

**ATTACHMENT A**  
**THE PROPOSED DECISION**

BEFORE THE  
BOARD OF ADMINISTRATION  
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM  
STATE OF CALIFORNIA

In the Matter of the Application for Full-  
Time Service Credit for Sabbatical Leave of:

JOHN LOVELL,

Respondent,

and

CALIFORNIA STATE UNIVERSITY  
EAST BAY,

Respondent.

Case No. 2011-0361

OAH No. 2015010222

**PROPOSED DECISION**

Administrative Law Judge Ruth S. Astle, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on May 27, 2015.

Senior Staff Counsel Jeanlaurie Ainsworth represented petitioner California Public Employees' Retirement System.

Respondent John Lovell was present and represented himself.

There was no appearance by or on behalf of respondent California State University East Bay.

The matter was submitted on May 27, 2015.

**FACTUAL FINDINGS**

1. Petitioner California Public Employees' Retirement System (CalPERS) made the statement of issues against respondents John Lovell (respondent) and California State University East Bay (CSUEB). The statement of issues alleges that, based on erroneous salary data provided to CalPERS by the State Controller's Office, CalPERS credited respondent with 0.691 years of service credit to which he is not entitled. CalPERS asserts

PUBLIC EMPLOYEES RETIREMENT SYSTEM  
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that it is obligated to correct the error by reducing respondent's account by a total of 0.691 years of service. Respondent requested a hearing.

2. Respondent is a professor at CSUEB. He was first employed by CSUEB in 1972. By virtue of his employment, respondent is a member of CalPERS.

3. Respondent has taken three "Difference in Pay"/sabbatical leaves: from September 22, 1992, to September 20, 1993; from January 4, 1999, to January 2, 2000; and from September 4, 2002, to September 22, 2003. Based upon salary data provided to CalPERS by the State Controller's Office, CalPERS credited respondent with one full year of service credit for each difference in pay/sabbatical leave and so informed him on his member statements.

4. At some time in 2005, CalPERS discovered that the salary data provided by the State Controller's Office for each of respondent's sabbatical leaves – and the salary data of approximately 1,300 other California State University employees similarly situated – had been reported incorrectly.

Respondent's retirement plan provides that, when a member goes on a difference in pay/sabbatical leave for which he is paid less than his usual compensation – a "difference in pay leave" – the member earns proportional rather than full service credit:

Time during which a member is excused from performance of his or her duties . . . and for which he or she receives compensation, but in an amount less than the full compensation earnable by him or her while performing his or her duties . . . such as sabbatical leave, shall be credited as service in the proportion that the compensation paid to the member bears to the full compensation that would be earnable by him or her while performing his or her duties on a full-time basis.

(Gov. Code, § 21008; all statutory references are to the Government Code.)

During each of his difference in pay/sabbatical leaves, respondent received compensation in an amount less than the full compensation he earned while performing his usual duties. For example, at the time of his first sabbatical leave, respondent's full-time pay rate was \$5,080 per month; on difference in pay/sabbatical leave, his compensation was reduced to \$2,658 per month; from September 22, 1992 through September 20, 1993, and to \$3059.82/3,252.53 per month for January 4, 1999 to January 2, 2000.<sup>1</sup> During each of

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<sup>1</sup> Respondent's full-time pay rate during his 1999-2000 difference in pay/sabbatical leave was \$5,703/6,068.53 per month, but his compensation on sabbatical was \$3,059.82 per month for per month for part of the 12 months and \$3,252.53 per month for the other part of the 12 months. His full-time pay rate during his 2002-2003 difference in pay/sabbatical

respondent's difference in pay/sabbatical leaves, however, the State Controller's Office reported his reduced compensation as his "full-time pay rate," thus causing him to be credited, incorrectly, with full service credit while on difference in pay/sabbatical leave. Under section 21008, the Controller's Office should have left respondent's full-time pay rate unchanged, and shown his reduced earnings while on difference in pay/sabbatical leave. Respondent would have then have been credited with only the proportional service credit to which he was entitled under section 21008.

5. On June 17, 2005, CalPERS wrote to respondent and informed him that he was incorrectly credited with full-time service during the time he was on the difference in pay/sabbatical leaves. CalPERS told respondent he would have an opportunity to purchase the excess service credit and receive full credit for retirement purposes.

6. CalPERS concluded, and the evidence establishes, that 0.277 years of service credit were credited to respondent's account in error for his 1992-1993 difference in pay/sabbatical leave; 0.156 years of service credit were credited to his account in error for his 1999-2000 difference in pay/sabbatical leave; and 0.258 years of service credit were credited to his account in error for his 2002-2003 difference in pay/sabbatical leave, for a total of 0.691 years of service credit erroneously credited to his account.

7. In three letters dated March 24, 2008, each letter pertaining to one of respondent's difference in pay/sabbatical leaves, CalPERS informed respondent of its conclusions. CalPERS told respondent that the service credit identified in Finding 6, above, would be deleted from his retirement account. The letters informed respondent that he was eligible to purchase the service credit CalPERS intended to delete.

Respondent has purchased some of the service credit back.

8. Respondent believes that this error in calculations should only apply to sabbatical leaves. The law makes no distinction between difference in pay leaves and sabbatical leaves. Respondent could not testify to exactly what he did during his difference in pay leaves. He did not do any teaching when he was on leave. Respondent is still working full time for CSUEB.

#### LEGAL CONCLUSIONS

1. Under section 21008, respondent is not entitled to full-time service credit for his difference in pay/sabbatical leaves in 1992-1993, 1999-2000, and 2002-2003. For those leaves, respondent was granted 0.691 years of service credit to which he is not entitled, due to errors in salary data provided to CalPERS by the State Controller's Office. (Findings 4 through 6.)

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leave was \$6,630 per month, but his compensation on difference in pay/sabbatical leave was \$3,595 per month.

2. Under section 20160, subdivision (b), the board of CalPERS "shall correct all actions taken as a result of errors or omissions of the university, any contracting agency, any state agency or department, or this system."

3. Respondent essentially argues that CalPERS is equitably estopped from correcting his service credit account. The burden of proof is on respondent. To establish equitable estoppel, respondent must prove that when CalPERS sent him statements showing that he had earned one full year of service credit while on difference in pay/sabbatical leave, CalPERS knew the information was incorrect. Just the opposite is true: CalPERS did not know that the information it had provided respondent (and others) was wrong until it learned, in 2004 or 2005, of the salary reporting errors by the State Controller's Office. Respondent must also prove that he relied on the incorrect service credit information on his statements to his detriment, a proposition that is not established by the evidence. Respondent's contention that a difference in pay leave is different than a sabbatical leave and should not be subject to correction is not supported by the law. CalPERS is not precluded from correcting respondent's account and crediting him with only the service credit to which he is entitled under section 21008.

#### ORDER

The appeal of respondent John Lovell, from the determination by CalPERS that he is not entitled to full-time service credit for his three "difference in pay"/sabbatical leaves without further cost to him, is denied.

DATED: June 22, 2015

  
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RUTH S. ASTLE  
Administrative Law Judge  
Office of Administrative Hearings