

MEETING  
STATE OF CALIFORNIA  
PUBLIC EMPLOYEES' RETIREMENT SYSTEM  
BOARD OF ADMINISTRATION  
OPEN SESSION

ROBERT F. CARLSON AUDITORIUM  
LINCOLN PLAZA NORTH  
400 P STREET  
SACRAMENTO, CALIFORNIA

THURSDAY, FEBRUARY 18, 2016

9:00 A.M.

TIFFANY C. KRAFT  
CERTIFIED SHORTHAND REPORTER  
LICENSE NUMBER 12277

A P P E A R A N C E S

BOARD MEMBERS:

Mr. Rob Feckner, President

Mr. Henry Jones, Vice President

Mr. Michael Bilbrey

Mr. John Chiang, also represented by Mr. Grant Boyken

Mr. Richard Costigan

Mr. Richard Gillihan, also represented by Ms. Katie Hagen

Ms. Dana Hollinger

Mr. J.J. Jelincic

Mr. Ron Lind

Ms. Priya Mathur

Mr. Bill Slaton

Ms. Theresa Taylor

Ms. Betty Yee, represented by Ms. Lynn Paquin

STAFF:

Ms. Anne Stausboll, Chief Executive Officer

Ms. Cheryl Eason, Chief Financial Officer

Mr. Ted Eliopoulos, Chief Investment Officer

Mr. Douglas Hoffner, Deputy Executive Officer

Ms. Donna Lum, Deputy Executive Officer

Mr. Doug McKeever, Deputy Executive Officer

Mr. Alan Milligan, Chief Actuary

Mr. Brad Pacheco, Deputy Executive Officer

A P P E A R A N C E S C O N T I N U E D

STAFF:

Mr. Matthew Jacobs, General Counsel

Ms. Mary Anne Ashley, Chief, Legislative Affairs Division

Ms. Kara Buchanan, Board Secretary

Ms. Preet Kaur, Senior Staff Counsel

Mr. Marguerite Seabourn, Assistant Chief Counsel

ALSO PRESENT:

Mr. Joseph Bolander, representing Mr. Timothy Bacon and  
Darryl Hurt

Mr. Terry Brennand, Service Employee International Union

Mr. Chirag Shah, Shah and Associates

Mr. Neal Johnson, Service Employees International Union,  
Local 1000

Mr. Neil Okazaki, City of Riverside

I N D E X

	PAGE
1. Call to Order and Roll Call	1
2. Pledge of Allegiance	2
3. Board President's Report	2
4. Executive Reports	
a. Chief Executive Officer's Report (Oral)	4
b. Chief Investment Officer's Report (Oral)	11
5. Consent Items Action Consent Items:	
a. Approval of December 16, 2015 Board of Administration Meeting Minutes and January 19-21, 2016 Offsite Board of Administration Meeting Minutes	12
b. Board Travel Approvals	13
6. Consent Items	14
Information Consent Items:	
a. Board Meeting Calendar	
b. Draft Agenda for March 16, 2016 Board of Administration Meeting	
c. General Counsel's Report	
d. Communications and Stakeholder Relations Report	
7. Committee Reports and Actions	
a. Investment Committee (Oral)	14
b. Pension and Health Benefits Committee (Oral)	16
c. Finance and Administration Committee (Oral)	17
d. Performance, Compensation & Talent Management Committee (Oral)	20
e. Risk and Audit Committee (Oral)	21
f. Board Governance Committee (Oral)	21
Action Agenda Items	
8. Proposed Decisions of Administrative Law Judges	28
a. Tom Walters	
b. Patrick J. Campbell	
c. Luz Lopez	
d. Gwendolyn Lewis-Parker	
e. Nila Job	
f. Martha G. Haywood	
g. Jerry Dean Beasley	
h. Scott Casadona	

I N D E X C O N T I N U E D

PAGE

8.	Proposed Decisions of Administrative Law Judges (Continued)	
i.	Richard Montre	
j.	Deborah L. Buchko	
k.	Timothy C. Stadler (Larrie Ciano)	
l.	Mike V. Perez	
m.	Santa Clara County and Kathleen King	
n.	Merry Grisak	
o.	Brandy LeChuga-Falk (Thomas LeChuga)	
p.	Mei Kwee	
q.	Sandra Lombella Adams	
r.	Diane Euer	
s.	David Grewing	
t.	Nicholas Rodriguez	
u.	Jolie Caughey (Donald Caughey)	
v.	Perry Leffler	
w.	Gere Sibbach	
x.	Madhu Ghuman	
y.	Christine Yaple (David Yaple)	
z.	Kristen Del Carlo	
aa.	Stephanie Lamb	
bb.	Beverly Powers	
cc.	Kevin Davey	
dd.	Vincent Miller	
ee.	Salma Juarez	
ff.	William Johnson	
gg.	Crystal Bickford (William Varnado)	
hh.	Denise Hunt-Bangoli (James Davey)	
9.	Petitions for Reconsideration	30
a.	Marcos Rivera	
b.	Stacy Bridges	
10.	Full Board Hearing	
a.	Timothy Bacon, Darryl Hurt (Consolidated)	35
CLOSED SESSION		
11.	Deliberate on Full Board Hearing (Government Code section 11126(c)(3))	
a.	Timothy Bacon, Darryl Hurt (Consolidated)	80

I N D E X C O N T I N U E D

PAGE

OPEN SESSION

12. Announcement of Action Taken on Full Board Hearing	
a. Timothy Bacon, Darryl Hurt (Consolidated)	80
Information Agenda Items	
13. State Legislation Update	30
14. Summary of Board Direction	34
15. Public Comment	34
Adjournment	81
Reporter's Certificate	82

1 P R O C E E D I N G S

2 PRESIDENT FECKNER: Good morning. We'd like to  
3 call the Board of Administration meeting to order. The  
4 first order of business will be to call the roll.

