

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

## Respondent's Argument to ADOPT the Proposed Decision

President Feckner and Honorable Board Members. My name is Michael Shirey and I am a Deputy City Attorney for the City of Chula Vista in San Diego County. I have been employed with the City of Chula Vista for 9 years. However, I have been in public service for approximately 26 years and in the California Public Employee Retirement System (PERS) that entire time. In approximately 2003 I left public employment for a few years to pursue private practice; although, while in private practice, I still strictly represented public agencies. In 2006 I left private practice and again joined a public agency, my current employer, the City of Chula Vista. Since I was out of public employment for a few years, I decided to take advantage of the Additional Retirement Service Credit (ARSC) offered by PERS.

I timely submitted the "Request for Service Credit Cost Information Additional Retirement Service Credit" to PERS. However, I never received the final ARSC packet in the mail from PERS which resulted in me missing the 60 day final fling deadline for my 3 years of ARSC. I requested that PERS staff re-send the ARSC packet, which they refused to do. So, ultimately, I had to appeal this matter to the state Office of Administrative Hearings. On February 9, 2015 a hearing was held on this matter in San Diego before the Honorable Adam L. Berg.

**On April 29, 2015, his Honor sustained (upheld) my appeal and ordered that I be allowed to purchase three (3) years of ARSC pursuant to my original request with PERS.**

President Feckner and Honorable Board Members, knowing how busy you are, knowing that you have a full agenda and knowing that a copy of the Proposed Decision will be included with your agenda packet, I do not want to take up your valuable time by reiterating/arguing what is included in the Proposed Decision. The Proposed Decision lays out the facts of this matter and thoughtfully and correctly applies the law. This case is really nothing more than me not receiving my ARSC packet in the mail and me now being allowed to purchase my additional (i.e., missing) 3 years of ARSC. And significantly, as indicated in the Proposed Decision, my employer will have no additional liability with me now being allowed to purchase my missing 3 years of ARSC.

President Feckner and Honorable Board Members, please read the Proposed Decision, once you do, I submit that you too will agree with Judge Berg. In addition, I believe that you will see that this matter is really quite simple, as follows:

- 1) I did not receive my ARSC purchase package from PERS;
- 2) I was legally prejudiced by this non-receipt;
- 3) Testimony at the Hearing showed that my employer will not be liable if the Board recommends that PERS offer me my ARSC now (as discussed in the Proposed Decision);
- 4) PERS will have no additional liability because I will send them a check for my requested ARSC; and

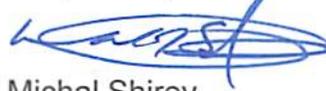
5) I have more than acted reasonable in regards to this matter thereby meeting Government Code section 20160 and Code of Civil Procedure section 473 (also as fully discussed in the Proposed Decision).

Lastly, just out of fairness and equity I believe that the Board should find in my favor and adopt the Proposed Decision as its own recommending that PERS now offer me my requested ARSC, *which I will immediately take full vantage of.* In addition, cases of this type are highly fact sensitive, and therefore, depending on the facts of other similar cases, a decision by the Board in my favor should not be precedential for PERS.

Therefore, I respectfully request that the Board adopt Judge Berg's Proposed Decision and order PERS to re-send (via certified mail) my 3 year ARSC packet so that I may purchase my missing 3 years.

Thank you for your thoughtful consideration in this matter.

Respectfully Submitted,



Michal Shirey

(Submitted Via FAX and Certified U.S. Mail, Return Receipt Requested.)