ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Robert Toering (Respondent Toering) was employed by the City of Vernon (City) in multiple positions, including Assistant Director of Industrial Development and Executive Director of the Redevelopment Agency. Respondent Toering initially worked for the City as an independent contractor; and he later worked for the City as an employee. By virtue of this employment, Respondent Toering was a miscellaneous member of CalPERS. In August 2014, CalPERS notified Respondent Toering that the payrate he had requested as final compensation was not allowable, and that his final compensation was properly calculated based on the average of payrates for other employees of his employment type, and not on the combined payrate he had received for more than one position. Respondent Toering timely appealed this determination.

A hearing was held on January 12, 2015, to determine Respondent Toering's correct final compensation. Prior to the hearing, CalPERS explained the hearing process to Respondent Toering and the need to support his case with witnesses and documents. CalPERS provided Respondent Toering with a copy of the administrative hearing process pamphlet. CalPERS answered Respondent Toering's questions and clarified how to obtain further information on the process.

The Administrative Law Judge (ALJ) was asked to decide whether CalPERS' determination of Respondent Toering's final compensation, which was based on Government Code sections clarifying how to analyze final compensation when there are overlapping multiple positions, and how to determine when overtime pay is being awarded, was correct. Witnesses were heard and documentary evidence was presented.

Respondent Toering testified that he had worked diligently for the City and should be considered to have been paid his full salary for only one of his positions. Respondent Toering argued that because the regulation clarifying publicly available pay schedules was not yet in place during his employment, because he was not a member of a group or class of like employees with like payrates, and because he kept the same salary even after he lost one of his titles in the last six months of employment, that he is entitled to his entire salary as final compensation.

CalPERS provided the testimony of a program staff member, who testified that CalPERS has always been required by statute to look behind noncompliant pay schedules, even before the clarifying regulation, California Code of Regulations, title 2, section 570.5, was in place. She testified that CalPERS used the Assistant/Deputy Director Group as a logical grouping to determine salary because there was no published pay schedule for Respondent Toering's positions. Additionally, she pointed out that CalPERS cannot accept a salary that has doubled in the last six months before retirement because Government Code section 20636 and California Code of Regulations, title 2, section 570.5 disqualify "final settlement pay" from consideration as final compensation.

The ALJ issued a Proposed Decision on April 21, 2015, denying Respondent Toering's appeal. The ALJ agreed with CalPERS' methodology and found that CalPERS followed the statutory requirements to analyze and determine final compensation. The Proposed Decision concluded that CalPERS appropriately determined that Respondent Toering's final compensation had to take into account that he was being paid for two full time positions at the City, and therefore had to be adjusted to consider one position only. The ALJ also approved of the method used by CalPERS to determine what the proper payrate was for one position of that type.

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.

June 17, 2015

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Senior Staff Attorney