

**ATTACHMENT A**  
**RESPONDENTS' PETITION FOR RECONSIDERATION**

**ROBERT B. PAXTON, M.D.**

**PETITION FOR RECONSIDERATION**

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8 **CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM  
BOARD OF ADMINISTRATION**

9 **In the Matter of the Statement of Issues:**

10 **CALIFORNIA PUBLIC EMPLOYEES'  
RETIREMENT SYSTEM,**

11 **Agency,**

12 v.

13 **DR. ROBERT B. PAXTON,**

14 **Respondent.**

15 **consolidated with:**

16 **HOWARD M. SKOPEC, M.D., and**  
17 **DANILO V. LUCILA, M.D.,**

18 **Respondents.**

**Paxton:**

**OAH CASE NO. 2014080002  
AGENCY CASE NO. 2014-0336**

**Skopec:**

**OAH CASE NO. 2014050198  
AGENCY CASE NO. 2013-1120**

**Lucila:**

**OAH CASE NO. 2014050199  
AGENCY CASE NO. 2014-0335**

**DR. ROBERT B. PAXTON'S  
PETITION FOR RECONSIDERATION**

**Meeting Date: September 17, 2015**

19 **PETITION**

20 Respondent ROBERT B. PAXTON ("Paxton") petitions the Board to reconsider its decision  
21 in this matter (the "Decision"), which the Board adopted on September 17, 2015.

22 **ARGUMENT**

23 When a court evaluates a decision of a lower body, such as CalPERS, it usually accepts the  
24 lower body's factual findings but considers matters of law independently of the lower body's  
25 decision. In the specific context of pensions, courts resolve ambiguities in a statute "in favor of the  
26 pensioner." *Ventura County Deputy Sheriffs' Association v. Board of Retirement* (1997) 16 Cal.4th  
27 483, 490. The Decision found in favor of Respondents on the only disputed factual issue – i.e., that  
28 they had not worked an average of more than forty hours per week, which means they earned the

1 bonuses during their regular shifts. The errors in the Decision are matters of law – the interpretation  
2 and application of statutes – making it vulnerable to reversal by a court.

3 **1. The Statute Expressly Makes Bonuses PERSable “Special Compensation.”**

4 GOVERNMENT CODE §20636 *twice* expressly makes “bonuses” PERSable by including them  
5 in “special compensation” for “state members”:

6 (3) Notwithstanding subdivision (c), “special compensation” for state  
7 members shall mean all of the following: . . .

8 (B) Compensation for performing normally required duties, such as holiday  
9 pay, bonuses (for duties performed on regular work shift) . . . GOVERNMENT  
10 CODE §20636(g)(3).

11 (6) (A) Subparagraph (B) of paragraph (3) prescribes that compensation  
12 earnable includes compensation for performing normally required duties, such  
13 as holiday pay, bonuses (for duties performed on regular work shift) . . .  
14 GOVERNMENT CODE §20636(g)(6).

15 **a. The Statute Deprives CalPERS Of Any Authority To Say Otherwise.**

16 It is elementary administrative law that an agency may only implement, and not contradict or  
17 alter, a governing statute. *E.g., California School Employees Association v. Personnel Commission*  
18 (1970) 3 Cal.3d 139, 143-144. When the Legislature made bonuses PERSable, as quoted above, it  
19 took away any authority or discretion CalPERS may have had to say otherwise.

20 The Decision tries to work around this clear legislative command by citing provisions of the  
21 statute giving CalPERS the authority to find that “other” payments are or are not “special  
22 compensation” or “payrate,” whether because of a (non-existent) conflict with a memorandum of  
23 understanding or because CalPERS staff said so. Again, however, it is elementary that CalPERS’  
24 authority and discretion cannot contradict an express statutory statement, such as the command that  
25 bonuses are part of special compensation. *E.g., id.; Pardee Construction Co. v. California Coastal*  
26 *Commission* (1979) 95 Cal.App.3d 471, 478-479. CalPERS may only fill in “gaps” left in the  
27 statute, *e.g., Aguilar v. Superior Court* (2009) 170 Cal.App.4th 313, 324-325; *RCJ Medical*  
28 *Services, Inc. v. Bontá* (2001) 91 Cal.App.4th 986, 1005, but this statute left no gaps for  
interpretation; it flatly included “bonuses” as “special compensation.”

