

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

In the Matter of the Calculation of Final  
Compensation of:

BRUCE MALKENHORST, SR.,

Respondent,

and

CITY OF VERNON,

Respondent.

Case No. 2012-0671

OAH No. 2013080917

**PREHEARING CONFERENCE ORDER**

On June 13, 2014, a Prehearing Conference was held before Howard W. Cohen, Administrative Law Judge (ALJ), Office of Administrative Hearings, at Los Angeles, California.

Jason Levin, Attorney at Law, represented complainant California Public Employees' Retirement System (CalPERS). John Jensen, Attorney at Law, represented respondent Bruce Malkenhorst, Sr. Joung Yim, Attorney at Law, represented respondent City of Vernon.

Good cause appearing therefor, the following order relating to the conduct of the hearing is hereby made:

1. The hearing in this matter shall be held at the Office of Administrative Hearings, located at 320 West Fourth Street, Suite 630, Los Angeles, California 90013. The hearing shall commence on **August 25, 26, and 27, 2014**, at 9:00 a.m. and again on **September 3 and 4, 2014**, at 9:00 a.m., as necessary. At the discretion of the hearing judge or the presiding administrative law judge, venue may be changed from time to time, upon the request of either party, for good cause shown.

2. The factual issues to be decided in the case are as set forth in the Statement of Issues. Complainant shall bring to the hearing a computer disk or drive containing the most recent Accusation in Word format. If any additional allegations or issues are subsequently raised in any amended or supplemental Accusation, they shall be deemed controverted, and

respondent need not file any response. They will not necessarily be included in the presently scheduled hearing, but may be bifurcated. Respondent shall notify OAH if the amendment requires additional time to prepare for hearing. (See Gov. Code, § 11507.)

3. An Amended Status and Trial Setting Conference Order dated April 17, 2014 (April 2014 Order) required all parties to file and exchange, by May 19, 2014, a Joint Prehearing Conference Statement, final exhibit lists, final witness lists, issue statements, and any stipulations of law and fact.

4. The April 2014 Order also required the parties to identify in their final witness lists any witnesses who are expected to testify as experts. For each expert witness identified, the parties shall comply with the provisions of Business and Professions Code section 2334, except that the exchange of the information described in subdivision (a) of that section shall be completed by June 23, 2014. Expert witness reports, if any, are to be served by June 23, 2014. No party may designate and call more than three expert witnesses. Counter-designation of expert witnesses shall be served and filed by June 30, 2014. Objections to designations shall be filed by July 7, 2014. Responses to objections shall be filed by July 10, 2014. Objections and responses to objections may not exceed 7 pages in length. The Administrative Law Judge may rule on any objections on or before the date of hearing. Each party making a designation or counter-designation shall make that expert witness available for deposition prior to August 6, 2014.

5. At the hearing, the parties are to have five sets of their respective exhibits, for the use of the Administrative Law Judge, each counsel, and the witnesses. All exhibits more than two pages in length are to be internally paginated. A party using more than 10 exhibits shall place its exhibits in one or more three-ring binders; **do not overfill the binders.**

6. At the commencement of the hearing, each party shall provide to the Administrative Law Judge a trial exhibit list for use by the Administrative Law Judge during the hearing. The list shall have a column identifying the exhibit, a column that can be marked to indicate that the exhibit has been marked for identification, and a column that can be marked to indicate that the exhibit has been admitted into evidence.

7. Each party shall prepare a list of any unusual, technical, and foreign terms or names that it expects to use during the hearing. A copy of each party's list shall be provided to the court reporter and the Administrative Law Judge at the commencement of the hearing.

8. The parties shall schedule their witnesses in such a manner as to avoid any delays in the hearing and to accommodate the witnesses' schedules and eliminate the need to take witnesses out of order. By 10:00 a.m. on the day before any witness is to testify, notice shall be given to the Administrative Law Judge and to the opposing party of the identity of the witness. All witnesses must be prepared to continue their testimony day-to-day if their testimony is not concluded on the day they first testify, and counsel shall inform witnesses of this obligation. When scheduling witnesses, counsel shall take into account that, absent good cause, hearsay evidence may be offered **only after** the non-hearsay evidence it is intended to supplement or explain has been admitted.

9. At the hearing, counsel shall not present argument in support of any objection unless requested to do so by the Administrative Law Judge. When objecting, parties shall solely state "objection," and the legal grounds.

10. To the extent that either of the parties intends to use electronic technology (such as an overhead projector or PowerPoint presentation) during the hearing, the party proposing to use that technology shall notify the Office of Administrative Hearings and counsel for the other party in writing, by facsimile transmission, at least two business days prior to the date on which such technology is intended to be used, and shall have the burden of ensuring that the proper equipment and facilities are delivered, set up, and available at the hearing location.

11. Should translation services be needed, the arrangements therefor, including payment of all fees associated therewith, shall be made by the party who calls the witness in need of such services. Notice that translation services will be used shall be provided to counsel for the other party and to the Office of Administrative Hearings in writing, by facsimile transmission, at least two business days prior to the first date of the hearing.

12. All pre-hearing motions were governed by the April 2014 Order.


13. The parties are to comply with Government Code section 11514 with respect to the introduction of any evidence by affidavit.

14. If a party chooses to submit a trial brief, the brief shall be served on the other party, with a copy to the trial judge, by no later than the first day of hearing. If any trial briefs are submitted prior to the first day of hearing, they shall be filed and served by facsimile transmission or overnight delivery. If any trial briefs are submitted on the first day of hearing, they may be hand-delivered to the Administrative Law Judge and opposing counsel. No trial brief shall exceed 10 pages in length.

15. Should the parties reach a final settlement, the hearing will be taken off-calendar by the Office of Administrative Hearings only upon the filing of the first page and the fully executed signature page or pages of the settlement agreement.

16. Except as superseded by this order, the April 2014 Order remains in effect.

IT IS SO ORDERED this 17th day of June 2014.

  
HOWARD W. COHEN  
Administrative Law Judge  
Office of Administrative Hearings