



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 AAA (9 PAGES)

Fax: 310-282-2200

Nov 3 2005 11:46 P.02

## **LOEB & LOEB LLP**

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November 3, 2005

### **VIA EXPRESS MAIL & FAX**

Ms. Alinda Herlinger  
RPS II  
Compensation Review Unit  
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. Herlinger:

We are in receipt of your correspondence dated September 23, 2005 and have addressed the points contained in your correspondence below. I would like to note that, while your letter was dated September 23, 2005, we did not receive the letter until October 24, 2005. However, despite this fact, we desire to timely comply with your request for a November 3, 2005 response date.

The first point contained in your correspondence requests whether the following amounts are included in Mr. Malkenhorst's salary: (i) ICMA Retirement (Section (f)(4)); (ii) IRA Account (Section (f)(5)); and (iii) Supplemental Executive Retirement Plan. These amounts are not included in Mr. Malkenhorst's salary.

You next state that the duties of City Treasurer, Director of Finance and Personnel, Purchasing Agent, Executive Director of Light and Power and Executive Director of the Redevelopment Agency performed by Mr. Malkenhorst, with the exception of City Administrator, are considered overtime and are not reportable to CalPERS for retirement purposes. However, these were not positions for which Mr. Malkenhorst was separately compensated but were included in his responsibilities as the City Administrator and at no time did he receive overtime or additional compensation for performance of such duties. In fact, the City's Salary Resolutions specifically state that no additional compensation will be paid for performance of such

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duties, as evidenced by the following statement contained in Resolution No. 6467, adopted on June 30, 1994, relevant portions of which are attached hereto as "Exhibit A", and which states the following:

**Section 21: LIGHT AND POWER DEPARTMENT:**

"The compensation for the following positions are included in the compensation established for the said position in the City Administrator/City Clerk Department, Schedule II, Exhibit B.

(1) CHIEF EXECUTIVE OFFICER - The City Administrator Clerk shall serve as the Chief Executive Officer in the Light and Power Department; . . ." (emphasis added).

Because the City of Vernon was a small city, Mr. Malkenhorst, as City Administrator was called upon to perform various duties and fill various roles over the years as the need arose. As is the case with smaller cities, such situations were commonplace throughout Mr. Malkenhorst's employment because the City of Vernon was a very small City when he commenced his leadership role. While the City of Vernon is not yet as large as some of the other surrounding cities, it has grown considerably throughout Mr. Malkenhorst's tenure much to his credit.

Over the years Mr. Malkenhorst's duties have changed as the needs of the City have changed. As further evidence of the fact that Mr. Malkenhorst did not receive any additional compensation for performing additional duties assigned to him over the years, Mr. Malkenhorst's salary did not increase as a result of performing particular specified duties or decrease upon transfer or elimination of particular duties. For example, Mr. Malkenhorst ceased being the Director of Finance and Director of Light and Power in early 2005, yet, as contemplated in the Salary Resolutions, his salary did not decrease.

With respect to your question concerning the amount of Mr. Malkenhorst's salary, Mr. Malkenhorst had significant experience with respect to city administration prior to being employed by the City. Moreover, Mr. Malkenhorst had been employed by the City for approximately 30 years. As such, he was paid a salary commensurate with his experience and expertise. It should be noted that any salary comparison to discrete positions, such as the Director of Environmental Health, does not make sense based upon Mr. Malkenhorst's wealth of experience, breadth of responsibility and length of employment with the City.

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The City has not hired a replacement for Mr. Malkenhorst, but is currently engaged in the process. As with Mr. Malkenhorst, any salary paid to the new City Administrator will be based upon the experience and abilities of the individual.

You further state in your correspondence that, pursuant to Government Code § 20322, ". . . Elected Officials are optional and excluded from membership and a separate group and cannot be inclusive of employee management benefits." However, based on our review of Government Code § 20322, nothing prevents Mr. Malkenhorst from being included in the same benefit class under the Longevity Program as the City Counsel Members, as outlined in Section 25 of Salary Resolution No. 8473 (Resolution).<sup>1</sup> Government Code § 20322 merely provides optional membership for Elected Officials in the Public Employees' Retirement System and does not make any distinction with respect to maintaining separate groups or classes based on elected or unelected status.

In fact, Government Code § 20636(7)(e)(1) states "group or class of employment" means a number of employees considered together because they share similarities in job duties, work locations, collective bargaining unit, or other logical work related grouping. One employee may not be considered a class or group." In the instant matter, Mr. Malkenhorst's logical work related grouping as City Administrator is with that of the other City Council Members as their positions relate to implementation and administration of the City and its policies. Additionally, the longevity program is the same for the City Administrator and the City Council Members. There is nothing in the Government Code definition of group or class that suggests that an elected official covered by the program may not be in the same group or class as similarly situated employees of the City, nor would such a distinction make sense. The group or class requirement is intended to prevent individual employees from being singled out for special treatment. If elected officials are included in the class with an employee, it can hardly be said that such employee has been singled out for special treatment in that regard.

We have made every effort since receipt of your last letter to be forthcoming with information about both Mr. Malkenhorst and the longevity program and to be responsive to both your written and oral questions. We have contacted you a number of times and offered to answer any additional questions you may have. We have

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<sup>1</sup> Salary Resolution No. 8473, effective July 1, 2004, was attached as "Exhibit B" to our correspondence of October 11, 2005.

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requested that you meet with us to discuss your concerns and resolve any outstanding questions or concerns regarding Mr. Malkenhorst and the longevity program. We understood that this matter had already been submitted to your legal department for review. We were therefore surprised by the new questions and arguments raised in your recent letter which have not previously been discussed with us. Please feel free to call me to discuss this response or with any further questions or comments you may have. We look forward to a timely resolution of these issues.