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1                   **b.       The Bonuses Need Not Reflect “Special” Work, But They Do.**

2           The Decision also tries to work around the statutory command by characterizing the effort  
3 required to earn the bonuses as *mere* “extra work.” To do this, the Decision cites part of subdivision  
4 (c) of Section 20636, which defines “special compensation” as pay for special skills and so on.  
5 However, subdivision (g)(3) of Section 20636, which governs “state members” such as Paxton,  
6 makes “bonuses” “special compensation” “[n]otwithstanding subdivision (c).” The Decision relies  
7 on language the Legislature expressly made inapplicable.

8           Even if the inapplicable language applied, the Decision tendentiously chops parts off the  
9 statute. Although the Decision occasionally quotes the entire provision regarding “special  
10 compensation,” it repeatedly only applies part of that provision: that “special compensation” is  
11 payment for special skills, knowledge, and abilities. However, the rest of that provision includes, as  
12 “special compensation,” payment for “special” “work assignment” “or other work conditions.”  
13 GOVERNMENT CODE §20636(c)(1). Even under the facts found in the Decision, working more than  
14 the threshold required to earn bonuses was a special assignment and a special work condition. The  
15 Decision does not interpret those terms incorrectly; it reached its desired conclusion by ignoring  
16 them.

17           The Decision argues that the bonuses did not qualify as “bonuses” under 2 CAL. CODE REGS.  
18 §571. Both the employing authority and the Legislature-approved collective bargaining agreement  
19 designated the bonuses as “bonuses.” Moreover, Rule 571 is irrelevant because it does not apply to  
20 state members, such as Respondents. Even if Rule 571 applied, earning these bonuses required  
21 Paxton’s “superior performance,” the phrase appearing in the regulation, i.e., he was extraordinarily  
22 fast and efficient so as to perform a superior number of disability evaluations. Calling this mere  
23 “extra work,” as the Decision does, uses a term without legal meaning and demeans these  
24 Respondents’ efforts; indeed, “extra work” *is* “superior performance.”

25                   **c.       The Bonuses Were Paid For Work Performed During Regular Shifts.**

26           The statute that expressly makes “bonuses” “special compensation” excludes only work not  
27 “performed on regular work shift.” The Decision correctly found as a fact that none of the  
28 Respondents worked more than forty hours per week to earn their bonuses. As to Paxton, the

1 Decision even repeats some basic arithmetic showing how easily his superior performance could  
2 earn his bonuses during his regular work shifts. The factual finding makes the exclusion (for work  
3 not performed on “regular work shifts”) inapplicable, and thus leaves the bonuses as “special  
4 compensation.”

5 The Decision then goes off the tracks, confusing these bonuses with something metaphorical.  
6 The Decision concludes that, because the disability review program used to offer an overtime  
7 component, these bonuses must therefore reflect overtime pay. This conclusion again conflicts with  
8 the governing statute: The statute recognizes bonuses as long as they were paid “for duties  
9 *performed* on regular work shift,” GOVERNMENT CODE §20636(g)(3)(B), (g)(6)(A) (emphasis  
10 added), which they were. The Decision says that, because some medical consultants (“MCs”) *might*  
11 have worked extra hours, the bonuses were “akin to overtime”; the Decision’s speculation  
12 transforms into overtime a bonus system that was expressly intended *not* to be overtime, “whether  
13 formal or informal” (UAPD Agreement, *Exh.* 18:18 [§7.6.C.3]; see also CalPERS’ trial Exh. 16, first  
14 page, “eliminate all current formal and informal” forms of overtime) and which the Decision itself  
15 found was *not, in fact*, earned outside regular work shifts. Indeed, the only testimony on point was  
16 that MCs were instructed *not* to work more than their regular shift. A pension dispute is no place for  
17 metaphors.

18 **d. The Bonuses Need Not Have Been “Available” To All MCs.**

19 Subdivision (g) of GOVERNMENT CODE §20636 defines “compensation earnable” for state  
20 employees like Paxton in terms of two components, “payrate” and “special compensation.” Payrate  
21 is for groups – “similarly situated members.” As quoted above, though, bonuses are special  
22 compensation, which can be individualized. Nevertheless, the Decision concludes that the bonuses  
23 are not “compensation earnable” because they were not available to all persons in the same class.  
24 No one who wanted bonus work was denied it, but more importantly the Decision reaches its  
25 conclusion by alternately creating and ignoring statutory language.

