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9 Employees' Retirement System

10 BOARD OF ADMINISTRATION

11 CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

12	In the Matter of the Calculation of Final Compensation of)	AGENCY CASE NO. 2014-0681
13)	OAH NO.
14	CHRISTINE F. LONDO,)	STATEMENT OF ISSUES
15)	Hearing Date:
16	Respondent,)	Hearing Location:
17)	Prehearing Conf.: None Scheduled
18	and)	Settlement Conf.: None Scheduled
19	CITY OF WALNUT,)	
20)	
21	Respondent.)	

22 California Public Employees' Retirement System (CalPERS) states:

23 I

24 CalPERS makes and files this Statement of Issues in its official capacity as such
25 and not otherwise.

II

Respondent Christine F. Londo (respondent Londo) was employed by
respondent City of Walnut as a Finance Director/City Treasurer. By virtue of her
employment, respondent Londo is a local miscellaneous member of CalPERS.

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III

On or about June 18, 2013, CalPERS received an application for service retirement from respondent Londo. Respondent Londo retired for service effective September 14, 2013, with 36.388 years of service credit, and has been receiving her retirement allowance from that date.

IV

Respondent City of Walnut (City) is a public agency contracting with CalPERS for retirement benefits for its eligible employees. The provisions of the City's contract with CalPERS are contained in the Public Employees' Retirement Law (PERL). (Cal. Gov. Code, §§ 20000 et seq.)

V

CalPERS is a defined benefit plan. Benefits for its members are funded by member and employer contributions, and by interest and other earnings on those contributions. The amount of a member's contributions is determined by applying a fixed percentage to the member's compensation. A public agency's contribution is determined by applying a rate to the payroll of the agency. Using certain actuarial assumptions specified by law, the CalPERS Board of Administration sets the employer contribution rate on an annual basis.

VI

The amount of a member's service retirement allowance is calculated by applying a percentage figure, based upon the member's age on the date of retirement, to the member's years of service and the member's "final compensation." In computing a member's retirement allowance, CalPERS staff may review the salary reported by the employer for the member to ensure that only those items allowed

1 under the PERL will be included in the member's "final compensation" for purposes of
2 calculating the retirement allowance.

3 **VII**

4 During CalPERS' review of respondent Londo's reported payroll records, it was
5 found that the City reported a pay increase of \$5,000 per month on behalf of
6 respondent Londo from November 2005 through November 2006, for compensation of
7 her duties as the Interim City Manager.

8 **VIII**

9 Agenda 12 dated November 30, 2005, from Michael B. Montgomery, City
10 Attorney, to the City Council states:

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

18 **IX**

19 The following provisions of the Government Code are relevant to calculation of
20 final compensation:

21 Section 20630 provides:

22 (a) As used in this part, "compensation" means the
23 remuneration paid out of funds controlled by the employer
24 in payment for the member's services performed during
25 normal working hours or for time during which the member
is excused from work because of any of the following:

(1) Holidays.

(2) Sick leave.

1 (3) Industrial disability leave, during which, benefits are
2 payable pursuant to Sections 4800 and 4850 of the Labor
3 Code, Article 4 (commencing with Section 19869) of
Chapter 2.5 of Part 2.6, or Section 44043 or 87042 of the
Education Code.

4 (4) Vacation.

5 (5) Compensatory time off.

6 (6) Leave of absence.

7 (b) When compensation is reported to the board, the
8 employer shall identify the pay period in which the
9 compensation was earned regardless of when reported or
10 paid. Compensation shall be reported in accordance with
Section 20636 and shall not exceed compensation
11 earnable, as defined in Section 20636.

12 Section 20635 provides:

13 When the compensation of a member is a factor in any
14 computation to be made under this part, there shall be
15 excluded from those computations any compensation
16 based on overtime put in by a member whose service
17 retirement allowance is a fixed percentage of final
18 compensation for each year of credited service. For the
19 purposes of this part, overtime is the aggregate service
20 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.

21 If a member concurrently renders service in two or more
22 positions, one or more of which is full time, service in the
23 part-time position shall constitute overtime. If two or more
24 positions are permanent and full time, the position with the
25 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 provides in 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.

