

BEFORE THE BOARD OF ADMINISTRATION  
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM  
STATE OF CALIFORNIA  
HUMBERTO FLORES, ADMINISTRATIVE LAW JUDGE

ORIGINAL

In the Matter of the Calculation )  
of Final Compensation of: )  
CHRISTINE F. LONDO, ) CASE NO. 2014-0681  
Respondent, ) OAH NO. 2014070904  
and )  
CITY OF WALNUT, )  
Respondent. )  
\_\_\_\_\_ )

TRANSCRIPT OF PROCEEDINGS  
Los Angeles, California  
Friday, July 31, 2015

Reported by:  
CLAUDETTE A. HENRY  
Hearing Reporter  
Job No.:  
63780AH



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TRANSCRIPT OF PROCEEDINGS, taken at  
320 West Fourth Street, Suite 630, Los Angeles,  
California, commencing at 10:00 a.m.  
on Friday, July 31, 2015, heard before  
HUMBERTO FLORES, Administrative Law Judge,  
reported by CLAUDETTE A. HENRY, Hearing Reporter.

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APPEARANCES:

For the BOARD: RORY J. COFFEY  
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I N D E X

E X H I B I T S

(None)

1 Los Angeles, California, Friday, July 31, 2015  
2 10:00 a.m.

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4  
5 THE COURT: State your appearances for the record  
6 beginning with Mr. Coffey.

7 MR. COFFEY: Good morning. Rory, R-O-R-Y; Coffey,  
8 C-O-F-F-E-Y, appearing for California Public Employees'  
9 Retirement System, CalPERS.

10 THE COURT: And Mr. Silver.

11 MR. SILVER: Stephen, S-T-E-P-H-E-N; Silver,  
12 S-I-L-V-E-R, appearing on behalf of the Respondent  
13 Christine Londo.

14 THE COURT: Mr. Montgomery.

15 MR. MONTGOMERY: Michael Montgomery, city attorney  
16 City of Walnut.

17 THE COURT: This Matter of Christine F. Londo,  
18 Respondent and City of Walnut, Respondent was remanded  
19 to the administrative law judge for the taking of  
20 additional evidence regarding the issue of whether the  
21 fact of this case differ from the facts of the Board's  
22 precedential decision in the Matter of Roy Ramirez case  
23 number 00-06.

24 And also it seems that there -- for argument  
25 on whether or not under the facts of this case

1 Respondent's position of interim city manager qualify  
2 the special compensation under Government Code Section  
3 20636.

4 So -- my name is Humberto Flores  
5 administrative law judge who handled the initial hearing  
6 and is handling the remand. All right.

7 Mr. Coffey, is there any kind of an opening  
8 statement that you wish to make?

9 MR. SILVER: Excuse me. This is Mr. Silver. I just  
10 wanted to say one thing for the record. Both Mr. Coffey  
11 and I represented to the presiding judge when we  
12 scheduled this conference that neither one of us had any  
13 -- even Mr. Montgomery agreed that none of us had any  
14 evidence to present.

15 And that all we are engaging in is oral  
16 argument. I just want to get that on the record.

17 THE COURT: If that is the case then, who is going  
18 to begin the process here. Mr. Coffey, are you going to  
19 begin with your oral argument?

20 MR. COFFEY: I certainly can, your Honor.

21 THE COURT: All right.

22 MR. COFFEY: And I think I can be very brief. The  
23 Ramirez precedential decision cited in the CalPERS  
24 post-hearing brief is to be given weight and actually  
25 presumptive value or presumptive correctness.

1 I will provide your Honor and Mr. Montgomery  
2 and Mr. Silver with a copy of the City of Pleasanton  
3 versus Board of Administration decision which includes  
4 that language and also addresses estoppel issues.

5 But looking at Mr. Silver's argument regarding  
6 the Ramirez precedential. First, there has been no  
7 legal challenge, post the Board adopting it as a  
8 precedential decision. Clearly, in your Honor's initial  
9 proposed decision at page 3 it was made clear that the  
10 position that Ms. Londo took as an interim city manager  
11 slash finance director was temporary.