26 The Decision claims that paragraph (g)(1) of Section 20636 requires that the bonuses have  
27 been “available” to all class members, including MCs doing non-psychiatric work, MCs working in  
28 the state program, and MCs working in locations without the backlogs that triggered the bonuses.

1 However, “available” appears nowhere in that paragraph. As indisputably shown at trial, non-  
2 psychiatric MCs are in a different employment “class” (code 7784) than psychiatric MCs (code  
3 7785), who do different work. Even if bonuses were subject to a group requirement, it would have  
4 been satisfied here because the test is “similarities in job duties, work location, collective bargaining  
5 unit, or other logical work-related grouping,” GOVERNMENT CODE §20636(e)(1), and the MCs who  
6 did not earn bonuses had different duties, locations, and logical work-related groupings such as  
7 backlogs. The only reference to groups concerns “average time” worked by members in the class,  
8 GOVERNMENT CODE §20636(g)(1), which concerns time spent, *Ventura County Deputy Sheriffs’*  
9 *Association v. Board of Retirement* (1997) 16 Cal.4th 483, 504, which is irrelevant given  
10 Respondents’ performance during regular working hours.

11 The key error the Decision makes in this context is that it *again* ignores the statutory  
12 provision that renders its desired provision inapplicable. The Decision’s argument that special  
13 compensation must be available to other class members derives from subdivision (c) of Section  
14 20636 and *Molina v. Board of Administration* (2011) 200 Cal.App.4th 53, 65-66. However,  
15 subdivision (c) concerns employees other than state employees, and *Molina*, which interpreted  
16 subdivision (c), concerned a city employee. Subdivision (c) and *Molina* are irrelevant because  
17 Paxton and the other Respondents are *state* employees subject to subdivision (g), and subdivision (g)  
18 expressly makes subdivision (c)’s rules for payrate and special compensation inapplicable.  
19 According to *Ventura County*, each member’s pension is still based on “the individual employee’s  
20 pay,” which includes “‘special compensation’ items” for each employee. *Id.* at 504-505. *Ventura*  
21 *County*, in fact, approved as special compensation a series of items such as bilingual pay and a  
22 motorcycle bonus, *id.* at 488, 488n2, 488n8, which were unavailable to many members.

23 For state employees, groups matter for payrate, but bonuses are part of individualized special  
24 compensation. The statute specifically makes bonuses special compensation. The Decision again  
25 applied the wrong part of the statute.

26 **2. Whether CalPERS Budgeted For This Is Irrelevant.**

27 The Decision concludes that the bonuses are not PERSable because they will create an  
28 unfunded liability. However, CalPERS’ failure (or refusal, in light of the first ALJ’s decision in the

1 related Hurwitz/Norbeck matter) to recognize the PERsability of these bonuses is irrelevant as a  
2 matter of law; if someone earns a pension, they have a vested contractual right to that pension. E.g.,  
3 *Teachers' Retirement Board v. Genest* (2007) 154 Cal.App.4th 1012, 1036; *County of Orange v.*  
4 *Association of Orange County Deputy Sheriffs* (2011) 192 Cal.App.4th 21, 47. The California  
5 Supreme Court has expressly rejected the notion that "unanticipated costs" can justify "denying  
6 these plaintiffs" their pension rights. *Ventura County, supra*, 16 Cal.4th at 507.

7 The Decision's conclusion on this point is particularly odd because the ALJ had agreed at  
8 trial that CalPERS' costs were irrelevant; he thus barred testimony about the costs to CalPERS of  
9 Respondents' pensions. In addition to being wrong on the law, negating that ruling after trial  
10 deprives Respondents of the ability to have countered it factually at trial.

### 11 CONCLUSION

12 The ALJ allowed CalPERS' counsel, over Paxton's objection, to search for evidence  
13 favoring CalPERS by putting on witness after witness who lacked knowledge of the facts. For the  
14 CalPERS Board to have approved the Decision is to invite litigation based on result-oriented  
15 misreadings of a statute. Indeed, a class action lawsuit has already been drafted. The statute  
16 repeatedly makes irrelevant the provisions on which the Decision relies; the statute stripped  
17 CalPERS of the authority to conclude otherwise.

18 Paxton requests that the Board reconsider the Decision and remand the matter to the ALJ for  
19 reconsideration. Paxton requests that, along with reconsideration of the law as discussed above, the  
20 Decision be amended to address three undisputed facts shown at trial: that the psychiatric and non-  
21 psychiatric MCs had different class codes; that they were instructed not to work more than their  
22 regular hours; and that work supervisors were responsible for assigning the "bonus" work.

