

MEETING
STATE OF CALIFORNIA
PUBLIC EMPLOYEES' RETIREMENT SYSTEM
BOARD OF ADMINISTRATION
OPEN SESSION

ROBERT F. CARLSON AUDITORIUM
400 P STREET
SACRAMENTO, CALIFORNIA

WEDNESDAY, NOVEMBER 18, 2015
9:00 A.M.

JACQUELINE TOLIVER, CSR
CERTIFIED SHORTHAND REPORTER
LICENSE NUMBER 4808

A P P E A R A N C E S

BOARD MEMBERS:

Mr. Rob Feckner, President

Mr. Henry Jones, Vice President

Mr. Michael Bilbrey

Mr. John Chiang, represented by Mr. Grant Boyken

Mr. Richard Costigan

Mr. Richard Gillihan

Mr. Richard Gillihan, represented by Ms. Katie Hagen

Ms. Dana Hollinger

Mr. J.J. Jelincic

Ms. Priya Mathur

Mr. Bill Slaton

Ms. Theresa Taylor

Ms. Betty Yee

STAFF:

Ms. Anne Stausboll, Chief Executive Officer

Mr. Douglas Hoffner, Deputy Executive Officer

Mr. Doug McKeever, Deputy Executive Officer

Ms. Donna Lum, Deputy Executive Officer

Mr. Brad Pacheco, Interim Deputy Executive Officer

Ms. Mary Anne Ashley, Chief, Legislative Affairs
Division

Ms. Cheryl Eason, Chief Financial Officer

Mr. Ted Eliopoulos, Chief Investment Officer

A P P E A R A N C E S C O N T I N U E D

STAFF:

Mr. Matthew Jacobs, General Counsel

Curtis Ishi, Managing Investment Director

Mr. Alan Milligan, Chief Actuary

Mr. Scot Blackledge, Assistant Chief, Legislative
Affairs Division

Ms. Barbara Cody, Board Governance Secretary

ALSO PRESENT:

Mr. Chirag Shah, Shah and Associates

Mr. Jason Levin, Steptoe and Johnson, Outside Counsel
for CalPERS

Mr. John Michael Jensen, Counsel for Bruce Malkenhorst,
Sr.

Ms. Kristy Bauma, California Professional Firefighters

Mr. Neil Johnson, SEIU 1000

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1 P R O C E E D I N G S

2 PRESIDENT FECKNER: Good morning, everybody.

3 We'd like to call the Board of Administration meeting to
4 order. Good morning to all of you.

5 The first order of business will be to call
6 the roll, please.

7 MS. CODY: Rob Feckner.

8 PRESIDENT FECKNER: Good morning.

9 MS. CODY: Henry Jones?

10 VICE PRESIDENT JONES: Here.

11 MS. CODY: Michael Bilbrey?

12 BOARD MEMBER BILBREY: Good morning.

13 MS. CODY: Grant Boyken for John Chiang?

14 ACTING BOARD MEMBER BOYKEN: Here.

15 MS. CODY: Richard Costigan?

16 BOARD MEMBER COSTIGAN: Here.

17 MS. CODY: Richard Gillihan?

18 BOARD MEMBER GILLIHAN: Here.

19 MS. CODY: Dana Hollinger?

20 BOARD MEMBER HOLLINGER: Here.

21 MS. CODY: J.J. Jelincic?

22 BOARD MEMBER JELINCIC: Here.

23 MS. CODY: Ron Lind?

24 PRESIDENT FECKNER: Excused.

25 MS. CODY: Priya Mathur?

1 BOARD MEMBER MATHUR: Good morning.

2 MS. CODY: Bill Slaton?

3 BOARD MEMBER SLATON: Here.

4 MS. CODY: Theresa Taylor?

5 BOARD MEMBER TAYLOR: Here.

6 MS. CODY: Betty Yee?

7 BOARD MEMBER YEE: Here.

8 PRESIDENT FECKNER: Thank you.

9 This morning we're going to combine Items 3
10 and 2, the Board President's message and the Pledge of
11 Allegiance. And you'll understand why as I get into it.

12 So, again, thank you for being here. Good
13 morning to all of you.

14 One week ago today, our nation celebrated a
15 very sacred and a very special day: Veterans Day.
16 Veterans Day is more than just a national holiday. It's
17 a time when we in America, as Americans, can honor and
18 show our appreciation for all those who have served or
19 are currently serving in our armed forces.

20 This morning we want to continue to the
21 celebration in honor of the veterans who are a part of
22 our part of our CalPERS family and our extended family
23 of members, employers, and stakeholders.

24 I'd like to now welcome to the stage Charles
25 Berg from our Information and Technology Services

1 Branch. Charles has a proud history of service. He
2 first enlisted as an Army Combat Medic in 1979 and
3 served in Desert Storm as a logistics officer and
4 company commander with the First Calvary Division. He
5 later worked as a foreign intelligence officer with the
6 NSA and was promoted to Major.

7 Charles, would you please come forward and
8 lead us in the Pledge of Allegiance, and everyone please
9 rise.

10 (Thereupon the Pledge of Allegiance was
11 recited in unison.)

12 PRESIDENT FECKNER: Thank you, Charles. I
13 appreciate that.

14 At this time I'd like to acknowledge all the
15 veterans in our regional offices throughout the State
16 and those who are here with us today in the audience.
17 We ask that all of you that served in the military or
18 are currently serving to please stand and be recognized.

19 Excellent.

20 (Applause.)

21 PRESIDENT FECKNER: On behalf of the Board and
22 all of us here at CalPERS, we want to thank you for your
23 service to our country. And please note that in the
24 back of the room here you'll notice three members of our
25 kitchen cafe staff are with us also. Thank you. Thank

1 you for joining us. We will always be grateful for all
2 your dedication, your sacrifice, and your courage.

3 Now, on another note, I know our CO will be
4 making some comments about our recent educational forum,
5 but I'd just like to take the opportunity to thank all
6 the members of our Board who participated in that event.
7 It was again a valuable opportunity for us to engage
8 with our employers and talk with them about the issues
9 that we face together.

10 I especially wanted to acknowledge our leaders
11 and staff who put on the event. It takes an enormous
12 amount of work to organize that event every year. And I
13 know I speak for all the Board in thanking you for the
14 outstanding efforts on behalf our members, as well as of
15 our employers. Thank you.

16 That brings us to Agenda Item 4, the Chief
17 Executive Officer's report. Ms. Stausboll, please.

18 CHIEF EXECUTIVE OFFICER STAUSBOLL: Good
19 morning, Mr. President, and members of the Board.

20 We've had a busy week so far with a full day
21 still ahead, so I'll make my report brief this morning.

22 I wanted to start by thanking Ted Eliopoulous
23 and his team for the Private Equity workshop on Monday.
24 A huge amount of work went into it, and by the Legal
25 Office as well as Investment. I hope you all found it

1 productive. And for members of the public who missed
2 it, the recorded workshop will be on our website in a
3 few days.

4 So moving on to the big topic for this
5 morning, yesterday the Finance and Administration
6 Committee heard the presentation of our Fourth Annual
7 Report on CalPERS funding levels and risks and the
8 overall soundness of the system.

9 We started presenting that report four years
10 ago. It's a continuation of the asset liability
11 management work, which is the basis for the initiative
12 on mitigating our funding risk. It's a
13 multi-dimensional approach and a combined effort of the
14 Investment, Actuarial and Finance offices.

15 And our goal is to make sure we're looking at
16 the fund from all angles through the lens of the capital
17 market, as well as through the demographics of our
18 population.

19 This morning the Board is going to consider
20 adoption of a funding risk policy/mitigation policy, a
21 topic that's been under consideration for almost two
22 years. It's a very important decision, and I am
23 confident and pleased that when we look back on it we
24 will regard this as an important milestone.

25 Turning to next month and the closeout of the

1 calendar year, at next month's meeting we'll be
2 finalizing the CAFR, the Comprehensive Annual Financial
3 Report, following the review this week of the
4 Independent Auditors' Report and the Basic Financial
5 Statement. And then we'll release the CAFR publicly and
6 post it on the website.

7 In addition, our Actuarial staff is finalizing
8 evaluation reports for public agencies. And as Alan
9 Milligan mentioned yesterday, we've been delayed in
10 completing the reports this year because of the demand
11 on the actuaries in developing GASB 68 reports for the
12 first time this year, but we do hope to complete the
13 evaluation by the end of the year. And we all
14 appreciate the extra work the actuaries are putting in
15 to complete the work.

16 Also, next month the Investment Office will be
17 presenting a draft of our Annual Emerging Manager
18 Five-Year Plan Report that we submit to the Legislature.
19 This will come in front of the Investment Committee, and
20 the report will cover the third year of the plan and
21 look at the progress and accomplishments to date; and
22 once finalized, we'll be deliver that to the
23 Legislature.

24 As Rob mentioned, I also wanted to talk about
25 the educational forum that we had a few weeks ago in San

1 Jose, our 16th Annual Forum. And I want to thank all
2 the Board members who attended. That makes a big
3 difference at the event.

4 And I also want to thank -- I think it's about
5 a hundred staff who attend and make the conference
6 possible. We had 605 attendees at the conference
7 representing over 300 employer groups. So it was a
8 great turnout, and the feedback that we've gotten
9 through surveys has been overwhelmingly positive.

10 Next year, we'll be doing the conference back
11 in Southern California in Riverside at the Riverside
12 Convention Center. Last time we held the forum in
13 Riverside, we had 720 attendees, which was the most
14 ever; so we're looking forward to another great
15 conference.

16 Turning to our community-giving activities
17 here internally, we just closed out the 2015 Our Promise
18 Charitable Campaign. And it was formerly known, as you
19 all know, as the California State Employees' Charitable
20 Campaign.

21 We had our annual Silent Auction and Chili
22 cookoffs put on by staff, and we raised almost \$4,000
23 for a number of local charities.

24 And we're still tallying the payroll
25 contributions by our employees, and I'll have that

1 information later in the year; but all this is another
2 example of the CalPERS employees' generosity.

3 In keeping with the holiday spirit, our
4 California State Employees' Food Drive officially
5 started last week. It goes through January 15. The
6 donations from this food drive help families and senior
7 citizens in the Sacramento area. And our goal for
8 CalPERS this year is to collect 40,000 pounds -- 40,000
9 pounds of food.

10 This Friday we're holding our annual Turkey
11 Drop, which is always a fund event from 6:30 until 9:00
12 here at headquarters. We've always done our share
13 during the holiday season here at CalPERS to help those
14 less unfortunate; so I encourage anyone who is able to
15 contribute to do so.

16 Lastly, and as always, I'd like to take a
17 moment for some recognition. And, in particular,
18 following the educational forum, I wanted to acknowledge
19 our Employer Response Team.

20 You may remember the ERT was launched two
21 years ago, and it was an outcome of the received at the
22 ED forum. The goal was to improve employer services and
23 provide a single point of contact for employers, which
24 was something they were very vocal about for critical
25 and time-sensitive requests. And since inception, this

1 team has received 1,573 inquiries and answered about
2 80 percent of those in three days or less.

3 And the credit goes to the manager of the
4 team, Kellye Smith, and her three staff members: Susan
5 Forrer, Patricia Brown, and Ryan Digman. They go the
6 extra mile always to instill confidence and credibility
7 with our employers. I think they're all here to stand,
8 so please join me in recognizing the Employer Response
9 Team.

10 (Applause.)

11 CHIEF EXECUTIVE OFFICER STAUSBOLL: And I also
12 wanted to take a moment to share the news that our
13 Financial Office got a very prestigious award for its
14 work on the 2014/15 Annual Budget. It's the GFOA,
15 Government Finance Officers' Association, award for the
16 distinguished budget presentation. And it's the only
17 national awards program in government budgeting.

18 It's the second time CalPERS has received the
19 honor, and it's really a testament to the hard work of
20 Cheryl Eason, our CFO, and the budget team that's led by
21 Rose McAuliffe. And they have truly committed
22 themselves to raising the bar to the highest principles
23 of budget preparation and oversight. So congratulations
24 to you and your entire team.

25 (Applause.)

1 CHIEF EXECUTIVE OFFICER STAUSBOLL: That's my
2 report for this morning. I want to wish everyone here
3 and everyone watching and all our employees and the
4 Board a very happy Thanksgiving.

5 Thank you. That concludes my remarks this
6 morning.

7 PRESIDENT FECKNER: Thank you.

8 That brings us to Item 4b, Chief Investment
9 Officer Report. Mr. Eliopoulos.

10 CHIEF INVESTMENT OFFICER ELIOPOULUS: Good
11 morning President Feckner, members of the Board. I have
12 a brief update on the performance of the Public
13 Employees' Retirement Fund as of September 30th, 2015.
14 For that three-month period of the fiscal year the total
15 fund performance for the fiscal year to date, as I just
16 mentioned, is a negative 4.9 percent, which covers that
17 three-month period. Of course we like to look at much
18 longer time periods, as they are more meaningful for
19 measuring our performance.

20 The three-year return is 7.6 percent, the
21 five-year return is 8.0 percent, the 10-year return is
22 5.2 percent, and the 20-year return of the total fund is
23 7.2 percent.

24 All asset classes are within their policy
25 ranges, and the total fund assets are valued as of

1 September 30th, 2015, at \$283.9 billion.

2 Mr. President, that is my report.

3 PRESIDENT FECKNER: Thank you. Seeing no
4 request to speak, we're moving on to Item 5, Action
5 Consent items.

6 Moved by Jelincic, seconded by Mathur.

7 Any discussion on the motion?

8 Seeing none.

9 All in favor say aye?

10 (Ayes.)

11 PRESIDENT FECKNER: Opposed, no?

12 Motion carries.

13 Item 6, consent calendar items. I've heard no
14 requests opposing the information item.

15 Moving to Item 7, 7a, and Committee Reports.

16 7a is Investment Committee. For that I call on the
17 Chair, Mr. Jones.

18 VICE PRESIDENT JONES: Thank you,
19 Mr. President.

20 The Investment Committee met on November 16,
21 2015. Additionally, the Committee participated in a
22 workshop exploring private equity in more detail. The
23 topics included the benefits and drawbacks of private
24 equity, the role of private equity in CalPERS'
25 portfolio, key legal terms and conditions, and examples

1 of accounting methods.

2 The Committee received several public comments
3 following the workshop. And I would also like to add --
4 at this time to thank Mr. Eliopoulous and his staff for
5 an outstanding presentation which led to a very
6 enlightening and productive discussion. So thank you
7 very much.

8 Following the workshop, the Committee
9 discussed and approved the following: Proposed
10 revisions to the Fixed Income and Global Equity
11 policies; staff recommendation that portfolio companies
12 are not subject to the California Public Divest from
13 Iran Act; proposed updates to the Legislative and Policy
14 Engagement Guidelines; and an update to the Wilshire
15 Associates Key Persons List.

16 The Committee also received presentations on
17 the following: A federal legislative update covering
18 recent developments on issues of interest to CalPERS;
19 the estimated carbon emissions of the public equity
20 components of CalPERS' Public Employees' Retirement
21 Fund; the Public Equity Annual Review by staff and
22 pension consultant Alliance, and proposed revisions to
23 the Private Equity Program policies.

24 Highlights for what to expect at the December
25 Investment Meeting include: The Annual Program Review

1 of Real Estate Assets; the Annual Report to the
2 California Legislature on the CalPERS Emerging Managers'
3 Five-Year Plan; and, an update on Investment Office
4 Roadmap.

5 The next meeting of the Investment Committee
6 is scheduled for December 14, 2015, in Sacramento
7 California. That completes my report, Mr. President.

8 PRESIDENT FECKNER: Thank you.

9 Item 7b, Pension and Health Committee Report.
10 For that I call on Chair Ms. Mathur.

11 BOARD MEMBER MATHUR: Thank you,
12 Mr. President.

13 The Pension and Health Benefits Committee met
14 on November 17, 2015. The Committee discussed the
15 potential impact of any additional wellness efforts on
16 the excise tax, or the excise tax implications of; and,
17 as a result, I move that the Board approve Committees
18 recommendation on Agenda Item 5, which is to defer
19 further development of a statewide wellness platform due
20 to risks associated with exceeding excise tax
21 thresholds, and instead to endorse the continuation of
22 the California Public Employees' Retirement System
23 Population Health Management Initiative.

