



California Public Employees' Retirement System
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Ref No. 2014-0681

November 9, 2015

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Stephen H. Silver, Esq.
Silver, Hadden, Silver, Wexler & Levine
P. O. Box 2161
Santa Monica, CA 90407-2161

Subject: In the Matter of the Calculation of Final Compensation of
CHRISTINE F. LONDO, Respondent, and CITY OF WALNUT,
Respondent.

Dear Mr. Silver:


Enclosed is a copy of the Proposed Decision After Remand of the administrative law judge in the above matter.

The Board of Administration, at its meeting on October 21, 2015, considered the Proposed Decision after Remand and concluded not to adopt it, but instead to decide the matter itself on the record after affording the parties an opportunity for argument at a subsequent meeting. A copy of the procedures for the conduct of full hearings before the Board, as revised in September 2005, is enclosed for your reference.

The full board hearing is scheduled for December 16, 2015, at CalPERS headquarters in Sacramento, California.

If you have any questions about this procedure, you may contact me at (916) 795-3938.

Sincerely,


RORY J. COFFEY
Senior Staff Attorney

RJC:clb

Enclosures

cc: Christine F. Londo
Michael B. Montgomery, Esq., City of Walnut

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8 BOARD OF ADMINISTRATION
9 CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

10	In the Matter of the Calculation of Final Compensation:	)	CASE NO. 2014-0681
		)	OAH NO. 2014070904
11	CHRISTINE F. LONDO,	)	*AMENDED
12	Respondent,	)	NOTICE OF FULL BOARD HEARING
13	and	)	Date: December 16, 2015
		)	Time: 9:00 a.m.
14	CITY OF WALNUT,	)	Location: Robert F. Carlson Auditorium
15	Respondent.	)	CalPERS
		)	Lincoln Plaza North
16		)	400 Q Street
		)	Sacramento, CA 95811

17 TO RESPONDENT Christine F. Londo and her attorney of record, Stephen H.
18 Silver; and to Respondent City of Walnut, and to its attorney of record, Michael B.
19 Montgomery:

20 YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that the Board of
21 Administration of the California Public Employees' Retirement System, at its meeting of
22 October 21, 2015, voted to decline to adopt the administrative law judge's Proposed
23 Decision After Remand dated August 28, 2015, but to instead decide the matter itself
24 on the hearing record produced before the administrative law judge without admission

1 of any further evidence. This matter has been placed on the agenda to be considered
2 by the Board of Administration at its regular meeting scheduled for:

3 **December 16, 2015, beginning at 9:00 a.m., or as soon thereafter as the matter**
4 **can be heard on the calendar of agenda items, at: CalPERS Headquarters,**
5 **Robert F. Carlson Auditorium, Lincoln Plaza North Building, 400 Q Street,**
6 **Sacramento, California, 95811.**

7 In accordance with section 11517(c) of the Government Code, arguments either
8 oral or written, or both, may be submitted to the Board. **Written argument, if any,**
9 **must be received by CalPERS by December 4, 2015, and sent to:**

10 **Board Secretary, Post Office Box 942701, Sacramento, CA 94229-2701, in order**
11 **to be mailed to the Board members with the agenda item package. Please note**
12 **that if you miss this date, the Board may consider this matter without your**
13 **argument. Any written argument submitted to the Board Secretary should be**
14 **titled as "Respondent's Argument."**

15 CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT
16 SYSTEM

17 Dated: Nov. 9, 2015 BY _____

18 
19 RORY J. COFFEY,
20 SENIOR STAFF ATTORNEY

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22
23
24
25
AMENDED

In re matter of CHRISTINE F. LONDO
NOTICE OF FULL BOARD HEARING

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

**In the Matter of the Calculation of
Final Compensation of:**

CHRISTINE LONDO,

Respondent,

and

CITY OF WALNUT,

Respondent.

Case No. 2014-0681

OAH No. 2014070904

**PROPOSED DECISION
AFTER REMAND**

Humberto Flores, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter on November 5, 2014, in Glendale, California.

Roy Coffey, Staff Counsel, represented the California Public Employees' Retirement System, State of California (CalPERS).

Stephen H. Silver, Attorney at Law, represented Christine Londo (respondent Londo), who was present throughout the administrative hearing.

The City of Walnut was represented by Michael Montgomery, City Attorney for the City of Walnut.

The ALJ issued a Proposed Decision on January 14, 2015. On April 20, 2015, the Board of Administration of CAIPERS remanded the matter to the ALJ to "receive and consider additional evidence regarding the issue of whether the facts of this case differ from the facts of the Board's Precedential Decision number 00-06." The issue set forth in the Order of Remand is addressed in Factual Finding 12 and Legal Conclusion 7.