23 Dated: September 29, 2015

**HECHT SOLBERG ROBINSON GOLDBERG & BAGLEY LLP**

24  
25 By: 

26 Richard A. Schulman, Attorneys for Respondent  
27 DR. ROBERT B. PAXTON

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**DANILO V. LUCILA, M.D.**

**PETITION FOR RECONSIDERATION**

Danilo V. Lucila, M.D.

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

In the Matter of the Calculation of Final Compensation of

DANILO V. LUCILA, M.D.  
OAH Case No. 2014050199  
Agency Case No. 2014-0335  
Respondent

Consolidated with:

DR. ROBERT B. PAXTON  
OAH Case No. 2014080002  
Agency Case No. 2014-0336

and

DR. HOWARD M. SKOPEC  
OAH Case No. 2014050198  
Agency Case No. 2013-1120

Respondents.

**Date of Hearing: April 13-16, 2015**

**ALJ Jonathan Lew**

**PETITION FOR RECONSIDERATION**

The undersigned respondent, DANILO V. LUCILA, to the Honorable Board of Administration of the California Public Employees' Retirement System (CalPERS) respectfully submits the following arguments in his PETITION FOR RECONSIDERATION:

First of all, Respondent would like to call the attention of the Board that he is representing *in propria persona* and has filed separate pleadings both before the ALJ and this Honorable Board. During the hearing he appeared *in pro per*. It is requested that communications regarding this matter be coursed directly to him.

It has been noted that the decision of this Board was focused mainly on the issue of PERSability of the bonus payments but perhaps missing, ignoring or omitting the fundamental issue raised by Respondent, creating an impression, at least in so far as he is concerned, that he may not have received a fair and due consideration on his main argument.

We will not go into details into the issue of PERSability of bonus as this has been sufficiently discussed in our Trial Brief and in our Respondent's Arguments before this Honorable Board. Suffice it to state a preponderance of the evidence by the Respondent established that the productivity bonuses that were paid to the Respondent were paid for performing special services during normal working hours and the payments constituted "special compensation" under the retirement law.

Another point that Respondent would like to point out is that there has been a very glaring misstatement, erroneous and unfair narration of events. CalPERS witness Jennifer Sandness on direct testimony concerning the bonus payment testified under oath that Respondent received approximately \$5,000 in monthly bonus payments. The fact and the truth of the matter is that his average monthly bonus payment was approximately \$2,000.00 only. Most strikingly, the ALJ in his Proposed Decision quite clearly stated that Respondent's ". . . highest documented monthly bonus of \$11,880 was received in May 2009 . . . Dr. Lucila closed 440 cases that month." (CF: Proposed Decision, page 11, par. 23-c).

Respondent NEVER received that amount, and NEVER processed 440 cases in the month of May 2009. This conclusion is not supported by any evidence submitted during the hearing nor was there any testimony to that effect.

On the contrary, CalPERS' own Exhibit 13 indicated that Respondent only received \$4,968 in bonus for the month of May 2009 and processed only 184 cases. This is identified on page 000027 of said exhibit. Again, on CalPERS' Exhibit 11, posted on

October 31, 2009 for the period from May 1-31, 2009 indicated that Respondent received special compensation of \$4,968. Respondent's Exhibit "B" showed also a deposit of \$4,968.

It is extremely difficult for Respondent to understand and comprehend these erroneous and misstatement of facts when they were supposed to be based on the evidence. It can only be assumed by Respondent that there was a subtle attempt to paint him in a negative light, or to put it more bluntly a "heavy-hitter" when in fact he was not. Shelia Powel, Case Adjudication Bureau Chief of the Oakland Branch, testified under oath that Respondent was a "model of integrity". Again, Debra Peel, Assistant Deputy Director, Field Operations, a witness for CalPERS, when asked during cross-examination, testified that the federal audits conducted by the Inspector General of the Social Security Administration did not find any irregularity, wrong doing or impropriety in the work of the Respondent.

