

In the Matter of the Calculation of Final Compensation of:

Bruce Malkenhorst, Sr., Respondent,
and
City of Vernon, Respondent

OAH Case No. 2013080917

CalPERS Case No. 2012-0671

EXHIBIT VV (3 PAGES)



Actuarial & Employer Services Division
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FILE COPY

July 18, 2005

Employer Code #209

Martha Valenzuela, Personnel
City of Vernon
4305 Santa Fe Ave
Vernon, CA 90058

Reply to Section 1157ah

Re B Malkenhorst

Dear Ms Valenzuela

Our office has recently completed a review of the compensation reported for Bruce Malkenhorst by the City of Vernon (the City)

The City reported compensation for the period of July 2004 to July 2005 as follows

Payrate

\$44,128 July 2004 to June 2005

According to the City's 2003/2004 salary schedule, the maximum salary allowed for Mr Malkenhorst's position is \$35,302. According to the 2002-2003 salary resolution, the City Administrator was eligible for 25% longevity after 25 years of service. Longevity is a special compensation item that can be reported to CalPERS as long as it meets all the criteria of California Code of Regulations (CCR) 571

571 (b) The Board has determined that all items of special compensation listed in subsection (a) are

- (1) Contained in a written labor policy or agreement,
- (2) Available to all members in the group or class,
- (3) Part of normally required duties,
- (4) Performed during normal hours of employment,
- (5) Paid periodically as earned,
- (6) Historically consistent with prior payments for the job classification,
- (7) Not paid exclusively in the final compensation period,
- (8) Not final settlement pay, and,
- (9) Not creating an unfunded liability over and above PERS' actuarial assumptions

California Public Employees' Retirement System
Lincoln Plaza - 400 P Street - Sacramento, CA 95814

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GC 20636 "Compensation Earnable"

(a) "Compensation earnable" states in part, by a member means the payrate and special compensation of the member, as defined by subdivisions (b), (c), and (g), and as limited by Section 21752 5

(b) (1) "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 of employment for services rendered on a full-time basis during normal working hours "Payrate," for a member who is not in a group or class, means the monthly rate of pay or base pay of the member, paid in cash and pursuant to publicly available pay schedules, for services rendered on a full-time basis during normal working hours (emphasis added)

C 20630 "Compensation"

As used in this part, "compensation" means the remuneration paid out of funds controlled by the employer in payment for the member's services performed during normal working hours or for time during which the member is excused from work because of holidays, sick leave, industrial disability leave, during which, benefits are payable pursuant to Sections 4800 and 4850 of the Labor Code or Article 4 (commencing with Section 19869) of Chapter 2 5 of Part 2 6, vacation, compensatory time off, or leave of absence

When compensation is reported to the board, the employer shall identify the pay period in which the compensation was earned regardless of when reported or paid Compensation shall be reported in accordance with Section 20636 and shall not exceed compensation earnable, as defined in Section 20636

The base payrate for Mr Malckenhorst's position is \$35,302 00 According to the language in the salary resolution, the 25% longevity is only available to the City Administrator and no one else

Government Code 20636 (7)(e) states in part "group or class of employment" means a number of employees considered together because they share similarities in job duties, work location, collective bargaining unit, or other logical work related grouping One employee may not be considered a group or class "

The increased payrates the City reported to CalPERS does not meet the CalPERS retirement law criteria and exceeds the City's salary schedule Mr Malckenhorst's retirement benefit will be calculated on the following payrate

Payrate

\$35,302 from 7/1/04 to 7/1/05

We ask that the City reverse the increased payroll and special compensation entries for Mr Malckenhorst and report the above correct payrate Upon completion of these reversals, CalPERS will credit the agency with all contributions paid on these items If

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the member paid any contributions on these items, the City should, in turn, refund the member's contributions

However, you have the right to formally appeal this decision by filing a written appeal with CalPERS within 30 days of the mailing of this letter, in accordance with sections 555-555.4, Title 2, of the California Administrative Code, a copy of which is enclosed for your convenience. As stated in the regulations, an appeal should set forth the factual basis and legal authorities on which it is based. The appeal should be mailed to the following address:

Lon McGartland, Acting Division Chief
Actuarial and Employer Services Branch
P O Box 942709
Sacramento, CA 94229-2709

Please do not hesitate to contact me at 1 (888) 225-7377 should you have any questions or concerns regarding this matter.

Yours truly,



Alinda Hennger, RPS II
Compensation Review Unit

cc B Malkenhorst