24 PRESIDENT FECKNER: On motion by Committee.

25 Any discussion on the motion?

1 Seeing none.

2 All in favor say aye?

3 (Ayes.)

4 PRESIDENT FECKNER: Opposed, no?

5 Motion carries.

6 Ms. Mathur.

7 BOARD MEMBER MATHUR: The Committee received
8 several reports, including an update on the federal
9 Health Care Policy and Federal Retirement Policy, as
10 well as Customer Services and Support Performance and
11 Charter School Participation and Governmental Plan.

12 The Chair directed staff to weigh in on the
13 Department of Labor's proposed rule on State-run pension
14 plans for private sector workers as it relates to Secure
15 Choice plans, particularly if that is consistent with
16 our pension beliefs, and for retirement security for all
17 workers.

18 The Committee received public comment from
19 Chris Little regarding high-deductible plan options and
20 regional pricing criteria.

21 Some highlights of what to expect in December
22 at the Pension Health Benefits Committee Meeting
23 include: A review of strategic measures for customer
24 service support and legislative affairs. And we will
25 also receive some information on population, health, and

1 pharmacy costs and use in December.

2 The next meeting of the Pension and Health
3 Benefits Committee is scheduled for December 15, 2015,
4 in Sacramento California.

5 And that concludes my report, Mr. President.

6 PRESIDENT FECKNER: Thank you.

7 That brings us to our agenda Item 7c, Finance
8 and Administration Committee. For that I call on Chair
9 Mr. Costigan.

10 BOARD MEMBER COSTIGAN: Thank you,
11 Mr. Feckner.

12 The Finance and Administration Committee met
13 on November 17, 2015. The Committee recommends and I
14 move the Board approve the following: Agenda Item 5a,
15 Draft 2014-15 Basic Financial Statements, and approve
16 the draft CalPERS 2014-15 Basic Financial Statements.

17 PRESIDENT FECKNER: On motion by Committee.

18 Any discussion on the motion?

19 Seeing none.

20 All in favor say aye?

21 (Ayes.)

22 PRESIDENT FECKNER: Opposed, no?

23 Motion carries.

24 BOARD MEMBER COSTIGAN: The Committee
25 recommends and I move the Board approve the following:

1 Agenda Item 5b, the 2015-16 mid-year budget revisions
2 first reading, and approve the first reading of the
3 California Public Employees' Retirement System's fiscal
4 year 15-16 mid-year total budget of \$1,807,600,000.

5 PRESIDENT FECKNER: Thank you.

6 On motion by Committee.

7 Any discussion on motion?

8 Seeing none.

9 All in favor say aye?

10 (Ayes.)

11 PRESIDENT FECKNER: Opposed, no?

12 Motion carries.

13 BOARD MEMBER COSTIGAN: The Committee
14 recommends and I move the Board approve the following:
15 Agenda Item 6a, the Funding Risk Mitigation Policy
16 Second Reading, and approve the Funding Risk Mitigation
17 Policy with the 2 percent threshold.

18 PRESIDENT FECKNER: Motion by Committee.

19 Any discussion on the motion?

20 Mr. Jones.

21 VICE PRESIDENT JONES: Thank you,

22 Mr. President.

23 First of all, I would like to just thank Alan
24 Milligan and his entire staff for all of the work that
25 they have performed in getting us to this point, and

1 also the Finance Office and Investment Office for all of
2 the work over a two-year period to reach this point in
3 this process.

4 And with that, Mr. President, I would like to
5 offer a substitute motion to approve the Funding Risk
6 Mitigation Policy with the original 4 percent threshold.

7 BOARD MEMBER MATHUR: Second.

8 PRESIDENT FECKNER: Moved by Jones, seconded
9 by Mathur on the substitute motion.

10 Any discussion on the substitute motion?

11 Ms. Mathur.

12 BOARD MEMBER MATHUR: Thank you.

13 I just want to say that this is a real
14 historic moment and the important combination of a lot
15 of work done by our staff, as was noted in the Actuarial
16 Office, the Investment Office, and the Finance Office,
17 also, all together came together to help CalPERS work
18 through how can we improve our the risk of the funding
19 level of this fund over the long term and thereby create
20 a more sustainable fund for our beneficiaries, which is,
21 of course, what we're all here for.

22 This is a real cutting edge, leading edge
23 effort. I don't think there's any other pension plan in
24 the country that has considered this type of policy, and
25 I think it's really forward thinking and prudent,

1 responsible thing to do.

2 So I'm very proud that we've come to this
3 point involving lots of stakeholders over an 18-month
4 period and a significant outreach effort in getting
5 everyone to the same page. This was an important step
6 to take.

7 So with that, I just want to say I support the
8 motion that Mr. Jones has made.

9 PRESIDENT FECKNER: Thank you.

10 Ms. Taylor.

11 BOARD MEMBER TAYLOR: I want to speak on
12 behalf of the motion, as well as state that I really
13 appreciate the work that went into this. I know that we
14 spent a long time engaging all of the stakeholders on
15 the 4 percent. And I'm very happy with where we landed
16 on this, so I would like us to move forward with the 4
17 percent threshold.

18 Thank you.

19 PRESIDENT FECKNER: Thank you.

20 Mr. Gillihan.

21 BOARD MEMBER GILLIHAN: Thank you,
22 Mr. President.

23 As I said yesterday in Committee, we think
24 that we should be moving more aggressively here. This
25 Board has authority under existing policy to make a

1 change to the discount rate and phase that in under
2 existing Board policy.

3 This action today, this substitute motion,
4 simply kicks the can down the road. And we all
5 acknowledge that we face an uncertain future,
6 particularly in the markets, and it takes an
7 extraordinary market event to even consider making a
8 very modest change in the rate. So we think we're
9 missing an opportunity to be bold and do what's right.
10 And I will be opposing this substitute motion.

11 PRESIDENT FECKNER: Thank you.

12 Mr. Slaton.

13 BOARD MEMBER SLATON: Thank you,
14 Mr. President.

15 First of all, I want to add my thanks to the
16 Actuarial Office and all the staff that worked so hard
17 on this process. It's never an easy task to make these
18 kinds of changes, but I think that, to the credit of
19 this Board and the staff, that we all recognize that we
20 need to mitigate risk.

21 We can differ on strategy; we can differ on
22 the pace of change, and that's healthy. That's fair.
23 It's a good debate that we've had. We've had a very
24 good discussion about this. I and others, of course,
25 wanted us to move more aggressively, but I can

1 understand that there's always going to be potential
2 difference of opinion.

3 The main thing, though, is that we're moving
4 forward and that we are mitigating risk on behalf of the
5 beneficiaries of the system, because at the end of the
6 day all our loyalty lies in trying to make sure that the
7 money is there to be able to pay the earned benefits in
8 this plan.

9 So I understand -- I can pretty much see where
10 the votes are going. I'm in favor of risk mitigation,
11 so I'll be voting for this motion.

12 Thank you.

13 PRESIDENT FECKNER: Thank you.

14 Mr. Boyken.

15 ACTING BOARD MEMBER: Thank you.

16 I just want to echo the praise for the
17 Actuarial Office and other staff who've been involved in
18 working on this policy for a long time. Priya said we
19 are a leader, and we are.

20 You know, I should point out that our sister
21 system across the river, through a different
22 methodology, is looking at ways to reduce risk. And I
23 think, despite some differences, we're all unified in
24 our desire to reduce volatility and risk.

25 And so in the spirit of unity, I will be

1 supporting the substitute motion.

2 PRESIDENT FECKNER: Thank you.

3 Ms. Yee.

4 BOARD MEMBER YEE: Thank you, Mr. President.

5 I also want to extend my thanks to the staff
6 for bringing us to this point. I support Mr. Jones'
7 motion. It is a balanced approach, and I think -- as
8 was discussed yesterday, I think everyone's awareness of
9 risk has been heightened in part by the process that has
10 been engaged over a period in the last two years, as
11 well as just what's to come in terms of more full
12 disclosure with respect to our unfunded liability.

13 So I think this is a great, great approach
14 that really doesn't get our employers to have to really
15 look at a quick slide down a very, very dangerous slope.
16 So I really appreciate the sensitivity to our employer
17 committee.

18 PRESIDENT FECKNER: Thank you.

19 I have two requests to speak from the
20 audience. I have Neil Johnson and Christy Bauma.

21 Will you please come down. Right side of
22 the -- your right side, our left side. The microphones
23 are on. Please state your name for the record. And
24 you'll have up to three minutes.

25 MS. BAUMA: Thank you, Mr. President, Board of

1 Administration. Christy Bauma on behalf of the
2 California Professional Firefighters.

3 I came before you yesterday and you nearly
4 froze me out, so I'm going to stay fully robed to make
5 our very brief comments, because I think I said whatever
6 I needed to say yesterday in Finance and Administration
7 Committee, which is we applaud you.

8 Sometimes your labor partners take a little
9 dragging to the table to look at realities that we all
10 face, but what I know about my members is they love the
11 communities they work in; they want their employers to
12 be able to promote a safe and prosperous community, and
13 so they're team members in that regard.

14 And I think that they would also be what
15 you're doing today, if this substitute motion passes, is
16 doing the same thing in looking out for their best
17 interests for their retirement security, in protecting
18 their families as they protect their communities,
19 without overly burdening the employers in putting
20 this -- I would say keeping this system on a positive
21 path; because I've never held a view that you have taken
22 a wrong turn and you're recovering from that; that
23 you've always been proactive. And this is -- as I said
24 yesterday, you're setting a trend for public pension
25 systems.

1 And we'll see -- we hope that you have an
2 accolade of voices about decisions you'll make, rather
3 than critics, which there will always be some.

4 So I appreciate your time and appreciate the
5 engagement that you did with all of us to come to this
6 place, and I encourage you to support the substitute
7 motion.

8 PRESIDENT FECKNER: Thank you. I'm sorry we
9 froze you out yesterday. They must have readjusted the
10 vents because it's plenty warm up here.

11 Neil.

12 MR. JOHNSON: Neil Johnson, SEIU 1000.

13 Besides my comments yesterday about why we
14 don't support a 2 percent threshold, one is a little bit
15 of Mr. Gillihan's comment a little earlier of
16 extraordinary returns and where sort of going from the 4
17 to the 2 is a little bit like the classic rate creep
18 we've seen in the education system where what used to be
19 an A-minus is now sort of a C-plus, and so do we really
20 move on changes that are slightly above the long-term
21 average, which Mr. Eliopoulous told us the fund has
22 done? We traded 7.2 percent over a 20-year horizon.
23 Clearly, we have to appreciate taking risk out of the
24 system. That is why we're here.

25 I would like to thank Mr. Milligan and his --

1 the rest of the Actuarial Office for a several year
2 discussion on funding risk, starting with, I think, the
3 2012 off site where he started his crude model and
4 explained the funding risk problems. This policy is
5 ahead of the curve as far as our pension systems, and I
6 encourage you to adopt the 4 percent.

7 Further, this is consistent, I think, with the
8 discussion yesterday at the Governance Committee that we
9 need -- as fiduciaries we do what is best for the
10 system, and one of those beliefs of this inherent in the
11 system is we're in this for the long term, not the short
12 term.

13 And with that, I encourage you to vote for the
14 4 percent. Thank you.

15 PRESIDENT FECKNER: Thank you.

16 Ms. Yee, your light is on. Do you want to
17 speak.

18 BOARD MEMBER YEE: I'm sorry. No.

19 PRESIDENT FECKNER: Mr. Bilbrey.

20 BOARD MEMBER BILBREY: Thank you,
21 Mr. President.

22 So I, too, and my colleagues -- I really want
23 to concur with Mr. Slaton that although we have a
24 difference in strategy, we are all on the same page,
25 which is so important, and I think should be highlighted

1 more than we have here.

2 Also, I want to echo my thanks to the
3 Actuarial staff, as well as Finance. I really want us
4 to think about what we -- we do spend a lot of time here
5 discussing this, but think about how much time the staff
6 has in preparing to put this all forward to us. Those
7 are countless hours that they really, really work so
8 hard to get something that's good for us; so I think
9 that we really need to highlight that more than we even
10 realize.

11 And I thank all those offices for their work
12 on it. Thank you so much.

13 CHIEF EXECUTIVE OFFICER STAUSBOLL: Mr.
14 President.

15 PRESIDENT FECKNER: Yes.

16 CHIEF EXECUTIVE OFFICER STAUSBOLL: Thank you.

17 In the spirit of all the appreciation, I just
18 also wanted to give a shout out to Brad Pacheco and his
19 team, because it was really -- the stakeholder process
20 and the full engagement that we had was really important
21 in making all this work. And they worked as hard as
22 anybody with the webinars, the briefings, the
23 roundtables and all the engagements; so I wanted to
24 acknowledge that.

25 PRESIDENT FECKNER: Absolutely. Thank you.

1 Seeing no other requests to speak, the motion
2 being on the floor before you.

3 All in favor of the motion say aye?

4 (Ayes.)

5 PRESIDENT FECKNER: Opposed, no?

6 (Nos.)

7 PRESIDENT FECKNER: Motion carries.

8 All right. That brings us to Agenda Item 7a.
9 Mr. Costigan.

10 BOARD MEMBER COSTIGAN: So just very quickly,
11 I do want to thank the Committee and the Board for the
12 vigorous debate on this policy issue.

13 Again, I just want to point out,
14 Mr. President, the fantastic work over the last two
15 years that everybody has done -- contentious policy
16 issue and a very thorough vetting. Thank you, staff.

17 With that, the Committee recommends and I move
18 the Board approve the following: Agenda Item 7a,
19 Long-Term Care Evaluation Report, approve the June 30th
20 2015, Actuarial Valuation Report for the Long-Term Care
21 Program.

22 PRESIDENT FECKNER: Motion by Committee.

23 Any discussion on the motion?

24 Seeing none.

25 All in favor say aye?

1 (Ayes.)

2 PRESIDENT FECKNER: Opposed, no?

3 Motion carries.

4 ACTING BOARD MEMBER BOYKEN: The Committee
5 received reports on the Annual Review of Funding Levels
6 and Risk, the Semi-Annual Self-funded Health Plans, the
7 Annual Cost Efficiency and Effectiveness, the My|CalPERS
8 Functional Optimization Update, and Service Credit
9 Installment Payment Resumption.

10 The Committee heard public comment. And we do
11 appreciate the folks that did come yesterday to the
12 Finance and Admin.

13 We heard from Eric Stern with the California
14 Department of Finance. Christy, who we froze out
15 yesterday, with California Professional Firefighters.
16 Jai with California School Employees' Association, and
17 then Neil Johnson with SEIU.

18 The December 2015 Finance and Administration
19 Committee will include the 2015 and '16 Mid-Year Budget
20 Revisions Second Reading; the review of the Actuarial
21 Policies Cost Methods Policy, and the Finance and
22 Administration Strategic Measures.

23 Mr. President, the next meeting of the Finance
24 and Administration Committee is scheduled for
25 December 15, 2015, in Sacramento.

1 Thank you, sir.

2 PRESIDENT FECKNER: Thank you.

3 That brings us to Item 7d, Performance
4 Compensation & Talent Management Committee.

5 There was no meeting, so no report.

6 7F, Risk and Audit Committee. For that, I
7 call on Vice Chair Mr. Jelincic.

8 Hold on just a second. I'm going to back up.
9 Pardon me. Mr. Bilbrey.

10 BOARD MEMBER BILBREY: Thank you,
11 Mr. President. The Performance Compensation & Talent
12 Management Subcommittee met on November 6th and 9th,
13 2015.

14 On November 6, 2015, the Subcommittee met and
15 elected Michael Bilbrey as Chair and Priya Mathur as
16 Vice Chair.

17 The Subcommittee then reviewed, evaluated, and
18 scored the technical proposals of the RFP responses
19 submitted by eight proposer firms. As a result, four
20 firms were selected as finalists for interviews.