The hearing on remand was held on July 31, 2015, in Los Angeles, California.

ISSUE

Should the total compensation respondent Londo received during a 12-month period in 2005 and 2006, from her employment with the City of Walnut when working as the Interim City Manager and Finance Director/City Treasurer be treated as “final compensation” for the purpose of calculating her CalPERS’ service retirement benefits?

FACTUAL FINDINGS

Background

1. Respondent Londo became a member of CalPERS as a result of her employment with the City of West Covina. In 1988, Londo was hired by the City of Walnut. Her full-time position in the City of Walnut was that of Finance Director/City Treasurer. She held that position until she retired in September 19, 2013. CalPERS determined that respondent Londo’s final compensation monthly pay rate to be \$12,325.99.

2. In October 2005, the City Manager of the City of Walnut resigned his position. Thereafter, City Attorney Montgomery asked Londo if she would be interested in taking on the additional position and duties of Interim City Manager in addition to performing her duties as Finance Director. Respondent Londo accepted on the condition that she would receive a \$5,000 increase in her monthly salary as additional compensation for the performing the duties of City Manager.

3. In an October 31, 2005 memorandum to the City Council, Mr. Montgomery wrote:

SUBJECT : INTERIM CITY MANAGER

At the October 26, 2005 City Council meeting, the City Council appointed Finance Director Christine Londo as the Interim City Manger [sic]. Ms. Londo is willing to retain her current Finance Director position, title, duties and salary and in addition, she will agree to be compensated in the additional sum of \$5,000 a month, with the commensurate benefits for performing the additional duties of City Manager.

RECOMMENDATION

It is recommended that the City Council approved [sic] the Interim City manager compensation of \$5,000 a month plus commensurate benefits effective October 27, 2005. (Exhibit 10, page 1, bold in original.)

4. On October 31, 2005, Londo wrote the following memorandum to the members of the Walnut Improvement Agency:

The City Manager of the City of Walnut serves as the Executive Director of the Walnut Improvement Agency. This office [City Manager] was vacated on October 27, 2005, and it is necessary to appoint the Interim City Manager as the Interim Executive Director.

It is recommended that the Agency appoint the Interim City Manager, Christine Londo, as the Interim Executive Director of the Walnut Improvement Agency. (Exhibit 10, page 2)

5. In the October 26, 2005 Walnut City Council meeting, the City Council appointed respondent Londo as "Acting City Manager" (Exhibit 11). In the November 30, 2005 Walnut City Council meeting, the City Council voted to "approve the Interim City Manager compensation of \$5,000 per month plus commensurate benefits effective October 27, 2005" (Exhibit C). Respondent Londo assumed the duties of Interim City Manager for the city of Walnut in November 2005, and continued in that position through November 2006. During that time, the City of Walnut reported a monthly pay increase of \$5,000.

6. Respondent Londo presented testimony that she assumed the position and duties of City Manager on a full-time basis. Respondent Londo asserts in her written brief that it was a permanent position. This assertion is not persuasive as it contradicts the documentary evidence set forth in Factual Findings 3, 4 and 5. The action of the City Council reported in the minutes of October 2005 City Council meeting refers to respondent Londo's position as "Acting City Manager." The reported minutes of the November 2005 City Council meeting refers to respondent Londo's position as "Interim City Manager." In their memoranda, both City Attorney Montgomery and respondent Londo refer to the subject position as "Interim City Manager." The documentary evidence shows that all of the parties involved (including respondent Londo) intended that respondent Londo's position of Interim City Manager would be temporary. Indeed, respondent Londo testified that she would only serve as City Manager through sometime in 2006.

7. On January 13, 2010, pursuant to a request by respondent Londo, the Retirement Estimate Unit of CalPERS notified respondent Londo that Cal PERS had calculated a final compensation of \$15,568.90 from 11/01/2005 to 10/31/2006. Respondent Londo received another estimate in 2013 reporting the same amounts as the 2010 estimate. She was also provided with an estimate of her monthly pension amount in the event she retired at age 62.75. Respondent Londo testified that this estimate was a major factor in her decision to retire. Respondent Londo retired on September 19, 2013.