12 It was not a permanent position. Also at page  
13 5 of your Honor's initial proposed decision, you found  
14 that there was no labor agreement. This was when she  
15 agreed to assume the additional duties of interim city  
16 manager. There was no publicly available schedule. It  
17 was not available to others.

18 And, again, for all those reasons the holding  
19 of the Ramirez precedential decision pertains and  
20 controls this matter. With respect to temporary upgrade  
21 pay as a basis for finding the additional \$5,000 a month  
22 as an allowable item of special compensation is Section  
23 5 -- of the regulation, Section 57183 the language  
24 includes required by their employer and upgraded  
25 position slash classification of limited duration.

1           And what happened in Mr. Londo's case does not  
2 satisfy that language. And I can give an example. If  
3 we have a local public agency like the city and imagine,  
4 if will you, two positions one a manager of parks and  
5 recreation.

6           That position is identified on a publicly  
7 available pay schedule. Whoever holds that manager  
8 parks and recreation position they are paid \$5,000 a  
9 month. In the city's publicly available schedule there  
10 is another position director of community service.

11           And that position compensation or pay rate is  
12 \$8,000 a month. Well, we have a situation where the  
13 existing director of community services leaves for  
14 whatever reason.

15           In order for temporary upgrade pay to be  
16 accepted as an item of special compensation, what would  
17 have to happen is the city would have to go to that  
18 person who is currently the manager of parks and  
19 recreation and say, look, we are moving you up to the  
20 existing position of director of community services.

21           And you are going to receive \$8,000 a month.  
22 And you will receive this for a, quote, "limited  
23 duration" meaning for as long as it takes us to hire a  
24 new permanent director of community services. And so  
25 that person leaves their manager of parks and recreation



1 position, steps into the director of community services  
2 position understanding that it is a limited duration.

3 Meaning they are not the person selected to be  
4 that director of community services on a permanent  
5 basis. Let's say they perform in that position for six  
6 months or 12 months, whatever it takes the city to do  
7 their interviewing and hiring purposes.

8 In that circumstance the upgrade pay of the  
9 \$8,000 a month that the person receives would be an item  
10 of special compensation if they were not hired as  
11 director of community services if they went back to  
12 their manager of parks and recreation position. That  
13 wasn't what happened in Ms. Londo's situation.

14 Again, significant in all of this is whether  
15 the position is or would have been available to all  
16 people and identified in the publicly available labor  
17 agreement.

18 THE COURT: Are you still there?

19 MR. COFFEY: Yes, I am.

20 THE COURT: Is there anything else?

21 MR. SILVER: May I respond now?

22 THE COURT: Okay. Are you complete? Did you  
23 complete your argument, Mr. Coffey?

24 MR. COFFEY: I believe so at this time, your Honor.  
25 Of course, I want to respond to anything that

1 Mr. Montgomery or Mr. Silver argues.

2 THE COURT: All right. Mr. Silver.

3 MR. SILVER: Yes. Thank you. This is Stephen  
4 Silver. First of all, what Mr. Coffey just finished  
5 doing is beyond the scope of the remand. The remand  
6 does not involve -- did not contemplate rearguing the  
7 determination your Honor has already made.

8 It contemplated preparing our situation,  
9 reviewing the situation to distinguish it.  
10 Nevertheless, I think that a quick response to Mr.  
11 Coffey's example. I think that is exactly the same what  
12 happened in the case of Mr. Londo. And I think your  
13 Honor correctly found that this was temporary upgrade  
14 pay.

15 The real question is presented in the remand is  
16 does the Ramirez situation have any impact on your  
17 Honor's earlier determination and to me the answer is  
18 clearly no. First of all, and much by far most  
19 importantly a temporary review of the Ramirez decision  
20 clearly reflects that the subject of temporary upgrade  
21 pay was not at all addressed or even mentioned in that  
22 decision.

23 I personally believe that had Mr. Ramirez  
24 presented that as an argument on his behalf there would  
25 have been a different result. The fact of the matter is

1 Ramirez does not have in any way for a proposition on  
2 that pay received under the circumstances involve both  
3 in the Ramirez case and Ms. Londo's case would not  
4 qualify as temporary upgrade pay.