21 On November 9th, 2015, the Subcommittee
22 conducted interviews with the four finalist proposer
23 firms and identified the highest-scoring finalist as the
24 selected firm.

25 A detailed summary of the Subcommittee's

1 evaluation process and resulting scores is included in
2 Attachment 1.

3 The Subcommittee recommends and I move the
4 Board approve the following: Agenda Item 5, selection
5 of Primary Executive Compensation Consultant; approve
6 the awarding of the Board's Primary Executive
7 Compensation Consultant contract to Grant Thornton;
8 direct staff to begin contract negotiations with Grant
9 Thornton; and, should negotiations be unsuccessful,
10 begin negotiations with the next highest scoring
11 finalist, Global Governance Advisors.

12 PRESIDENT FECKNER: A motion by Committee.

13 Any discussion on the motion?

14 Seeing none.

15 All in favor say aye?

16 (Ayes.)

17 PRESIDENT FECKNER: Opposed, no?

18 Motion carries.

19 BOARD MEMBER BILBREY: At this time I'd like
20 to share with you what to expect at the December,
21 Performance, Compensation & Talent Management Committee
22 meeting. We will review an update of human resources
23 strategic measures.

24 The next meeting of the Performance,
25 Compensation & Talent Management Committee is scheduled

1 for December 15, 2015, in Sacramento, California.

2 That concludes my report, Mr. President.

3 PRESIDENT FECKNER: Thank you.

4 Item 7f, Risk and Audit. The Vice Chair,
5 Mr. Jelincic.

6 BOARD MEMBER JELINCIC: The Risk and Audit
7 Committee met on November 17, 2015.

8 The Committee recommends and I move that the
9 Board approve the following:

10 Agenda Item 5a. A request for proposal for
11 the selection of the Independent Financial Statement
12 Auditor for audit years 2017 to 2021; approve the
13 request for proposal for the selection of the
14 Independent Financial Auditor for the years 2017 to '21.

15 PRESIDENT FECKNER: A motion by Committee.

16 Any discussion on the motion?

17 Seeing none, all in favor say aye?

18 (Ayes.)

19 PRESIDENT FECKNER: Opposed, no?

20 Motion carries.

21 BOARD MEMBER JELINCIC: The Committee
22 recommends and on behalf of the Committee I move that
23 the Board approve the following: The finalist interview
24 for Actuarial Parallel Valuation and Certifications
25 Services; approve the Actuarial Parallel Valuation

1 Certification Service Contract be awarded to Buck
2 Consultants.

3 PRESIDENT FECKNER: On motion by Committee.

4 Any discussion on the motion?

5 Mr. Costigan?

6 BOARD MEMBER COSTIGAN: Please note that I'll
7 be recusing on this issue.

8 PRESIDENT FECKNER: All right. Please record
9 for the record Mr. Costigan's recusal.

10 Any further discussion on the motion?

11 Seeing none, all in favor say aye.

12 (Ayes.)

13 PRESIDENT FECKNER: Opposed, no?

14 (No.)

15 PRESIDENT FECKNER: Motion carries.

16 BOARD MEMBER JELINCIC: The committee
17 recommends and I move that the Board approve the
18 following: The Independent Auditors' Report for fiscal
19 years 2014-15 and that we approve it.

20 PRESIDENT FECKNER: On motion by Committee.

21 Any discussion on the motion?

22 Seeing none, all in favor say aye.

23 (Ayes.)

24 PRESIDENT FECKNER: Opposed, no?

25 Motion carries.

1 BOARD MEMBER JELINCIC: The Committee also
2 received a report on the Semi-Annual Enterprise Risk
3 Management Reports. The summary of Committee directions
4 included a review of the evaluation criteria for the
5 request for proposal for the selection of the
6 Independent Financial Statement Auditor for the audit
7 years 2017-21; a business continuity update prior to the
8 next March 2016 Risk and Audit Committee.

9 In March 2016, the Risk and Audit Committee
10 agenda will include the review of the Risk and Audit
11 Committee delegation, presentation of the independent
12 auditor's management letter for the fiscal year ending
13 June 30th, 2015, the Third-Party Valuation and
14 Certification of the Judges' Retirement System, Judges'
15 Retirement System II, Legislators' Retirement System,
16 and the 1959 Survivor Benefits, and the Semi-Annual
17 Compliance Plan Update.

18 The next meeting of the Risk and Audit
19 Committee is scheduled for March 16, 2016, in
20 Sacramento.

21 PRESIDENT FECKNER: Thank you.

22 Agenda Item 7g, Board Governance Committee.
23 For that I call on Mr. Slaton.

24 BOARD MEMBER SLATON: Thank you, Mr.
25 President.

1 The Board Governance Committee met on
2 November 17, 2015. The committee received a report on
3 the following topic: CalPERS' Chief Executive Anne
4 Stausboll provided an update on the Board Education
5 Policy.

6 The Committee had a discussion regarding the
7 Board's Travel Policy, frequency of meetings, Board
8 member behavior, and the selection of topics for future
9 Committee meetings.

10 At this time I'd like to share some highlights
11 of what to expect at the December Board Governance
12 Committee meeting:

13 The Committee will consider proposed revisions
14 to the Board travel policy.

15 The Committee will receive another update on
16 the Board Education Policy and CalPERS' compliance
17 efforts with State-mandated Board member education.

18 The Committee will receive and consider
19 recommendation from CalPERS staff regarding the
20 frequency of Board meetings.

21 And, finally, the Committee will review the
22 roles, duties, and elected terms for CalPERS' president
23 and committee chairs.

24 The next Board meeting of the Board Governance
25 Committee is scheduled for December 15, 2015, in

1 Sacramento, California.

2 PRESIDENT FECKNER: Thank you.

3 That brings us to Agenda Item 8, the proposed
4 decision of Administrative Law Judges. And I want to
5 note that the Board's Independent Counsel of
6 Administrative Decisions, Chiraq Shah, is here with us
7 today.

8 Good morning, Mr. Shah.

9 MR. SHAH: Good morning.

10 PRESIDENT FECKNER: So we have Mr. Jones,
11 please.

12 VICE PRESIDENT JONES: Thank you,
13 Mr. President.

14 I move to accept the recommendations of our
15 Independent Board Counsel and adopt the proposed
16 decisions at Agenda Items 8a through r as the Board's
17 own decisions in their entirety.

18 PRESIDENT FECKNER: Thank you.

19 Ms. Mathur.

20 BOARD MEMBER MATHUR: Thank you.

21 I think I would like to take up 8i separately.
22 I have some questions for the Independent Board Counsel.

23 PRESIDENT FECKNER: Very well. Anything else?

24 BOARD MEMBER MATHUR: Can I just confirm,
25 actually, that the respondent's argument that we just

1 received that was received on November 16, that does
2 apply to 8i. I believe that is true, but it was not
3 actually written on the item.

4 It doesn't say who it is from or who it is
5 about, so I'm inferring that it's with respect to 8i.

6 MR. SHAH: I'm sorry. The question is?

7 BOARD MEMBER MATHUR: Have you seen this?

8 MR. SHAH: It have Seen in, yes. And I have
9 looked at it.

10 BOARD MEMBER MATHUR: And it does pertain to
11 8i?

12 MR. SHAH: Yes, it does.

13 BOARD MEMBER MATHUR: Okay. Great. That's
14 the one I would like to take up separately.

15 Thank you, Mr. President.

16 PRESIDENT FECKNER: Any other requests?

17 Seeing none.

18 Then the motion is 8a through r, minus i.

19 Seeing no other discussion or motion.

20 All in favor say aye?

21 (Ayes.)

22 PRESIDENT FECKNER: Opposed, no?

23 Motion carries.

24 8i, please. Mr. Jones, can you make a motion
25 yet?

1 VICE PRESIDENT JONES: Yes. I move to accept
2 the recommendations of our Board Independent Counsel and
3 adopt the proposed decisions at Agenda 8i as the Board's
4 own decision in their entirety.

5 PRESIDENT FECKNER: Thank you.

6 Ms. Mathur.

7 BOARD MEMBER MATHUR: Thank you.

8 Just a couple of questions. We just received
9 this respondent's argument. It was received on
10 November 16 by CalPERS. Is that correct? That's what's
11 stamped on it.

12 MR. SHAH: That's my understanding.

13 BOARD MEMBER MATHUR: And is that timely? Is
14 that within the time required for the response?

15 MR. SHAH: Actually, it's not timely. It's
16 just presented to the Board for information.

17 BOARD MEMBER MATHUR: Okay. And you have
18 reviewed this?

19 MR. SHAH: I have reviewed it.

20 BOARD MEMBER MATHUR: And after reviewing it
21 does your recommendation change at all?

22 MR. SHAH: No, it does not.

23 BOARD MEMBER MATHUR: Thank you.

24 PRESIDENT FECKNER: All right. On motion in
25 front of you, in order of discussion, all in favor say

1 aye?

2 (Ayes.)

3 PRESIDENT FECKNER: Opposed, no?

4 Motion carries.

5 Thank you. Brings us to Item 9, Petitions for
6 Reconsideration.

7 Mr. Jones.

8 VICE PRESIDENT JONES: Thank you,
9 Mr. President.

10 I move to accept to accept the recommendation
11 of our Independent Board Counsel and deny the Petition
12 for Reconsideration at Agenda Item 9a.

13 PRESIDENT FECKNER: Thank you.

14 Let's show for the record Mr. Gillihan is
15 recusing himself from this item.

16 Seeing no other requests.

17 All in favor -- wait. Was there a second?
18 I'm sorry.

19 BOARD MEMBER MATHUR: Second.

20 PRESIDENT FECKNER: Moved by Jones, seconded
21 by Mathur.

22 All in favor say aye?

23 (Ayes.)

24 PRESIDENT FECKNER: Opposed, no?

25 (No.)

1 PRESIDENT FECKNER: Motion carries.

2 Item 10, Full Board Hearing.

3 Before we go into that, we're going to take a
4 five-minute break so people can get coffee or water or
5 something. So we will reconvene at 9:45.

6 (Thereupon there was a recess from 9:40 a.m.
7 until 9:50 a.m.)

8 PRESIDENT FECKNER: We're going to call the
9 Board meeting back to order, please.

10 We're going to skip down momentarily to Item
11 11 and take up State Legislation Update before we go to
12 the Full Board Hearing.

13 So Item 11, please. Ms. Ashley.

14 MS. ASHLEY: Hi. Good morning, Chair Feckner
15 and members of the Board.

16 I'm Mary Anne Ashley, CalPERS staff, and I'm
17 here to provide you with a legislative update.

18 In your Board materials you have the
19 Legislative Program Update which is Attachment 1.

20 Last month, Mr. Blackledge provided a detailed
21 report and update on the bills that could impact CalPERS
22 that were either signed or vetoed by the Governor.

23 The Legislature is still out of regular
24 session; it won't return until January, so there have
25 not been any changes or updates to that report.

1 Mr. Blackledge also provided you information
2 on two new initiatives proposing constitutional
3 amendments that were filed by Chuck Reed and Carl DeMaio
4 and group. Both the initiatives, the Voter Empowerment
5 Act of 2016 and the Government Pension Cap Act of 2016,
6 were recently amended on October 20th. And the
7 amendments made -- conformed the definition of "new
8 employee" that's included in the initiative proposals to
9 the definition of "new employee" as defined in PEPRRA, or
10 the Public Employee Pension Reform Act of 2013.

11 The amendment to the definition will allow
12 existing employees to continue to have limited
13 reciprocity and membership rights with other retirement
14 systems.

15 The earlier versions of the proposal would
16 have defined existing incumbent public employees as new
17 employees, who would be subject to reduced benefits
18 whenever they moved between public employers in the
19 future.

20 The Voter Empowerment Act was also amended so
21 that voter approval for benefit enhancements provided to
22 existing public employees would no longer be required.

23 And the Pension Cap Act was amended to now
24 also include employer payroll taxes for Medicare
25 benefits in the type of retirement benefits that are

1 subject to the 11 percent cap for miscellaneous
2 employees and the 13 percent cap for safety members.

3 The amendments do not change the timelines
4 that apply to the initiative. The Legislative Analyst's
5 Office and the Department of Finance Analysis and Report
6 is due by November 24th, and the Attorney General Title
7 and Summary is due by December 9th.

8 Staff is going to continue to monitor the
9 progress of both of these initiatives and will keep you
10 updated.

11 Additionally, I would like to provide you
12 information on another initiative called the California
13 Drug Price Relief Act that is sponsored by the AIDS
14 Health Care Foundation.

15 If approved by voters, it would begin July
16 1st, 2016, prohibit a state or any state administrative
17 agency or other state entity from paying more than the
18 price paid by the U.S. Department of Veterans Affairs
19 for prescription drugs. It would apply the price
20 ceiling to all programs where the State entities are the
21 ultimate payer for the drug, even if it did not purchase
22 the drug directly from a manufacturer.

23 It would require the Department of Health Care
24 Services to make a determination as to whether the net
25 cost of the drug is the same or less than the lowest

1 price paid for the same drug by the VA. It would allow
2 State agencies to enter into additional agreements with
3 drug manufacturers for further price reductions.

4 And while the proposal has not yet qualified
5 for the ballot, the proponents have turned in over
6 500,000 signatures, and county election officials are
7 randomly verifying the signatures and have until
8 December 14th to complete the random sample.

9 CalPERS staff is currently reviewing the
10 initiative to determine if there are any impacts to
11 CalPERS and the extent of those impacts, and may bring
12 additional information to the Board in December if it's
13 necessary.

14 And thank you very much. That concludes my
15 presentation. And I'm happy to answer any questions.

16 PRESIDENT FECKNER: Thank you. Seeing no
17 request to speak, thank you very much.

18 MS. ASHLEY: Thank you.

19 PRESIDENT FECKNER: Brings us back to Agenda
20 Item 10, the Full Board Hearing.

21 So good morning. We now turn to Agenda Item
22 10 and open the record for the Full Board Hearing in the
23 appeal of Mr. Bruce Malkenhorst, Sr. CalPERS Case No.
24 2012-067.

25 Let us first take roll call. Please call the

1 role.

2 MS. CODY: Rob Feckner.

3 PRESIDENT FECKNER: Morning.

4 MS. CODY: Henry Jones?

5 VICE PRESIDENT JONES: Here.

6 MS. CODY: Michael Bilbrey?

7 BOARD MEMBER BILBREY: Good morning.

8 MS. CODY: Grant Boyken for John Chiang?

9 ACTING BOARD MEMBER BOYKEN: Here.

10 MS. CODY: Richard Costigan.

11 BOARD MEMBER COSTIGAN: Here.

12 MS. CODY: Katie Hagen for Richard Gillihan.

13 ACTING BOARD MEMBER HAGEN: Here.

14 MS. CODY: Dana Hollinger:

15 BOARD MEMBER HOLLINGER: Here.

16 MS. CODY: J.J. Jelincic?

17 PRESIDENT FECKNER: Excused.

18 MS. CODY: Ron Lind?

19 PRESIDENT FECKNER: Excused.

20 MS. CODY: Priya Mathur.

21 BOARD MEMBER MATHUR: Here.

22 MS. CODY: Bill Slaton?

23 BOARD MEMBER SLATON: Here.

24 MS. CODY: Theresa Taylor?

25 BOARD MEMBER TAYLOR: Here.

1 MS. CODY: Betty Yee?

2 BOARD MEMBER YEE: Here.

3 PRESIDENT FECKNER: Thank you.

4 Please note for the record that Mr. Jelincic
5 has recused himself from this discussion and has left
6 the room.

7 The proposed decision in this case was
8 originally considered by the Board at the September 2015
9 Board Meeting. At that meeting, the Board rejected the
10 proposed decision and scheduled this matter for a Full
11 Board Hearing on the following issues:

12 One: Whether the process by which CalPERS
13 staff arrived at the payrate was arbitrary;

14 Two: Whether any of the pay at issue
15 constitutes prohibited overtime for purposes of the
16 Public Employees Retirement log; and,

17 Three: Whether CalPERS staff is time barred
18 in recouping any overpayments that may have been made to
19 the member.