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8. On November 26, 2013, Tomi Jimenez, Manager of the Compensation and Employer Review Customer Account Services Division of CalPERS, wrote a decision letter to respondent Londo informing Londo that CalPERS would not consider as part of her pay rate for establishing a final compensation, the additional \$5,000 per month that respondent Londo earned for assuming the duties of Interim City Manager. In the letter, Ms. Jimenez writes:

CalPERS made multiple attempts at retrieving a salary schedule and/or documents publicly approved by the governing body of the City identifying the pay rate for your position of Interim City Manager, but was not provided with the requested information. The City provided a recommendation from Michael B. Montgomery, City Attorney, to the City Council stating that you were willing to retain your current Finance Director position, title duties, and salary and agreed to be compensated the additional sum of \$5,000 per month for performing the additional duties of City Manager. This document is not considered a publicly available pay schedule and cannot be used to verify your pay rate. Even if the recommendation was considered a publicly available pay schedule, the additional sum of \$5,000 per month would be considered pay rate because it was not part of your normal rate of pay that was paid to similarly situated members in the same group or class employment, and you continued to work in your capacity as the Finance Director/City Treasurer while performing the additional duties of City Manager. Furthermore, the additional sum of \$5,000 would not be considered temporary upgrade pay because you did not assume the upgraded position. Instead you performed some additional duties while remaining in your primary position of Finance Director/City Treasurer. (Exhibit 5.)

9. Respondent Londo filed an appeal of the decision by CalPERS excluding the additional \$5,000 per month she earned for assuming the duties of Interim City Manager. In her appeal, respondent Londo contended that California Code of Regulations, title 2, section 570.5, which was cited by CalPERS in its decision letter, was enacted after respondent Londo earned the disputed income.

10. Respondent Londo testified that she was working full-time as the City Manager and that most of her duties as Finance Director/City Treasurer were taken over by her Accounting Manager who took over the supervisory role in that department. However, respondent Londo maintained her position Finance Director/City Treasurer. Respondent Londo further testified that although she assumed the duties and responsibilities of the City Manager she did not increase her hours of work.

11. The highest monthly pay rate for the Finance Director/City Treasurer set forth in July 2006 Salary Schedule for the City of Walnut was \$10,362. The City of Walnut did not establish a pay rate for the position of Interim City Manager. Respondents Londo and/or the City of Walnut did not present documentary evidence of the monthly salary or pay rate for the position of City Manager during the relevant time period.¹

Factual Findings Pursuant to Order of Remand

12. In its Post Hearing Brief, CalPERS contended that a Precedential Decision entitled *In the Matter of the Appeal for Calculations of Benefits Pursuant to the Employer's Report of Final Compensation Related to: ROY T. RAMIREZ and City of Indio* is controlling in this case. In support of its contention, CalPERS cited numerous facts in the *Ramirez* case that were consistent with the facts of this case. However, there were differences as set forth below:

- (a) In *Ramirez*, the ALJ found that Ramirez assumed the duties of Interim City Manager in April 1998. Sometime thereafter the City of Indio offered "golden handshakes" to its long term employees and Ramirez decided to retire and filed his application for retirement on or about June 22, 1998. Ramirez signed the Memorandum of Agreement on August 6, 1998, more than a month *after* he had filed his application for retirement benefits with CalPERS. Although the ALJ in *Ramirez* found that the compensation that Ramirez earned for performing the dual functions of Interim City Manager and Chief of Police was not designed to "spike" the amount of CalPERS retirement benefits Ramirez would receive if he retired, "it certainly had that effect." In this case, respondent Londo continued to work for the City of Walnut for seven more years after she completed her term as Interim City Manager. The issue of retirement was nowhere in sight for respondent Londo during the time she was the Interim City Manager. Therefore, under the facts of this case there was no intent to spike respondent Londo's salary, nor did her retirement seven years later have the effect of a salary spike.
- (b) The ALJ in *Ramirez* found that "a significant increase in special compensation at or near the time of a member's retirement creates an unfunded liability, which may increase the not only the rates charged by CalPERS to the last employer, but also the rates CalPERS charges to any previous public employers who contract with CalPERS." Further, the ALJ noted that some actuarial problems would exist if the compensation Ramirez received as Interim City Manager, a miscellaneous status, were

¹ Respondent Londo testified credibly that her total monthly salary during the relevant time period was commensurate with the salary for the position of City Manager.

included in his “final compensation” as a local safety member. The evidence in this case did not establish that the increase in respondent Londo’s compensation created an unfunded liability. As noted above, respondent Londo continued to work for the City of Walnut for seven years after completing her term as Interim City Manager. Further, the actuarial problems noted in *Ramirez* were not present in this case because as Interim City Manager and Finance Director, respondent Londo would be considered a miscellaneous member under both positions.