5 BOARD SECRETARY BUCHANAN: Good morning.  
6 Rob Feckner?

7 PRESIDENT FECKNER: Good morning.

8 BOARD SECRETARY BUCHANAN: Henry Jones?

9 VICE PRESIDENT JONES: Here.

10 BOARD SECRETARY BUCHANAN: Michael Bilbrey?

11 BOARD MEMBER BILBREY: Good morning.

12 BOARD SECRETARY BUCHANAN: Grant Boyken for John  
13 Chiang?

14 ACTING BOARD MEMBER BOYKEN: Here.

15 BOARD SECRETARY BUCHANAN: Rich Costigan?

16 BOARD MEMBER COSTIGAN: Here.

17 BOARD SECRETARY BUCHANAN: Richard Gillihan?

18 BOARD MEMBER GILLIHAN: Here.

19 BOARD SECRETARY BUCHANAN: Dana Hollinger?

20 BOARD MEMBER GILLIHAN: Here.

21 BOARD SECRETARY BUCHANAN: J.J. Jelincic?

22 BOARD MEMBER JELINCIC: Here.

23 BOARD SECRETARY BUCHANAN: Ron Lind?

24 BOARD MEMBER LIND: Here.

25 BOARD SECRETARY BUCHANAN: Priya Mathur?

1 BOARD MEMBER MATHUR: Here.

2 BOARD SECRETARY BUCHANAN: Bill Slaton?

3 BOARD MEMBER SLATON: Here.

4 BOARD SECRETARY BUCHANAN: Theresa Taylor?

5 BOARD MEMBER TAYLOR: Here.

6 BOARD SECRETARY BUCHANAN: And Lynn Paquin for  
7 Betty Yee?

8

9 ACTING BOARD MEMBER PAQUIN: Here.

10 PRESIDENT FECKNER: Thank you.

11 Next order of business is Pledge of Allegiance.

12 If you'd all please rise, I've ask Board Member Mathur to  
13 lead us in the pledge.

14 (Thereupon the Pledge of Allegiance was  
15 recited in unison.)

16 PRESIDENT FECKNER: Thank you.

17 Agenda Item 3 is the President's Report.

18 So good morning everyone. Each year we provide  
19 an assessment of the state of the System, which I think of  
20 as an annual check-up on the health of CalPERS. This  
21 year, we're going to do so in the form of a column to our  
22 valued members, employers, and stakeholders. You received  
23 a copy as you entered the auditorium this morning.

24 Last year was marked with significant progress  
25 toward ensuring the long-term soundness and sustainability



1 of CalPERS. We saw improved cost effectiveness combined  
2 within innovation and risk mitigation measures which  
3 bolstered the security of our pension fund for generations  
4 to come. The fact that our members were living longer is  
5 a sober reminder that we have a growing obligation to  
6 provide for their pensions.

7           Just a decade ago, the ratio of active workers to  
8 retirees was over two to one. That ratio is now 1.3  
9 workers to every retiree. And we pay out more in benefits  
10 than we receive in contributions. This Board and our  
11 professional staff have responded to these changes with  
12 prudence and vigilance. For example, we adopted a policy  
13 designed to reduce our 7.5 percent assumed rate of return  
14 on investments over time. This will help pay down the  
15 pension funds unfunded liability and reduce risk and  
16 volatility in the fund. We've maintained a vigorous and  
17 proactive approach toward improvements in corporate  
18 governance.

19           During the past year, we continued to voice  
20 strong support for our shareowner -- more shareowner  
21 input. And in June, we launched a new website to deliver  
22 enhanced service to both members and employers. As one of  
23 our Board members recently said at a pension conference,  
24 the CalPERS of today is much more nimble and engaged. The  
25 recent headwinds of volatility in the financial markets

1 may have raised uncertainties in the global economy.

2           However, the new year also brings us a fresh  
3 opportunity for accomplishment, as we continue to provide  
4 retirement and health security for the public employees  
5 who serve California.

6           Thank you.

7           Moving on to Agenda Item 4, Executive Reporters,  
8 the Chief Executive Officer's report Ms. Stausboll.

9           CHIEF EXECUTIVE OFFICER STAUSBOLL: Thank you,  
10 Mr. President. Good morning, members of the Board.

11           Before I start my report, I'd like to introduce  
12 you to two new members of our senior management team.  
13 First is our new Chief Risk Officer, Forrest Grimes.  
14 Forrest has been working in our Investment Office for  
15 about three and a half years on compliance and operational  
16 risk. And before that, he worked in the private sector in  
17 real estate development in northern California. And after  
18 a long and quite rigorous search, we're very excited to  
19 fill this position. I'll have him stand in a moment.  
20 Forrest will be reporting to Cheryl Eason our CFO, and  
21 he'll start his new roll on the 22nd of February.

22           And we've also just filled the position of Chief  
23 of the Retirement, Research, and Planning Division, which  
24 was recently vacated. And we filled this with Jan  
25 Falzarano, who is a long time member of the CalPERS

1 family. And she'll start her job on March 1. Jan has had  
2 a lot of experience at CalPERS. She's been here since  
3 2001. She has served as Assistant Division Chief over our  
4 Regional Offices. She's also serviced in Benefit Services  
5 and in the health area, so she's got a wealth of  
6 experience.

7 As Chief of RRPD, she'll be responsible for  
8 proactively addressing public policy issues, such as  
9 retirement security. So Forrest and Jan will you please  
10 both stand?

11 (Applause.)

12 CHIEF EXECUTIVE OFFICER STAUSBOLL: Thank you.

13 Turning now to some of our current priorities and  
14 initiatives. Yesterday, you heard the first reading of  
15 a new CalPERS budget policy. Establishing this policy  
16 allows us to demonstrate our commitment to responsible  
17 fiscal management and proper and appropriate allocation of  
18 resources. We got great feedback from the Committee, and  
19 we'll be back next month with a second reading.

20 Also, next month, we'll be bringing you the  
21 second reading of the business plan for 2016-17, along  
22 with the first reading of the corresponding budget. The  
23 plans lays out several new initiatives, builds on the  
24 progress we've made over the last few years as we enter  
25 the final year of our five year strategic plan. And in

1 March, we'll also be presenting you with a proposal for  
2 how to proceed on the development of our/your next  
3 strategic plan.

4           Then, as we all know, March and April are always  
5 dedicated to our health care rate negotiations with the  
6 health plans and pharmacy contractor. So we'll be  
7 presenting the preliminary risk-adjusted rates in open  
8 session in May, as we did last year in the spirit of  
9 transparency, with the goal of final approval in June.

10           We're also busy with stakeholder activities as we  
11 start the new year. So this month, we're going to resume  
12 our executive employer visits. We're starting with a  
13 visit to the Los Angeles area on February 24. Members of  
14 the executive team will meet with leaders at the L.A.  
15 Unified School District, as well as the L.A. County Office  
16 of Education, which are very important employers for us.  
17 These face-to-face meetings are a great opportunity for us  
18 to hear directly from employers about the issues that are  
19 on their minds. And then in the coming months, we'll also  
20 be visiting contracting employers in Orange County and  
21 Riverside.

22           On the member side, last month we held a CBEE in  
23 Rohnert Park. We had over 1,100 people attend, a much  
24 larger crowd than we had anticipated. A couple of Board  
25 members were there. Our next event will be in Seaside on

1 the 26th of this month. And the whole schedule for the  
2 CBEEs is on our website. We've got nine of them planned  
3 for the year.

