

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Nicholas Rodriguez (Respondent Rodriguez) filed a Service Retirement Election Application on November 7, 2013, and has been receiving a retirement allowance since December 6, 2013. By virtue of his employment with Respondent City of Pasadena (Pasadena) and Respondent City of Vernon (Vernon), Respondent Rodriguez was a local miscellaneous member of CalPERS. Respondent Rodriguez qualified for service retirement based upon his years of service and his age at retirement.

Respondent Rodriguez earned 24.651 years of service credit with Pasadena as a Deputy City Attorney and then an Assistant City Attorney. Respondent Rodriguez also purchased an additional five years of Additional Retirement Service Credit (ARSC) while employed with Pasadena for a total of 29.651 years of service credit with Pasadena. Respondent Rodriguez earned 1.313 years of service credit with Vernon as the City Attorney.

In a letter dated April 14, 2014, Respondent Rodriguez asked CalPERS to review the calculation of his benefit amount. Respondent Rodriguez questioned CalPERS' calculation of his retirement benefit based on a "mix" or "blend" of a final compensation amount from his service with Pasadena and a final compensation amount from his service with Vernon. Respondent Rodriguez asserted that there is no authority supporting CalPERS' mixing or blending of the final compensation amounts to determine his retirement benefit.

In a letter dated May 9, 2014, CalPERS staff explained that a member's retirement benefit is calculated by multiplying the member's years of service credit, a benefit factor, and final compensation for each employer and adding the total together to arrive at an unmodified benefit allowance. The retirement formula, as well as the final compensation, are benefit provisions that are contracted for and by each employer.

Specifically:

1. Pasadena contracts for a three year final compensation under Government Code section 20037 (PERL 20037), which provides that final compensation is the highest average annual compensation earnable by a member during three consecutive years of employment. Based on this, for Respondent Rodriguez' employment with Pasadena, the highest consecutive three year final compensation was from December 6, 2010, through December 5, 2013, and was \$18,356.28 per month.
2. Vernon contracts for a one year final compensation under Government Code section 20042 (PERL 20042), which provides that final compensation is the highest average annual compensation earnable by a member during a one year period of employment. Based on this, for Respondent Rodriguez' employment

with Vernon, the highest consecutive one year final compensation was from September 6, 2012, through September 5, 2013, and was \$21,083.73 per month.

Respondent Rodriguez filed a timely appeal asserting that his entire 30.964 years of service credit should be calculated using the one year final compensation period that Vernon's contract opted for (PERL 20042) and the higher final compensation amount of \$21,083.73. At the hearing, the parties stipulated that the underlying figures used and calculations that were made were performed correctly. The dispute is whether the 29.651 years of service credit under the Pasadena contract should utilize the one year final compensation (PERL 20042) from the Vernon contract. However, Respondent Rodriguez does not seek to use the Vernon retirement formula (2.7 percent at 55) for the service credit attributable to Pasadena despite Pasadena's less favorable formula (2.5 percent at 55).

Two CalPERS staff employees testified at the hearing:

A Staff Services Manager in the Retirement Administration and Support Unit testified about the procedures CalPERS followed in calculating Respondent Rodriguez' retirement allowance; that many CalPERS members have more than one employer and separate benefit calculations are made for each employer and each contract; that CalPERS then adds together all of the individual benefit calculations to reach a final unmodified benefit allowance; that Respondent Rodriguez' desire to use the Vernon contract provision (PERL 20042) towards the Pasadena service credit and otherwise use the Pasadena retirement formula is not consistent; and, that to calculate Respondent Rodriguez' final compensation in that manner would cause Pasadena to have a liability or obligation to pay for an increase which was not contracted for under its contract pursuant to PERL 20037.

A Senior Pension Actuary testified that CalPERS has never applied a one year final compensation period under PERL 20042 to calculate a member's final compensation and retirement benefit that was earned under PERL 20037; that if CalPERS were to calculate Respondent Rodriguez' final compensation in such a manner, an unfunded liability of approximately \$2,000 per month would be attributable to Pasadena; and, that when a contracting agency, such as Vernon, contracts for a one year final compensation period under PERL 20042, the public agency has a corresponding higher contribution rate to pay for the increased benefit.

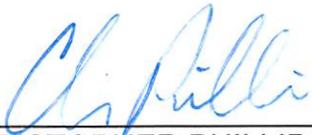
Because the underlying facts were stipulated to, Respondent Rodriguez did not testify and instead relied on his counsel to make arguments and cross examine CalPERS witnesses.

The Administrative Law Judge (ALJ) recited several of Respondent Rodriguez' arguments for calculating his final compensation under PERL 20042, and dismissed them all as not persuasive. The ALJ found that Respondent Rodriguez failed to demonstrate that CalPERS' interpretation of PERL 20042 and PERL 20037 for determining his service retirement allowance from Pasadena and Vernon is unreasonable or erroneous.

The ALJ concluded that Respondent's appeal should be denied. The Proposed Decision is supported by the law and the facts. Staff argues that the Board adopt the Proposed Decision.

Because the Proposed Decision applies the law to the salient facts of this case, the risks of adopting the Proposed Decision are minimal. The member may file a Writ Petition in Superior Court seeking to overturn the Decision of the Board.

February 18, 2016



CHRISTOPHER PHILLIPS
Senior Staff Attorney