#### **THE GRAVAMEN OF RESPONDENT'S ARGUMENT**

Respondent participated in the bonus program on or about September, 2006 thru November, 2011 when it was discontinued. He joined the program when it was made available to all DSS psychiatric medical consultants at the Oakland Branch and other branches of California Disability Determination Service at the federal level at the same time and on the same terms and conditions. The sublime purpose was to alleviate the mounting and chronic backlog of psychiatric disability evaluation cases at the federal level. The rule at the ground level was quite simple: you must process psychiatric disability evaluation cases over the threshold of 90 cases a week to be entitled to a bonus payment of \$27.00 per case over the mandated threshold during normal working hours; that is, without working over- time. Senior management made it very clear that under the program working overtime is not allowed, and if done, would not be compensable. These conditions were made pursuant to the MOU negotiated by the UAPD and DSS. The threshold was 90 cases a week or approximately 360

cases a month. His average monthly bonus was \$2,000 and his average productivity output in excess of the mandated threshold of 360 cases a month was approximately 74 cases. By working harder and faster, improving his familiarity with the automated system, increased focused attention to the case at hand though taxing to the mind and eyes, avoiding or minimizing distractions, being more organized and more efficient in the disposition of cases, and by superior performance, he was able to work it out during normal working hours. He continued to work under the bonus program until it was discontinued in 2011, and he retired on May 1, 2012. While still working under the bonus program, his pension contribution was continually being deducted from his bonus payments, and his DSS bonus checks as well as CalPERS's own Exhibit 11 indicated "special compensation". Likewise, his employer, DSS, was also submitting retirement contributions based on his payrate and bonus payments on his own behalf. This arrangement continued on without any changes or modification until it was discontinued in 2011. On or about May 1, 2012 when he retired or maybe sometime in June, 2012, he received a statement from CalPERS indicating his pension benefits without any explanation as to what it was. The statement indicated benefits with the bonus payment and without the bonus payment. There was no explanation whatsoever other than what it contained. On June 1, 2012, he received his first pension check without the bonus pension benefits. Nobody from CalPERS contacted him either by phone or by letter why the bonus pension was missing from his pension check. The mailing of that pension benefit statement without explanation and the first pension payment minus the bonus benefit appear to have been made surreptitiously.

On September 20, 2013 or approximately *one year and six months after retirement*, Respondent received a letter from CalPERS informing him that his bonus payments would not be included in the computation of his final retirement benefits, without giving any reason or explanation. Shortly after April 28, 2014, or *approximately two years after retirement*, he received the Statement of Issues from CalPERS informing him that his bonus payment is not eligible to be included in the calculation of his final compensation without any explanation.

During that hearing of April 13-16, 2015, he *first learned* that the reason for the exclusion of the bonus payment in the final computation of total compensation was the non-PERSability of the bonus payment. He *first learned* also that this issue of PERSability was a subject of communication between the Compensation Unit at CalPERS and DSS. When that was made and for how long was never mentioned during the hearing. No evidence or documentation was presented. This new information – the non-PERSability and communication between the Compensation Unit and DSS on this subject - became known to Respondent *approximately three years after retirement*.

The series of events, post retirement, seem to create a pattern of subtle attempts to conceal or hide or withhold significant information critical to Respondent's understanding of what was going on regarding his bonus pension.

It is submitted that the issue of PERSability which was the focus of the ALJ Proposed Decision which was adopted by this Honorable Board cannot be applied to the herein Respondent because it is *fait accompli*. The Respondent had completely retired when this issue was raised. During the time that he was working under the bonus program nobody either from the Compensation Unit at CalPERS or from DSS contacted or informed him, either by telephone, memo or official communication that there was an issue on the bonus payment. Nobody at the Oakland Branch Office was aware of it and Respondent was unaware that there was an issue on the bonus payment. He continued to work under the bonus program believing in good faith that the retirement benefits on the bonus would augment his retirement income. The PERSability of the bonus together with the bonus payments was an inducement for him to participate in the program.

The negligent and abject failure of DSS and the Compensation Unit at CalPERS, and the abdication of their responsibility to inform the Respondent *while he was still working* under the program that there was an issue on the bonus, allowed the unfolding of events over time to ripen the inchoate pension right of Respondent to the bonus retirement benefit, to mature into an irrevocable protected contractual obligation.