4           Turning now to some of our internal activities  
5 here at Headquarters, I wanted to take a moment to talk  
6 about the changes we're making in the landscaping. So as  
7 we enter our fifth year of record dry whether conditions,  
8 we've been hard at work on our landscaping plan to replace  
9 some of the large grass areas we had, and our  
10 water-dependant plants. So if you haven't seen lately the  
11 third floor terrace here in this building, this would be a  
12 great time to take a walk and look at it. We've completed  
13 the hardscape updates and installed mulch and bark. We're  
14 waiting to plant plants until the appropriate time, based  
15 on lifting of the water restrictions.

16           But the terrace features a beautiful patio and  
17 pathway made of river rock and colorful stone, and it's a  
18 beautiful area. The work at Lincoln Plaza East and West  
19 is also underway. We're just completing the hardscapes.  
20 We recently put in a new shade structure, which will  
21 improve our outdoor events over there, and we'll be adding  
22 a recycled glass pathway. So that project, minus the  
23 plants, is expected to be completed in early spring.

24           Moving on, I'd like to take a moment to thank our  
25 staff for the food and monetary donations they made this

1 season to the Sacramento Food Bank. Our goal was to  
2 collected 40,000 pounds of food, and our unofficial total  
3 has us just seven pounds shy of that. So we're optimistic  
4 that once the numbers are in, we'll have met the goal.

5           And we also have scheduled our annual Jammin For  
6 The Cure kick-off for February 24 here in the auditorium.  
7 And that's in preparation for the Susan G. Komen Race for  
8 the Cure in May. As you know, CalPERS has supported the  
9 Race for the Cure for a very long time, and our employees  
10 are always very generous in contributing in any way they  
11 can. So we're hoping for a great turnout at that event.  
12 Board members are, of course, welcome to attend.

13           Finally, I'd like to update you on some of our  
14 recent diversity and inclusion efforts. The first thing  
15 I'd like to do is introduce you to our new Chief of the  
16 CalPERS Diversity Outreach Program, Rollin Davis. Prior  
17 to coming to CalPERS, Rollin worked for the State  
18 Compensation Insurance Fund for eleven years. He began  
19 his career as a claims adjuster, and then became an equal  
20 employment opportunity coordinator, then an EEO manager,  
21 and finally a human resources manager.

22           He served on numerous boards and commissions,  
23 including the San Joaquin County Equal Employment  
24 Committee, Modesto's Equal Employment Advisory Board, and  
25 also volunteered for the City of Stockton Youth

1 Initiative. So we're really pleased to have him here.

2 Rollin, will you please stand.

3 (Applause)

4 CHIEF EXECUTIVE OFFICER STAUSBOLL: And a couple  
5 of updates from the program side itself. We recently  
6 published our annual Diversity and Inclusion Report.  
7 We're very proud of the accomplishments laid out in the  
8 report. It's available on the website. I believe I  
9 recently it to you by e-mail as well. So I hope you'll  
10 take a look at it.

11 In additon, CalPERS was recently recognized at  
12 the 16th Annual California State Agency Recognition Awards  
13 for our commitment to diversity. This is an event hosted  
14 by the Governor's Office and Departments of General  
15 Services and Veterans Affairs to acknowledge efforts to  
16 contract with small and disabled veteran businesses. So  
17 our staff received recognition and awards for our outreach  
18 and advocacy efforts.

19 And the last thing I wanted to touch on is, as  
20 you may know, we do an annual diversity and inclusion  
21 all-stall event here at CalPERS. Our event was scheduled  
22 for February 23rd. We learned yesterday we need to  
23 reschedule. But I wanted to tell you who our speaker will  
24 be, because it's going to be really interesting. We'll be  
25 welcoming NASA astronaut and physician Mae Jemison to

1 speak to our staff. She was the first African-American  
2 woman to travel in space, and is an inductee into the  
3 National Women's Hall of Fame. So as soon as we  
4 reschedule, we'll let you know the date, and I'm looking  
5 forward to that event.

6           So now as always a moment of recognition. I  
7 wanted to close by recognizing the outstanding work of a  
8 group of employees who are -- have led our effort and  
9 recently launched a new program we have called the Idea  
10 Factory. This is our new employee-driven innovation  
11 platform. And it's designed to inspire staff to share  
12 ideas and solutions to improve CalPERS to have more of a  
13 voice in our work and planning. It's very transparent.  
14 It's a process where ideas will be regularly shared,  
15 recognized, responded to and considered for  
16 implementation. And we're using as a platform the Spark,  
17 which is our internal social media platform.

18           We began rolling out the program in January. We  
19 asked our employees for ideas on what we could do to  
20 further our internal conservation efforts. So we got some  
21 great ideas. We're vetting those now. And each month,  
22 we'll be asking staff a different question. So it's a  
23 really fun and exciting project, and I am really looking  
24 forward to see how it plays out. So I'd like, at this  
25 time, to ask the Idea Factory members to please stand.



1 (Applause.)

2 CHIEF EXECUTIVE OFFICER STAUSBOLL: Mr.  
3 President, that concludes my remarks for this morning.  
4 I'm happy to answer any questions.

5 PRESIDENT FECKNER: Thank you. Seeing none.

6 Item 4b is the Chief Investment Officer's report,  
7 Mr. Eliopoulos.

8 CHIEF INVESTMENT OFFICER ELIOPOULOS: Good  
9 morning, President Feckner --

10 PRESIDENT FECKNER: Good morning.

11 CHIEF INVESTMENT OFFICER ELIOPOULOS: -- members  
12 of the Board. I have a brief update on the performance of  
13 the Public Employees' Retirement Fund as of December 31st,  
14 2015. The total fund performance for the fiscal  
15 year-to-date is a negative three percent, which covers a  
16 six-month period. We like to look at a much longer time  
17 period, as they are more meaningful for measuring our  
18 performance as the Board is well aware. The three-year  
19 return is 7.3 percent. The five-year return is 7.2  
20 percent. The ten-year return is 5.1 percent. And the  
21 20-year return of the total fund is 7.1 percent.

22 All asset classes allocations are within their  
23 policy changes. The total fund assets are valued as of  
24 the calendar year-end, December 31st, 2015 at \$289.9  
25 billion.

1           President Feckner, that is my report.

2           PRESIDENT FECKNER:    Thank you.   Seeing no other  
3 requests, appreciate that.

4           Item 5, the consent item.   I've been asked to  
5 separate that into a and b.   So Item a is before us.   I do  
6 have a request to speak on that.

7           Mr. Jelincic.

8           BOARD MEMBER JELINCIC:   Yeah.   The minutes for  
9 the December 16th meeting have attached to them, and I  
10 assume everybody saw the attachments, a revised travel  
11 approval and then two reports of votes.   And yet, the  
12 minutes themselves don't reference the attachments.   So I  
13 would like to suggest that we add amendments at the end of  
14 the minutes to simply say, see the three attached items,  
15 so that people looking at the minutes know they're there  
16 and go look for them.

