



Board of Administration
California Public Employees' Retirement System

Agenda Item 8h

October 21, 2015

ITEM NAME: Proposed Decision – In the Matter of the Calculation of Final Compensation of CHRISTINE F. LONDO, Respondent, and CITY OF WALNUT, Respondent.

PROGRAM: Employer Account Management Division

ITEM TYPE: Action

PARTIES' POSITIONS

Staff argues that the Board of Administration should decline to adopt the Proposed Decision.

Respondent Christine F. Londo (Respondent Londo) and Respondent City of Walnut (City) argue that the Board of Administration should adopt the Proposed Decision.

STRATEGIC PLAN

This item is not a specific product of either the Strategic or Annual Plans. The determination of administrative appeals is a power reserved to the Board of Administration.

PROCEDURAL SUMMARY

Respondent Londo submitted an application for service retirement. CalPERS determined that a temporary increase of \$5,000 per month paid by the City to Respondent Londo from November 2005 through November 2006 should not be included in the calculation of Respondent Londo's final compensation. Respondent Londo and the City appealed this decision and the matter was heard by the Office of Administrative Hearings (OAH) on November 5, 2014. A Proposed Decision was issued on January 14, 2015, granting Respondent Londo and the City's appeals. On April 20, 2015, CalPERS remanded the matter to the Administrative Law Judge (ALJ) for the purpose of taking additional evidence. The hearing on remand was held by the OAH on July 31, 2015. A Proposed Decision After Remand was issued on August 28, 2015, granting Respondent Londo and the City's appeals.

ALTERNATIVES

- A. For use if the Board decides to adopt the Proposed Decision as its own Decision:

**Agenda Item 8h
Board of Administration
October 21, 2015
Page 2 of 3**

RESOLVED, that the Board of Administration of the California Public Employees' Retirement System hereby adopts as its own Decision the Proposed Decision dated August 28, 2015, concerning the appeals of Christine F. Londo and City of Walnut; **RESOLVED FURTHER** that this Board Decision shall be effective 30 days following mailing of the Decision.

- B.** For use if the Board decides not to adopt the Proposed Decision, and to decide the case upon the record:

RESOLVED, that the Board of Administration of the California Public Employees' Retirement System, after consideration of the Proposed Decision dated August 28, 2015, concerning the appeals of Christine F. Londo and City of Walnut, hereby rejects the Proposed Decision and determines to decide the matter itself, based upon the record produced before the Administrative Law Judge and such additional evidence and arguments that are presented by the parties and accepted by the Board; **RESOLVED FURTHER** that the Board's Decision shall be made after notice is given to all parties.

- C.** For use if the Board decides to remand the matter back to the Office of Administrative Hearings for the taking of further evidence:

RESOLVED, that the Board of Administration of the California Public Employees' Retirement System, after consideration of the Proposed Decision dated August 28, 2015, concerning the appeals of Christine F. Londo and City of Walnut, hereby rejects the Proposed Decision and refers the matter back to the Administrative Law Judge for the taking of additional evidence as specified by the Board at its meeting.

- D.** Precedential Nature of Decision (two alternatives; either may be used):

- 1.** For use if the Board wants further argument on the issue of whether to designate its Decision as precedential:

RESOLVED, that the Board of Administration of the California Public Employees' Retirement System requests the parties in the matter concerning the appeals of Christine F. Londo and City of Walnut, as well as interested parties, to submit written argument regarding whether the Board's Decision in this matter should be designated as precedential, and that the Board will consider the issue whether to designate its Decision as precedential at a time to be determined.

- 2.** For use if the Board decides to designate its Decision as precedential, without further argument from the parties.

Agenda Item 8h
Board of Administration
October 21, 2015
Page 3 of 3

RESOLVED, that the Board of Administration of the California Public Employees' Retirement System, hereby designates as precedential its Decision concerning the appeals of Christine F. Londo and City of Walnut.

BUDGET AND FISCAL IMPACTS: Not applicable

ATTACHMENTS

Attachment A: Proposed Decision
Attachment B: Staff's Argument
Attachment C: Respondent's Argument



DONNA RAMEL LUM
Deputy Executive Officer
Customer Services and Support

ATTACHMENT A
THE PROPOSED DECISION

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 CALPERS 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.