1 (b) (1) "Payrate" means the normal monthly rate of pay or
2 base pay of the member paid in cash to similarly situated
3 members of the same group or class of employment for
4 services rendered on a full-time basis during normal
5 working hours, pursuant to publicly available pay
6 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). [¶] . . . [¶]

7 (c) (1) Special compensation of a member includes a
8 payment received for special skills, knowledge, abilities,
9 work assignment, workdays or hours, or other work
10 conditions. [¶] . . . [¶]

X

11 The following regulations, promulgated by the Board of Administration
12 through California Code of Regulations, Title 2, Division 1, Chapter 2, Subchapter
13 1, Article 4, are relevant to this appeal:

14 Section 570 provides:

15 "Final settlement pay" means any pay or cash conversions
16 of employee benefits in excess of compensation earnable,
17 that are granted or awarded to a member in connection with
or in anticipation of a separation from employment. Final
settlement pay is excluded from payroll reporting to PERS,
in either payrate or compensation earnable.

18 For example, final settlement pay may consist of severance
19 pay or so-called "golden parachutes." It may be based on
20 accruals over a period of prior service. It is generally, but
not always, paid during the period of final compensation.
It may be paid in either lump-sum, or periodic payments.

21 Final settlement pay may take the form of any item of
22 special compensation not listed in Section 571. It may also
23 take the form of a bonus, retroactive adjustment to payrate,
conversion of special compensation to payrate, or any other
method of payroll reported to PERS.

1 Section 570.5 provides:

2 For purposes of determining the amount of "compensation
3 earnable" pursuant to Government Code Sections 20630,
4 20636, and 20636.1, payrate shall be limited to the amount
5 listed on a pay schedule that meets all of the following
6 requirements:

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

10 (2) Identifies the position title for every employee position;

11 (3) Shows the payrate for each identified position, which
12 may be stated as a single amount or as multiple amounts
13 within a range;

14 (4) Indicates the time base, including, but not limited to,
15 whether the time base is hourly, daily, bi-weekly, monthly,
16 bi-monthly, or annually;

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

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

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

24 (8) Does not reference another document in lieu of
25 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;

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(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 provides in part:

(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: [redacted] . . . [redacted]

(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. [redacted] . . . [redacted]

(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 meeting 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;

- 1 (D) Indicates an effective date and date of any revisions;
- 2 (E) Is retained by the employer and available for public
3 inspection for not less than five years; and
- 4 (F) Does not reference another document in lieu of
5 disclosing the item of special compensation;
- 6 (2) Available to all members in the group or class;
- 7 (3) Part of normally required duties;
- 8 (4) Performed during normal hours of employment;
- 9 (5) Paid periodically as earned;
- 10 (6) Historically consistent with prior payments for the job
11 classification;
- 12 (7) Not paid exclusively in the final compensation period;
- 13 (8) Not final settlement pay; and
- 14 (9) Not creating an unfunded liability over and above PERS'
15 actuarial assumptions.
- 16 (c) Only items listed in subsection (a) have been
17 affirmatively determined to be special compensation. All
18 items of special compensation reported to PERS will be
19 subject to review for continued conformity with all of the
20 standards listed in subsection (b).
- 21 (d) If an items of special compensation is not listed in
22 subsection (a), or is out of compliance with any of the
23 standards in subsection (b) as reported for an individual,
24 then it shall not be used to calculate final compensation for
25 that individual.

XI

21 CalPERS conducted a review of respondent Londo's compensation reported
22 by the City, and determined that the pay increase in the amount of \$5,000 per month
23 from November 2005 through November 2006 does not meet the definition of

1 "compensation earnable" under the PERL, and should therefore be excluded in the
2 calculation of respondent Londo's final compensation.

3 **XII**

4 By letter dated November 26, 2013, respondent Londo and the City were
5 notified of CalPERS' determination and were advised of their appeal rights.

6 **XIII**

7 By letter dated December 5, 2013, respondent Londo, through her counsel, filed
8 a timely appeal, and has requested an administrative hearing.

9 **XIV**

10 By letter dated December 17, 2013, the City filed a timely appeal, and stated
11 that it wished to join respondent Londo in her appeal.

12 **XV**

13 This appeal is limited to the issue of whether the pay increase of \$5,000 per
14 month from November 2005 through November 2006 should be included in the
15 calculation of respondent Londo's final compensation.

16 BOARD OF ADMINISTRATION, CALIFORNIA
17 PUBLIC EMPLOYEES' RETIREMENT SYSTEM

18
19 Dated: JUL 22 2014

BY


RENEE OSTRANDER, Acting Chief
Customer Account Services Division