17          PRESIDENT FECKNER:    Very good.   Thank you.

18          BOARD MEMBER JELINCIC:   And if I may, I think we  
19 need to, going forward, establish that if there is an  
20 attachment to the minutes, they get reflect -- it gets  
21 reflected in the minutes that there is an attachment.

22          PRESIDENT FECKNER:    Very good.

23          BOARD MEMBER MATHUR:   Move approval.

24          BOARD MEMBER BILBREY:   Second.

25          PRESIDENT FECKNER:    Nothing else.

1 Moved by Mathur, seconded by Bilbrey.

2 Any further discussion on that motion?

3 PRESIDENT FECKNER: As amended?

4 BOARD MEMBER MATHUR: As amended.

5 PRESIDENT FECKNER: As amended.

6 Seeing none.

7 All in favor say aye?

8 (Ayes.)

9 PRESIDENT FECKNER: Opposed, no?

10 Very good.

11 We're on item 5b, Board travel approvals. It's  
12 already been moved, so the vote is before us.

13 All in favor say aye?

14 (Ayes.)

15 PRESIDENT FECKNER: All opposed?

16 (No.)

17 PRESIDENT FECKNER: Please note Mr. Jelincic  
18 voting no.

19 Mr. Slaton.

20 BOARD MEMBER SLATON: Yeah, I just wanted to --  
21 I'm not attending the Ceres conference in Boston. I think  
22 it's still on the list.

23 PRESIDENT FECKNER: Correct.

24 BOARD MEMBER SLATON: So make sure we delete  
25 that.

1           PRESIDENT FECKNER: If you could please modify  
2 your list it shows Mr. Slaton is not going to the Ceres  
3 conference in Boston, May 3 through 5.

4           BOARD MEMBER SLATON: Thank you.

5           PRESIDENT FECKNER: Thank you.

6           That brings us to Agenda Item 6, consent --  
7 information consent calendars. Seeing no one making any  
8 requests to remove any item.

9           Move to Item 7, Committee Reports and Actions.

10          7a, Investment Committee. For that, I call on  
11 the Chair, Mr. Jones.

12          VICE PRESIDENT JONES: Thank you, Mr. President.

13          The Investment Committee met on February 16,  
14 2016. The Committee conducted an election for the Chair  
15 and Vice CHAIR positions. Henry Jones was elected as  
16 Chair of the Committee and Bill Slaton was elected as Vice  
17 Chair of the Committee.

18          The Committee discussed and approved proposed  
19 revisions to the Real Assets Program Policy.

20          The Committee also received presentations on the  
21 following:

22          The performance and risk profile of the Public  
23 Employees's Retirement Fund and Affiliate Funds as of  
24 December 31st, 2015; the revisions of the Global  
25 Governance Principles as approved by the Global Governance

1 Ad Hoc Subcommittee; the first reading of proposed  
2 revisions to two policy items: One, the Affiliate Fund  
3 Policy; and two, the Total Fund Policy including  
4 divestments; and lastly, an update on the borrowed  
5 liquidity approach.

6           The Chair directed staff to include -- excuse me  
7 -- the Chair directed staff to include climate change risk  
8 assessment skills as an attribute in Section IX(b) of the  
9 Global Governance Principles; bring a second and third  
10 reading of the Total Fund Policy to the Committee; work  
11 with Public Affairs to develop a communications strategy  
12 for proxy voting activity; request that the federal  
13 representative propose the addition of women of color in a  
14 bill requesting strategies to increase women on corporate  
15 boards; and verify that the Holocaust Era and Northern  
16 Ireland reports to the Legislature can be approved by the  
17 Committee as a consent item.

18           The Committee heard public comment on the support  
19 for CalPERS long-term strategy.

20           Highlights of what to expect at the March  
21 Investment Committee meeting include a review of the  
22 Global Governance Program's Climate Change Strategy.

23           The next meeting of the Investment Committee is  
24 scheduled for March 14, 2016 in Sacramento, California.

25           That concludes my report, Mr. President

1           PRESIDENT FECKNER: Thank you.

2           Item 7b, Pension and Health Committee. For that,  
3 I call on the Chair, Ms. Mathur.

4           BOARD MEMBER MATHUR: Thank you, Mr. President.

5           The Pension and Health Benefits Committee met on  
6 February 17th, 2016. The Committee elected Priya Mathur  
7 as Chair and Michael Bilbrey as Vice Chair of the  
8 Committee.

9           The Committee recommends and I move on Agenda  
10 Item 6 that the Board approve staff's recommendation to  
11 sponsor legislation to condense the number of retirement  
12 payment options currently in statute and regulations from  
13 13 to five options for members of the California Public  
14 Employees' Retirement System, the Judges' Retirement  
15 System, and the Judges' Retirement System II that retire  
16 on -- for the first time on or after January 1st, 2018.

17           PRESIDENT FECKNER: By motion -- on motion by  
18 Committee.

19           Any discussion on the motion?

20           Seeing none.

21           All in favor say aye?

22           (Ayes).

23           PRESIDENT FECKNER: Opposed, no?

24           Motion carries.

25           BOARD MEMBER MATHUR: The Committee also received

1 a presentation regarding the Customer Services and Support  
2 performance, recruitment and retention for public agencies  
3 in the Health Benefits Program and health program open  
4 enrollment results for the 2015 period.

5 The Chair directed staff to research available  
6 data on public agencies eligible to participate in the  
7 health program and whether they cover retirees, and also  
8 to determine how many public agencies have left CalPERS  
9 and come back into the system.

10 Some highlights of what to expect in March  
11 include that the Committee will receive updates on the  
12 California Employers' Retiree Benefit Trust, the  
13 Supplemental Income Plans Program, and the retiree cost of  
14 living adjustment. The Committee will review the PHBC  
15 delegation, and will also receive information on federal  
16 health care and retirement policy, the pharmacy benefit  
17 manager contract evaluation, and the Long-Term Care  
18 Program.

19 The next meeting of the PHBC is scheduled for  
20 March 15th, 2016 in Sacramento, California. That  
21 concludes my report, Mr. President.

22 PRESIDENT FECKNER: Thank you. That brings us to  
23 Agenda Item 7c, Finance and Administration Committee. For  
24 that, I call on the Chair, Mr. Costigan.

25 BOARD MEMBER COSTIGAN: Good morning, Mr. Feckner

1 and Committee. The Finance and Administration Committee  
2 met on February 17, 2016.

3 The Committee held an election for the Finance  
4 and Administration Committee Chair and vice Chair.  
5 Richard Costigan was elected as Chair and Dana Hollinger  
6 was reelected as Vice Chair of the Committee.