5 Secondly, I read the Ramirez conclusion of the  
6 law or whatever you want to call, the determination of  
7 the law several times. And it is clear to me that the  
8 sole basis or at least the primary for the determination  
9 of Ramirez was the finding by the administrative law  
10 judge that Mr. Ramirez's duties performed as city  
11 manager while he was still serving as the chief of  
12 police were in addition to or accepted as his normal  
13 duties as the chief of police.

14 And effectively constituted overtime which the  
15 administrative law judge determined did not qualify as  
16 compensation earnable or special compensation under the  
17 provisions of the public employees' retirement law.  
18 Replete throughout the critical conclusion in Ramirez is  
19 the fact he worked an extra 20 hours a week over and  
20 above his duties as chief of police in order to serve as  
21 city manager.

22 As your Honor's proposed decision clearly  
23 relates that was not the case with Ms. Londo. Ms.  
24 Londo's duties did not increase. Her primary duties  
25 when she accepted the position as city manager were to

1 perform the duties of the city manager. And that the  
2 duties that she had previously performed as finance  
3 director was substantially performed by the subordinate  
4 not Ms. Londo.

5 She was really acting in a different capacity  
6 during the one-year period in question, and namely as  
7 city manager, and therefore was serving in an upgraded  
8 position. Some other factors to differentiate our  
9 situation from Ramirez is the administrative law judge  
10 in Ramirez relied on the fact that there was evidence in  
11 that case that the pay in question because it occurred  
12 during the last year of employment of Mr. Ramirez was  
13 basically final settlement pay.

14 And most importantly as a result of that, there  
15 was a significant amount of underfunding of the benefits  
16 that resulted from that. And your Honor found there is  
17 no evidence on the record that there is any underfunding  
18 in this case primarily because Ms. Londo's service as  
19 interim city manager occurred seven years before she  
20 retired.

21 And there was ample time for CalPERS to make a  
22 funding adjustment with the City of Walnut. In that  
23 regard it can't be regarded as final settlement pay.  
24 Because at the time Ms. Londo served in that position,  
25 she wasn't even thinking about retirement. This

1 occurred seven years before she started thinking about  
2 retirement.

3 A couple of other differences according to the  
4 findings in the Ramirez case. Mr. Ramirez continued to  
5 receive this special pay as chief of police special  
6 bonuses, etcetera, while he was working and performing  
7 extra duties as city manager. Nothing like that is  
8 present in this particular situation.

9 There is -- and other difference unlike the  
10 Ramirez situation here there is authorization for Ms.  
11 Londo to serve both as city manager and finance  
12 director. As the proposed decision notice that sets  
13 forth in the Walnut Municipal Code.

14 The other distinction for what it is worth in  
15 Ramirez. He received a salary that actually was more  
16 than what the city manager, previous city manager have  
17 been earning. During Ms. Londo's salary when serving as  
18 interim city manager is consistent with what had been  
19 earned by the previous city manager.

20 So I think that -- again, and I guess the final  
21 difference that I have. According to the Ramirez  
22 decision, he only performed some of the duties of the  
23 city manager position. Here in Ms. Londo's instance,  
24 she performed all of the duties of the city manager  
25 while she was serving as interim city manager.

1           So the -- I guess I shouldn't get on my high  
2 horse with what CalPERS is doing because this should  
3 have been remanded. And I don't understand why there is  
4 no new evidence that was presented. There is absolutely  
5 no reason at all to depart from your proposed decision  
6 as far as I can tell.

7           And unless your Honor has any questions, then I  
8 will submit on that.

9           THE COURT: No. I may have questions after Mr.  
10 Coffey responds.

11          MR. COFFEY: I don't think I have anything to add,  
12 your Honor.

13          THE COURT: Okay. Then I do have a question. And  
14 that is under Government Code Section 20049. It states,  
15 "Labor policy or agreement means any written policy  
16 agreement, memorandum of understanding, legislative  
17 action of the elected or appointed body governing the  
18 employer or any other documents used by the employer to  
19 specify the pay rate, special compensation, and benefits  
20 of represented and unrepresented employees."

