

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent City of Morro Bay (Morro Bay) is a CalPERS contracting agency.

Respondent Gere Sibbach (Respondent Sibbach) worked for Morro Bay from December 22, 1980, to November 18, 1983. By virtue of his employment with Morro Bay, Respondent Sibbach was a local miscellaneous member of CalPERS.

Respondent Sibbach began working for the County of San Luis Obispo (SLO County) on October 17, 1983, and became a member of the San Luis Obispo County Pension Trust (SLOCPT) at that time. From October 17, 1983, to November 18, 1983, Respondent Sibbach had concurrent membership in CalPERS and SLOCPT and was earning service credit in both systems. On November 18, 1983, Respondent Sibbach withdrew his CalPERS contributions and terminated membership in the CalPERS system.

On April 19, 1984, CalPERS and SLOCPT entered into a reciprocity agreement. Thereafter, Respondent Sibbach was informed by SLO County that he may have some benefits as a result of the reciprocity agreement. Respondent Sibbach then contacted CalPERS in 1987 and was informed that he could reinstate his membership in CalPERS by redepositing \$8,532.29 to restore 3.311 years of service credit. Respondent Sibbach chose not to redeposit any contributions at that time.

In 2012, Respondent Sibbach contacted CalPERS again for another cost estimate to redeposit withdrawn contributions. CalPERS provided the estimate and also informed Respondent Sibbach that because of his concurrent employment with Morro Bay and SLO County, he would not be able to use salary earned with SLO County to establish his CalPERS benefit. The CalPERS benefit would be based on earning in CalPERS employment or an annuity based on the redeposited contributions, whichever was higher.

Respondent Sibbach timely appealed this determination asserting that under the legal doctrine of equitable estoppel he should be afforded "final compensation exchange" or final compensation reciprocity. Respondent Sibbach did not dispute that concurrent employment in both CalPERS and SLOCPT would normally preclude the application of final compensation reciprocity, but that he relied on promises made by CalPERS in 1987 that he would be entitled to full reciprocity.

Respondent Sibbach was represented by counsel. Due to there being no factual issues in dispute, all parties stipulated that the matter would be submitted based on documentary evidence and written and oral argument.

The Administrative Law Judge (ALJ) determined that the plain language of Government Code section 20351 requires separation from one system before entry into the other system for reciprocity between the two to apply. Additionally, CalPERS has consistently

interpreted section 20351 to preclude full reciprocity in the computation of final compensation if there has been concurrent employment in two systems.

Respondent Sibbach argued that despite the plain meaning of the statute, he reasonably relied on promises made by CalPERS that he could retroactively redeposit his withdrawn contributions and that he would receive a benefit from each system. He also argued that CalPERS' failure to honor the promise would result in substantial detriment in that he will receive a significantly lower retirement allowance from CalPERS.

The ALJ did not find Respondent Sibbach's arguments persuasive, finding that CalPERS did not make any promises regarding how Respondent Sibbach's final compensation would be calculated. Additionally, the ALJ found that Respondent Sibbach seeks a benefit to which he is not entitled, namely, final compensation reciprocity despite the concurrent employment. As such, Respondent Sibbach may not avail himself of equitable estoppel to obtain final compensation reciprocity.

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
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