7 The Committee recommends and I move the Board  
8 approve the following:

9 Agenda Item 6a, Proposed California Employees  
10 Pension Prefunding Trust Legislation. Approve sponsoring  
11 legislation to allow the implementation of the California  
12 Employers' Pension Prefunding Trust Program to be  
13 administered by the California Public Employees'  
14 Retirement System, while continuing to work with  
15 stakeholders on the specific language for the proposed  
16 legislation.

17 PRESIDENT FECKNER: On motion by Committee.

18 Any discussion on the motion?

19 Mr. Chiang.

20 BOARD MEMBER CHIANG: I recuse myself from this  
21 matter, because I'm a member of LRS.

22 PRESIDENT FECKNER: Thank you.

23 Any other comments on this?

24 The motion being before you. All in favor say  
25 Aye?



1 (Ayes.)

2 PRESIDENT FECKNER: Opposed, no?

3 Motion carries.

4 BOARD MEMBER COSTIGAN: Agenda Item 6b, the Board  
5 of Administration Scoring Methodology for Request for  
6 Proposals. Approve the scoring methodology for Board  
7 procurement with modifications for an option three scoring  
8 methodology as discussed with the Committee.

9 PRESIDENT FECKNER: On motion by Committee.

10 Any discussion on the motion?

11 Seeing none.

12 All in favor say aye?

13 (Ayes.)

14 PRESIDENT FECKNER: Opposed, no?

15 Motion carries.

16 BOARD MEMBER COSTIGAN: The Committee received  
17 reports on the 2015-17 business plan midyear update; the  
18 CalPERS 2016-17 business plan, first reading; CalPERS  
19 budget policy, first reading; and the actuarial policies  
20 framework review.

21 The Committee heard public comment from Terry  
22 Brennand from SEIU, Faith Conley with the California State  
23 Association of Counties, and Dillon Gibbons with the  
24 California Special Districts Association.

25 The Chair directed staff on Item Agenda 6a to

1 come back to Finance and Administration in March with  
2 legislative language and cost analysis for Pension  
3 Prefunding Trust.

4           And on item -- or on Agenda Item 7b, Mr. Hoffner  
5 is to facilitate a discussion with CalHR and SPB  
6 representatives regarding Mr. Jones' request regarding the  
7 Chief Diversity Officer position, and bring back to  
8 Committee for discussion in the summertime.

9           The March 2016 Finance and Administration  
10 Committee meeting will include the CalPERS 2016-17  
11 business plan, a second reading; the Board of  
12 Administration election voting process and regulatory  
13 changes; the second reading of the CalPERS budget policy;  
14 a review of the Finance and Administration Committee  
15 delegation; the 2016-17 annual budget proposal; a review  
16 of actuarial cost method policy and amortization policy;  
17 the Treasurer -- the Treasury analysis and liquidity  
18 status report; and, the first reading of the Treasury  
19 Management Policy review.

20           The next meeting of the Finance and  
21 Administration Committee is scheduled for March 15th, 2016  
22 in Sacramento.

23           Thank you, Mr. President. That's my report.

24           PRESIDENT FECKNER: Thank you.

25           That brings us to Item 7d, Performance and

1 Compensation. No Committee -- no meeting, no report.

2 7e, Risk and Audit. No meeting, no report.

3 Item 7f, Board Governance Committee. For that, I  
4 call on the Chair, Mr. Slaton.

5 BOARD MEMBER SLATON: Thank you, Mr. President.

6 The Board Governance Committee met on  
7 February 17th, 2016. The Committee elected Bill Slaton as  
8 Chair and Richard Costigan as Vice Chair of the Committee.

9 On Agenda Item 6, the Committee heard public  
10 comment on that item from George Linn, CalPERS member,  
11 Neal Johnson with SEIU and Terry Brennand with SEIU.

12 The Committee recommends and I move the Board  
13 approve the following:

14 Agenda Item 6, Term Rotation for President and  
15 Committee Chairs. Approve the proposed amendment to the  
16 Board Governance Policy as contained in the agenda item.

17 PRESIDENT FECKNER: On motion by Committee.

18 Any discussion on the motion?

19 I have one request from the audience as well.

20 Mr. Jones.

21 VICE PRESIDENT JONES: Yeah. Thank you, Mr.  
22 President. Mr. President, I'd like to have a substitute  
23 motion on this item to amend Section VII C, and Section  
24 VIII A. And the actual changes is changing the four year  
25 one-year terms to six year consecutive one-year terms.

1 PRESIDENT FECKNER: Okay. Mr. Lind.

2 BOARD MEMBER LIND: Well, I was going to speak  
3 on --

4 BOARD MEMBER SLATON: Does it need a second?

5 PRESIDENT FECKNER: Yes, it does. I'm sorry --  
6 Is there a second?

7 BOARD MEMBER SLATON: I'll accept it or second  
8 it.

9 PRESIDENT FECKNER: All right. Mr. Lind.

10 BOARD MEMBER LIND: I'll speak -- I guess my  
11 comments are the same on the substitute motion as they  
12 would be on the original motion. I do want to thank  
13 Committee Chair Slaton for leading us through a very  
14 productive and, you know, great conversation about this.  
15 And, you know, it was very thoughtful and a lot of Board  
16 members sort of worked through it. And I stated my  
17 opinions in Committee, so I won't go into a long  
18 dissertation.

19 I just continue to think that we should encourage  
20 term rotation, rather than mandate term rotation or Chair  
21 or Board President rotation. So I'll be voting against  
22 the motion.

23 PRESIDENT FECKNER: Thank you.

24 Ms. Hollinger.

25 BOARD MEMBER HOLLINGER: Yes, I think it's

1 important that we have a process that allows for good  
2 governance, because without a process in place that allows  
3 for change, transition, and rotation without bringing  
4 personal acknowledges into play, and it's what we expect  
5 from the companies that we investment in, and so I think  
6 we have to lead by being an example.

7 PRESIDENT FECKNER: Thank you.

8 Mr. Slaton.

9 BOARD MEMBER SLATON: Thank you, Mr. President.

10 PRESIDENT FECKNER: Did you have another comment?

11 BOARD MEMBER SLATON: Yeah, I did. That's why --

12 PRESIDENT FECKNER: Okay.

13 BOARD MEMBER SLATON: So dealing with governance  
14 issues sometimes is very easy and sometimes it's not very  
15 easy. Sometimes we have reached consensus on items and  
16 sometimes it has -- we've been a divided group. This  
17 happens to be one where it's clear there's a divided --  
18 divided opinions.