PUBLIC EMPLOYEES RETIREMENT SYSTEM

FILED September 3, 2015

Rathie K. Sahrey

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.

//

//

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.

//

//

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

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO DECLINE TO ADOPT THE PROPOSED DECISION AFTER REMAND

Respondent Christine Londo (Respondent Londo) was employed by Respondent City of Walnut (City) as the Finance Director/City Treasurer. The City contracted with CalPERS to provide retirement benefits to its employees. By virtue of her employment, Respondent Londo was a local miscellaneous member of CalPERS. In September 2013, Respondent Londo submitted an application for service retirement. CalPERS staff reviewed her file and determined that additional compensation paid to her (\$5,000 per month) during the period of November 2005 through November 2006, for work she performed in addition to her work as the Finance Director/City Treasurer, could not be included in her final compensation for purposes of calculating her service retirement allowance. Respondent Londo appealed staff's determination and a hearing was held on November 5, 2014. Respondent Londo was represented by counsel before and during the appeal hearing.

The parties submitted Post-Hearing Briefs. The Administrative Law Judge (ALJ) issued an initial Proposed Decision on January 14, 2015. That initial Proposed Decision was presented to the Board at its April, 2015 meeting. The Board rejected the initial Proposed Decision and remanded the matter back to the ALJ. The hearing on remand was held July 31, 2015. The ALJ issued a Proposed Decision After Remand, which granted Respondent Londo's appeal.

The ALJ, in applying the relevant and controlling statutes to the facts, correctly rejected two of the three legal arguments advanced by Respondent Londo to include the disputed additional compensation in Respondent Londo's final compensation. However, the ALJ incorrectly interpreted another statutory provision and concluded that the disputed additional compensation could and should be included in Respondent Londo's final compensation. For that reason, staff recommends that the Board decline to adopt the Proposed Decision After Remand and that it hear and decide the matter after a Full Board Hearing.

SUMMARY OF FACTS

Respondent Londo was employed by the City as its Finance Director/City Treasurer. That position was a full-time position and the City had established a payrate of \$10,362 per month for the position. The payrate for the position of Finance Director/City Treasurer was contained in a publicly available Salary Schedule (July 2006) created and approved by the City.

In October 2005, the City Manager of the City resigned. The City Attorney approached Respondent Londo and asked her if she would be interested and willing to take on the additional position and duties of Interim City Manager, in addition to performing her duties of Finance Director/City Treasurer. Respondent Londo accepted the position of Interim City Manager with the understanding and agreement that (1) the City would pay her an additional \$5,000 per month (over and above her regular salary as the Finance

Director/City Treasurer); and (2) the position of Interim City Manager would be temporary, not permanent. The understanding and agreement between Respondent Londo and the City was documented. In an October 31, 2005, memorandum to the City Council, the City Attorney wrote, in relevant part:

At the October 26, 2005 City Council meeting, the City Council appointed Finance Director Christine Londo as the Interim City Manager [*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.

Respondent Londo assumed the duties of Interim City Manager (in addition to her regular duties of Finance Director/City Treasurer) in November 2005 and continued in the position through November 2006. The City paid Respondent Londo an additional \$5,000 per month during that period for her work as the Interim City Manager.

The ALJ correctly found:

[T]he 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. (Factual Findings No.6.)

The City did not create a permanent position of Interim City Manager. The City did not create a permanent position of Interim City Manager – Finance Director/City Treasurer. The City did not create and publish in a publicly available pay schedule a payrate for the position of Interim City Manager. The monthly compensation Respondent Londo received during the year she performed duties as both the Finance Director/City Treasurer and Interim City Manager was not available to other employees of the City who were similarly situated.

**THE ALJ'S PROPOSED DECISION ERRONEOUSLY FINDS THAT THE
DISPUTED \$5000/MONTH PAY IS "TEMPORARY UPGRADE PAY" A FORM
OF SPECIAL COMPENSATION**

The California Public Employees' Retirement Law provides that certain items of "special compensation" can be included in an individual's final compensation, or compensation earnable, for purposes of calculating their service retirement allowance. Government Code section 20636 subdivision (a) provides that "compensation earnable" consists of either payrate or special compensation. Subdivision (c) reads, as follows:

(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. [¶]

Section 571, subdivision (a)(3) provides the following definition of one item of allowable special compensation:

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.