20 Would counsel please take a moment to
21 introduce themselves for the record, starting with staff
22 counsel, then Mr. Malkenhorst's counsel.

23 MR. LEVIN: Good morning, Mr. President.

24 PRESIDENT FECKNER: Microphone, please.

25 Thank you.

1 MR. LEVIN: I apologize.

2 Good morning, Mr. President, members of the
3 Board. I'm Jason Levin of Steptoe and Johnson, Outside
4 Counsel for CalPERS in this matter.

5 PRESIDENT FECKNER: Thank you.

6 MR. JENSEN: Good morning, Mr. President,
7 Board members. I'm John Michael Jensen, and I represent
8 Bruce Malkenhorst.

9 PRESIDENT FECKNER: Thank you.

10 Let the record also reflect that Cirag Shah,
11 Los Angeles-based law firm of Shah and Associates, the
12 Board's Independent Counsel on Full Board Hearings and
13 proposed decisions from the Office of Administrative
14 Hearings, is here now and will be in attendance
15 throughout the hearing.

16 Mr. Shah will be advising members of the Board
17 on procedure, as well as substantive issues that arise
18 in the proceeding should Board members have questions.
19 Mr. Shah will also provide a brief summary of the case
20 before we begin oral arguments.

21 In today's proceeding the record from the
22 hearing before the Administrative Law Judge stands as
23 is, but the parties have the opportunity to present oral
24 and written arguments. The Board procedure does not
25 permit any type of evidence to be presented today in

1 this Full Board Hearing. Mr. Malkenhorst and CalPERS
2 staff have submitted written arguments which are in the
3 Board packets.

4 Now I would like to provide a general outline
5 of the procedures that we will follow today. I trust
6 that all parties have received copies of the Statement
7 of Policy and Procedures for Full Board Hearings before
8 the Board.

9 Is that correct, Mr. Jensen?

10 MR. JENSEN: Yes, Mr. President.

11 PRESIDENT FECKNER: Thank you.

12 Mr. Levin?

13 MR. LEVIN: Yes, Mr. President.

14 PRESIDENT FECKNER: Thank you.

15 As we do with all Full Board Hearings, we will
16 adhere to the Board's written procedures.

17 First, as previously indicated, Mr. Shah will
18 provide a brief summary of the case; then we will
19 address matters relating to evidentiary issues,
20 including Mr. Malkenhorst's request to supplement the
21 administrative record.

22 After that, we will proceed with argument.
23 Each position will have 15 minutes for oral argument.
24 Mr. Levin will first have 15 minutes to present staff's
25 argument. After that, Mr. Jensen will have 15 minutes

1 to present argument on behalf of Mr. Malkenhorst.

2 Neither side has to use the full 15 minutes.
3 Each side may, but does not have to, use the entire 15
4 minutes to present argument. However, if you conclude
5 your argument in less than the time allotted, you do not
6 get to roll over any remaining time for rebuttal or any
7 portion of this proceeding; so it's use it or lose it.

8 After both sides have presented oral
9 arguments, each side will be given five minutes for
10 rebuttal arguments in the same order as the original
11 presentation. First, Mr. Levin, then Mr. Jensen.

12 Here, too, you may, but do not have to, use
13 the entire time allotted to you for the rebuttal. But
14 if you decide to use less time, you will not have
15 another opportunity to use any remaining time in your
16 rebuttal.

17 There is a timer in this room which will be
18 set for 15 minutes for initial argument and five minutes
19 for rebuttals. The timer will begin when you start to
20 speak. Please pay close attention to the timer as you
21 make your presentations in order to avoid going over
22 your allotted time.

23 The timer will have a yellow light when you
24 have two minutes remaining to speak. When the timer
25 light turns red, your time will have expired.

1 After all sides and arguments and rebuttals
2 are concluded, the Board may ask questions of any of the
3 parties in this proceeding. The alternatives available
4 to the Board are set forth in Agenda Item 10a.

5 At the very end of this proceeding, the Board
6 will go into closed session with its Independent Counsel
7 to deliberate and vote upon the matter.

8 Any questions so far? Do all parties
9 understand the procedures?

10 MR. JENSEN: Yes.

11 MR. LEVIN: Yes.

12 PRESIDENT FECKNER: Thank you.

13 Now, then, Mr. Shah, please provide a brief
14 summary of the case.

15 MR. SHAH: Thank you, Mr. President, members
16 of the Board. Good morning to you.

17 As you said, my name is Cirag Shah, and I'm
18 the Board's Independent Counsel on Full Board Hearings.

19 My summary this morning will be very brief.
20 I'm going to present a very general outline of the
21 respective positions of the parties here today.

22 In summary, Mr. President, this is a dispute
23 over the calculation of final compensation under section
24 20636 of the Public Employees' Retirement Law, members
25 of former City Administrator/City Clerk, who we will

1 refer to as CACC for purposes of this hearing, with the
2 City of Vernon.

3 Staff asserts that member held multiple
4 positions in Vernon from 1975 to 2005 and saw his salary
5 increase from \$39,000 per year to \$1,056,000 per year
6 when he retired.

7 More specifically, staff asserts that in
8 addition to serving as CACC, member held the following
9 positions at various periods of time and at the time of
10 retirement he held these positions simultaneously. The
11 positions are: Treasurer, Municipal Employee Relations
12 Representative, Chief Executive Officer of the
13 Electrical Department, also known as the Light and Power
14 Department, Executive Director and Secretary of the
15 Redevelopment Agency, Chief Executive Officer of the Gas
16 and Municipal Utility Department, Executive Director of
17 the Industrial Development Authority, and Executive
18 Director of the Vernon Historic Preservation Society.

19 Member retired in 2005 from the CACC position
20 with a monthly retirement allowance of \$40,022.66.
21 However, in 2011, a CalPERS audit resulted in staff's
22 adjustment of member's final compensation from \$44,128
23 per month to \$7,875 per month and thereby making a
24 corresponding reduction to member's retirement
25 allowance.

1 CalPERS staff also determined that any paid
2 member receiving in excess of the Acting City Clerk's
3 salary constituted overtime for purposes of the PERL.

4 In the proposed decision, the Administrative
5 Law Judge agrees with staff that all the compensation
6 associated with the additional positions was paid
7 through a "catchall payrate category" whereby member was
8 compensated solely through the CACC position and, as
9 such, member's true salary was concealed from the
10 public.

11 On the other hand, the Administrative Law
12 Judge also agrees with member and questions the process
13 by which staff arrived at member's final compensation in
14 2011. In 2011 -- excuse me -- when staff assigned
15 member a payrate of Acting City Clerk. Member seeks to
16 have -- naturally, member seeks to have all of his
17 compensation included in his pension calculation. Or,
18 in the alternative, he would like to apply the salary of
19 the City Administrator position as opposed to the Acting
20 City Clerk.

21 The member's position basically is that
22 staff's readjustment of the benefits was indeed
23 arbitrary and constituted an abuse of discretion.

24 In the proposed decision, the Administrative
25 Law Judge also finds that member did not work overtime

1 in performing his many executive positions or titles, as
2 the Administrative Law Judge calls it. Member obviously
3 agrees with this legal conclusion, while staff disagrees
4 with it.

5 Finally, Mr. President, members of the Board,
6 there's a question of whether recoupment of any
7 overpayments that may have been made to member is
8 properly before the Board.

9 Member takes the position that the limitations
10 question as it relates to recoupment is not right since
11 CalPERS has not sought any recoupment yet.

12 Staff argues that the issue is properly before
13 the Board because recoupment of overpayments is a
14 necessary component of bringing finality to this
15 litigation from an administrative standpoint.

16 Substantively, staff's position is that
17 CalPERS is not time barred from seeking recoupment of
18 any overpayments made to member, that the accrual period
19 did not commence until April 27, 2012, the date of
20 CalPERS' written report of its audit of Vernon, and that
21 the limitations period was tolled during the
22 administrative proceeding and will be tolled further
23 during any subsequent civil litigation that may ensue.

24 So you can see, Mr. President, members of the
25 Board, this is indeed a very complex case. The details

1 of each party's position are presented in the written
2 arguments and the administrative record before the Board
3 at Agenda Item 10.

4 And on that basis, Mr. President, members of
5 the Board, this concludes my brief summary of the case.

6 Thank you.

7 PRESIDENT FECKNER: Thank you, Mr. Shah.

8 So now let us turn to the preliminary
9 evidentiary issues.

10 As all parties are aware, the Administrative
11 Procedures Act and the Board procedure governing this
12 hearing expressly provide that the scope of the Board
13 review and Full Board Hearings will normally be limited
14 to the administrative record of the hearing before the
15 Administrative Law Judge as it stands.

16 In other words, we are not here to relitigate
17 the factual issues or resubmit evidence into the
18 administrative record. However, in rare circumstances,
19 in the interests of achieving a just result may require
20 consideration of newly discovered relevant documentary
21 evidence which could not with reasonable diligence have
22 been discovered or produced at the hearing before the
23 Administrative Law Judge and which, therefore, is not
24 part of the administrative record.

25 All of this applies only to newly discovered

1 documentary evidence that is relevant to the case and
2 that could not have been produced at the hearing. Under
3 no circumstance may the Board accept new witness
4 testimony or any kind of examination or
5 cross-examination of anyone, including Board members, in
6 today's proceeding.

7 Under the Board procedure, requests to
8 introduce documentary evidence must have been submitted
9 in writing to the Board secretary no later than the due
10 date for written argument, which in this case was
11 November 6, 2015.

12 Now, my understanding is that Mr. Jensen
13 submitted a written request to supplement an
14 administrative record dated November 5th, 2015. The
15 Board denied that request on the grounds that the
16 evidence was not newly discovered and could have been
17 produced at the hearing.

18 The denial decision was conveyed to Mr. Jensen
19 by Mr. Shah through written communication delivered via
20 electronic mail on November 12, 2015. As stated in that
21 communication, any exhibit impermissibly attached to
22 Mr. Malkenhorst's arguments will be stricken from the
23 administrative record and Board members will disregard
24 such arguments and such documents.

25 Is that correct, Mr. Jensen?

1 MR. JENSEN: Mr. President, may I speak to
2 that issue?

3 PRESIDENT FECKNER: Yes.

4 MR. JENSEN: The administrative hearing was
5 about the calculation of the proper final compensation
6 of Mr. Malkenhorst during his employment. And that's
7 what it was limited to. And so we presented evidence in
8 the hearing basically in response to the statement of
9 issues given to us by CalPERS; and it was limited to the
10 calculation of the final compensation.

11 And when the ALJ heard the evidence, what he
12 said is that Mr. Malkenhorst was entitled to a final
13 compensation for performing the tasks of what your
14 counsel has described as CACC. It's the City
15 Administrator/City Clerk I position. And so at that
16 time there was no reason to introduce any of the
17 evidence regarding the successor City Administrator's
18 salary or the current City Administrator's salary.

19 However, when the ALJ, who heard seven days of
20 evidence and hundreds of -- thousands of pages of
21 documents, when he was writing his proposed decision, he
22 said, "Well, we want to give the Board additional
23 information that might help them make a decision about
24 what is the proper final compensation." And so the ALJ
25 suggested that we submit to you additional documents

1 that weren't relevant to Mr. Malkenhorst's actual
2 calculation but were relevant to establish the facts of
3 what this position was paid.

4 And those facts are just facts. They're
5 not -- you know, the fact that the successor City
6 Administrator was paid \$335,000 is just a fact. There's
7 no implication regarding anything else.

8 And so upon receiving the Administrative Law
9 Judge's proposed decision, we said, "Well, we want to
10 give the Board members additional evidence in which to
11 respond to the ALJ's argument." So we submitted, I
12 believe, four, five documents from the City of Vernon
13 which described and addressed the issues that the ALJ --
14 excuse me -- directed us to provide you information.

15 So until that time when the ALJ said this
16 might help the Board make its determination, we didn't
17 consider it relevant because it was after his
18 employment.

19 And so upon receiving that, we submitted those
20 documents attached to our respondent's argument first,
21 and the Board accepted that and published those and
22 held it on their website. And there was no -- at that
23 point there was no issue about whether that's
24 appropriate. And we would -- the date when that first
25 proposed decision was addressed, those attachments were

1 attached to our argument, our six-page respondent's
2 argument.

3 Subsequent to that, on the Board's
4 non-adoption of the proposed decision in this full
5 hearing, we again supplemented that record and --
6 although those documents were already in the
7 administrative report upon the Board acceptance of it
8 the first time; and then we heard the subsequent
9 rejection of those documents.

10 But, again, I -- we believe that they're just
11 responsive to the arguments and the inquiries that the
12 ALJ made and they don't have any other independent
13 significance, but I think that they are important in
14 this case. So I request that you reconsider that
15 decision.

16 PRESIDENT FECKNER: Mr. Shah, any comments?

17 MR. SHAH: Mr. President, I suggest you take
18 comments from the staff as well. In my view, this is
19 evidence that is not newly discovered, does not meet the
20 standards of the Board and, therefore, it should be
21 denied.

22 PRESIDENT FECKNER: Thank you.

23 Mr. Levin, anything to comment?

24 MR. LEVIN: Yes. Thank you, Mr. President.

25 The materials that Mr. Malkenhorst would now

1 like to present to the Board were available to
2 Mr. Malkenhorst and his counsel at the time of the
3 administrative hearing, and they could have been
4 presented to the Administrative Law Judge at that time.
5 They were also relevant at the time of the hearing.

6 The issue before the Administrative Law Judge
7 was CalPERS' selection of a new payrate for
8 Mr. Malkenhorst. And the argument that Mr. Malkenhorst
9 is now making is that these documents are relevant to
10 that issue.

11 It was an intentional decision not to submit
12 information post Mr. Malkenhorst's retirement to the
13 Administrative Law Judge. This is not newly discovered
14 information, and thus CalPERS agrees that it does not
15 fall under the rule that would permit the Board to
16 consider new evidence.

17 PRESIDENT FECKNER: Thank you.

18 So with that we're going to stick to our
19 original ruling of denying the request.

20 So then, to be safe, let the record reflect
21 Mr. Malkenhorst's request to supplement the
22 administrative record dated November 5 is hereby denied,
23 and all exhibits attached to that request will be
24 stricken from the administrative record.

25 In order to avoid interruptions during each

1 party's restricted time today, please let us know now if
2 any of the parties has any relevant, newly discovered
3 evidence which could not have been discovered and
4 produced at the hearing that it seeks to be admitted
5 into the administrative record today, as to which a
6 timely written request was submitted to the Board.

7 Mr. Levin, do you have any such evidence to
8 offer today to which you have submitted a prior written
9 request by the new date for argument?

10 MR. LEVIN: No, Mr. President.

11 PRESIDENT FECKNER: Thank you.

12 Mr. Jensen, do you have a position -- or do
13 you have any documents as well?

14 MR. JENSEN: Other than those documents, I'm
15 not intending to submit any additional document at this
16 time.

17 PRESIDENT FECKNER: Thank you.

18 Mr. Shah, do you have a recommendation for us
19 with respect to anything else?

20 MR. SHAH: No. The only request was the newly
21 discovered -- or the request to supplement the
22 administrative record, and my request is to deny. My
23 recommendation is to deny that.

24 PRESIDENT FECKNER: Very good.

25 So Mr. Jensen, we've been through that part.

1 Seeing that there are no pending requests to submit
2 newly discovered evidence, let us begin with oral
3 arguments.

4 Mr. Levin will please present staff's
5 argument. Please start the clock for 15 minutes when
6 Mr. Levin begins to speak.

7 MR. LEVIN: Thank you, Mr. President, and
8 members of the Board. Again, I'm Jason Levin, of
9 Steptoe and Johnson, Outside Counsel for CalPERS.

10 As described by Mr. Shah, the issue before the
11 Board is a familiar one in some respects. It's final
12 compensation. But what makes this final compensation
13 matter remarkable is Mr. Malkenhorst's personal
14 involvement in concealing critical information from the
15 public and from CalPERS.