19 I just want to make just a couple of comments.  
20 This has been expressed sometimes as term limits or  
21 compared to term limits. I think that the construct of  
22 this in no way is a term limit, in that Board members  
23 are -- can come back and be a President or Committee  
24 Chair. It's just an ability to give some rotation to  
25 refresh the leadership of the organization, which has a

1 lot of positive aspects to it.

2           There was a suggestion made that perhaps only  
3 elected members should lead this organization. That was  
4 suggested yesterday. I think that is a bad idea. I don't  
5 think we have senior Board members and junior Board  
6 members. I think we all sit as equal participants in the  
7 governance of this organization.

8           The concern about maintaining leadership by  
9 elected members I think is a false issue, because as I  
10 count it, every year we have an election for committee  
11 chairs and for the President of the Board. To get  
12 President of the Board requires seven votes. It requires  
13 seven votes today, and it would require seven votes under  
14 this motion as well.

15           So I think that this represents a move forward in  
16 good governance to give ourselves a chance to refresh the  
17 organization to move forward in a positive way, and I'll  
18 be supporting the motion.

19           PRESIDENT FECKNER: Thank you. I have three  
20 requests from the audience. I have Jai Sookprasert, Neal  
21 Johnson and Terry Brennand. If you'd please come forward.  
22 You have up to three minutes. Start on my left, your  
23 right, and the microphone will be turned on for you.

24           MR. SOOKPRASERT: Good morning, Mr. President and  
25 members. Jai Sookprasert with the California School

1 Employees Association.

2 I am here in opposition to the term limit  
3 proposal, the rotation. We believe that changes in  
4 leadership should come from the current existing election  
5 process that you had mentioned. The Board may change its  
6 officers at any time. And artificial term limits  
7 propose -- you know, that's proposed simply rotates as  
8 Chair regardless of experience, qualification,  
9 organizational needs and democratic vote.

10 We have seen CalPERS go, you know, through many  
11 periods of upheaval, and we believe that it's important to  
12 our members that elected leadership have the experience,  
13 the values that provide a good stable management of the  
14 Fund. These positions are too important to simply rotate.  
15 And it diminishes the balance of power and experience that  
16 comes with these leadership rolls, and we believe is  
17 important to the management of the Fund.

18 For those reasons, we urge you to oppose this  
19 proposal.

20 Thank you.

21 PRESIDENT FECKNER: Thank you.

22 Mr. Johnson.

23 MR. JOHNSON: Neal Johnson with SEIU local 1000.

24 As I said yesterday, we think the concept of broadening  
25 the experience makes a lot of sense, but this proposal

1 doesn't really resolve that. And it's a way to compromise  
2 the current election process. It -- as I said yesterday,  
3 the rolls of chair and President require skills that are  
4 just beyond necessarily the subject matter expertise that  
5 people develop as they're on the committee. And while  
6 we're appreciative of rotation and developing new skills,  
7 we really think this process, as I say, really reduces  
8 people's rights to run for office and really compromises  
9 the election process.

10           And I'd encourage the Board to not support the  
11 initial motion, but support rejecting it, and continuing  
12 with the current process.

13           Thank you.

14           PRESIDENT FECKNER: Thank you.

15           Mr. Brennand.

16           MR. BRENNAND: Mr. Chairman and Board members,  
17 Terry Brennand on behalf of SEIU California.

18           I spoke yesterday at the Governance Committee, so  
19 I don't want to belabor the points made. I'd just mention  
20 every study of term limits, every experience of term  
21 limits has demonstrated it weakens the elected officials,  
22 empowers the staff, and the third house. I don't think  
23 you need either your staff or people like me more  
24 empowered. For that reason, we're opposed.

25           PRESIDENT FECKNER: Thank you.



1           Seeing no other requests to speak. The motion  
2 being before you. It is a motion with the amendment --  
3 Mr. Jones' amendments changing VII C and VIII A from four  
4 to six years.

5           Let's have a roll call vote, please on the  
6 amendment. Voting on the amendment. Right now, you're  
7 voting on the change from four to six, yes.

8           (Thereupon an electronic vote was taken.)

9           PRESIDENT FECKNER: Okay. The amendment fails.

10          We're back on the original motion. Please clear  
11 the screen. Right, back to the original motion.

12          Okay. Please set -- we are back on the original  
13 motion. Please clear the screen and let's vote again  
14 electronically.

15          There we go.

16          (Thereupon an electronic vote was taken.)

17          PRESIDENT FECKNER: The motion fails.

18          Thank you.

19          Mr. Slaton.

20          BOARD MEMBER SLATON: Hit the microphone.

21          PRESIDENT FECKNER: Just a second. Let me find  
22 it again.

23          BOARD MEMBER SLATON: Okay. Thank you very much.

24          The Committee received a report on the following  
25 topic: Update on Board Education Program.

1           The next meeting of the Board Governance  
2 Committee tentatively -- is tentatively scheduled for  
3 March 15th, 2016 in Sacramento, California. And that  
4 completes my report.

5           PRESIDENT FECKNER: Thank you.

6           That brings us to Agenda Item 8, the Proposed  
7 decision of Administrative Law Judges. First, let me note  
8 that Chirag Shah, the Board's independent counsel of  
9 administration decisions is with us today.

10          Good morning, Mr. Shah.

11          MR. SHAH: Good morning.

12          PRESIDENT FECKNER: Also, I wanted -- I've been  
13 requested to remove Item M, M as in Mary, and take that up  
14 separately.

15          Before we proceed, any comments, Mr. Shah.

16          MR. SHAH: Not at this time, Mr. President.

17          PRESIDENT FECKNER: Thank you.

18          Mr. Jones.

19          VICE PRESIDENT JONES: Thank you, Mr. President.

20          I move to adopt the proposed decisions at Agenda  
21 Item 8a through 8hh as the Board's own decisions with the  
22 minor clarification/modifications argued by staff.

23          PRESIDENT FECKNER: And minus M.

24          VICE PRESIDENT JONES: Minus M.

25          PRESIDENT FECKNER: Is there a second?

1 BOARD MEMBER JELINCIC: Second.

2 PRESIDENT FECKNER: It's been moved by Jones,  
3 seconded by Jelincic. Items 8a through double H, minus M.  
4 All in favor of the motion say aye?

5 (Ayes.)

6 PRESIDENT FECKNER: Opposed, no?

7 Motion Carries.

8 Mr. Jones, Item M.

9 VICE PRESIDENT JONES: Yes, I move that we adopt  
10 the proposed decision at Agenda Item M as the Board's own  
11 decision with the minor clarification/modifications argued  
12 by staff.

13 PRESIDENT FECKNER: Thank you.

14 Mr. Lind.

15 BOARD MEMBER LIND: Thank you.

16 I'm going to request that the Board set this for  
17 a full Board hearing. I think that the facts are such  
18 that it makes sense for us to hear a full review of this.  
19 And I'd request support from our -- my fellow Board  
20 members on this issue.

