

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Dennis Leone (Respondent) was employed by Respondent Fresno Unified School District (District) as a Custodial Services District Supervisor I until he retired on May 1, 2013. Upon review of his final compensation, CalPERS determined that "Converted Positive Active Teacher: Fresno Adult Education Adult Ed Voc. Consortium Pay" (Teacher Pay) should not be included in his final compensation for the purpose of calculating his retirement allowance. Respondent appealed and a hearing was completed on March 24, 2015. Respondent was represented by counsel at the hearing.

The sole issue for determination was whether the Teacher Pay reported by the District, 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.

CalPERS presented evidence regarding why Respondent's Teacher Pay did not meet the statutory definition of "payrate." The Teacher Pay was reported to CalPERS by the District as "special compensation." California Code of Regulations, Title 2, section 571, delineates specifically and exclusively what can be reported to CalPERS as special compensation, including the requirement that it must be for services rendered during normal working hours. Respondent's Teacher Pay was earned outside of the normal working hours of Respondent's primary position as Custodial Services Supervisor I. Furthermore, Teacher Pay is specifically excluded as overtime under Government Code section 20635. The Teacher Pay is not for services rendered on a full-time basis, nor is it listed in the exclusive list to be considered as special compensation. Therefore, CalPERS argued that the Teacher Pay does not qualify as compensation earnable and should not have been reported to CalPERS.

Respondent testified that his Custodial Services Supervisor I job was a full-time position and his primary duties were hiring all new custodians for the District. He also held a part-time position of Adult Education Teacher. The Teacher Pay was paid to him in addition to his regular salary as Custodial Services Supervisor I.

The Administrative Law Judge (ALJ) reviewed relevant California Government Code sections 20630, 20635 and 20636, as well as California Code of Regulations, Title 2, section 571. The ALJ found that Respondent was compensated for performing two separate and distinct positions with the District: a full-time Custodial Services Supervisor I position, and a part-time teaching position. The Teacher Pay constitutes "overtime" as defined by Government Code section 20635. The Teacher Pay was not included in publicly available pay schedules for the position, and therefore was not part of his "payrate" for the position. It was not special compensation for his position of Custodial Services Superintendent I, but it was compensation paid for a second position rather than a "payment for special skills, knowledge, abilities, work assignment, work days or hours, or other work conditions." Government Code section 20636(c).

Therefore, the ALJ held that CalPERS correctly determined that Respondent's compensation earned for purposes of calculating his final compensation and ultimately monthly retirement allowance for his position as Custodial Services District Supervisor I does not include Teacher Pay. The Teacher Pay was paid for performing a separate and distinct part-time job, was not included in his payrate for his Custodial Services Supervisor I position, and did not constitute special compensation.

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 Teacher Pay pursuant to California Government Code sections 20630, 20635, 20636, and California Code of Regulations, Title 2, 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.

June 17, 2015


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