

**ATTACHMENT B**  
**STAFF'S ARGUMENT**

## STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Clay Rosencrans (Respondent) was employed by the City of La Verne (City) as a Park Maintenance Supervisor. The City contracted with CalPERS to provide retirement benefits for its eligible employees. By virtue of his employment, Respondent was a local miscellaneous member of CalPERS. Respondent retired from service, effective September 17, 2013, with 35.80 years of service. Respondent sought to have his service retirement benefit calculated using his earnings from the period March 1, 2009, to February 27, 2010. CalPERS staff reviewed payroll records, special compensation summary and relevant statutes, and regulations, and determined that CalPERS must exclude a performance bonus received by Respondent Rosencrans during the 2009 – 2010 year from the calculation of his Final Compensation because it constituted Final Settlement Pay. Staff advised Respondent and the City of their determination. Respondent appealed staff's determination and a hearing was held on July 29, 2015.

Prior to the hearing, CalPERS explained the hearing process to Respondent and the need to support his case with witnesses and documents. CalPERS provided Respondent with a copy of the administrative hearing process pamphlet. CalPERS answered Respondent's questions and clarified how to obtain further information on the process.

In the time period of March 1, 2009, to February 27, 2010, in addition to his regular salary, Respondent received from the City a five percent (5%) education incentive and a three percent (3%) performance bonus. Respondent's receipt of the education incentive and performance bonus caused 2009 – 2010 to be his highest annual earnings year.

"Compensation Earnable" means the payrate and special compensation of the member (Gov. Code, sec. 20636(a)). "Payrate" means the normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group, or class for services rendered on a full-time basis during normal working hours pursuant to a publicly available pay schedule (Gov. Code, sec. 20636(b)). "Special Compensation" includes payment received for special skills, knowledge, abilities, work assignments, workdays or hours, or other work conditions (Gov. Code, sec. 20636(c)(1)).

"Special Compensation" does not include "Final Settlement Pay" (Gov. Code, sec. 20636(c)(7)(a)). "Final Settlement Pay" means pay or cash conversions of employee benefits that are in excess of compensation earnable, that are granted or awarded to a member in connection with or in anticipation of, a separation from employment. (Gov. Code, sec. 20636(f)) Regulation section 570 provides, in relevant part, that Final Settlement Pay "is generally, but not always, paid during the period of final compensation" and that it "may also take the form of a bonus...."

The 3% performance bonus was paid to Respondent during what was determined to be his highest paid three year period. As such, it would be an item of compensation received by Respondent during his Final Compensation period. By necessity then, the 3% performance bonus, in order to be included in his final compensation as an item of allowable compensation earnable, would have to be a valid and allowable item of special compensation. The statutes and regulations cited above provide that a one-time bonus, paid during the Final Compensation period, constitutes Final Settlement Pay and must be excluded from the calculation of Respondent's Compensation Earnable and Final Compensation.

After considering all of the evidence and testimony, the Administrative Law Judge (ALJ) concluded as follows:

"Respondent's Final Compensation is based upon the highest average annual compensation earnable during the three consecutive years of employment immediately preceding the effective date of his retirement or any other three year consecutive period that the member designates. Here, Respondent Rosencrans' highest period of compensation is the 2009-2010 fiscal year and he sought to use the 2009-2010 fiscal year earnings as part of the Compensation Earnable upon which his Final Compensation and retirement benefit were determined. Under these circumstances, the performance bonus must be excluded from computation of the Compensation Earnable and Final Compensation upon which Respondent Rosencrans' retirement benefits are calculated because the performance bonus constitutes Final Settlement Pay under the PERL."

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.

October 21, 2015

  
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RORY J. COFFEY  
Senior Staff Attorney