21 PRESIDENT FECKNER: Is that in the form of a  
22 motion?

23 BOARD MEMBER LIND: Yes, it is.

24 BOARD MEMBER MATHUR: Second.

25 PRESIDENT FECKNER: Moved by Lind, seconded by

1 Mathur. All in favor of the motion say aye?

2 (Ayes.)

3 PRESIDENT FECKNER: Opposed, no?

4 Motion carries. Thank you.

5 Item 9, Petitions for Reconsideration. Mr.

6 Jones.

7 VICE PRESIDENT JONES: Yeah. Thank you, Mr.

8 President. I move to deny the petitions for

9 reconsideration at Agenda items 9a and 8b.

10 BOARD MEMBER COSTIGAN: Second.

11 PRESIDENT FECKNER: Moved by Jones, seconded by

12 Costigan.

13 Any discussion on the motion?

14 Seeing none.

15 All in favor say aye?

16 (Ayes.)

17 PRESIDENT FECKNER: Opposed, no?

18 Motion carries.

19 Item 10 is the full Board hearing. We're going

20 to hold that until we complete the rest of the open

21 session agenda.

22 That brings us to Item 13, State Legislative

23 Update. Ms. Ashley.

24 LEGISLATIVE AFFAIRS DIVISION CHIEF ASHLEY: Good

25 morning, Mr. President and members of the Board. Marry

1 Ann Ashley, CalPERS staff.

2           Included in your Board materials is the summary  
3 of legislation that notes CalPERS sponsored bills as well  
4 as other bills that would potentially impact CalPERS. I'd  
5 like to provide some updates to that summary.

6           In regards to the bills that CalPERS is  
7 sponsoring this year, the retirement option simplification  
8 bill will be authored by Assembly Member Cooley. And we  
9 are finalizing the language based on decisions that were  
10 made at the Pension and Health Benefits Committee  
11 yesterday.

12           The annual housekeeping bill will be authored by  
13 the Assembly Public Employees Retirement and  
14 Social Security Committee.

15           The California Employers Pension Prefunding Trust  
16 Program will also be authored by Assembly Member Cooley,  
17 noting that we have committed to engaging and working  
18 further with stakeholders on resolving outstanding issues  
19 and concerns.

20           The deadline to introduce new bills this year is  
21 tomorrow, February 19th. Language to amend spot bills  
22 must be submitted to Legislative Counsel by Friday,  
23 February 26th. Spring recess will begin on March 17th and  
24 the Legislature will reconvene on March 28th. April 22nd  
25 is the last day for policy committees to hear and report

1 fiscal bills introduced in their house of origin to fiscal  
2 committees. And May 6th is the last day for policy  
3 committees to hear non-fiscal bills introduced in their  
4 house and report to the floor.

5 Legislative Affairs will continue monitoring all  
6 bills introduced and will track and provide information to  
7 the Board as appropriate any bills impacting or of  
8 interest to CalPERS. Though not introduced yet, we do  
9 anticipate there will be a couple of bills this year that  
10 deal with the issue of transparency in private equity.  
11 And again, we will be tracking these bills and updating  
12 the Board, if and when they're introduced.

13 There has also been one divestment bill  
14 introduced so far. It's noted in your written summary.  
15 This's AB 1551, which would prohibit investments in  
16 business firms or financial institutions that engage in  
17 discriminatory business practices in the boycotting of  
18 Israel. Staff is currently analyzing that measure.

19 We also may see another divestment bill  
20 introduced that would require the Board to cease investing  
21 in securitized home rental properties. That has not been  
22 introduced. If it is, we will bring that information to  
23 the Board.

24 As noted, staff will continue monitoring all the  
25 bills as they are introduced. We expect a flurry of them

1 with the deadline being tomorrow.

2           The Assembly Public Employees Retirement and  
3 Social Security Committee is planning a hearing regarding  
4 divestment, and they plan to possibly hold the hearing in  
5 March. And they have asked that a CalPERS representative  
6 participate.

7           In regards to the initiatives, you probably  
8 already have heard that the Reed/DeMaio initiatives will  
9 not be on the November ballot. The proponents have  
10 decided, due to polling, that it just isn't feasible to  
11 try and pursue getting those initiatives on the ballot  
12 this year.

13           In terms of the drug price relief initiative,  
14 that is qualified for the November ballot. Staff is  
15 currently analyzing the impacts of that initiative, and we  
16 will keep the Board updated on that as well.

17           And thank you. That concludes my report, and I'm  
18 happy to answer any questions.

19           PRESIDENT FECKNER: Thank you.

20           Mr. Jelincic.

21           BOARD MEMBER JELINCIC: AB 1052, the Cooley bill.  
22 On page one of eight, you indicate that we're going to get  
23 amended out of it.

24           LEGISLATIVE AFFAIRS DIVISION CHIEF ASHLEY:

25           That's correct.

1 BOARD MEMBER JELINCIC: But then on five of  
2 eight, it shows that it's at the Senate desk and doesn't  
3 indicate that we're coming out. I just want to clarify we  
4 are, in fact, coming out of that bill?

5 LEGISLATIVE AFFAIRS DIVISION CHIEF ASHLEY: Yes,  
6 we are.

7 BOARD MEMBER JELINCIC: Thank you.

8 PRESIDENT FECKNER: Thank you.

9 Seeing no other requests. Thank you very much.

10 LEGISLATIVE AFFAIRS DIVISION CHIEF ASHLEY: Thank  
11 you.

12 PRESIDENT FECKNER: That brings us to Agenda Item  
13 14, Summary of Board Direction. Ms. Stausboll, do we have  
14 anything -- anything under Board direction?

15 CHIEF EXECUTIVE OFFICER STAUSBOLL: I don't  
16 believe so, other than the motions made.

17 PRESIDENT FECKNER: Very good. Item 15 -- the  
18 changes to the minutes. Yes, but that wasn't through a  
19 direction. We got that figured out.

20 Item 15, Public Comment. Anyone from the public  
21 wish to address the Board at this time?

22 If not, we're going to revert back to Item 10,  
23 the full Board hearing. We're going to take a five-minute  
24 break for everyone to get coffee, water, et cetera before  
25 we move into the hearing. So we're on recess for five



1 years.

2 (Off record: 9:40 AM)

3 (Thereupon a recess was taken.)

4 (On record: 9:50 AM)

5 PRESIDENT FECKNER: If the Board please come to  
6 order, we'd like to move forward with the full Board  
7 hearing.

8 Are we all present and accounted for?

9 We are.

10 So good morning, we now turn to Agenda Item 10  
11 and open the record for the full Board hearing in the  
12 consolidated appeals of Officer members Timothy Bacon and  
13 Darryl Hurt. CalPERS Case number 2012-0191. Let us first  
14 take roll call, please.