16 So we're here not just to address the
17 technical details of final compensation; we're here to
18 address the public policy implications of an
19 administrative ruling that in many respects interferes
20 with CalPERS' efforts to ensure transparency.

21 CalPERS' analysis begins with the records it
22 received from the City of Vernon as part of its audit.
23 Those records reveal three basic facts:

24 First, the City's records describe that
25 Mr. Malkenhorst held multiple positions at the City of

1 Vernon. He was employed by the City of Vernon from 1977
2 to June 30th, 2005, and during almost that entire period
3 served as Vernon's full-time City Administrator/City
4 Clerk. But as the years went on, Mr. Malkenhorst took
5 on several other positions at the City. He was the
6 treasurer; he was the CEO of the Light and Power
7 Department; he was appointed Executive Director and
8 Secretary of the Redevelopment Agency, and the CEO of
9 the Gas, Municipal and Utility Department. And there
10 were several other positions as well.

11 Second, except for the City Administrator/City
12 Clerk position, none of Malkenhorst's other positions
13 were listed on publicly available pay schedules.

14 Third, the City's records indicate that
15 Mr. Malkenhorst was compensated for taking on these
16 additional positions. For example, the City resolution
17 that appointed Mr. Malkenhorst the CEO of the Light and
18 Power Department stated that the compensation for that
19 position would be included in the compensation he
20 received as City Administrator/City Clerk. And, in
21 fact, this is exactly what happened. Over the next two
22 budget cycles, the base pay for the City
23 Administrator/City Clerk increased 24 percent.

24 In sum, the base pay for City Administer/City
25 Clerk included compensation that had nothing to do with

1 city administration and had nothing to do with the
2 duties of City Clerk.

3 These three facts led the ALJ to agree with
4 CalPERS on the central point of the hearing: The base
5 pay for City Administrator/City Clerk, about \$35,000 per
6 month at the time of Mr. Malkenhorst's retirement, could
7 not be used as his payrate.

8 The ALJ found that the position of City
9 Administrator/City Clerk was merely a catchall payrate
10 category that concealed important pay information from
11 public view. Specifically, the ALJ ruled, quote:

12 "For most the positions assigned to
13 Respondent Malkenhorst, there was no publicly
14 available pay schedule and there was no public
15 accountability for payrates associated with newly
16 created positions. Vernon and Respondent
17 Malkenhorst obscured any connection between
18 Respondent Malkenhorst's pay increases and the
19 positions and duties he was assigned, making it
20 impossible for any member of the public to
21 ascertain how much the City was paying for services
22 associated with numerous important City functions.
23 All of this obfuscation and blurring of the line
24 between job title and payrate subverted the
25 transparency requirements of the PERL."

1 End quote.

2 When a contracting agency's pay schedule don't
3 provide a proper payrate, the regulation provide CalPERS
4 sole discretion to select a new payrate. Of course,
5 CalPERS must act reasonably. And it did, reducing
6 Malkenhorst's payrate to \$7,875.

7 CalPERS' selection of a new payrate centered
8 on its review of the City pay schedules that went into
9 effect on July 1st, 2005, the day after
10 Mr. Malkenhorst's retirement. That pay schedule did not
11 list a CACC position, or any other administrator
12 position, but it did list three new full-time positions
13 that sounded similar to the positions Malkenhorst once
14 held. The positions were Acting City Clerk, at a
15 payrate of \$7,875; Acting City Treasurer, at a payrate
16 of \$7,875; and Acting Director of the Light and Power
17 Department, at a payrate of \$24,000.

18 CalPERS decided that Malkenhorst should be
19 given the same rate as the Acting City Clerk. Why was
20 this position selected? Because the City of Vernon had
21 been telling the public for decades that Malkenhorst's
22 sole position was City Administrator/City Clerk, and
23 Acting City Clerk was the position that at least in name
24 most closely approximated Malkenhorst's position.

25 It was not unreasonable or arbitrary for

1 CalPERS to believe that the Acting City Clerk would be
2 doing many of the same duties that Malkenhorst once
3 performed.

4 The ALJ disagreed with CalPERS and ruled that
5 its decision was arbitrary, but the ALJ failed to offer
6 any clear guidance on how CalPERS might have selected a
7 better payrate.

8 The ALJ did suggest that CalPERS should
9 consider the payrate for Malkenhorst's successor as City
10 Administrator, but the ALJ apparently did not realize
11 that the City did not name a successor upon
12 Malkenhorst's retirement but, as previously mentioned,
13 split the position into three.

14 Of the three full-time positions, the one with
15 the highest payrate was the Acting Director of Light and
16 Power. At the administrative hearing, Malkenhorst
17 didn't make any argument suggesting that it would have
18 been appropriate for CalPERS to select that payrate for
19 him, but he makes that argument now, although there are
20 simply no public records or other reliable pieces of
21 information that would permit CalPERS to conclude that
22 Malkenhorst's work as City Administrator/City Clerk had
23 more in common with the Acting Director of Light and
24 Power than it did with Acting City Clerk. It would be
25 the selection of the Light and Power payrate that could

1 validly subject CalPERS to a claim of arbitrariness.
2 Under the circumstances, CalPERS believes that the
3 payrate it did ultimately select for Malkenhorst was
4 reasonable and appropriate.

5 The ALJ's second error was in rejecting
6 CalPERS' alternative argument that the base pay for City
7 Administrator/City Clerk could not be used for
8 Malkenhorst's payrate because it included undeclared
9 overtime pay.

10 Under the PERL, an employee's payrate cannot
11 include pay for working beyond full-time hours, and at
12 Vernon full time for the CACC position, as for most
13 positions, was defined by resolution as 40 hours a week.

14 CalPERS' determination that Malkenhorst was
15 paid for working overtime hours begins with the city's
16 pay schedules. The pay schedules notified the public of
17 the CACC position, stated the base pay for that
18 position, and indicated that the pay was for
19 administrative and clerking duties that would take 40
20 hours a week to complete.

21 CalPERS took the pay schedules at face value
22 and that Malkenhorst was in fact working 40 hours a week
23 to complete his jobs, administrative and clerking
24 functions; so when CalPERS learned in 1995 that
25 Malkenhorst held several additional positions with the

1 City, it concluded these positions must be requiring him
2 to work overtime.

3 CalPERS first raised the overtime concern in
4 1995, sending two letters to Gloria Orosco,
5 Malkenhorst's personal secretary at the City. CalPERS
6 stated that Malkenhorst's positions apart from City
7 Administrator/City Clerk would be considered overtime,
8 so the City needed to keep track of the time Malkenhorst
9 spent in his various other roles.

10 Both letters were ignored. Malkenhorst never
11 tracked his hours as CalPERS requested, and neither did
12 the City, even though they were required to do so under
13 section 20221 of the PERL.

14 At the administrative hearing, Malkenhorst
15 argued that, despite what CalPERS asked for, he did not
16 need to track his hours because he was an FLSA exempt
17 supervisor. Malkenhorst also took the stand and
18 testified that, in any event, that he really didn't work
19 more than 40-hour weeks.

20 Malkenhorst is wrong on both counts. First,
21 the PERL's overtime rules do apply to FLSA exempt
22 supervisors like Malkenhorst. Under the PERL overtime
23 rules, neither the city's high-ranking managers nor its
24 rank-and-file employees are able to include in their
25 pension calculations that compensation received for

1 working beyond an agency's standard workweek.

2 Matter of *Ramirez*, CalPERS' precedential
3 decision, is an example of CalPERS' enforcement of the
4 overtime rules against FLSA exempt employees. Ramirez
5 was the full-time chief of police with the City of
6 Indio, who, at the request of City council, took on the
7 extra position of Interim City Manager. The new
8 position paid Ramirez an additional \$2,500 per month,
9 which the ALJ correctly determined would be considered
10 overtime pay.

11 But what if the City of Indio had avoided an
12 explicit link between Ramirez's additional position and
13 the additional pay he received? What if Ramirez was not
14 given an additional \$2,500 per month as Interim City
15 Manager but, instead, was told that Indio would add the
16 money onto the payrate of the Chief of Police?

17 This second scenario described what happened
18 at Vernon when Mr. Malkenhorst was given additional
19 positions and compensation for those positions was added
20 to the CACC position.

21 From CalPERS' perspective, this too reflects
22 overtime compensation. If not, it would simply be too
23 easy for managerial employees to increase their final
24 compensation in a way that is unavailable to other
25 employees.

1 Second: Malkenhorst cannot be permitted to
2 rebut through testimony what is clearly apparent from
3 this city's records. Those records provide objective,
4 transparent, and verifiable data, which is why CalPERS
5 makes its final compensation determinations day in and
6 day out based on contemporaneously prepared agency
7 records.

8 Witness statements and testimony, on the other
9 hand, may rely on faded memories of events, years, if
10 not decades, in the past. Memories can also be
11 subjective and self-serving.

12 After-the-fact oral statements are also
13 contrary to the PERL's goal of transparency and aren't
14 available to CalPERS in its routine payrate
15 determinations. Elevating witness accounts over agency
16 records would therefore reward poor recordkeeping,
17 invite manipulation, and frustrate CalPERS policy and
18 practice.

19 Finally, CalPERS asks that the Board consider
20 the issue of recoupment. CalPERS believes it's not
21 barred by any statute of limitations from recouping past
22 overpayments to Malkenhorst, which total in excess of
23 \$3 million.

24 The Board should address the statute of
25 limitations because it can and because it would be

1 efficient to do so. The PERL expressly provides the
2 Board with authority to render a conclusive and binding
3 decision on the applicability of statutory limitation
4 periods. And if the Board does not exercise its
5 authority this time, another round of proceedings before
6 an Administrative Law Judge will be required.

7 In particular, the Board should first
8 determine that the PERL's 10-year limitation period
9 should apply. The 10-year period applies to
10 overpayments made as a result of fraudulent reports for
11 compensation. The 10-year limitation period is
12 appropriate given Malkenhorst's act of concealment of
13 his true payrate and refusal to address CalPERS' lawful
14 request that he track time spent in his various
15 positions.

16 The Board should also rule that the PERL's
17 limitation periods are subject to the discovery rule and
18 here did not accrue until CalPERS completed its audit of
19 the City in 2012. And the Board should further rule
20 that the limitations periods described in the PERL are
21 tolled for the entire period of time and overpayment is
22 the subject of an administrative proceeding or civil
23 action.

24 These rulings would ensure there is no time to
25 bar CalPERS' effort to recoup all overpayments from

1 Mr. Malkenhorst.

2 Thank you.

3 PRESIDENT FECKNER: Thank you.

4 MR. JENSEN: Mr. President, I'd also request
5 an additional three minutes because some of this
6 information is new. And, in addition, it's --

7 PRESIDENT FECKNER: We're not going to do an
8 extra three minutes, so please.

9 MR. JENSEN: Okay. Just regarding this
10 recoupment issue, we're not attacking it at this point
11 on grounds of a statute of limitations. It wasn't
12 presented in the statement of issues. It wasn't raised
13 and it wasn't brought in the hearing.

14 If you look at the statement of issues, there
15 was no mention of recoupment, there's no due process,
16 there's no notice, there's no argument, there's no
17 facts, there's no intentional concealment. None of
18 that.

19 This Board is limited to the -- under the
20 Government Code to deciding some or all of the issues
21 raised by the statement of issues. Since recoupment
22 wasn't raised, it can't be raised now. It's just the
23 way the process works.

24 This is obviously a highly politicized case,
25 very difficult for -- all of these sort of nuances are

1 brought up. The facts are pretty simple.
2 Mr. Malkenhorst and Vernon were compliant with the rules
3 and the laws in effect during his tenure. He retired in
4 2005. These issues about transparency and public
5 availability were only raised in Government Code 20636
6 afterwards, in 2006. And *Prentice*, the decision, was
7 only decided in 2006.

8 So I need to sort of step back, because
9 there's no citations to the record about the facts that
10 they've mentioned. They're going beyond the statement
11 of issues. They're mischaracterizing our arguments
12 about statement -- the statute of limitations. And so
13 what I have to sort of ask you as a board to do, and
14 individually, is to exercise your judicial restraint; to
15 look at the record, to look at the facts, to look at the
16 proposed decision that was made, to look at CalPERS'
17 prior decision in 2005-2006 on this same matter. Those
18 are all consistent. Now CalPERS is bringing up
19 different arguments on different law, even though the
20 facts have not changed.

21 And regarding the payrate, Mr. Malkenhorst
22 never held the position of Acting City Clerk, and
23 they're using a payrate after he retired. So both of
24 these are both inconsistent with the law and the facts
25 in the administrative record. And it seems that the

1 only reason that they're doing it, neglecting the other
2 alternatives that were suggested by CalPERS'
3 compensation review staff, such as the \$24,000 salary,
4 or the salary he actually earned, is because there's
5 this drive to reduce his pension.

6 So as judges you have to independently
7 scrutinize staff's arguments, you to have independently
8 look at the record, and you have to realize that staff's
9 position is contrary to the same position that was made
10 by CalPERS' staff before on these same facts. There's
11 no newly discovered facts.

12 And to look at correct testimony. You can
13 also look at the testimony of the other CalPERS
14 witnesses in this case, such as Terrance Rodgers and
15 Lolita Luerez (phonetic), who recommended alternatives
16 that were significantly higher, but CalPERS chose to
17 ignore those and go with the absolute lowest payrate
18 that they could.

19 Now, I know it's difficult to set aside sort
20 of partisan feeling and try to undertake this huge task
21 of looking through this record. This record is
22 enormous. It's over six thousand pages. But that's the
23 job that's in front of you now, and it's worthy of you
24 looking at this record.

25 And the law requires that when you reach a

1 decision you must consider all the relevant evidence in
2 the record and reach a decision in accord with the facts
3 that are proven, not these arguments that are made by
4 counsel here about a million dollars salary. There's no
5 pension on a million dollars.

6 They admit that the CACC salary was publicly
7 available and listed. Their position here is that he
8 held, quote, "multiple positions in the CACC position,"
9 But the facts are very clear that the City -- that Bruce
10 Malkenhorst was known as the highest-paid employee for
11 years in the one position of City Administrator/City
12 Clerk that Vernon put in various duties in that one
13 position. And just as you are sitting here in your
14 adjudicatory duty or position, it's part of your board
15 position. It's not separate.

16 Many of these positions have multiple duties.
17 And that's the same with Malkenhorst. All of these,
18 quote, "positions" were all incorporated within this one
19 position established by the City of Vernon. And it's
20 explicit in the record. And the City organized itself
21 under the Charter City of Rules to have the City
22 Administrator position perform various tasks. And it
23 wasn't from Malkenhorst individually or specifically.
24 It was because it was a small city that had many things
25 to do.

1 And basically staff is arguing that Vernon
2 can't place multiple duties in one position. And that's
3 contrary to law and it's contrary to what happens in the
4 real world. It's contrary to what you experienced right
5 here.

6 The ALJ did find as facts that Malkenhorst was
7 a full-time employee, he did not work overtime, he did
8 not work part-time; his, quote, "duties or positions"
9 were not part-time, and that many of the assigned tasks
10 took only a nominal amount of work and that Malkenhorst
11 never worked fewer than 40 hours or more than 45 hours.

12 He was paid a high salary. That's clear. But
13 the salary was reviewed, determined independently, and
14 approved by Vernon's finance council. It wasn't -- this
15 allegation that's not proven that Mr. Malkenhorst was
16 personally involved in concealing it, it's contrary to
17 the facts in the record. There's a lot of
18 documentation.

19 And so, in a certain way, CalPERS is saying,
20 Well, we're going to rely on the documentation for this
21 purpose, but we're not going to rely on it in that
22 purpose. And that's just inappropriate. It's just
23 arbitrary. It's picking and choosing.

24 And so the ALJ did make some recommendations
25 about what would be the appropriate payrate, and all of

1 those recommendations were for the City
2 Administrator/City Clerk position. And all of those
3 salaries for the successor, the current, are 300,000 or
4 above, and yet CalPERS is using a payrate of 7,000,
5 which is about 20 percent of what his payrate was.