- (c) In *Ramirez*, the ALJ found that Ramirez increased his work load to more than sixty hours per week in handling the duties of both the Interim City Manager and the Chief of Police. The ALJ in *Ramirez* determined that these extra hours amounted to overtime, which would not be considered special compensation. In this case, respondent Londo assumed the duties of Interim City Manager on a full-time basis and delegated her duties as Finance Director/City Treasurer to an experienced staff, including the Accounting Manager who was experienced and qualified to assume a supervisory role in the department. As Finance Director, respondent Londo made herself available only for higher level decision making. As a result, respondent Londo did not appreciably increase her hours of work when she assumed the duties of Interim City Manager.
- (d) Ramirez earned \$89,000 per year as Chief of Police for the City of Indio, while the City Manager’s yearly salary was \$85,000. In addition to his salary as Police Chief, Ramirez was paid an extra \$2,500 per month to assume the duties of Interim City Manager and an additional one-time bonus of \$5,000, which the city referred to as “special compensation.” During the approximately five months that Ramirez performed the duties of both positions, he was paid substantially more (almost \$20,000) than the salary of the previous City Manager. In this case, respondent Londo was paid approximately \$15,000 per month during the period she was Interim City Manager and Finance Director. Respondent Londo testified credibly that this monthly salary was commensurate with the salary for the position of City Manager.

13. While there are many similarities to the *Ramirez* case, the differences set forth in Factual Finding 12(a) through 12(d) are significant. The contention that the *Ramirez* case (Precedential Decision number 00-06) should control the outcome of this case is not persuasive.

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LEGAL CONCLUSIONS

Relevant Statutes and Regulations

1. The following provisions of the Government Code are relevant to this appeal:

Section 20630 provides:

- (a) As used in this part, "compensation" means the remuneration paid out of funds controlled by the employer in payment for the member's services performed during normal working hours or for time during which the member is excused from work for any of the following:
 - (1) Holidays
 - (2) Sick Leave
 - (3) Industrial Disability Leave . . .
 - (4) Vacation
 - (5) Compensatory Time Off
 - (6) Leave of Absence
- (b) When compensation is reported to the Board, the employer shall identify the pay period in which the compensation was earned regardless of when reported or paid. Compensation shall be reported in accordance with Section 20636 and shall not exceed compensation earnable, as defined in Section 20636.

Section 20635 provides:

When the compensation of a member is a factor in any computation to be made under this part, there shall be excluded from those computations any compensation based on overtime put in by a member whose service retirement allowance is a fixed percentage of final compensation for each year of credited service. For the purposes of this part, overtime is the aggregate service performed by an employee as a member for all employers and in all categories of employment in excess of the hours of work considered normal for employees on a full-time basis, and for which monetary compensation is paid.

If a member concurrently renders service in two or more positions, one or more of which is full time, service in the part-time position shall constitute overtime. If two or more positions are permanent and full time, the position with the highest payrate or base pay shall be reported to this system. This provision shall apply only to service rendered on or after July 1, 1994.

Section 20636 states in pertinent part:

(a) "Compensation earnable" by a member means the payrate and special compensation of the member, as defined by subdivisions (b), (c), and (g), and as limited by Section 21752.5.

(b) (1) "Payrate" means the normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours, pursuant to publicly available pay schedules. "Payrate," for a member who is not in a group or class, means the monthly rate of pay or base pay of the member, paid in cash and pursuant to publicly available pay schedules, for services rendered on a full-time basis during normal working hours, subject to the limitations of paragraph (2) of subdivision (e). [¶ . . . ¶]

(c) (1) Special compensation of a member includes a payment received for special skills, knowledge, abilities, work assignment, workdays or hours, or other work conditions.

(2) Special compensation shall be limited to that which is received by a member pursuant to a labor policy or agreement or as otherwise required by state or federal law, to similarly situated members of a group or class of employment that is in addition to payrate. If an individual is not part of a group or class, special compensation shall be limited to that which the board determines is received by similarly situated members in the closest related group or class that is in addition to payrate, subject to the limitations of paragraph (2) of subdivision (e).

(3) Special compensation shall be for services rendered during normal working hours and, when reported to the board, the employer shall identify the pay period in which the special compensation was earned. [¶ . . . ¶]

(6) The board shall promulgate regulations that delineate more specifically and exclusively what constitutes "special compensation" as used in this section. A uniform allowance, the monetary value of employer-provided uniforms, holiday pay, and premium pay for hours worked within the normally scheduled or regular working hours that are in excess of the statutory maximum workweek or work period applicable to the employee under Section 201 and following of Title 29 of the United States Code shall be included as special compensation and appropriately defined in those regulations.

Government Code section 20049 states:

"Labor policy or agreement" means any written policy, agreement, memorandum of understanding, legislative action of the elected or appointed body governing the employer, or any other document used by the employer to specify the payrate, special compensation, and benefits of represented and unrepresented employees.