The ALJ incorrectly found that the Interim City Manager position was an "upgraded position" and that Respondent Londo was entitled to include the \$5,000 monthly compensation paid to her as an item of allowable special compensation. (See Legal Conclusions No. 5.) The ALJ's conclusion is flawed.

Staff, in its November 26, 2013, letter to Respondent Londo correctly advised her:

[F]urthermore, 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. (Emphasis added.)

The City did not create an upgraded position of Interim City Manager or Interim City Manager and Finance Director/City Treasurer. Respondent Londo did not relinquish or vacate her permanent position of Finance Director/City Treasurer. The City did not create or establish a new payrate for the position of Interim City Manager or Interim City Manager and Finance Director/City Treasurer.

This issue has previously been considered by the Board. Reference is made to *In the Matter of the Appeal for Calculation of Benefits Pursuant to The Employer's Report of Final Compensation, Roy T. Ramirez, Respondent, and City of Indio, Respondent (2000)* California Public Employees' Retirement Board of Administration, Precedential Decision No. 00-06. A comparison of the Factual Findings, Legal Conclusions, and Decision in *Ramirez* with the instant matter demonstrates that the Board's Precedential Decision is controlling with respect to Respondent Londo's appeal.

<u>RAMIREZ</u>	<u>LONDO</u>
● Ramirez was employed by the City as the Police Chief.	● Londo was employed by the City as the Finance Director/City Treasurer.
● The position was a full-time position.	● The position was a full-time position.
● Ramirez was paid a salary for the position of Chief of Police that was contained in a publicly available pay schedule.	● Londo was paid a salary for the position of Finance Director/City Treasurer that was contained in a publicly available pay schedule.
● The position of City Manager became vacant.	● The position of City Manager became vacant.
● Ramirez agreed to act as the Interim City Manager, on a temporary basis, in addition to performing his duties as Chief of Police.	● Londo agreed to act as the Interim City Manager, on a temporary basis in addition to performing her duties as Finance Director/City Treasurer.
● Ramirez negotiated additional compensation (\$2,500 per month) for performing the duties of Interim Manager.	● Londo negotiated additional compensation (\$5,000 per month) for performing the duties of Interim Manager.
● Ramirez increased his workload to more than 60 hours per week.	● Londo increased her workload.
● The City did not establish a permanent position of Chief of Police/City Manager.	● The City did not establish a permanent position of Director of Finance/City Manager.
● The City did not establish a payrate for	● The City did not establish payrate for

the position of Chief of Police/City Manager.	the position of Director of Finance/City Manager.
● When Ramirez accepted the additional responsibilities of Interim City Manager, he did not anticipate retiring when a permanent City Manager was appointed.	● When Londo accepted the additional responsibilities of Interim City Manager, she did not anticipate retiring when a permanent City Manager was appointed.

The Legal Conclusion in *Ramirez* (Paragraph 13) can and should be modified to be the controlling Legal Conclusion in the instant matter, as follows:

Good cause exists to sustain the Chief Executive Officer's determination that the disputed payments made to [Respondent Londo] in connection with [her] service as the Interim City Manager, [City of Walnut], be excluded from the calculation of [her] service retirement benefit allowance.

THE ALJ CORRECTLY APPLIED THE PROVISIONS OF GOVERNMENT CODE SECTIONS 20635 AND 20636 IN FINDING THAT THESE STATUTES DID NOT SUPPORT RESPONDENT'S CASE

Government Code 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 the system. This provision shall apply to service rendered on or after July 1, 1994.

Government Code section 20635 cannot be used in support of Respondent Londo's claim that the Finance Director/City Treasurer and Interim City Manager positions were both full time and permanent AND that the Interim City Manager position was the

position with the "highest payrate or base pay," and that, therefore, her final compensation should include the \$5,000 per month she received in 2005-2006. First, the Interim City Manager position was not a permanent position. Second, the City did not create or establish a payrate or base pay for the position of Interim City Manager.

