

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Julia Erickson (Respondent Erickson) was employed by the City of Vallejo (City) as an Executive Assistant to the City Manager. By virtue of this employment, Respondent Erickson is a miscellaneous member of CalPERS. Respondent Erickson, previously classified as a Secretary, performed high level secretarial work as an Executive Assistant until her retirement in October 2012. During her employment, Respondent Erickson received additional, off pay-schedule compensation, initially as a "general-flex benefit" and later, as "Management Incentive Pay." Upon her application for retirement, CalPERS determined that Respondent Erickson was not a management employee, and therefore not entitled to Management Incentive Pay as special compensation added to her final compensation in calculating her pension. CalPERS informed Respondent Erickson and the City of this determination, and Respondent Erickson appealed that finding.

A hearing was held on February 10, 2015, before an Administrative Law Judge (ALJ) on the issue of whether Respondent Erickson was entitled to Management Incentive Pay as special compensation. Witnesses were heard and documentary evidence was presented. On April 8, 2015, the ALJ requested additional briefing based upon a new argument by Respondent Erickson in her closing brief. The ALJ issued a Proposed Decision on May 26, 2015, denying Respondent Erickson's appeal.

At the hearing, Respondent Erickson testified that she performed significant high level work for the City Manager and was a conduit for information from the City Manager's office to many areas of the City government. Respondent Erickson argued that because CalPERS had not challenged the representation of the City that Respondent Erickson was performing at management level, as evidenced by CalPERS' acceptance of the paid contributions to CalPERS, CalPERS should not now be able to deny that Respondent Erickson was a management employee. Respondent Erickson also argued that CalPERS is not entitled to dispute the position of the City that Respondent Erickson was a management employee.

CalPERS presented a staff witness who explained that CalPERS is a statutory agency and that the Government Code must be followed to determine, at the time of pension calculation, whether an employee is entitled to receive special compensation in addition to his/her published salary schedule payrate in pension calculation. CalPERS argued that reported special compensation had to be reviewed (such as in this case, in order to determine whether a member was actually a manager) before special compensation can be included in a final compensation computation. In this case, CalPERS presented evidence of the job duties of Respondent Erickson and why they did not conform to management duties, which made Respondent Erickson ineligible for Management Incentive Pay.

The Proposed Decision concluded that Respondent Erickson's work did not include management duties pursuant to the plain meaning of the word "management" as well as

the Government Code definition. The ALJ also found that CalPERS does not have a duty to investigate the manner in which the City classified its employees during employment, and imposing such a duty on CalPERS would be onerous and unworkable. "CalPERS cannot be required to continuously review and monitor the employment decision of contracting agencies." The ALJ determined that there was no other special compensation to which Respondent Erickson was entitled to. As a result, the ALJ denied the appeal.

The Proposed Decision is supported by the law and the facts. CalPERS' 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.

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