

Friday 10 of Oct 2014, Faxination

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

In the Matter of the Calculation of Final
Compensation of:

RICHARD LEWIS,

Respondent,

and

CITY OF SAN BERNARDINO,

Respondent.

Case No. 2014-0256

OAH No. 2014040945

ORDER DENYING RICHARD LEWIS'S
MOTION TO PRESENT HIS
COLLATERAL ESTOPPEL/RES
JUDICATA CLAIMS AT THE OUTSET
OF THE HEARING

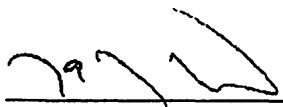
On June 13, 2014, Administrative Law Judge Beth Faber Jacobs issued an order denying Richard Lewis's Motion Regarding Jurisdictional Challenge, without prejudice. ALJ Jacobs ruled that the issues may be addressed at hearing after evidence is received and the matter addressed in the proposed decision issued by the trial judge.

In the instant motion, Mr. Lewis requests presenting these issues first.

In its Statement of issues, CalPERS seeks to reduce Mr. Lewis's retirement compensation. As CalPERS noted, the appeal is "limited to the issue of whether 'Temporary Upgrade Pay' and the value of Employer Paid Member Contributions can be included in the calculation of Mr. Lewis's final compensation." CalPERS contends that they cannot be included. CalPERS bears the burden of proof on that issue. Some of Mr. Lewis's defenses to CalPERS's position are based on theories of res judicata and collateral estoppel.

In light of those respective positions, and consistent with the burden of proof, CalPERS shall present its case in chief first. Mr. Lewis shall raise his defenses during his case in chief or during his cross-examination of CalPERS's witnesses. All issues will be heard and addressed in the final decision.

DATED: October 10, 2014



MARY AGNES MATYSZEWSKI
Administrative Law Judge
Office of Administrative Hearings

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DECLARATION OF SERVICE

Case Name: Lewis, Richard

OAH No.: 2014040945

I, Monica Peterson, declare as follows: I am over 18 years of age and am not a party to this action. I am employed by the Office of Administrative Hearings. My business address is 2349 Gateway Oaks Drive, Suite 200, Sacramento, CA 95833. On October 10, 2014, I served a copy of the following document(s) in the action entitled above:

ORDER DENYING RICHARD LEWIS'S MOTION TO PRESENT HIS COLLATERAL ESTOPPEL/RES JUDICATA CLAIMS AT THE OUTSET OF THE HEARING

to each of the person(s) named below at the addresses listed after each name by the following method(s):

Jolena Grider
City of San Bernardino
Office of the City Attorney
300 North "D" St. 6th Floor
San Bernardino, CA 92418
Sent via fax 1-909-384-5238

Wesley E. Kennedy
Senior Staff Counsel
CalPERS
P.O. Box 942707
Sacramento, CA 94229-2707
Sent via fax 795-3659

John M. Jensen
Attorney at Law
11500 W. Olympic Blvd., Suite 550
Los Angeles, CA 90064
Sent via fax 1-310-312-1109
Sent via fax 1-310-477-7090

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. This declaration was executed at Sacramento, California on October 10, 2014.



Monica Peterson, Declarant

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