

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

## STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Foothill-DeAnza Community College District (Respondent) contracts with the California Public Employees' Retirement System (CalPERS) and the California State Teachers' Retirement System (CalSTRS) to provide retirement benefits to its employees. Respondent is also an agency eligible to contract with CalPERS for group health insurance covered by the provisions of the Public Employees' Medical and Hospital Care Act (PEMHCA). Eligible agencies that elect to contract for health care benefits through CalPERS are bound by the provisions set forth in PEMHCA (Gov. Code § 22922). In 2012, Respondent chose to switch from its self-funded health care plan to CalPERS health care coverage under PEMHCA.

Pursuant to various collective bargaining agreements, Respondent had several groups of employees that it was responsible for providing health care coverage to, and which Respondent sought to cover under the PEMHCA. The group at issue in the instant matter is a group of former employees, hired before July 1, 1997, to which Respondent promised retiree health insurance benefits if the employees rendered service for 20 or more years immediately preceding their resignation from Respondent. Respondent defines this group of employees, who worked 20 or more years and are entitled to "retiree" health benefits, as having "retired." This group of employees participated in CalPERS or CalSTRS while they were employed by Respondent. Upon leaving employment with Respondent, none of them retired from CalPERS or CalSTRS – some continued working with CalPERS-covered employers, others left when they were not yet eligible to retire from CalPERS or CalSTRS, but were waiting to become age-eligible to retire, and at least one withdrew his contributions from CalPERS.

Respondent realized that these former employees would not be eligible for PEMHCA because they were not current employees of Respondent, and they were not annuitants since they were not receiving a retirement allowance from CalPERS or CalSTRS. Therefore, Respondent created a supplemental 401(a) retirement plan for the purpose of attempting to have the former employees meet the definition of annuitant by providing them with a retirement allowance through the 401(a) plan. Despite receipt of an allowance from the 401(a) plan, CalPERS staff determined that the former employees are not eligible as annuitants under PEMHCA because they participated in CalPERS and CalSTRS when they worked for Respondent, not the newly created 401(a) retirement plan. CalPERS notified Respondent of its determination and provided appeal rights. Respondent appealed CalPERS staff's determination and the matter proceeded to hearing on March 3 and 4, 2015. The record was held open for the filing of simultaneous written closing arguments and replies by the parties.

Under PEMHCA, individuals are eligible for health benefits if they meet the definition of an employee or annuitant. Government Code section 22760, subdivision (c) defines annuitant as "[a] person who has retired within 120 days of separation from employment with a contracting agency . . . and who receives a retirement allowance from the retirement system provided by the employer . . . ."

At the hearing and in its written arguments, Respondent argued that its former employees met the definition of annuitant because, through its creation of the 401(a) plan, they were retired and were receiving a retirement allowance provided by their employer. Further, Respondent argued that denying health benefit coverage to the 20-year former employees created a conflict with the collective bargaining agreement, which guaranteed Respondent would provide these employees with lifetime "retiree" health care benefits. Lastly, Respondent argued that the doctrine of estoppel should apply in this case to allow its former employees coverage under PEMHCA.

The Administrative Law Judge (ALJ) determined that the meaning of the word "retire" as it is used in PEMHCA differs from Respondent's definition of "retire" in referring to its 20-year "retirees." As the ALJ explained, an individual who is leaving employment with Respondent is not the same as retiring under Respondent's retirement system with all of its intended benefits, including receiving a monthly retirement allowance from CalPERS or CalSTRS. The ALJ indicated "[I]t is reasonable to conclude that a person has not retired simply because he or she is eligible to receive lifetime 'retiree' health care benefits pursuant to a collective bargaining agreement." (Proposed Decision, Item 14, p. 13.) Moreover, the ALJ found Respondent's definition of "retire" is used for compliance with the terms of the collective bargaining agreement, which indicates Respondent will provide lifetime health benefits to its 20-year employees. However, as noted by the ALJ, the provisions of PEMHCA are controlling over any memorandum of understanding reached between public employees and employee organizations. For the above reasons, the ALJ concluded that the 20-year "retirees" are ineligible for PEMHCA because they do not meet the definition of annuitant under Government Code section 22760, subdivision (c).

The ALJ also ruled that Respondent had not established the elements necessary for estoppel.<sup>1</sup> In explaining her ruling, the ALJ described the 401(a) plan as a supplemental retirement plan that was established to make otherwise ineligible employees meet the definition of annuitant, which the 401(a) plan specifically indicated was its purpose. As the ALJ analyzed, if the 20-year retirees are determined to be eligible for PEMHCA, it would contravene the purpose of PEMHCA because it would allow employees who left Respondent's employment to continue to be eligible for lifetime health benefits that, under PEMHCA, are only provided to employees who continue to work for an employer and retire from that employer within 120 days of separation from employment. Specifically, to allow the 20-year retirees that participate in the 401(a) plan to be considered annuitants would circumvent the 120-day requirement.

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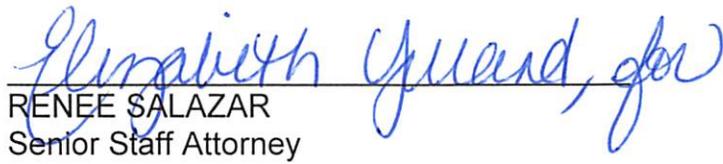
<sup>1</sup> The party asserting the doctrine of equitable estoppel must establish:

- (1) the party to be estopped must be apprised of the facts;
- (2) the party must intend or reasonably believe that his or her conduct will be acted upon;
- (3) the party asserting the estoppel must be ignorant of the true state of facts; and
- (4) the party asserting the estoppel must actually rely upon the other party's conduct to his or her detriment. (*City of Long Beach v. Mansell*) (1970) 3 Cal.3d 462, 489.)

Accordingly, the ALJ concluded that Respondent'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 applies the law to the salient facts of this case, the risks of adopting the Proposed Decision are minimal. Respondent may file a Writ Petition in Superior Court seeking to overturn the Decision of the Board.

November 18, 2015

  
RENEE SALAZAR  
Senior Staff Attorney