2. The following provisions of the California Code of Regulations, title 2, division 1, chapter 2, subchapter 1, are relevant to this appeal:

Section 570.5 – Requirement for a Publicly Available Pay Schedule

(a) For purposes of determining the amount of "compensation earnable" pursuant to Government Code Sections 20630, 20636, and 20636.1, payrate shall be limited to the amount listed on a pay schedule that meets all of the following requirements:

- (1) Has been duly approved and adopted by the employer's governing body in accordance with requirements of applicable public meetings laws;**
- (2) Identifies the position title for every employee position;**
- (3) Shows the payrate for each identified position, which may be stated as a single amount or as multiple amounts within a range;**
- (4) Indicates the time base, including, but not limited to, whether the time base is hourly, daily, bi-weekly, monthly, bi-monthly, or annually;**
- (5) Is posted at the office of the employer or immediately accessible and available for public review from the employer**

during normal business hours or posted on the employer's internet website;

(6) Indicates an effective date and date of any revisions;

(7) Is retained by the employer and available for public inspection for not less than five years; and

(8) Does not reference another document in lieu of disclosing the payrate.

(b) Whenever an employer fails to meet the requirements of subdivision (a) above, the Board, in its sole discretion, may determine an amount that will be considered to be payrate, taking into consideration all information it deems relevant including, but not limited to, the following:

(1) Documents approved by the employer's governing body in accordance with requirements of public meetings laws and maintained by the employer;

(2) Last payrate listed on a pay schedule that conforms to the requirements of subdivision (a) with the same employer for the position at issue;

(3) Last payrate for the member that is listed on a pay schedule that conforms with the requirements of subdivision (a) with the same employer for a different position;

(4) Last payrate for the member in a position that was held by the member and that is listed on a pay schedule that conforms with the requirements of subdivision (a) of a former CalPERS employer.

Section 571 – Definition of Special Compensation

(a) The following list exclusively identifies and defines special compensation items for members employed by contracting agency and school employers that must be reported to CalPERS if they are contained in a written labor policy or agreement: ¶ . . . ¶

(3) PREMIUM PAY

Temporary Upgrade Pay - Compensation to employees who are required by their employer or governing board or body to work in an upgraded position/classification of limited duration. ¶ . . . ¶

(b) The Board has determined that all items of special compensation listed in subsection (a) are:

(1) Contained in a written labor policy or agreement as defined at Government Code section 20049, provided that the document:

(A) Has been duly approved and adopted by the employer's governing body in accordance with requirements of applicable public meetings laws;

(B) Indicates the conditions for payment of the item of special compensation, including, but not limited to, eligibility for, and amount of, the special compensation;

(C) Is posted at the office of the employer or immediately accessible and available for public review from the employer during normal business hours or posted on the employer's internet website;

(D) Indicates an effective date and date of any revisions;

(E) Is retained by the employer and available for public inspection for not less than five years; and

(F) Does not reference another document in lieu of disclosing the item of special compensation;

(2) Available to all members in the group or class;

(3) Part of normally required duties;

(4) Performed during normal hours of employment;

(5) Paid periodically as earned;

(6) Historically consistent with prior payments for the job classification;

(7) Not paid exclusively in the final compensation period;

(8) Not final settlement pay; and

(9) Not creating an unfunded liability over and above PERS' actuarial assumptions.

(c) Only items listed in subsection (a) have been affirmatively determined to be special compensation. All items of special compensation reported to PERS will be subject to review for continued conformity with all of the standards listed in subsection (b).

(d) If an items (*sic*) of special compensation is not listed in subsection (a), or is out of compliance with any of the standards in subsection (b) as reported for an individual, then it shall not be used to calculate final compensation for that individual.

Respondent Longo's Compensation for Service as Interim City Manager

3. In this case, Respondent Londo was appointed Interim City Manager. This was not a permanent position. The evidence established that it was the intent of all of the parties involved that the position would be temporary (Exhibits 10 and 11). The parties also intended that respondent Londo would be compensated for the additional hours that she would work beyond her normal working hours as Finance Director/City Treasurer in order to meet the added responsibilities of Interim City Manager. In accordance with the parties' intent, respondent Londo received the pay rate she was entitled to as Finance Director/City Treasurer and received the additional compensation for acting as the Interim City Manager. The City of Walnut did not establish a pay rate pursuant to Government Code section 20636, subdivision (b)(1), based on a publicly available pay schedule for the position of Interim City Manager or the combination of Interim City Manager/Finance Director. The monthly compensation respondent Londo received as Interim City Manager was not available to other City of Walnut employees who were similarly situated. Under the facts of this case, the additional \$5,000 that respondent Londo received for serving as Interim City Manager should not be considered as part of her final compensation for the purpose of calculating her CalPERS service retirement benefits based on Government Code section 20636, subdivision (b)(1).

