

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Revelina Talavera (Respondent Talavera) was employed by Respondent City of Chula Vista (City), as a Fiscal Operations Manager/Comptroller (FOM/C), and by virtue of her employment was a local miscellaneous member of CalPERS.

Effective September 6, 2013, Respondent Talavera service retired and has been receiving her retirement allowance from that date.

At the time of Respondent Talavera's retirement, CalPERS staff reviewed the compensation reported by her employer. Respondent Talavera's payroll records showed that from July 15, 2011, through June 27, 2013, and from July 12, 2013, through September 5, 2013, the City reported compensation in addition to her payrate as (FOM/C), as special compensation, for Respondent Talavera, identified as Temporary Upgrade Pay for performing additional duties as the City's Purchasing Agent.

CalPERS staff determined that this additional compensation is not eligible as special compensation pursuant to Government Code section 20626 or Title 2, California Code of Regulations, section 571, and therefore would not be included in the calculation of Respondent Talavera's final compensation.

By letter dated November 5, 2013, Respondent Talavera and the City were notified of CalPERS' determination and were advised of their appeal rights. Respondent Talavera, through her representative/attorney-in-fact, filed a timely appeal, and requested an administrative hearing. This issue on appeal was limited to the issue of whether Respondent Talavera's Temporary Upgrade Pay can be included in the calculation of her final compensation.

A hearing before an Administrative Law Judge (ALJ) was held on August 25, 2015. Although initially represented by legal counsel before the hearing and in post-hearing briefing after the hearing, Respondent Talavera and her legal counsel chose not to have her legal counsel appear at the hearing.

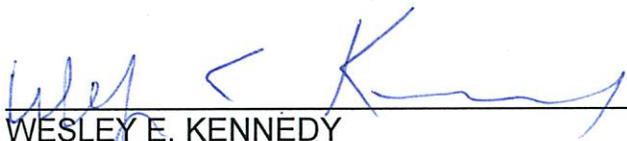
Prior to the hearing, CalPERS explained the hearing process to Respondent Talavera and the need to support her case with witnesses and documents. CalPERS provided Respondent Talavera with a copy of the administrative hearing process pamphlet. CalPERS answered Respondent Talavera's questions and clarified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

Based on the evidence submitted, both documentary and testimonial, the ALJ found that the supplemental compensation paid to Respondent Talavera did not qualify as "temporary upgrade pay." The additional compensation was not available to other members of her same group or class of employment and because it did require her to work hours in addition to those of her normal position, it was excluded as overtime pay.

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.

The ALJ concluded that Respondent Talavera'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.

November 18, 2015



WESLEY E. KENNEDY
Senior Staff Attorney