RODRIGUEZ:** I'm done.

8           **ADMINISTRATIVE LAW JUDGE ANDERSON:** Okay. I didn't  
9 remember.

10           All right. Mr. Wasserman ....

11           **MR. WASSERMAN:** Just a couple of things in rebuttal.

12           One of them relates to your question in Ms. Monsen's  
13 case, at the beginning of her employment she made the  
14 contribution to the 457 as part of her base salary. It  
15 didn't count for a pay rate retirement, because it was the  
16 beginning, but that's what happened. Later on, the agency  
17 paid some of it, and after 2007 it switched back at her  
18 request.

19           There's no evidence that she in fact didn't have  
20 discretion over that money to direct it to 457 or not 457, so  
21 it would have been included in the check she received. It's  
22 her testimony she had that discretion and there's been no  
23 contradiction at all.

24           I very much appreciate your question about the  
25 definition of published, and I appreciate Ms. Rodriguez

1 acknowledging there are lots of ways to publish.

2           There's a conclusory testimony from Mr. Camacho, but  
3 not based on evidence that it wasn't. The record, the letter  
4 itself of October 28th makes reference to two things: The  
5 memo, and what is referred to in the letter as the approved  
6 salary schedule, which I would suggest is Exhibit I.

7           Exhibit I was not posted anywhere and as we have noted  
8 impending the stay, but I think it's a mistake that led PERS  
9 to the conclusion they made. There was testimony -- somewhat  
10 vague, I don't deny it -- that the \$20,500 as part of her  
11 salary was disclosed in open session after the closed session  
12 and that indeed it was available to the public and when  
13 requested was delivered. There is no specific requirement  
14 that says they needed to do anything else.

15           And Ms. Monsen should not be denied her bargained for  
16 right, the right and amount she relied on when she bought her  
17 air credit, her service credit, and when she applied for  
18 retirement on the basis of vague standards that this doesn't  
19 quite measure up.

20           This is not different than a whole lot of other  
21 circumstances and there's no indication that in 2007, when  
22 this change was made, that there were other means that were  
23 avoided.

24           The fact that there were politics in it doesn't mean  
25 it was avoided. And the fact that it was done three years

1 before she retired -- at a time when she had no intention of  
2 retiring -- her testimony, Mayor Green's testimony, no  
3 contradiction, does not put it in this situation where well  
4 obviously six months before this change was made and that's  
5 the only reason it was made. That's not the context of the  
6 facts before you.

7 I can understand PERS jumping to this conclusion, but  
8 it in fact is not supported by the facts and the facts  
9 support that it's PERSable.

10 **ADMINISTRATIVE LAW JUDGE ANDERSON:** Okay. Thank you.

11 Ms. Rodriguez ....

12 **MS. RODRIGUEZ:** (Shook head negatively.)

13 **ADMINISTRATIVE LAW JUDGE ANDERSON:** No, okay. I don't  
14 believe that there was evidence, specific evidence that after  
15 the closed session people came out and made this  
16 announcement. There was evidence that this is generally what  
17 occurred, unless I'm incorrect.

18 **MR. WASSERMAN:** I believe that two things were said:  
19 One was that Mayor Green recalled there was a report out.

20 **MS. RODRIGUEZ:** That's not what I heard actually.

21 But --

22 **MR. WASSERMAN:** He said generally there was.

23 **ADMINISTRATIVE LAW JUDGE ANDERSON:** One at a time.

24 **MS. RODRIGUEZ:** -- historically there was.

25 **MR. WASSERMAN:** And he said generally there was.

1           **MS. RODRIGUEZ:** I think he said historically there  
2 was.

3           **MR. WASSERMAN:** Historically or generally, but I  
4 believe he testified there was after that incident.

5           **ADMINISTRATIVE LAW JUDGE ANDERSON:** All right. So  
6 anything else for the record today? Let's see if all the  
7 exhibits are admitted.

8           **MS. RODRIGUEZ:** I think they are.

9           **ADMINISTRATIVE LAW JUDGE ANDERSON:** Yep. Okay.

10          **MS. RODRIGUEZ:** Thank you.

11          **ADMINISTRATIVE LAW JUDGE ANDERSON:** All right.

12          **MS. RODRIGUEZ:** Thank you.

13          **MR. WASSERMAN:** Thank you.

14          **ADMINISTRATIVE LAW JUDGE ANDERSON:** So that concludes  
15 the case, and we're off the record.

16                   (Proceedings concluded.)

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