In Legal Conclusions No. 4, the ALJ correctly applied the terms of Government Code section 20635 to Respondent Londo's claims that she worked two full-time positions.

[E]ven if respondent's assertion that she served in two full-time positions is true, her contention that 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 [*sic*] 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 [*sic*] 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. (Emphasis added.)

Government Code section 20636 provides, in relevant part, as follows:

(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 publically 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). [¶] . . . [¶]

Government Code section 20636 also cannot be used to support Respondent Londo's claim to include the additional \$5,000 per month paid to her to be included in her final compensation. First, there was no group or class of similarly situated employees of the City who received or could have received the additional compensation paid to Respondent Londo, as required by Government Code section 20636(c)(2). The ALJ made this part of his Legal Conclusion No. 3.

The monthly compensation respondent Londo received as Interim City Manager was not available to other City of Walnut employees who were similarly situated.

Second, there was no publicly available pay schedule that identified the additional compensation paid to Respondent Londo. Again, the ALJ made this part of his Legal Conclusion No. 3.

The City of Walnut did not establish a pay rate pursuant to Government Code section 20636, subdivision (b)(1), based on a publically available pay schedule for the position of Interim City Manager or the combination of Interim City Manager/Finance Director.

Third, Respondent Londo continued to be paid her normal payrate for her position of Finance Director/City Manager, for work she performed "on a full-time basis during normal working hours." Again, the ALJ correctly applied the provisions of Government Code section 20636, subdivision (b)(1) to reject Respondent Londo's claim that she, in essence, worked two full-time positions. In Legal Conclusion No. 3, the ALJ held:

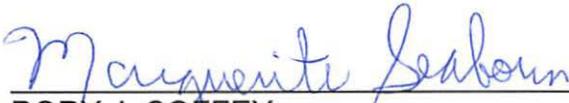
The parties also intended that respondent Londo would be compensated for the additional hours that she would work beyond her normal working hours as Finance Director/City Treasurer in order to meet the added responsibilities of Interim City Manager. In accordance with the parties' intent, respondent 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.... 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 (b)(1). (Emphasis added.)

Proposed Board Action

The ALJ concluded that Respondent Londo's appeal should be denied, in part; but the ALJ also concluded that Respondent Londo's appeal should be granted. In finding that the disputed compensation qualified as an allowable item of special compensation (Temporary Upgrade Pay – See Legal Conclusion No. 5), the ALJ ignored and/or contradicted his earlier findings and legal conclusions. As explained and argued above,

staff believes that the Proposed Decision is flawed and should be rejected by the Board. Most importantly, the Proposed Decision is diametrically contrary to a Precedential Decision of the Board, therefore should not be adopted without the detailed scrutiny exercised during a Full Board Hearing. Staff argues that the Board reject the Proposed Decision and hear and determine the matter in a Full Board Hearing.

October 21, 2015


for Marguerite Seaborn
RORY J. COFFEY
Senior Staff Attorney

ATTACHMENT C
RESPONDENT'S ARGUMENT

0
 1 STEPHEN H. SILVER, SBN 38241
 2 SILVER, HADDEN, SILVER & LEVINE
 3 1428 Second Street, Suite 200
 4 P.O. Box 2161
 5 Santa Monica, CA 90407-2161
 6 Telephone: (310) 393-1486
 7 Facsimile: (310) 395-5801
 8
 9 Attorneys for Respondent Christine F. Londo

10 **BOARD OF ADMINISTRATION**
 11 **CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM**
 12 **ADMINISTRATIVE LAW JUDGE HUMBERTO FLORES**

13 In the Matter of the Calculation of Final 14 Compensation of 15 CHRISTINE F. LONDO, 16 Respondent, 17 and 18 CITY OF WALNUT, 19 Respondent. 20 _____) AGENCY CASE NO. 2014-0681) OAH NO. 2014070904)) RESPONDENT CHRISTINE F.) LONDO'S ARGUMENT IN SUPPORT) OF PROPOSED DECISION AFTER) REMAND)) Hearing: November 5, 2014) Remand Hearing: July 31, 2015)))
--	--