Sincerely,



Maria J. Aspinwall  
for Loeb & Loeb LLP

:rkb  
20438410002  
LA1006355.3

Attachment

cc: Eric Fresch, City of Vernon  
Lori McGartland

## EXHIBIT A

**RESOLUTION NO. 6467**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VERNON FIXING THE COMPENSATION FOR CERTAIN EMPLOYEES OF SAID CITY AS OF JULY 1, 1993, AUTHORIZING CERTAIN EXPENSE ALLOWANCES AND AMENDING RESOLUTION NO. 5645 AND REPEALING ALL RESOLUTIONS IN CONFLICT THEREWITH

ADOPTED ON JUNE 30, 1994

AMENDMENTS TO RESOLUTION NO. 6467				
RESOLUTION NO.	ADOPTION DATE	PAGES AMENDED	SCHEDULE AND/OR SECTIONS AMENDED	DEPARTMENT AFFECTED



1 (d) Additional Hours Worked.

2 All employees in the Water Department, except the  
3 Director of Community Services and those in supervisory positions,  
4 required to work hours in addition to their regular forty (40)  
5 hour work week will be compensated for such additional hours  
6 worked.

7 (e) Dispatchers.

8 The Chief Water and Power Dispatcher, Senior Water and  
9 Power Dispatcher and Water and Power Dispatchers I and II shall  
10 serve as Dispatchers in the Water Department and the compensation  
11 for said positions is included in the compensation established for  
12 the positions in the Light and Power Department, Schedule II,  
13 Exhibit "B".  
14

15 (f) Compensation of Certain Positions - Department of  
16 Community Services.

17 The compensation for the Director of Water is included in  
18 the compensation established for the Director of Community  
19 Services in the Community Services Department.

20 SECTION 21: LIGHT AND POWER DEPARTMENT:

21 (a) Compensation of Certain Positions - City  
22 Administrator/City Clerk Department.

23 The compensation for the following positions are included  
24 in the compensation established for said position in the City  
25 Administrator/ City Clerk Department, Schedule II, Exhibit "B".

26 (1) CHIEF EXECUTIVE OFFICER--the city  
27  
28

1 Administrator/City Clerk shall serve as the Chief Executive  
2 officer in the Light and Power Department;

3 (2) ACCOUNTANT--the Accountant in the City  
4 Administrator/City Clerk Department shall also serve as the  
5 Accountant in the Light and Power Department;

6 (3) SENIOR ACCOUNT CLERK--the Senior Account Clerk  
7 in the City Administrator/City Clerk Department shall also serve  
8 as the Senior Account Clerk in the Light and Power Department;

9 (4) ACCOUNT CLERK--the Account Clerk in the City  
10 Administrator/City Clerk Department shall also serve as the  
11 Account Clerk in the Light and Power Department.

12 (b) Personal Vehicle Allowance.

13 In addition to said salaries as set forth in Schedule II,  
14 Exhibit "B", certain individuals serving in specified  
15 classifications shall receive, when using their own motor vehicle  
16 in the service of the City, an additional sum per month as  
17 provided for in Schedule III.

18 (c) Responsibility For Upkeep of Vehicle.

19 The city shall not be responsible for repairs or any  
20 additional costs for upkeep, fuel, lubrication, replacement in  
21 whole or in part, or other expenses in connection with any such  
22 vehicle beyond the respective amounts set forth in Schedule III.

23 (d) Additional Hours Worked.

24 All employees in the Light and Power Department, except  
25 the Director of Light and Power, Field Operations Manager,  
26 Electrical Engineering Manager, Resource Planning Manager, Power  
27

**SCHEDULE II**

0.05

**CITY ADMINISTRATOR/CITY CLERK DEPARTMENT SALARY SCALE**

**MONTHLY SALARY**

CITY ADMINISTRATOR/CITY CLERK - 4000	STEP 1	\$24,189.00
DIRECTOR OF ENVIRONMENTAL HEALTH - 4310	STEP 1	\$8,502.00
	2	\$8,059.00
	3	\$7,639.00
	4	\$7,241.00
	5	\$6,864.00
	6	\$6,506.00
	7	\$6,167.00
ASSISTANT TO THE CITY ADMINISTRATOR - 4001	STEP 1	\$7,886.00
	2	\$7,285.00
	3	\$6,905.00
	4	\$6,545.00
	5	\$6,204.00
	6	\$5,881.00
	7	\$5,574.00
CHIEF DEPUTY DIRECTOR ENVIRONMENTAL HEALTH-4320	STEP 1	\$6,888.00
	2	\$6,529.00
	3	\$6,189.00
	4	\$5,866.00
	5	\$5,560.00
	6	\$5,270.00
	7	\$4,985.00
ASSISTANT FINANCE DIRECTOR - - 4102	STEP 1	\$6,639.00
	2	\$6,293.00
	3	\$5,965.00
	4	\$5,654.00
	5	\$5,359.00
	6	\$5,080.00
	7	\$4,815.00
CUSTOMER SERVICE MANAGER - 4110	STEP 1	\$6,218.00
	2	\$5,894.00
	3	\$5,587.00
	4	\$5,298.00
	5	\$5,020.00
	6	\$4,758.00
	7	\$4,510.00
ENVIRONMENTAL SPECIALIST - 4340	STEP 1	\$5,230.00
	2	\$4,957.00
	3	\$4,699.00
	4	\$4,454.00
	5	\$4,222.00
	6	\$4,002.00
	7	\$3,793.00
	8	\$3,595.00

**SCHEDULE II**

**EXHIBIT "B" PAGE 16**