4 Respondent Londo asserted that she served as Interim City Manager in a permanent full-time capacity and that she spent most of her time performing the duties of Interim City Manager. Based on this assertion, respondent Londo contends that she was in fact working in two full-time positions, which was allowed under the City's Municipal Code, section 2-23.² Therefore, she qualifies under Government Code section 20635 to receive a pension amount based on the higher base rate pay of the City Manager position. Even if respondent's assertion that she served in two full-time positions is true, her contention that

² Walnut City Code, section 2-23 states: "The city manager shall be the administrative head of the city government under the direction and control of the city council . . . In addition to his general powers, . . . it shall be his or her duty and he shall have the power: . . . (p) To serve in any appointed office or head of department within the city government to which he may be qualified when appointed thereto by the city council and to hold and perform the duties thereof at the pleasure of the city council."

she should be credited with the City Manager's base rate pay is not persuasive. The City of Walnut and respondent Londo did not agree to a base rate pay for her service as Interim City Manager. The agreement was for respondent Longo to maintain her position and base rate pay as Finance Director/City Treasurer and to receive an additional \$5,000 to serve as Interim City Manager. Irrespective of how respondent Longo chose to divide her time in performing the duties of both positions, her highest monthly pay rate during the relevant time period was \$10,362, based on her position as Finance Director/City Treasurer. Pursuant to Government Code section 20635 her base rate pay for Finance Director/City Treasurer should have been reported to CalPERS as her highest pay rate. Therefore, respondent Londo did not establish that she is entitled to include the \$5,000 additional compensation in her CalPERS retirement calculation based on Government Code section 20635.

Special Compensation

5. California Code of Regulations, title 2, section 571, subdivision (a)(3), provides that "Special Compensation" is reportable to CalPERS if it is contained in a written labor policy or agreement. Special Compensation includes Premium Pay/Temporary Upgrade Pay, which is defined as "Compensation to employees who are required by their employer or governing board or body to work in an upgraded position/classification of limited duration."

In this case respondent Londo entered into an agreement with the City of Walnut wherein she agreed to work in the upgraded position of Interim City Manager for an additional compensation of \$5,000. The agreement complies with Government Code section 20049 in that it was subject to a vote by the City Council based on a recommendation by the City Attorney that specified a compensation of \$5,000. This agreement set forth in a memorandum by the City Attorney to the City Council along with a recommendation that was public record in that it was included as an agenda item in the November 2005 City Council minutes. The City Council acted on the recommendation and voted in a public City Council meeting to appoint respondent Londo as "Acting City Manager. This City Council's action to appoint respondent Londo as Acting City Manager was also public record in that it was included in the minutes of the November 2005 City Council meeting (Exhibit C).

Once she was appointed, respondent Londo was required to work in the upgraded position of Interim City Manager. The action by the City Council has been maintained in the City of Walnut records since 2005, and available for public inspection. The total amount of compensation received by respondent Londo during the relevant time period was consistent with the salary that had been paid to the prior City Manager. Finally, there was no evidence presented that this special compensation would create an unfunded liability over and above CalPERS' actuarial assumptions. Therefore, respondent Londo has established that the monthly \$5,000 that she was paid to perform the duties of the position of City Manager qualifies as "Special Compensation" under Government Code section 20636, subdivision (c), and as a Premium Pay/Temporary Upgrade Pay under California Code of Regulations, title 2, section 571, subdivision (a)(3).

6. Cause exists to overrule the decision of CalPERS to exclude from calculation of respondent Londo's retirement benefit allowance, all compensation Londo received as Interim City Manager.

Application of Precedential Decision 00-06

7. Cause does not exist to exclude from calculation of respondent Londo's retirement benefit allowance, all compensation Londo received as Interim City Manager, based on the application of Precedential Decision 00-06 (*Ramirez*). The differences between *Ramirez* and this case are significant.

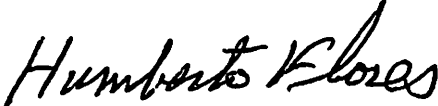
Equitable Estoppel

8. Respondent Londo asserts that equitable estoppel should be applied in this case because respondent Londo relied on the written estimates she received from CalPERS delineating the her final compensation and pension amounts she was entitled to receive. Based on the Legal Conclusions 5, 6 and 7, it is unnecessary to address this issue.

ORDER

The determination by CalPERS to exclude from the calculation of service retirement allowance the \$5,000 monthly payments made to respondent Christine F. Londo in connection with her service as Interim City Manager for the City of Walnut from November 2005 through November 2006 is overruled. The appeal filed by respondent Christine F. Londo is granted.

DATED: August 28, 2015


HUMBERTO FLORES
Administrative Law Judge
Office of Administrative Hearings



California Public Employees' Retirement System
Legal Office
P.O. Box 942707
Sacramento, CA 94229-2707
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www.calpers.ca.gov

Ref No. 2014-0681


November 6, 2015

TO: ALL PARTIES AND THEIR ATTORNEY OF RECORD

SUBJECT: Procedures for Full Hearings before the Board of Administration, California Public Employees' Retirement System

The attached document describes the procedures for the conduct of full hearings before the Board of Administration.