21                So tell me why Mr. Londo's case -- how would  
22 you apply this section to Ms. Londo's case?

23          MR. COFFEY: Are you wanting my response? Rory  
24 Coffey.

25          THE COURT: Yes, Mr. Coffey.

1 MR. COFFEY: I have my PERL open to that section,  
2 your Honor. 20049. And again, the fact that the  
3 position of interim city manager slash finance director  
4 wasn't available to any other employee. That is how we  
5 would say 20049 does not apply.

6 There is no posting, if you will. There wasn't  
7 any recruiting. There wasn't any action by their city  
8 counsel. We are going to create this interim position.  
9 The fact as I believe was presented developed in the  
10 hearing, the then existing city manager left.

11 Ms. Londo was a long term seemingly valued  
12 employee in a position of finance director. And the  
13 city attorney, I believe, approached her and said would  
14 you -- in essence, would you be willing to assume  
15 additional duties of city manager while still keeping  
16 your position and all of your duties as finance manager.

17 And Mr. Londo agreed to that proposal and asked  
18 for additional compensation. And the confirmation of  
19 that agreement which has been negotiated between very  
20 simply, two very limited parties. That doesn't elevate  
21 it in our mind to a, quote, "labor policy or an  
22 agreement document used by the employer specified pay  
23 rate, special compensation, and benefit of represented  
24 and unrepresented employees."

25 It was simply a confirmation of a discussion

1 and negotiated terms of the agreement. And okay. For a  
2 one-year period, we are going to pay you an extra five  
3 grand a month. Thank you for your service.

4 THE COURT: All right.

5 MR. MONTGOMERY: This is Mr. Montgomery, I want to  
6 say something. I'm not looking at the record right now.  
7 But I was a participant in the transaction. And it was  
8 going to be temporary, I preferred to use the term  
9 indefinite position.

10 It was she that said I might not want to do  
11 this for more than a year. Not me. I did not look for  
12 another city manager to put in the position. The other  
13 distinction, first, the assistant city manager quite  
14 functioned as a city manager as the city manager was on  
15 vacation, rather in the office.

16 So without going through the selection process  
17 she was the logical one to step into that office. And  
18 the problem there that date as far her finance duties  
19 demoted Ms. Sanders to the finance office who is now  
20 doing what Ms. Londo had done. So I think it is unfair.

21 Because, yeah, I did make it public. We  
22 adopted it. Submitted it to the city counsel. Those  
23 are on the website. She got a different pay.  
24 Everyone could have looked that up in the city of  
25 Walnut. Any city manager approved pay that would have



1 been political review. She did function as city  
2 manager.

3 This is like -- not like it is with Ramirez or  
4 another case that I know that you have. Where the fire  
5 chief became acting city administrator but kept his  
6 office over at the fire station. She moved in the city  
7 manager's office in other words her office.

8 And she was the city manager for as long she  
9 wanted to be there. And when she said I don't want to  
10 do it anymore, we recruited a city manager which was  
11 easy to do. We had an interim who became the rank of  
12 city manager. We brought him over. So she was the one  
13 that specify the term not me. She could have been there  
14 as long she wanted.

15 MR. SILVER: This is Stephen Silver. In response to  
16 your Honor's question, first of all, Government Code  
17 Section 20049 which I am looking at right now as you  
18 found in your proposed decision would clearly satisfy.

19 It is a very broadly written provision. It  
20 talks about any written policy, agreement, memorandum of  
21 understanding, legislative action, elected or appointed  
22 government body, the employer or any other document used  
23 by the employer to specify the pay rate. Clearly, the  
24 communications that you referenced in your proposed  
25 decision more than satisfy that particular section.

1           As far as what Mr. Coffey said about trying to  
2 distinguish this, again, he is rearguing the case. He  
3 was not responding to the question about 20049. But  
4 very simply the evidence that was presented at the  
5 hearing I remember specifically asking a question of the  
6 CalPERS witness, I can't remember her name, about a  
7 police officer who was asked to temporarily serve in the  
8 position of a police sergeant until such time as that  
9 position could be filled by a permanent police sergeant.