6 So this is not a pension-spiking case. This
7 is not a pension underfunding case. Vernon completely
8 superfunded its pension obligations to CalPERS at the
9 time of retirement in 2006. They were more than fully
10 funded.

11 Malkenhorst didn't receive any increases in
12 his pay in the last four years. He was highly paid.
13 CalPERS knew it. And after he retired in 2005-2006,
14 Vernon and Malkenhorst together -- CalPERS initiated the
15 administrative process, and Vernon and CalPERS -- I'm
16 sorry -- Vernon and Malkenhorst had counsel file
17 documents, these same documents, these same arguments,
18 which CalPERS' attorneys and CalPERS accepted it. Now,
19 10 years later, they're changing it retroactively, based
20 on the change in the political landscape? the new
21 regulations? because -- you know, there's this political
22 goal to reach out and reduce his pension.

23 But this is a legal case, and Mr. Malkenhorst
24 and Vernon were compliant with the PERL under the laws
25 that were in effect at that time. And it's not just not

1 appropriate to reach back 10 years over the ALJ's
2 position and CalPERS' staff decision and say, Well, we
3 don't like the result. The pension's too high. Vernon
4 paid him too high of a base rate.

5 That's really what this case is: Vernon paid
6 Malkenhorst too high of a base rate. But that's
7 Vernon's decision. That's not CalPERS.' They can't go
8 back and say, Okay. Well, we're going to divide up that
9 position into multiple duties and responsibilities that
10 the employer established for this position. And then
11 they employed Malkenhorst in that position.

12 And under the law that was in effect at that
13 time, *Prentice*, the only requirement was that the
14 position was listed and the payrate was listed. There
15 was transparency issues, but what it was. The
16 transparency was that the payrate had to be correctly
17 listed.

18 Same thing with *Ramirez*. If the payrate was
19 correctly listed with the position, that satisfied the
20 transparency argument. The ALJ found in this case that
21 those were publicly available and that salary was
22 listed.

23 And now what is even more so that leads me to
24 sort of request additional time was CalPERS' request for
25 recoupment of three-and-a-half-million dollars. It

1 wasn't raised in the administrative hearing. There is
2 no evidence about it. There's no evidence to support
3 there was any fraud. There's no evidence to support
4 that there was personal involvement in concealing or to
5 ensure transparency. This is an 84-year-old man.

6 And to disregard CalPERS' prior decision
7 accepting and approving this in 2006-2005 and now come
8 back and say, Well, that decision, we're going to
9 overturn it, which CalPERS has no grounds. It's barred
10 by collateral estoppel and res judicata. But we're
11 going to reach back 10 years and seek to have that
12 recovered.

13 The ALJ specifically ruled in its proposed
14 decision that no determination of recoupment may be made
15 in this matter. And that's because the statement of
16 issues didn't raise it. The statement of issues would
17 have to raise it, and then there would be arguments; but
18 without raising it, it's just not in play.

19 And so this sort of cavalier disregard for the
20 legal framework of vested pension rights, especially --
21 it's sort of this idea that CalPERS can just decide
22 what's the right payrate, what's the right pension
23 amount, and after the fact go back 10 years, request
24 three-and-a-half-million dollars. It's a dangerous
25 proposition. It's a dangerous idea that -- this law of

1 vesting of property rights, which the Board has been
2 very vigilant about with the Stockton bankruptcy and
3 with these initiatives we just heard about.

4 They're all playing into that same idea that
5 pension rights are somehow less vested property rights
6 than others; that there can be, you know, changes in the
7 determination of it by administrative process. And I
8 think that at a certain point you've just got to ask
9 yourself, Why?

10 You know, you review the proposed decision and
11 you look at it and look at those facts. That ALJ was
12 diligent. He reviewed thousands of pages of motions,
13 probably 3,000 pages of transcripts. And I really --
14 you know, counsel told me not to ask you if you read it,
15 but I really encourage you to read it.

16 There's no citations in the record,
17 unfortunately, by your counsel, but there's citations to
18 the record in our area. So at least look at ours. And
19 look at the facts. Look at the proposed decision. Look
20 at the prior decision by CalPERS as well in 2005.

21 And if nothing else, consider what the ALJ
22 requested of you, requested that this Board take under
23 consideration, which was this was a highly paid
24 position. The City Administrator/City Clerk earns
25 300,000-plus a year. The successor, the current, any

1 others. That was the same position in name that
2 Mr. Malkenhorst had. I don't -- I believe that that
3 same position is current today.

4 And then ask yourself the other question,
5 which is basically the framework for CalPERS
6 disentangling or -- I don't -- dividing up this
7 position. Can an employer tell a -- designate a
8 position to have multiple duties and responsibilities?
9 Is that okay? Is it good to encourage these small
10 cities in particular -- to have these jobs filled by one
11 position? It happens all the time in reality.

12 The City managers, in practice, serve as the
13 directors of redevelopment agencies when those still
14 existed, without pay. Malkenhorst was not paid for any
15 of these other positions. He was only paid a single
16 salary, which I think staff admits.

17 So there's a lot of historical facts here.
18 There's a lot of legal facts. There's a lot that
19 supports the higher pension. There's very little that
20 doesn't support it. There's this idea that it's too
21 high. There's this idea that you can't have different
22 responsibilities in one position, even if they're
23 unpaid. And there's this idea that nobody should earn
24 that much money. But that's not this Board's
25 determination.

1 I think you guys understand that the amount of
2 compensation paid for a certain position is not within
3 the discretion of this agency. And so, anyway, I just
4 want to -- I urge you to look at those documents. I
5 urge you to look at this independently, look at it as
6 judges. Give it a chance. Don't just follow the
7 political overview.

8 PRESIDENT FECKNER: Okay. Mr. Levin, would
9 you like to offer rebuttal?

10 MR. LEVIN: Yes, Mr. President. Thank you.

11 CALPERS, of course, disagrees with a number of
12 the various issues raised by Mr. Malkenhorst. I'll just
13 go through them quickly in the order that I wrote them
14 down.

15 First of all, the disputed facts in the
16 administrative hearing concerned whether or not the
17 payrate for the CACC position could be used as the
18 payrate for purposes of determining Mr. Malkenhorst's
19 retirement benefit. And once that issue was resolved,
20 recoupment can be done administratively by statute, or
21 there could be a separate effort at collection. There's
22 no fact for the Administrative Law Judge to decide. And
23 that's why it was not part of the SOI and that's why
24 it's something that this board can decide with respect
25 to the statute of limitations.

1 That's the only issue, the factual issue, the
2 legal issue that requires further input either from the
3 Board now or some months or years later by an
4 Administrative Law Judge; but the mere fact of
5 recoupment is by statute and does not need to be
6 resolved.

7 Second point: Mr. Malkenhorst has taken the
8 position that he's a victim of the times and that back
9 in the 1980s and early '90s, and apparently up to 2005,
10 this is just the way things were done. And his counsel
11 mentioned some statutes, like 2636, and the requirement
12 for publicly available pay schedules that came into
13 being after his retirement. But that does not explain
14 the fact that Mr. Malkenhorst and the City received a
15 specific request -- two specific letter requests in 1995
16 and 1996 raising the overtime issue, raising the problem
17 with multiple positions, and those letters were ignored.

18 There's no way to sweep those letter requests
19 under the rug without implicating some effort on the
20 part of the City and Mr. Malkenhorst to avoid scrutiny
21 from CalPERS.

22 Third: There's a discussion of other
23 alternatives that CalPERS had before it in setting a
24 payrate for Mr. Malkenhorst. And it is correct that at
25 the time that CalPERS was attempting to set a new

1 payrate for Mr. Malkenhorst there was input from a large
2 number of people trying to figure out what to do in a
3 situation where a payrate did not naturally flow from
4 agencies' contemporaneously kept time records.

5 I mean, there had to be some level of
6 creativity involved here to come up with a payrate. And
7 that's why the regulation exists giving sole discretion
8 to CalPERS to come up with a payrate, because there's no
9 formula by which it can be done when the necessary
10 records are not kept.

11 CalPERS ultimately selected a particular
12 payrate that it believed best fit this factual
13 circumstances. And it should be known to the Board, and
14 it's important to point out, that Mr. Malkenhorst at the
15 administrative hearing did not present any alternative
16 of his own. Mr. Malkenhorst took one position, which
17 is, I get the entirety of my payrate in excess of
18 \$35,000 a month, and he offered no other alternatives.
19 But CalPERS had several alternatives. They spent some
20 time on this, and they picked the one payrate they
21 thought best fit the facts.

22 The next issue was whether or why CalPERS
23 supposedly does not have citations to the record in its
24 argument to the Board. It is incorrect that there are
25 no citations. What CalPERS has cited throughout are the

1 exhibits that were submitted to the Administrative Law
2 Judge. These exhibits are the public records, the
3 records of the City of Vernon. And in sharp contrast to
4 those public records that CalPERS is relying upon, one
5 only need look at Malkenhorst's brief to recognize that
6 he is citing and relying almost entirely on his own
7 testimony and the testimony of former City employees.

8 And this is the tension that we were referring
9 to in our opening statement: CalPERS needs to rely upon
10 objective, transparent documents, and not testimony of
11 the type they can normally access in their deliberative
12 process.

13 PRESIDENT FECKNER: Thank you.

14 Mr. Jensen, would you like to offer rebuttal
15 at this time?

16 MR. JENSEN: Yes, Mr. President. Thank you.

17 PRESIDENT FECKNER: Microphone.

18 MR. JENSEN: You know, I still believe in due
19 process. I don't know about you guy, but it's a good
20 legal process that should be provided. So, you know,
21 recoupment is a statute. I mean, you've got the facts
22 and law and you have to decide what law applies and what
23 facts apply and actually prove that there was some
24 period. So this argument that there is no due process
25 required to seek three-and-a-half-million dollars from

1 somebody, I don't know where that comes from, but I
2 think that's an even more dangerous argument.

3 So his argument that this is just the way that
4 things were done, well, actually, if things were done
5 correctly according to the Government Code, according to
6 the ordinances, and according to the PERL, of the law in
7 effect at that time, they didn't look into the future
8 and say, Oh. Well, there's going to be a different law
9 in the future. We're going to do something different
10 because that would not be compliant with the current
11 law.

12 So, you know, CalPERS says that they sent
13 specific requests for hours to an employee in a
14 managerial capacity -- and we didn't say that he was
15 FLSA; he was just an exempt managerial employee -- which
16 were ignored. Well, I don't agree with that
17 characterization.

18 But in any case, in 2005-2006 CalPERS had
19 access to all of this information, received it in a
20 legal process, and determined that he was compliant.
21 So, you know, in that case those representations were
22 accepted and it was resolved at that time.

23 As far as other alternatives, you know, we
24 cited to exhibits where the CACC payrate was listed and
25 publicly available and that is in exhibit that we

1 heavily relied on. We heavily rely on a lot of written
2 documents.

3 CalPERS is taking the position that the
4 written documents aren't accurate, so they're not
5 relying on the exhibits. They're relying on some idea
6 that there is this -- you know, that the documents were
7 an intent to conceal something.

8 So, you know, we argue that the payrate --
9 they said that they argue with the payrate that fit the
10 facts, but really in this case there was one position,
11 one payrate. And Mr. Malkenhorst never held the Acting
12 City Clerk position. He didn't work in the time period
13 that that salary was in effect. And there is there is
14 one correct legal answer to this, is that he is entitled
15 to that payrate.

16 I think that Mr. Malkenhorst would be amenable
17 to some discussion or enter into some kind of resolution
18 of this, because he is 84 years old. So if the Board
19 wants to entertain some kind of discussion about what
20 the ALJ suggested, that might be something that he
21 entertains. But to come up with this \$7,000 payrate and
22 then to seek three-and-a-half-million dollars in
23 recoupment that wasn't even listed in the pleading
24 documents, those are not supported by the records;
25 they're not supported by the law. There is no support

1 for that, other than staff's desire to reduce the
2 pension.

3 And, again, they've chosen the absolute lowest
4 payrate that could potentially apply, and then they're
5 ignoring the facts and law in the record.

6 So, again, I know it's a tremendous task to
7 actually go in and look at the record in this case. It
8 is an obligation, I think, in front of you as part of
9 your undertaking this duty and responsibility as being a
10 judge in this matter. Separate and apart from being
11 board members, you're sitting as judges. It's not an
12 advocacy position.

13 This is probably one of the most politicized
14 cases I've ever seen, and it's very hard to find the
15 facts in this case because there's so much argument.

16 He's been made a poster boy for something, but
17 the only thing that would really be appropriate is that
18 Vernon paid him a lot of money for performing the City
19 Administrator job. And that's Vernon's issue. And
20 since it was a fully funded pension at the time of his
21 retirement -- superfunded -- it's hard to see how
22 CalPERS can try to come back and try to change the
23 employer's designation of the duties and
24 responsibilities that were involved and intrinsic and
25 required in this position; and therefore -- so I ask you

1 to, if you need to, seek the opinion of the Attorney
2 General of the State of California.

3 PRESIDENT FECKNER: Thank you.

4 So are there any questions from Board members
5 for either of the counsel?

6 Ms. Mathur.

7 BOARD MEMBER MATHUR: Thank you,
8 Mr. President. And thanks to both of you for your
9 arguments here this morning.

10 My question is to you, Mr. Jensen. You are
11 arguing, if I understand it, that Mr. Malkenhorst held
12 responsibilities of nine different positions embedded in
13 this one CACC position at the time of his retirement; is
14 that correct?

15 MR. JENSEN: Actually, it was Vernon's charter
16 that established the duties and responsibilities of the
17 City Administrator's position. It's in the charter of
18 the City. And the charter designates personnel
19 responsibilities, purchasing responsibilities. And I
20 don't remember off the top of my head what the charter
21 specifically designated and required the City
22 Administrator perform, but they were City Clerk. And
23 there were approximately seven of those duties and
24 responsibilities that were specifically required in the
25 charter for the City Administrator to perform.

1 And Mr. Malkenhorst was hired into that
2 position, and once he was hired into that position, he
3 was required to perform all of those duties.

4 There was the duties at the time -- at one
5 point there was a community redevelopment, which was a
6 separate one, that I believe the City appointed the City
7 Administrator to serve as the Community Redevelopment
8 Officer, which was at the time commonplace practice.
9 There was no pay involved in that. It was a separate
10 entity, and he was essentially an ex-officio, like some
11 of you here, appearing on behalf of, you know, the
12 office of -- appearing on behalf of the City. And it's
13 very similar -- I don't know which members of you are
14 appearing on behalf of the controller or the treasurer,
15 or even as representatives for other agencies.

16 So those two outside positions. I think it
17 was -- the Vernon Historical Preservation Society was
18 one of them. And again there was no pay for those. The
19 only pay that he received was a payrate for City
20 Administrator/City Clerk, and that was designated on
21 that publicly available pay schedule.

22 BOARD MEMBER MATHUR: Mr. Levin, is there
23 anything you would like to say with respect to that
24 question?

25 MR. LEVIN: Yes. Thank you.

1 The City charter did specify the duties of the
2 City Administrator. It did not include the duties of
3 the Light and Power Department or the Gas Department or
4 the Preservation Society or any of those other positions
5 that Mr. Malkenhorst assumed. And that is why the City
6 of Vernon then created those positions and used the word
7 "position" and appointed Mr. Malkenhorst to those
8 positions.

9 If in fact these duties were required of him,
10 he would have just done them or they would have been
11 assigned to him. There didn't need to be a resolution.
12 Certainly not a resolution that said and, of course,
13 your compensation for taking on that position will be
14 included in your new payrate for City Administrator/City
15 Clerk. So there is a disconnect between what the
16 documents say and how Mr. Malkenhorst describes them.

17 BOARD MEMBER MATHUR: Thank you.

18 MR. JENSEN: May I -- I just need to address
19 that quickly.

20 PRESIDENT FECKNER: No.

21 Ms. Mathur.

22 BOARD MEMBER MATHUR: If I might, can I ask
23 another question?

24 It just sort of strikes me as not very
25 credible that an individual -- one individual is holding

1 all these positions, including the director of -- I get
2 the municipal utility, the electrical department, which
3 then became the Light and Power Department, and which
4 were then subsequent to his leaving posted as their own
5 positions with very high salaries. I mean, is this a
6 superhuman who can hold all of these positions within 40
7 hours a week without incurring any overtime?

