

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

## STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Terry Smith (Respondent Smith) was a local miscellaneous member of CalPERS through his employment with Respondent City of Needles. Respondent Smith retired on December 29, 2012, with 23.431 years of service credit and has been receiving a retirement allowance since that date.

In reviewing Respondent Smith's final reported compensation to establish his final compensation, CalPERS staff determined that the amount of compensation paid and reported on behalf of Respondent Smith as "on-call" pay was not a component of his payrate nor allowable item of "special compensation" pursuant to Title 2, California Code of Regulations section 571.

By letter dated July 22, 2013, CalPERS informed Respondent Smith of its determination and his right to file an administrative appeal. On August 20, 2013, Respondent Smith filed a timely appeal. A hearing was held before an Administrative Law Judge (ALJ).

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

At the hearing held on August 20, 2015, Respondent Smith appeared without legal counsel. Based on the evidence submitted, both documentary and testimonial, the ALJ found that the "on-call" pay had been paid in addition to his base pay for time outside of the normal working hours and otherwise qualified as special compensation. In addition, because it was paid for time in addition to normal working hours, the ALJ concluded that CalPERS properly excluded the reported "on-call" pay from the calculation of Respondent Smith's retirement allowance.

The ALJ concluded that Respondent Smith'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 correctly applies the law and the salient facts of the 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.

November 18, 2015

  
WESLEY E. KENNEDY  
Senior Staff Attorney