10           And the CalPERS witness testified that that  
11 would qualify as temporary upgrade pay. And I recall  
12 she also testified there was no difference between that  
13 situation and Ms. Londo's situation. So I think clearly  
14 the conclusion that the temporary upgrade pay is  
15 correct. I don't see any problem with 20049.

16           It is such a broadly written provision. The  
17 communication between Mr. Montgomery and Mr. Londo and  
18 -- and the other documentation clearly satisfy that.

19           THE COURT: All right. All right. Thank you all  
20 very much. If there is --

21           MR. COFFEY: Your Honor, just responding very  
22 briefly to Mr. Silver's argument or comment on his  
23 recollection of the CalPERS witness' testimony regarding  
24 the police officer temporary -- temporary manner acting  
25 as a police sergeant.

1           In that instance the employing agency would  
2 again presumably have a pay schedule that would say  
3 police officer X per month, police sergeant Y per month  
4 and includes the available but not just the one police  
5 officer as he temporarily steps in to perform duties of  
6 police sergeant.

7           It would be available to everybody. That's not  
8 the situation with Mr. Londo.

9           MR. SILVER: Excuse me. This is Mr. Silver. I  
10 don't know what you mean by available to everybody. If  
11 there was more than one vacant position, it will  
12 probably be available to two people. But there was only  
13 one position in my question. And there is only one  
14 vacant position here. And the result is exactly the  
15 same.

16          THE COURT: All right. Thank you all very much. I  
17 believe that this concludes the hearing on remand. And,  
18 Mr. Coffey, you did mention some other decision City of  
19 Pleasanton.

20           Has that been made part of the record?

21          MR. COFFEY: No, it has not, your Honor. I offered  
22 to provide a copy of that decision. Because the  
23 challenge by Mr. Silver to Ramirez decision included an  
24 argument that the CalPERS precedential decision should  
25 be given little weight.

1           And the City of Pleasanton decision has very  
2 specific language stating that agency decision including  
3 precedential decision are to be given presumptive  
4 validity.

5           THE COURT: Go ahead and finish, Mr. Coffey. And  
6 then, Mr. Silver, you may respond.

7           MR. COFFEY: I was offering to make a copy of that  
8 decision available to your Honor and counsel for that  
9 purpose. And if it is not necessary, I won't.

10          THE COURT: Okay. Mr. Silver.

11          MR. SILVER: I was just going to say that the  
12 Ramirez decision was incorrectly decided. That is part  
13 of my argument today.

14          THE COURT: All right. Then do you have any  
15 objection if Mr. Coffey providing that Pleasanton  
16 decision to you, Mr. Montgomery, and myself.

17          MR. SILVER: Not at all. I am familiar with the  
18 case. It is a reported court of appeals decision. I  
19 have no problem if your Honor reads it.

20          THE COURT: Why don't you give me the cite, Mr.  
21 Coffey?

22          MR. COFFEY: I don't have that right in front me at  
23 this time, your Honor. I can supplement that.

24          THE COURT: All right. That's fine. You can e-mail  
25 it to the office -- e-mail a copy of the decision to the

1 Office of Administrative Hearings or just give me the  
2 cite.

3 MR. COFFEY: I will do that, your Honor.

4 THE COURT: All right. Thank you all very much.  
5 As soon as I receive the cite to that decision or the  
6 decision itself, I will close the record, and consider  
7 this matter submitted for decision after remand.

8 Thank you all very much. We are off the  
9 record.

10 (Hearing adjourned at 10:50 a.m.)

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REPORTER'S CERTIFICATE

I, Claudette Henry, Hearing Reporter, do hereby certify:

That the foregoing transcript of proceedings was taken before me on July 31, 2015, at the time and place therein set forth, was taken down by me in shorthand, and thereafter transcribed into typewriting under my direction and supervision.

I hereby certify that the foregoing transcript of proceedings is a full, true, and correct transcript of my shorthand notes so taken.

I further certify that I am neither counsel for nor related to any party to said action, nor in anywise interested in the outcome thereof.

In witness thereof, I have hereunto subscribed my name this 9<sup>th</sup> day of November, 2015.



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Claudette Henry,  
Hearing Reporter

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