8 MR. JENSEN: Let me address that because there
9 is this mischaracterization about what it is. It's a
10 small city. I mean, Vernon is a city basically of
11 industries. There's far more industries than residents,
12 and so it's -- to overlay a concept of a large city or a
13 different city on top of it would lead to
14 misunderstanding, and you wouldn't necessarily believe
15 it to be credible.

16 What Mr. Levin was referring to regarding the
17 Light and Power was basically a position where the -- it
18 wasn't the managerial -- the operational aspects of the
19 Light and Power part. That had a separate high-level
20 position. What the City of Vernon did was appoint the
21 City Administrator/City Clerk -- not Mr. Malkenhorst
22 directly -- for no compensation. All right? The
23 resolution says "for no compensation." He quotes only
24 selective parts of it. That's why it's a little
25 frustrating here and why I wanted to address you.

1 So the City of Vernon appointed the City
2 Administrator for no compensation to act as,
3 essentially, the overseer of coordinating the wholly
4 owned municipal electricity utility and the gas utility,
5 coordinating that with the rest of the City. That was
6 his job. He wasn't operating it.

7 There was a separate operational aspect to it
8 that somebody was employed to go run the plant. But, in
9 particular, because the city was a high -- as it owned
10 its own municipal electric utility, it was the seller of
11 electricity to the business in the city, and so there
12 had to be coordination between the operational aspects
13 of the utility and the distribution or the selling
14 aspect because it was all one unit. That's fairly
15 commonplace to have that -- that job of basically -- not
16 job. It's really a responsibility within one job of
17 coordination.

18 And so when you say it's not credible, he --
19 this is, again, a atypical city. It's atypical because
20 of its relative small size and relative large amount of
21 money because it's the seller of electricity, but the
22 responsibilities are really -- it's more the
23 responsibilities than the work.

24 There was a great deal of testimony in the
25 record -- and I would hope that you guys would look at

1 it -- that the City Council wanted one individual to
2 help coordinate these different duties, these different
3 duties within the City Administrator position, but there
4 was a lot of delegation of the actual work.

5 And it's very clear that Mr. Malkenhorst was
6 not performing this work. He was more in the position
7 of like a CEO, which, as you know, Ms. Stausboll does
8 not do all the work; but she is the coordinator of it
9 and in a certain way establishes the mission and makes
10 people accountable. That's what the testimony showed
11 Mr. Malkenhorst's position was.

12 I don't have any personal experience. I'm not
13 testifying. And I think that that's the thing that is
14 apparent, is that that testimony that we tried to
15 describe to the court is it allows a real understanding
16 of what happened, which was that the very active City
17 Council overseeing the City but that was doing its -- it
18 established the City Administrator/City Clerk position
19 to basically oversee these different departments that
20 did the work and coordinate it for the City Council.
21 But it was one job one. Multiple responsibilities but
22 one job, one pay. Successful for a time but --

23 So I hope that answers your question.

24 BOARD MEMBER MATHUR: Thank you.

25 Mr. Levin, did you have anything with respect

1 to the question?

2 MR. LEVIN: I think I've fully addressed it
3 already. I won't take up any more time on that point.
4 Thank you.

5 BOARD MEMBER MATHUR: Thank you.

6 PRESIDENT FECKNER: Thank you.

7 Next request is Mr. Boyken.

8 ACTING BOARD MEMBER BOYKEN: Thank you.

9 Quick question for our Independent Counsel,
10 Mr. Shah: When it comes down to it, this is an issue of
11 overpayment. We deal with that quite a bit. Complex
12 though it may be, we're talking about overpayment, and
13 sometimes we have cases where, through mistake of the
14 staff, we have overpayment to a member. And this goes
15 to recoupment.

16 So is there any circumstance under which a
17 member can make a laches claim to a benefit that's not
18 allowed by law?

19 MR. SHAH: There is not. The statute you're
20 referring to is section 20160 of the Public Employees'
21 Retirement Law which creates a duty to recoup those
22 funds, and it is mandated. So staff is not collaterally
23 estopped or equitably estopped from recouping those
24 payments.

25 ACTING BOARD MEMBER BOYKEN: Thank you.

1 PRESIDENT FECKNER: Ms. Hollinger.

2 BOARD MEMBER HOLLINGER: I had the same
3 question, and I think you answered it.

4 So then there's nothing that would violate due
5 process is the argument he makes for us to recoup monies
6 that have been overpaid or paid in error?

7 MR. SHAH: I've gone through the entire
8 record, and I do not believe there are any due process
9 violations involved here.

10 BOARD MEMBER HOLLINGER: Okay. Thank you.

11 PRESIDENT FECKNER: Mr. Slaton.

12 BOARD MEMBER SLATON: Thank you,
13 Mr. President.

14 I've got three short questions. First of all,
15 in looking through the record, in 1980 the City Clerk
16 recommended the position be created Director of
17 Utilities and that position was filled. And it says
18 that it be created and included in the salary wage scale
19 resolution for the City of Vernon.

20 At the time Mr. Malkenhorst became the CEO of
21 the city's power department, did the position of
22 Director of Utilities, was it still in effect and
23 filled, or did he essentially take that position?

24 MR. JENSEN: My understanding -- and you're
25 asking a complex question. My understanding is that the

1 Director of Utilities is the operational person. Okay?
2 So Mr. Malkenhorst never held the operational position.
3 And throughout I believe that there's a salary for an
4 individual who essentially did the -- running the
5 electric utility.

6 And I don't know what those specific tasks
7 are, but it's basically making sure that the generators
8 work and that the people -- make sure the power lines
9 are all right. And that's not ever what we were
10 claiming.

11 And then my understanding is that that
12 position changed names because there was a gas utility
13 and water utility and electric utility, and at one point
14 they were all in one; and then I think for bonding
15 reasons, or whatever, they separated them out. It's
16 complex.

17 But Mr. Malkenhorst never assumed any position
18 associated with operations. He was never paid for any
19 position associated with the utilities. And they always
20 had individuals who were in those operational aspects.

21 BOARD MEMBER SLATON: So for CalPERS' Outside
22 Counsel: So you mentioned in your original opening
23 statement that these additional positions that
24 Mr. Malkenhorst were assigned said that the additional
25 compensation for those positions created would be

1 included in the CACC salary.

2 Did I hear that correctly?

3 MR. LEVIN: You did.

4 BOARD MEMBER SLATON: So what you did not say
5 is that there is no compensation for those positions?

6 MR. LEVIN: That's correct. CalPERS believes
7 there was compensation and that the compensation came in
8 the form -- the next budget process of large increases
9 in the payrate for the City Administrator/City Clerk
10 position.

11 BOARD MEMBER SLATON: So the City Council
12 could have said there's no additional compensation for
13 this position?

14 MR. LEVIN: That's correct.

15 BOARD MEMBER SLATON: They chose not to?

16 MR. LEVIN: That's correct.

17 BOARD MEMBER SLATON: They used the words
18 "included in the CACC salary"?

19 MR. LEVIN: That's correct.

20 BOARD MEMBER SLATON: Okay. Then they went
21 back and made adjustments to that salary?

22 MR. LEVIN: That's correct.

23 BOARD MEMBER SLATON: Okay. Is there anything
24 that prevents -- that is inappropriate, even though we
25 might disagree with the percentage, for a City Council

1 to grant a 24 percent pay increase?

2 MR. LEVIN: None.

3 BOARD MEMBER SLATON: None under the PERL?

4 MR. LEVIN: Correct.

5 BOARD MEMBER SLATON: So that's full
6 discretion. The City Council could do that?

7 MR. LEVIN: That's correct. This entire
8 matter is not about the amount Mr. Malkenhorst was paid.
9 It was about the disclosure of those payments and the
10 positions for which the pay was being given.

11 BOARD MEMBER SLATON: Okay. Could you opine
12 on the law at the time for a City Council to make a
13 statement -- if they had not made this statement,
14 "included in CACC salary," they said "no additional
15 compensation" and in a meeting had given him a
16 24 percent pay increase, would we have had a problem
17 with that?

18 MR. LEVIN: There would have been a problem.
19 This was an issue that was actually briefed before the
20 ALJ, and it goes to the heart as to how CalPERS
21 calculates a payrate with an individual who has more
22 than one position.

23 And the simplest way to explain it is imagine
24 an individual with two positions. One position, let's
25 say, pays a payrate of \$20,000 a month and that takes

1 half of the workweek, and the other position also takes
2 half of the workweek and it's a \$10,000 payrate. And so
3 there's a weighted averaging that goes on, and in that
4 particular example I gave you, the weighted average
5 would be \$15,000.

6 Now, if in fact there was a designation of a
7 new position with a zero payrate, then CalPERS would
8 need to know the percentage of time of that employee
9 being spent in that zero-pay position so it could be
10 weighted against the other percentage of the time spent
11 working in the position that actually did have a
12 payrate.

13 BOARD MEMBER SLATON: So that brings me to my
14 last question. When these letters were done in 1995 and
15 '96 -- is that correct? --

16 MR. LEVIN: Yes.

17 BOARD MEMBER SLATON: -- did those letters
18 specify what the consequences would be of not providing
19 the information requested?

20 MR. LEVIN: No.

21 BOARD MEMBER SLATON: Thank you.

22 PRESIDENT FECKNER: Mr. Jones.

23 VICE PRESIDENT JONES: Thank you,
24 Mr. President.

25 It's kind of following on Bill's question.

1 To Mr. Jensen, the question to you, in 1995
2 and '96, those letters that went out, why didn't
3 Mr. Malkenhorst respond?

4 MR. JENSEN: You know, I can only speak to
5 what the testimony is. I don't know personally. My
6 understanding was that they sent back the documents from
7 the City that said that these -- what we consider
8 responsibilities, what they call separate jobs, were all
9 included within the city's charter to be performed by
10 the City Administrator/City Clerk. So I believe they --
11 my understanding is that they did respond.

12 And this goes to another question.
13 Mr. Malkenhorst was -- he's a managerial employee,
14 meaning that he was paid a salary. And in fact many of
15 the people in the City administrative was just paid a
16 salary, and they didn't keep track of hours.

17 Mr. Levin's issue now is that there was some
18 kind of indication that they should have kept hours for
19 their specific duties. There was no, I don't think, any
20 direction from CalPERS at that time to keep hours. And
21 it wouldn't have been appropriate anyway because he was
22 a managerial employee.

23 Now, if he describes it as FLSA managerial
24 employee, which applies -- which CalPERS has some kind
25 of -- regarding firefighters, has some kind of say over

1 which type of overtime exists, but there was no
2 overtime.

3 I mean, this again -- I keep saying this.
4 It's a small city. There was a lot to do, but there
5 weren't a lot of people to do it. And so he did all of
6 his -- the testimony is very clear; the facts are very
7 clear that he did this one job 40 hours a week.

8 VICE PRESIDENT JONES: Mr. Jensen, my
9 question, though, is why didn't he respond?

10 MR. JENSEN: No. I believe they did respond
11 with the -- my understanding is that they responded --
12 sorry -- to CalPERS with the documents that indicated
13 that all of these duties and responsibilities were
14 performed within one position for one pay, and they sent
15 back the documents to CalPERS and CalPERS didn't follow
16 up. That's my understanding.

17 VICE PRESIDENT JONES: Mr. Levin?

18 MR. LEVIN: I believe that's incorrect. I
19 think that if you were to look at the chronological
20 order of the correspondence between CalPERS and the
21 City, the first thing the City did is to say, Well, here
22 are all the pay schedules and all the resolutions that
23 you've requested, CalPERS.

24 And this was in connection with
25 Mr. Malkenhorst's first application for retirement.

1 That's how all this came up in the first instance in
2 1995. And it was in going through all the information
3 that the City provided that CalPERS sought this
4 additional information, and there's no indication of any
5 information being sent back to CalPERS in connection
6 with its concern over the multiple positions and
7 overtime.

8 Mr. Malkenhorst was asked about his receipt of
9 the letters at the administrative hearing, and he said
10 that he couldn't recall; he just didn't know, which, you
11 know, fair enough. This was, you know, many, many years
12 ago. But I would say that the inference -- or I'd say
13 that the implication from both Mr. Malkenhorst's
14 testimony and others who gave testimony at the hearing
15 was that the City didn't believe that a managerial
16 employee had to worry about overtime as defined by the
17 PERL.

18 And the legal issue that we made to the ALJ,
19 which the ALJ accepted, which is overtime under the PERL
20 is different than overtime as defined by the FLSA, which
21 is where the whole concept of being an exempt employee
22 or a managerial employee arises, kind of the lay
23 mindset, which is, you know, managerial employees don't
24 have to count their hours because they don't have to be
25 paid additional dollars for additional hours worked.

1 Well, that may be true, but it doesn't mean
2 that salary they may be paid above a certain level for
3 working additional hours can be treated as part of their
4 final compensation when nonmanagerial employees who
5 receive additional dollars for working additional hours
6 cannot.

7 The PERL is not written that way and it has
8 not been interpreted that way, which is why we mentioned
9 the matter of the *Ramirez* precedential decision where
10 the ALJ decided and this Board confirmed that when you
11 give positions -- additional positions to managerial
12 employees and you pay them to work more than their set
13 number of hours, that's overtime. And that's why
14 CalPERS sent those letters.

15 CHAIRPERSON JONES: Thank you.

16 MR. JENSEN: I'd love to address that.

17 PRESIDENT FECKNER: Just a second. Is your
18 question finished?

19 VICE PRESIDENT JONES: Yes.

20 PRESIDENT FECKNER: Very good.

21 Ms. Hagen.

22 ACTING BOARD MEMBER HAGEN: Yes. Thank you.

23 So I've heard a lot of discussion today about
24 the multiple positions and the overtime, but I recall in
25 much of the reading that there was also a discussion

1 around special pay received and, specifically, longevity
2 pay. And isn't it part of the, I guess, the fact
3 pattern here that, you know, the documentation didn't
4 match up with the pay in his employment history, the
5 rate he received, and on the pay schedule? I mean,
6 isn't that also part of the argument, not just the
7 multiple positions and overtime?

8 MR. LEVIN: It is. There's two issues there
9 that I would like to separate out. One has to do with
10 special compensation that Mr. Malkenhorst received,
11 which was longevity pay. And CalPERS argued and the ALJ
12 agreed that Mr. Malkenhorst's longevity pay as an item
13 of special compensation needed to be reduced from 25
14 percent to 20 percent.

15 I didn't address it in my opening remarks
16 because it was not addressed by Mr. Malkenhorst in his
17 argument. I think it's pretty much a slam dunk from the
18 ALJ's point of view.

19 The other aspect to the question deals with
20 the increase in Mr. Malkenhorst's pay over time. I had
21 mentioned an increase of 24 percent over -- I think it
22 was about an 18-month period after he became the
23 Director of Light and Power in 1981; but, in fact,
24 CalPERS did an analysis of the bumps in
25 Mr. Malkenhorst's payrate over the entirety of the

1 period of time he was employed by the City of Vernon and
2 saw a correlation between larger-than-average pay
3 increases and his acceptance of these other positions.
4 So that was something else that was in the record.

5 MR. JENSEN: Can I address that, please?

6 Mr. Malkenhorst worked there for 30 years.
7 And there was a period of very high inflation during
8 that, too, but specifically there was testimony about
9 that one period where there was the 24 percent increase.
10 And Mr. Malkenhorst was recruited by an outside employer
11 and made the job offer. And the City of Vernon said,
12 "Okay. Well, we want to keep you, so we're going to
13 increase your wage." So that one specific increase that
14 Mr. Levin is talking about was well documented in his
15 testimony of having an alternative reason why the City
16 Council increased it. But this idea that there is a
17 correlation between him assuming different
18 responsibilities and increases in pay is just not
19 factually accurate.