21
 22
 23 Respondent, Christine Londo, strongly urges the Board of Administration of CalPERS
 24 (the Board) to adopt the Proposed Decision After Remand of the Administrative Law Judge
 25 (ALJ) in the above-captioned matter. After considering all the evidence and arguments
 26 submitted by the parties, including those presented on Remand, the ALJ correctly concluded
 27 that the increased compensation of \$5,000 earned by Ms. Londo between November 2005 and
 28 November 2006 while serving as the City of Walnut's Interim City Manager constituted special

1 compensation in the form of "Temporary Upgrade Pay" which is defined in Section 571(a)(3)
2 of the CalPERS Regulations as follows:

3 "Compensation to employees who are required by their employer
4 or governing board or body to work in an upgraded
5 position/classification of limited duration."

6 The ALJ correctly found that Ms. Londo, the City's Finance Director, was in fact
7 required by the governing body of the City of Walnut, its City Council, to work in the upgraded
8 classification of City Manager for that limited one year period in return for additional
9 compensation of \$5,000. The ALJ's determination is completely consistent with the testimony
10 of the CalPERS representative who appeared at the hearing. She was presented with the
11 following typical situation and then asked whether the pay in question would satisfy the
12 definition of Temporary Upgrade Pay: If an employee in the classification of Police Officer
13 and his or her employer agreed that for a temporary period of time he or she would occupy the
14 higher paying position of Police Sergeant on a full time basis and perform the attendant duties
15 and assume the attendant responsibilities for additional compensation until a promotional
16 examination had been conducted and the position had been filled, would that additional
17 compensation constitute Temporary Upgrade Pay? The CalPERS representative answered in
18 the affirmative.

19 As the ALJ concluded, the uncontroverted testimony of Ms. Londo established that her
20 situation was virtually identical to that hypothetical question. Like the hypothetical Police
21 Officer, she agreed to assume the City Manager job on a full time basis and she performed the
22 attendant duties and assumed the attendant responsibilities connected with that higher-paying
23 position. She did so for a limited time period until that position was filled one year later.

24 After the ALJ had submitted his initial Proposed Decision that determined that the
25 increased compensation Respondent earned while serving as Interim City Manager was
26 correctly reported as special compensation, on April 20, 2015, the Board of Administration of
27 CalPERS remanded the matter to the ALJ to "receive and consider additional evidence
28 regarding the issue of whether the facts of this case differ from the facts of the Board's

1 Precedential Decision No. 00-06 (*In the Matter of the Appeal For Calculations of Benefits*
2 *Pursuant to the Employer's Report of Final Compensation Related to: ROY T. RAMIREZ and*
3 *the City of Indio*). This Remand occurred even though this Precedential Decision had been
4 presented to the ALJ at the initial evidentiary hearing on November 5, 2014, and was briefed at
5 length by the parties prior to the initial Proposed Decision being rendered by the ALJ.

6 Interestingly, on remand, CalPERS offered no additional evidence but simply repeated the
7 same arguments that were rejected by the ALJ when he rendered his initial Proposed Decision.

8 On Remand, after receiving arguments from both CalPERS and Respondent, the ALJ
9 addressed the application of that Precedential Decision in Factual Findings 12 and 13, and
10 Legal Conclusion 7 of his Proposed Decision After Remand. The ALJ correctly determined
11 that the Precedential Decision is readily distinguishable from the present situation for several
12 reasons.

13 Initially, while the Precedential Decision found that the compensation in question in
14 that case had the effect of constituting a "spike" of the affected individual's retirement benefits,
15 there was no evidence to that effect presented in this case nor was there any evidence from
16 which that conclusion could be drawn. The ALJ correctly found (in Finding 12(a)) that "...
17 respondent Londo continued to work for the City of Walnut for seven more years after she
18 completed her term as Interim City Manager. The issue of retirement was nowhere in sight for
19 [her] during the time she [served in that capacity]." The ALJ therefore proceeded to conclude
20 that not only was there no intent to spike Respondent's salary but that her retirement seven
21 years after she received the income in question had no such effect.

22 Likewise, in Finding 12(b), the ALJ contrasted the Precedential Decision which found
23 that "a significant increase in special compensation at or near the time of a member's
24 retirement creates an unfunded liability, which may increase not only the rates charged by
25 CalPERS to the last employer, but also the rates CalPERS charges to any previous public
26 employers who contract with CalPERS." (Emphasis added.) The ALJ distinguished that
27 situation from Respondent's because her increase in special compensation occurred seven years
28 prior to the time of retirement.