Please note that these procedures were revised by the Board in September 2005 and contain information regarding allocation of time for oral argument. If you have any questions or concerns about these procedures please contact Rory J. Coffey, Senior Staff Attorney, who is the attorney assigned to represent CalPERS in this matter. You should contact Mr. Coffey at your earliest possible convenience at (916) 795-3938.



CHRISTY BODILY
Secretary to Rory J. Coffey

Enclosure: Procedures for Full Hearings

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

**STATEMENT OF POLICY & PROCEDURES
PROCEDURE FOR FULL HEARINGS BEFORE THE BOARD**

This document is effective immediately upon adoption, and is adopted pursuant to California Government Code sections 11517 and 20120, and California Constitution, article XVI, section 17.

I. PURPOSE

This policy establishes procedures for conducting full hearings before the Board of Administration (Board) where the Board has elected to suspend action on a proposed decision of an Administrative Law Judge (ALJ) so that it can evaluate the entire record itself and hear the parties argue the merits of the case on the record.

II. OBJECTIVE

The objectives of this policy are to:

- A. Establish consistent procedures for conducting full hearings before the Board; and
- B. To provide advance notice of those procedures to the parties involved;

III. POLICY & PROCEDURES

- A. **Applicability:** This policy applies to full hearings before the Board where the Board has declined to adopt the Proposed Decision of an Administrative Law Judge (ALJ) but rather has determined to evaluate the entire Administrative Record itself, and hear the parties argue the merits of the case on the record. Pursuant to Government Code section 11517, subsection (c)(2)(E), the Board has the authority to decide such cases upon the record, "with or without taking additional evidence."
- B. **Procedure for Full Hearings Before the Board:**
 - 1. Board President announces agenda item for hearing.
 - 2. Parties¹ seat themselves at presentation table.

3. CalPERS counsel introduces parties.
4. CalPERS counsel:
 - a) states the nature of the proceeding,
 - b) notes compliance with notice requirements, and
 - c) states brief procedural history of the case:
 - 1) date of the administrative hearing,
 - 2) date Proposed Decision presented to Board, and
 - 3) Board's action on Proposed Decision.
5. CalPERS counsel reminds Board and parties of procedural requirements, and announces that the parties have received a copy of this document, entitled *Procedures for Full Hearings Before the Board of Administration*, and, in the case of an unrepresented member, that the member has been offered assistance in understanding the procedural requirements for a full hearing.
6. CalPERS counsel presents staff's position and supporting arguments. This presentation shall not normally exceed 15 minutes. (See 8, below, regarding allocation of time among more than one party.) (See section III.C., below, regarding exceptions to this time limit.)
7. Respondent, or respondent's counsel, presents respondent's position. This presentation shall not normally exceed 15 minutes. (See 8, below, regarding allocation of time among more than one party.) (See section III.C., below, regarding exceptions to this time limit.)
8. If more than one party shares the position of CalPERS staff or the respondent, these parties shall split the time allocated to CalPERS staff or the respondent. The total time for each position shall be allocated on a pro rata basis among all the parties presenting argument for that position, unless those parties agree among themselves to allocate their time

differently. (See section III.C., below, regarding exceptions to this time limit.)

9. Upon conclusion of the last presentation of respondent's position, there will be a maximum of 5 minutes to offer rebuttal argument for the staff and the respondent, in the same order as the original presentations. If there is more than one party who shares the same position, the 5 minutes will be allocated on a pro rata basis among them, unless those parties agree among themselves to allocate their time differently.
10. The Board Secretary shall keep track of time allotted to all presenters, and shall notify each speaker when he or she has two minutes remaining, and when time has expired.
11. Upon conclusion of arguments, Board Members may question the parties or their counsel.
12. CalPERS counsel states the alternatives which are available to the Board for action and the consequences of each alternative.
13. Upon a majority vote, the Board President will recess the hearing for the purpose of holding a closed session to consider facts and legal arguments presented, and to deliberate. The Board shall provide appropriate notice in advance of a full hearing that a closed session may take place. The closed session will be attended by Board members only. Following its deliberations in closed session, the Board shall re-convene in open session for the purpose of making a decision in the matter before it. The closed session will be recorded; the record will be kept confidential unless a court action is filed in which case the record will be transcribed and released upon request by a party to the action.
14. Board makes its decision by voting to adopt one of the resolutions formulated by staff, or another alternative of its choice.
15. CalPERS counsel announces that the Legal Office will prepare a formal decision based on the Board's vote, for its adoption at the next meeting of the Board.