20 And I think if you look at the chart actually
21 created by CalPERS' Compensation Review Unit employee
22 Terrance Rodgers, who testified in the record, he said
23 there was no correlation or connection in time between
24 the assumption of -- between the City requiring the
25 position of City Administrator/City Clerk to perform

1 additional duties and any increases in pay. They just
2 weren't connected in time.

3 He was successful in his employment and he did
4 receive increases; the City was successful, but they're
5 not tied to assuming additional duties and
6 responsibilities.

7 And, again, it comes back to this idea that --
8 it's like I feel like CalPERS is trying to make a
9 backdoor challenge to Vernon's compensation practices
10 about how much they paid him. And they're doing it in a
11 certain way by saying that a city can't create various
12 duties and responsibilities in one position. And I
13 think both of those are unsupported. They're just not
14 in the PERL.

15 If you say, Okay. Well, Vernon was this
16 unusual city that was at a certain time very
17 economically successful and decided to pay their City
18 Administrator a great deal of money, and they put it on
19 a publicly available pay schedule and they paid all that
20 their contributions, didn't give him any raises in the
21 last four years, then there's no PERL issue.

22 If CalPERS said, Okay. The employer is
23 allowed to establish the duties and responsibilities of
24 these various positions that they created, especially
25 charter cities, you can go -- and the charter city has

1 absolutely reserved the right to designate the positions
2 and the duties of its subgovernment.

3 If CalPERS is coming to say, Well, you can't
4 do that. We're going to divide them all out. This one
5 position can't perform multiple duties, you guys are
6 going to be busy, because it happens all across the
7 State.

8 I mean, look at you sitting there. You serve
9 on sit on different committees. You serve as judges
10 here. I mean, these are just different responsibilities
11 in one position. It's no different down there.

12 And I don't know if you guys are paid or not,
13 but you represent organizations, probably not, but
14 it's -- you know, just imagine if you were paid a
15 stipend. Would they have to break it out by you serving
16 on a committee here and then you serving as a judge here
17 and then, you know, talking to staff later? Is that the
18 kind of detail you guys are going to require? And if
19 you don't do that, you're going to punish him? And then
20 if you don't do that, you're going to go seek repayment
21 back 10 years? Whoa. You guys -- I mean, not you guys.
22 This is like opening, to me, a ball of wax.

23 And there is no reason to because there's
24 nothing wrong with what they did, according to laws in
25 existence then. So I don't mean to speechify, but I

1 just feel like in a certain way the facts and the law
2 are what they are. And they sometimes say that, you
3 know, hard cases make bad law, or whatever; but, you
4 know, sometimes that politics trump law. I'm a lawyer;
5 I'm not a politician, and I value law and I value due
6 process and those kind of things, and I think that's the
7 way society should run. And I think that preserving the
8 integrity of vested pension rights is important for you
9 guys. I'm mean, not you guys. I just use colloquially.

10 And so those are my concerns. And I do think
11 that if in 1995 and 1996 CalPERS had some concern about
12 this, they had a duty to follow up and make some
13 documentation and address those and say to Vernon:
14 Listen. These aren't compliant with our practices. How
15 many -- did CalPERS audit Vernon anytime between 1995
16 and 2005? Did they raise these issues? I don't think
17 so. And then in 2006 did they agree to it as compliant?
18 Yes, they did. All these same facts. And now, 10 years
19 later, politics. I'd beware of it.

20 PRESIDENT FECKNER: Thank you.

21 Mr. Slaton.

22 BOARD MEMBER SLATON: So given your last
23 comments, I want to follow up with counsel on this
24 particular issue.

25 So let's assume for the moment that the facts

1 we had were that Vernon didn't add these titles, that
2 Malkenhorst did not take these positions. So the
3 positions were not created or not assigned to him, but
4 his duties expanded in terms of what he was responsible
5 for doing under his City Administrator role without
6 these other titles.

7 What would our argument be then?

8 MR. LEVIN: The City of Vernon then should
9 have created a new duty statement for City
10 Administrator/City Clerk and made that part of the
11 resolution and the pay schedules so that when a member
12 of the public saw "City Administrator/City Clerk," they
13 knew what it entailed. They knew how many hours that
14 person was working and what it was that that position
15 entailed.

16 BOARD MEMBER SLATON: So let me just follow
17 up. So we talked about a position being established in
18 1980 of a Director of Utilities and that being shown in
19 the salary schedule, but I've never seen that there's a
20 requirement for the specific job duties to be posted. I
21 mean, does the City Council normally post the detailed
22 job responsibilities for every job?

23 MR. LEVIN: Well, they don't. And I guess
24 that's the distinction between duties and a position. I
25 think that a position signifies an ongoing set of

1 duties, that it's not just, as Mr. Jensen suggested,
2 having to attend a committee meeting. I mean, when you
3 have a position it is a responsibility for a set of
4 duties that are ongoing over a period of time.

5 So I think that's part of the semantics
6 problem here. If in fact they were just some additional
7 duties -- Hey, Mr. Malkenhorst. We need you to attend
8 this meeting or attend to this issue today or next
9 month -- then you're right. Then that would not be
10 something normally that one would put in a resolution
11 and publicize, because it wouldn't be worthy of an
12 increase in compensation.

13 But if in fact they were going to pass a
14 resolution creating the new position stating that that
15 compensation for the new position existed and would be
16 included in the composition of City Administrator/City
17 Clerk -- and in fact there was testimony on the record
18 as to the significance of the amount of work and time
19 that Mr. Malkenhorst had to spend in some of these new
20 positions.

21 If I might, for example, refer the Board to
22 the budgeting process that Mr. Malkenhorst went through
23 in the last two years he was employed by the City of
24 Vernon. He, himself, had to approve the budgets for all
25 the various departments, and he then took his salary and

1 allocated across the various departments. Part would be
2 allocated to the Light and Power Department, part would
3 be allocated to the Treasury Department, and so on.

4 In the 2003-2004 budget year, only 25 percent
5 of Mr. Malkenhorst's total compensation was allocated to
6 City Administration and City Clerk. And in the last
7 year of his employment, that number went down to
8 10 percent.

9 Now, the City of Vernon is telling the public
10 that City Administration and City Clerk is a
11 40-hour-a-week position. And Mr. Malkenhorst himself is
12 saying in the last year of his employment he thinks it's
13 only 10 percent of his salary should be budgeted to
14 those positions. So we're not just talking about a duty
15 here or a duty there. We really are talking about true
16 positions of the type that take up a significant part of
17 the time.

18 MR. JENSEN: Mr. Levin just talked about the
19 budgeting process. The budgeting process, it's clear
20 testimony that it was not connected with the amount of
21 time spent in any responsibility. We had that at
22 length. The budgeting process was simply to allocate
23 salaries, as required by the Vernon's charter, to
24 allocate them over departments without respect to time.
25 And at this time it was really with respect to what

1 was -- I believe the testimony was the value of the
2 department, how much money was in each department, and
3 then they were allocating percentage-wise prospectively
4 over the next year to spread the cost of administration
5 across the different departments.

6 So in the specific period that Mr. Levin's
7 referring to, the wholly owned municipal power plant had
8 a huge budget because it was constructing a physical --
9 some kind of generator or something. So because that --
10 excuse me -- the value of that department was much
11 higher, there was a higher percentage of the City
12 Administrator's prospective salary for that year
13 allocated to that department.

14 I mean, the record is clear this is not
15 related to hours or work or anything. This is just a
16 separate budgeting process. And to say that the
17 separate budgeting process required by the charter is
18 somehow in direct contradiction to the facts reads on
19 his hours or his responsibilities, it's not true. It's
20 not the way they did business. It's not accurate.

21 Sorry. I just -- it's frustrating.

22 PRESIDENT FECKNER: Ms. Taylor.

23 BOARD MEMBER TAYLOR: Yes. I just had one
24 question for our counsel.

25 Can you opine on why --

1 PRESIDENT FECKNER: Mr. Levin or Mr. Shah?

2 BOARD MEMBER TAYLOR: Mr. Levin. Sorry.

3 -- why the ALJ had determined that we did not
4 calculate his retirement pay correctly? That we
5 did it -- what was the word here? We didn't use the
6 proper exercise of discretion when doing so?

7 Can you opine on why we think we should
8 overturn that?

9 MR. LEVIN: Yes. First of all, let me address
10 what I think the ALJ had in his mind in rejecting the
11 \$7,875 payrate that CalPERS came up with.

12 So, as previously mentioned, that payrate came
13 from the Acting City Clerk position that was created to
14 begin immediately the day after Mr. Malkenhorst left,
15 and I believe the ALJ was sensitive to Mr. Malkenhorst's
16 opinion and argument, that, Hey, I was never an Acting
17 City Clerk. How is CalPERS to say that that position is
18 anything like my position when I was the City Clerk?

19 And that's fair enough. But then how can one
20 say that the Light and Power position that was created
21 immediately after his departure that never existed
22 before was more like the duties that Mr. Malkenhorst was
23 undertaking? Or the treasury position? Or any other
24 future position at the City of Vernon.

25 To really know if there is another position

1 that fully captures the correct payrate, one would need
2 to know how many hours were you working and what exactly
3 were your duties? And cities like the City of Vernon,
4 they do have duty statements, and those are public. And
5 if somebody wanted to compare, for example, city
6 administrators of two different cities, they should be
7 able to see that one city administrator works 40 hours a
8 week, another does 50 hours a week, one city
9 administrator does work as a clerk and a treasurer, and
10 the other one is CEO of the Light and Power Department.

11 That is information that the public should
12 have and needs to be able to compare and contrast
13 different positions. And I think the ALJ struggled with
14 the use of the Acting City Clerk position, but didn't
15 have anything else to offer as a substitute.

16 And our position would be that it is not
17 arbitrary. It is in fact reasonable to use that
18 position because it is consistent with the policy of
19 transparency. And by that we mean this: The City of
20 Vernon told the public that Mr. Malkenhorst was
21 undertaking the activities of City Clerk. And so,
22 presumably, so was the Acting City Clerk. So at least
23 you had that crossover that made the most sense of
24 anything else.

25 BOARD MEMBER TAYLOR: So you're stating that

1 the judge actually struggled with what to call him or
2 where to categorize him, but I'm seeing here in the
3 response that even though the Respondent Malkenhorst's
4 duties and compensation as City Administrator -- and
5 you've referred to him as both City Administrator/City
6 Clerk, but when CalPERS determined what his
7 retirement -- or redetermined what his retirement was to
8 be, it sounds to me like it was a downgrading down to
9 City Clerk but he was City Administrator, and it sounds
10 as though -- my problem here is it does sound as though
11 the judge did pick a job description. And that's where
12 I have a little issue.

13 MR. LEVIN: Well, the judge did not pick a
14 different payrate or position that the ALJ thought fit
15 better. He just said, you know, "I'll send it back to
16 CalPERS."

17 He did suggest that CalPERS look to -- I think
18 the quote was "Mr. Malkenhorst's successor as City
19 Administrator." And if in fact there had been a
20 successor to City Administrator, absolutely that would
21 have been a better fit, but that position didn't exist.

22 If you look at the resolution immediately upon
23 his retirement, that City Administrator/City Clerk
24 position disappeared, and there was no other position on
25 the pay schedules that had anything close to resembling

1 an administrator title.

2 MR. JENSEN: Can I address that, please?

3 MR. LEVIN: Sure.

4 MR. JENSEN: Okay. It's just interesting word
5 play. So the ALJ said "successor City Administrator."
6 There was a successor City Administrator that was paid
7 \$335,000. It just wasn't immediately afterwards. So
8 CalPERS is basically saying that the successor to City
9 Administrator has to be immediately -- the next day
10 there has to be a position named City Administrator.
11 Well, there wasn't, but there was later; and that later
12 position would be the successor City Administrator. It
13 just wasn't in time.

14 There's a City Administrator and then there's
15 a subsequent. So to be able to -- to say that there
16 was -- that that direction or that --

17 BOARD MEMBER TAYLOR: I get your point.

18 MR. JENSEN: Okay. But also I need to -- the
19 judge wasn't saying just the Acting City Clerk. He was
20 saying, Listen, this is a highly paid, highly skilled
21 position in the City, and their people get \$300,000 --

22 BOARD MEMBER TAYLOR: That's not what he was
23 saying here, so let me -- let Mr. Levin respond.

24 MR. LEVIN: Thank you.

25 This talk about a successor City

1 Administrator, this is the topic of that request to the
2 supplemental record that was at the outset of this
3 hearing.

4 There was no evidence at the administrative
5 hearing of any successor City Administrator. There's no
6 discussion as to when that person was hired, what that
7 person's responsibilities were, duties, other positions,
8 hours, anything. And perhaps -- I inferred that the ALJ
9 was looking beyond the record that was presented, hoping
10 that something else might come up. But if you were to
11 take the ALJ literally, what the message would be is
12 CalPERS, when it was time to find a pay raise for
13 Mr. Malkenhorst at the time of his retirement, maybe he
14 should have waited around for a few years to see what
15 happened when an administrator was hired.

16 I mean, that's not the way CalPERS can do
17 business. I mean, it has to make, if it can,
18 contemporaneous decisions. And so it used the pay
19 schedule that existed at the time of retirement, that
20 took place immediately upon their retirement.

21 BOARD MEMBER TAYLOR: All right. Thank you,
22 Mr. Levin.

23 PRESIDENT FECKNER: All right. Seeing no
24 other questions or requests, we are going to recess.
25 The Board is going to recess in a closed session with

1 Independent Counsel; so you all can stay here and enjoy
2 a movie or something, but we'll be back shortly. This
3 open session is recessed.

4 (Thereupon the Full Board Hearing was recessed
5 at 11:34 a.m. and reconvened at 12:07 p.m.)

6 PRESIDENT FECKNER: We're going to reconvene
7 the Board meeting.

8 After a lengthy discussion with the Board and
9 Independent Counsel, the Board has reached a decision.
10 They have voted by a vote of 9 "Yes" and 2 "No" to
11 support -- please read the motion, Mr. Jones.

12 VICE PRESIDENT JONES: Thank you,
13 Mr. President.

14 I move to deny this appeal and revise the
15 proposed decision as argued by staff, including with
16 respect to recoupment of overpayments and accrual and
17 tolling of the limitations period.

18 PRESIDENT FECKNER: Thank you. And that vote
19 was 9 to 2.

20 MR. JENSEN: Mr. President, may I poll the
21 members?

22 PRESIDENT FECKNER: May you poll the members?

23 BOARD MEMBER MOFFITT: Just to see who voted
24 in which way.

25 PRESIDENT FECKNER: No.

1 Okay. This matter is over.

2 Moves us to Item 12, Summary of Board
3 Direction.

4 Ms. Stausboll.

5 MR. JENSEN: Thank you very much, by the way.

6 PRESIDENT FECKNER: Thank all for your time
7 here today.

8 CHIEF EXECUTIVE OFFICER STAUSBOLL: I don't
9 believe we have any new direction.

10 PRESIDENT FECKNER: I don't think so either.

11 CHIEF EXECUTIVE OFFICER STAUSBOLL: Thank you.

12 PRESIDENT FECKNER: Item 13, Public Comment.

13 Anybody from the public still here that wishes to
14 address the board?

15 If not, then we will close the -- adjourn the
16 open session and move into closed session to discuss
17 litigation matters. So if we could please clear the
18 room, we will move on to Item 14.

19 (Thereupon the California Public Employees'
20 Retirement System Board of Administration open
21 session meeting adjourned at 12:09 p.m.)

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1 C E R T I F I C A T E O F R E P O R T E R

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I, JACQUELINE TOLIVER, a Certified Shorthand Reporter of the State of California, do hereby certify:

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That I am a disinterested person herein; that the foregoing California Public Employees' Retirement System Board of Administration open session meeting was reported in shorthand by me, Jacqueline Toliver, a Certified Shorthand Reporter of the State of California and thereafter transcribed under my direction, by computer-assisted transcription.

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I further certify that I am not of counsel or attorney for any of the parties to said meeting nor in any way interested in the outcome of said meeting.

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IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of November 2015.

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JACQUELINE TOLIVER, CSR
Certified Shorthand Reporter
License No. 4808

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