It could be argued that the bonus program was defective and therefore non-PERSable and would not qualify it in the calculation of final compensation. But it cannot be so after all contingencies have happened. To hold otherwise would defeat the very objective of pension laws - to induce competent persons to enter and remain in public service. More importantly, to allow that to pass would be in the very words of the State Supreme Court "merely a snare and a delusion to the unwary". (*Gibson vs. City of San Diego*, 25 Cal. 2d 930 [156 P.2d737; *England vs. City of Long Beach*, 27 Cal. 2d 343; *Kerns vs. City of Long Beach*, 29 Cal. 2d 848). To put it more bluntly, the employer has deceived the employee into believing that the bonus payment was pensionable when in fact it was not at the end. In a sense, the determination of CalPERS excluding the bonus payment from the calculation of total compensation was an *ex post facto fiat* – it was PERSable while Respondent was working and Non-PERSable on retirement.

The California Supreme Court in the case of *Kern vs. City of Long Beach* (290 Cal.2d 848), the leading landmark in the area of pension jurisprudence, decided in 1947 that a public employee's pension constitutes an element of compensation and a vested contractual right to pension benefits and may not be destroyed, ONCE VESTED AND ALL CONTINGENCIES HAVE HAPPENED. Once vested, an employee gains an *irrevocable interest* in the benefits which is a form of compensation in the State. In Respondent's case, the last contingency occurred when he retired on May 1, 2012 and his State pension became due and payable, and his pension right to receive the entire retirement benefits became vested and irrevocable. (*Kavanagh vs. Board of Police P. F. Commrs.*, 134 Cal. 50 [66 P. 36].

Vested is generally understood in pension law to mean permanent, unalterable, absolute right or title. And this absolute and irrevocable right refers not only to the accrued or earned benefits but also the vested right to the pension. Respondent had completely earned 100% of accrued benefits and had completed the required number of years of service to vest on retirement. His fully vested and irrevocable right to receive the entire pension benefits without any diminution is fully protected under the contract clause, not only under the California Constitution but also under the U.S. Constitution. The withholding of his bonus pension checks by CalPERS violated his pension right and still continues to violate

his constitutional protected right. CalPERS by continuously allowing the withholding of his bonus pension since retirement on May 1, 2012 when it was due and payable may have exceeded its authority and perhaps abused its discretion.

While non-vested right maybe changed or altered or modified *while the employee is still working*, still it needs the consent of one of the parties. (*San Bernardino Public Employees Association vs. City of Fontana*, 67nCal. App. 4<sup>th</sup> 1215, 79 Cal. Rptr. 2d 634 (Fourth App. Dist. 1998).

The doctrine enshrined in the *Kern* case states that once pension right becomes vested and irrevocable, it cannot be abrogated, changed or modified without impairing the contract obligation. The contract clause of the California Constitution protects these retirement expectations. (*Allen v., Bd of Adm.* (1983) 34 Cal. 3d114, 120, 126 (Bd of Adm”).

The *Kern* doctrine is echoed in the principle under ERISA, the Employee Retirement Security of 1974, namely that any amendment of a pension plan or system would not work to reduce or eliminate those pension benefits that had by the time of the amendment already been accrued or earned and vested.

The California Supreme Court has also established that a promise of a pension by a public employer to its employees is a promise that must be kept. It is a sacred promise that must be honored, and once the pension right becomes *VESTED and IRREVOCABLE*, it cannot be taken away. Pension promised is a part of the contemplated compensation and so in a sense it is part of the contract of employment (*Dryden vs. Board of Pension Commrs*, 6 Cal. 2d 575).

Respondent finds some semblance or parallel in the *Kern case*. In the latter, Kern worked as a fireman and 32 days prior to his completion of the required 20 years of service, his pension benefit was entirely repealed by an amendment to the city charter. On retirement his application for pension was rejected. The Supreme Court reinstated his pension.

In Respondent's case, he worked under the bonus program until it was discontinued. On retirement, his pension check did not include the bonus

pension benefit. No explanation was given. Approximately one year and four months post retirement, his pension benefit was effectively abolished by *an ex post facto fiat*; approximately two years post retirement, CalPERS determined that the bonuses were not eligible for pension calculation, and approximately three years post retirement, it was revealed during the hearing that the bonus payments were not PERSable.

It is now up to the Honorable Board of the California Public Employment Retirement System to redress this grievous error that has caused financial injury to the Respondent, and to grant the relief prayed for in his earlier pleading – to include the bonus payments in the calculation of his final pension benefits.

It is hoped that this would be the last proceeding in Respondent's quest for equity and justice.

  
DANILO V. LUCILA, M. D.

Date OCT 14, 2015

Respondent