

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

## STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Michael Flaherty (Respondent) was employed by Respondent City of Hermosa Beach (City) as a Public Works Superintendent until he retired on October 5, 2010. Upon review of his final compensation, CalPERS determined that Premium Pay included in his monthly payrate should not be included in his final compensation for purpose of calculating his retirement allowance. Respondent appealed and a hearing was completed on October 2, 2014.

The sole issue for determination was whether the Premium Pay allowance reported by the City, and reflected as an increase in Respondent's payrate during his last years of employment, could be included in his final compensation for purposes of calculating his retirement allowance.

Prior to the hearing, CalPERS explained the hearing process to Respondent and the need to support his case with witnesses and documents. CalPERS provided Respondent with a copy of the administrative hearing process handbook. CalPERS answered Respondent's questions and provided him with information on how to obtain further information on the process.

CalPERS presented evidence regarding why Respondent's Premium Pay did not meet the statutory definition of "payrate." CalPERS reviewed the City's Memorandum of Understanding (MOU) regarding Respondent's employment, and determined that the Premium Pay was not compensation earnable because it is overtime under the California Public Employees' Retirement Law (PERL). The MOU specifically provided that Premium Pay was compensation for maintaining an emergency "call out" program for the City which "shall include responding to emergency after hours calls from Police Dispatch and other appropriate Department, and coordinating work crews to respond to the emergency." The MOU went on to specify that Premium Pay was compensation "for all non-scheduled after hours duties."

The Administrative Law Judge (ALJ) reviewed relevant PERL sections 20630, 20635 and 20636, as well as California Code of Regulations section 571, all of which prohibit an employer from reporting compensation for work performed outside of normal working hours. Because the MOU specifically states the Premium Pay was for work done outside of normal working hours, the ALJ found that Premium Pay was not compensation earnable.

The ALJ also reviewed three "Reportable Compensation" Circular Letters and pamphlets CalPERS sent to the City. Each of these exhibits specified "Items which are **NOT** reportable to CalPERS," and each listed overtime as excluded compensation.

The ALJ took Official Notice of CalPERS' Precedential Decision No. 00-06 (*In the Matter of the Final Compensation of Roy T. Ramirez*) which details the manner in which compensation earnable is determined.

The ALJ found that Respondent's arguments were not persuasive. He found that CalPERS has correctly determined that Respondent's compensation earnable for purposes of calculating his final compensation and in turn, his retirement benefits, cannot include amounts previously paid to him as Premium Pay pursuant to PERL sections 20630, 20635, 20636, and California Code of Regulations section 571.

The ALJ concluded that Respondent's appeal should be denied. The Proposed Decision is supported by the law and the facts. Staff argues that the Board adopt the Proposed Decision.

Because the Proposed Decision applies the law to the salient facts of this case, the risks of adopting the Proposed Decision are minimal. The member may file a Writ Petition in Superior Court seeking to overturn the Decision of the Board.

December 17, 2014

  
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ELIZABETH YELLAND  
Senior Staff Attorney

*for*