16. Board President announces conclusion of agenda item.

C. Requests for Exceptions to Time Limitations

It is the Board's intent to provide scheduling flexibility while maintaining a measure of oversight of these proceedings. In accordance with the goals of the Board, the following will be the Board's policy with respect to exceptions of time limitations.

1. Some flexibility is possible in the relatively simple case in regard to the 15-minute time limitation in that it is subject to extension by the presiding officer of the Board at any time. However, in the interest of efficiency, parties should inform the Board and other parties of any need for additional time at the earliest opportunity.
2. In addition to the above exception, if a matter is unusually complex, a party may request a greater allotment of time in advance. The Board requests that in this type of case, requests for additional time should be handled as follows:
 - a. The request should be filed no later than 5 days prior to the hearing, with:

Chief Executive Officer
California Public Employees' Retirement System
P.O. Box 942701
Sacramento, CA 94229-2701
 - b. The request should specify the amount of time needed.
 - c. The request should be supported by a clear, written justification of the need for additional time.
 - d. A copy of the request should be served concurrently on each party or their attorney of record.

The party requesting additional time and all parties or their counsel will be notified prior to the hearing whether the request has been granted or denied. If granted, the total time designated for the parties who share the opposing position will also automatically be extended so that each position has the same total amount of time

for oral presentation, allocated among the parties as provided in these policies and procedures.

- D. **Scope of Review:** The scope of the Board's review in full hearings will normally be limited to the Administrative Record of the hearing before the ALJ as it stands. In rare circumstances, however, the interest of achieving a just result may require the consideration of newly discovered documentary evidence which could not, with reasonable diligence, have been discovered and produced at the hearing, and which is therefore not part of the Administrative Record.
- E. **Requests for Introduction of Evidence Which is not Contained in the Administrative Record:**
1. This policy applies only to documentary evidence. Under no circumstances will the Board accept new witness testimony at a full hearing.
 2. A party who wishes to introduce evidence before the Board which is not contained in the Administrative Record must submit a written request to that effect on or before the due date for written arguments. Such a request must be served on all parties and filed, by mail or facsimile, with:

**Board Secretary
California Public Employees' Retirement System
Post Office Box 942701
Sacramento, CA 94229-2701**

Facsimile: (916) 795-3659

3. All requests for introduction of evidence not included in the Administrative Record must be accompanied by a complete and legible copy of any documentary evidence to be offered. In addition, the request must:
 - a) Show good cause why the evidence could not, with reasonable diligence, have been discovered and produced at the hearing;
 - b) Show the relevance of the evidence offered; and
 - c) Show that the evidence is otherwise admissible under the evidentiary rules of the Administrative Procedure Act.

4. After reviewing the written request and oral argument, if any, the Board may, in its discretion, decide to admit the evidence at the hearing.

IV. RESPONSIBILITIES

- A. Except as otherwise specified within this document, CalPERS' Chief Executive Officer is responsible for implementing these policies and procedures. The Chief Executive Officer may delegate responsibilities to subordinate staff as may be necessary.

PROOF OF SERVICE

I am employed in the County of Sacramento, State of California. I am over the age of 18 and not a party to the within action; my business address is: California Public Employees' Retirement System, Lincoln Plaza North, 400 "Q" Street, Sacramento, CA 95811 (P.O. Box 942707, Sacramento, CA 94229-2707).

On **November 9, 2015**, I served the foregoing document described as:

***AMENDED* NOTICE OF FULL BOARD HEARING** - In the Matter of the Calculation of Final Compensation of CHRISTINE F. LONDO, Respondent, and CITY OF WALNUT, Respondent.; Case No. 2014-0681; OAH No. 2014070904.

on interested parties in this action by placing ___ the original XX a true copy thereof enclosed in sealed envelopes addressed and or e-filed as follows:

Stephen H. Silver, Esq.
Silver, Hadden, Silver, Wexler & Levine
P. O. Box 2161
Santa Monica, CA 90407-2161

Office of Administrative Hearings –
Los Angeles
320 West Fourth Street, Suite 630
Los Angeles, CA 90013

***Via Certified Mail**

***Via e-file: laxfilings@dgs.ca.gov**

Michael B. Montgomery, Esq.
City of Walnut
P. O. Box 682
Walnut, CA 91788-0682

Christine F. Londo
126 E. Via Vaquero
San Dimas, CA 91773-3345

***Via Certified Mail**

***Via Certified Mail**

[XXX] BY CERTIFIED MAIL (RRR) -- As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Sacramento, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing an affidavit.

[XXX] BY ELECTRONIC TRANSMISSION -- I caused such document(s) to be sent to the addressee(es) at the electronic notification address(es) above. I did not receive within a reasonable time of transmission, any electronic message, or other indication that the transmission was unsuccessful.

Executed on November 9, 2015, at Sacramento, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Christy Bodily
NAME


SIGNATURE