1 Finding 12(b) also contrasted Respondent's situation from the Precedential Decision
2 which noted that some actuarial problems would exist if the compensation the individual in
3 question received while serving in a miscellaneous status were included in his final
4 compensation as a local safety member. The ALJ correctly noted that, in this case, all of
5 Respondent's service occurred as a miscellaneous member.

6 The ALJ set forth in Finding 12(b) yet another basis for distinguishing the Precedential
7 Decision. He observed that, in that case, the individual in question significantly increased his
8 workload which caused the resulting decision to conclude that the pay for those extra hours
9 amounted to overtime which is excluded from special compensation. The ALJ emphasized that
10 the uncontroverted testimony in this case revealed that Respondent "did not appreciably
11 increase her hours of work when she assumed the duties of Interim City Manager."

12 Finally, in Finding 12(d), the ALJ correctly distinguished the Precedential Decision on
13 the grounds that there the individual in question received significantly more compensation than
14 the occupant of the position he was filling in for on an interim basis while, in this case, the
15 uncontroverted credible testimony demonstrated that the salary received by Respondent for
16 serving as Interim City Manager was commensurate with the salary for that position.

17 The ALJ concluded in Finding 13 that, as a result of those differences, "[t]he contention
18 that the [Precedential Decision] should control the outcome of this case is not persuasive.

19 For all the reasons set forth above, the ALJ **again** correctly decided that the additional
20 compensation provided Respondent while serving as Interim City Manager constituted special
21 compensation in the form of Temporary Upgrade Pay. There is absolutely no basis for
22 rejecting that Decision or remanding it for further consideration on any possible grounds.
23 Respondent has incurred significant additional expenses because of the initial Remand, which
24 was questionable at best in light of the fact that the issue with respect to which the Remand
25 occurred had already been fully briefed and argued by the parties and no additional evidence
26 was presented on remand by CalPERS. Accordingly, there is absolutely no basis for the Board

27 ///

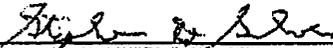
28 ///

1 to take any action that would cause Respondent to incur any additional emotional or monetary
2 expense by having to pursue this issue further, and it should adopt the Proposed Decision After
3 Remand.

4 Respectfully submitted,

5 SILVER HADDEN SILVER & LEVINE

6
7 Dated: September 17, 2015

8 By 
9 STEPHEN H. SILVER
10 Attorneys for Respondent Christine F. Londo
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 1428 Second Street, P.O. Box 2161, Santa Monica, California 90407-2161.

On September 17, 2015, I served the foregoing document described as **RESPONDENT CHRISTINE F. LONDO'S ARGUMENT IN SUPPORT OF PROPOSED DECISION AFTER REMAND** on the parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Via Mail

Hon. Humberto Flores
Administrative Law Judge
Office of Administrative Hearings
320 West Fourth Street, Suite 630
Los Angeles, CA 90013
Telephone No. (213) 576-7200
Facsimile No. (916) 376-6324

Via Email

Michael B. Montgomery, City Attorney
City of Walnut
City Hall
21201 La Puente Road
P.O. Box 682
Walnut, CA 91789
Phone: (909) 595-7543
Fax: (909) 595-6095
Email: mbmontgomery@hotmail.com

Via Email

Matthew G. Jacobs, General Counsel
Rory J. Coffey, Senior Staff Counsel
California Public Employees' Retirement System
Mailing Address: P.O. Box 942707
Sacramento, CA 94229-2707
Phone: (916) 795-3675
Fax: (916) 795-3659
Email: Rory.Coffey@calpers.ca.gov

[By Mail] I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice, on the same day that correspondence is placed for collection and mailing, it would be deposited with the U.S. Postal Service with postage thereon fully prepaid at Santa Monica, California, in the ordinary course of business. I am aware than on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[By Electronic Mail] I transmitted the document(s) to the addressee(s) via electronic mail at the address listed above.

Executed on September 17, 2015, at Santa Monica, California.

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

LISA L. HILL

