

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 XX (3 PAGES)

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August 11, 2005

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

Re: NOTICE OF APPEAL – City of Vernon (Employer Code #209).
Employee: B. Malkenhorst

Dear Ms. McGartland

This office represents the City of Vernon (“the City”) with respect to the appeal of above-entitled matter which relates to the City’s employee, Bruce Malkenhorst (“Mr. Malkenhorst”), and a request by CalPERS to reverse the increase payroll and special compensation entries related to Mr. Malkenhorst’s retirement benefits.

On or about July 18, 2005, the City received correspondence from Alinda Heringer of CalPERS’ Compensation Review Unit claiming that, upon a review of the City’s applicable Salary Resolutions, Mr. Malkenhorst was ineligible for a 25% longevity bonus, which the City awarded to Mr. Malkenhorst in recognition of his twenty-five (25) years of service and performance of his duties as City Administrator.¹ According to the letter, the City was incorrect to have increased Mr. Malkenhorst’s payrate by 25% based on his eligibility under the City’s Longevity Program (the “Longevity Program”) as outlined and approved in Sections 9 and 25 of the City’s salary Resolution No. 8473 effective July 1, 2004 (“the Resolution”).²

The letter indicates that CalPERS believes that the City Administrator is in a class by himself under the program and therefore the program violates Government

- ¹ A copy of this correspondence is attached as “Exhibit A” to this Appeal.
- ² A Copy of the Resolution is attached as “Exhibit B” to this Appeal.

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Lori McGartland

August 8, 2005

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Code Section 20636 (7)(e) which provides, in relevant part, that a "group or class of employment" means a number of employees considered together based on similarities in duties, authority or other logical work related grouping and that "one employee may not be considered a group or class." As outlined in greater detail below, our appeal is based on (i) the fact that, although the City Administrator's participation in the Longevity Program is discussed separately from other members of his class in Section 9 of the Resolution, the City Administrator is in the same benefit class under the Longevity Program as the City Counsel Members discussed in Section 25 of the Resolution and is not in a class by himself; and (ii) the base pay of the City Administrator is only for the single full time job of the City Administrator which includes numerous duties, as outlined in the Vernon City Codes ("Codes").

1. **City Administrator and City Counsel Members in Same Class.**

The Longevity Program approved by the City includes City employees and City Counsel Members in the same benefit class up to 20 years of service. The program provides both employees and counsel members with a 5% increase after 5 years of service, 10% increase after 10 years of service, 15% increase after 15 years of service, and 20% increase after 20 years of service. However, the program treats different classes of employees differently after 20 years of service. The Longevity Program provides a 25% increase after 25 years of service to the City Administrator and the City Counsel Members. The Program also provides a 25% increase after 30 years of service to Firemen and Department Heads. Thus, the City Administrator is in the same class and is eligible for the same Longevity benefit as the City Counsel Members. He is therefore, not the only member of his class.

The confusion has arisen due to the fact that the City's Longevity Program is discussed separately in the Resolution with respect to the City Counsel Members and the other employees of the city including the City Administrator. Thus, the resolution regarding the Longevity Program applicable to the City Administrator appears in Section 9(g) on page 12 of the Resolution and appears to apply only to the City Administrator. However, the same benefit is provided under the Longevity Program to the City Counsel Members under Section 25(b)(5) on page 42 of the resolutions. Taken together these two sections of the resolutions make clear that the City Administrator is not the only member of this benefit class under the Longevity Program. It is our understanding that, at the time of preparing the July 18, 2005 correspondence, Ms. Heringer did not have the entire Salary Resolution and therefore was unable to examine page 42. Accordingly, a copy of the entire Salary Resolution at issue is attached hereto as "Exhibit B" for your convenience.

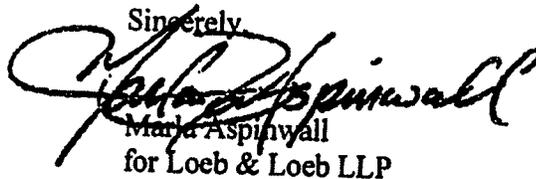
Lori McGartland
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2. **Mr. Malkenhorst Base Pay is Solely for Performance of His Duties as City Administrator, as Contemplated in the Vernon City Codes.**

The City Administrator's job description is included in the attached Vernon City Codes (attached hereto for your convenience as "Exhibit C") and, pursuant to those Codes, incorporates a number of different job titles and duties, all of which are included in the single full time job of City Administrator. The base pay reported to CalPERS for Mr. Malkenhorst is the base pay determined by the City Council for the performance of the duties contemplated in the Vernon City Codes for the position of City administrator.

We appreciate your consideration of the above evidence and further request that you grant this Appeal in light of the evidence. In the interim, should you have any questions, please do not hesitate to contact me. Thank you in advance for your assistance and cooperation.

Sincerely,


Maria Aspinwall
for Loeb & Loeb LLP

cc: Alinda Heringer, CalPERS
Eric Fresch, City of Vernon

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