15 BOARD SECRETARY BUCHANAN: Rob Feckner?

16 PRESIDENT FECKNER: Good morning.

17 BOARD SECRETARY BUCHANAN: Henry Jones?

18 VICE PRESIDENT JONES: Here.

19 BOARD SECRETARY BUCHANAN: Michael Bilbrey.

20 MR. BILBREY: Here.

21 BOARD SECRETARY BUCHANAN: Eric Lawyer for John  
22 Chiang?

23 ACTING BOARD MEMBER LAWYER: Here.

24 BOARD SECRETARY BUCHANAN: Richard Costigan?

25 BOARD MEMBER COSTIGAN: Here.

1 BOARD SECRETARY BUCHANAN: Katie Hagen for  
2 Richard Gillihan.

3 ACTING BOARD MEMBER HAGEN: Here.

4 BOARD SECRETARY BUCHANAN: Dana Hollinger?

5 BOARD MEMBER HOLLINGER: Here.

6 BOARD SECRETARY BUCHANAN: J.J. Jelincic?

7 BOARD MEMBER JELINCIC: Here.

8 BOARD SECRETARY BUCHANAN: Ron Lind?

9 BOARD MEMBER LIND: Here.

10 BOARD SECRETARY BUCHANAN: Priya Mathur?

11 BOARD MEMBER MATHUR: Here.

12 BOARD SECRETARY BUCHANAN: Bill Slaton?

13 BOARD MEMBER SLATON: Here.

14 BOARD SECRETARY BUCHANAN: Theresa Taylor?

15 BOARD MEMBER TAYLOR: Here.

16 BOARD SECRETARY BUCHANAN: And Lynn Paquin for  
17 Betty Yee?

18 ACTING BOARD MEMBER PAQUIN: Here.

19 PRESIDENT FECKNER: Thank you.

20 The proposed decision in this case was originally  
21 considered at the Board -- by the Board at the December  
22 2015 Board meeting. At that meeting, the Board rejected  
23 the proposed decision and scheduled this matter for a full  
24 Board hearing, as argued by staff, on the question of  
25 whether the compensation at issue should be included in

1 the member's final compensation calculation.

2 I note for the record that all parties have  
3 received notice of the full Board hearing, along with  
4 copies of the Statement of Policy and Procedures for full  
5 Board hearings before the Board. In addition, all parties  
6 have been informed in writing that oral argument will be  
7 limited to ten minutes for each position, and rebuttal  
8 will be limited to three minutes for each position.

9 Would counsel please take a moment to introduce  
10 themselves starting with staff counsel and the member's  
11 counsel.

12 SENIOR STAFF COUNSEL KAUR: Preet Kaur, Senior  
13 Staff Counsel for CalPERS.

14 ASSISTANT CHIEF COUNSEL SEABOURN: Marguerite  
15 Seabourn, Assistant Chief Counsel for CalPERS.

16 PRESIDENT FECKNER: Thank you.

17 MR. BOLANDER: Good morning, Joseph Bolander for  
18 the respondents Timothy Bacon and Darryl Hurt.

19 PRESIDENT FECKNER: Thank you.

20 Let the record also reflect that Chirag Shah, the  
21 Board's independent counsel on full Board hearings and  
22 proposed decisions for the Office of Administrative  
23 Hearing will advise the Board on procedural and  
24 substantive issues and answer questions that the Board  
25 members may have today. Mr. Shah will also provide a

1 brief summary of the case before we begin oral arguments.

2           As stated previously, each position will have ten  
3 minutes for oral argument. Ms. Kaur will have -- will  
4 first have ten minutes to present staff's argument. After  
5 that, Mr. Bolander will have ten minutes to present  
6 argument on behalf of the two minutes.

7           Neither side is compelled to use the full ten  
8 minutes. However, if a party concludes argument in less  
9 than the time allotted, it will not be permitted to carry  
10 that time to any other portion of this proceeding.

11           After both sides have presented oral arguments,  
12 each side will be provided three minutes for rebuttal  
13 arguments in the same order as the original presentation:  
14 First, Ms. Kaur for staff, then Mr. Bolander for the  
15 members. Here, too, you may, but you do not have to, use  
16 the entire time allocated for rebuttal. But if you decide  
17 to use less time, you will not have another opportunity to  
18 use any remaining time in your rebuttal.

19           There is a timer in front of you, which will be  
20 set for ten minutes for initial argument and three minutes  
21 for rebuttals. The timer will begin when you start to  
22 speak. Please pay close attention to the timer as you  
23 make your presentations in order to avoid going over your  
24 allotted time. When the timer's light turns red, your  
25 time will have expired.

1           After all sides' arguments and rebuttals are  
2 concluded, the Board may ask questions of any of the  
3 parties to this proceeding, as well as our independent  
4 counsel. The alternatives available to the Board are set  
5 forth at Agenda Item 10 at the Board meeting materials.

6           Any questions so far? Do all parties understand  
7 the questions?

8           SENIOR STAFF COUNSEL KAUR: Yes, Mr. President.

9           PRESIDENT FECKNER: Thank you.

10          Mr. Bolander?

11          MR. BOLANDER: Yes, Mr. President.

12          MR. OKAZAKI: Mr. President, may I -- may I make  
13 my introduction. I know you did request the CalPERS  
14 counsel as well as the employee -- the retiree. I'm Neil  
15 Okazaki. I'm here on behalf of respondent, City of  
16 Riverside as well here today, understanding that the  
17 respondents are sharing the ten minutes. I'm deferring  
18 that time to Mr. Bolander.

19          PRESIDENT FECKNER: Very good. Thank you.

20          Now, then, Mr. Shah, please provide a brief  
21 summary of the case as we go forward.

22          MR. SHAH: Thank you, Mr. President. Good  
23 morning to you. Good morning to the members of the Board.

24          As you said, my name is Chirag Shah. I'm the  
25 Board's independent counsel on full Board hearings. My

1 summary this morning will be very brief. Of course, I  
2 will let each counsel educate the Board on the details and  
3 the merits of their respective positions.

4           The cases that the Board is hearing today are  
5 substantially similar disputes over the calculation of  
6 final compensation under section 20636 of the Public  
7 Employees' Retirement Law, or PERL. Because of the  
8 similarities in the legal and factual issues in the two  
9 cases, the parties agreed to consolidate the cases into  
10 one hearing before the administrative law judge.

11           The members here are police officers with the  
12 City of Riverside with distinguished careers in public  
13 service to the Riverside community. Both members  
14 disability retired from Riverside and were classified by  
15 the city as lieutenants at the time of their disability  
16 retirement.

17           By way of background, in February 2009, the  
18 members filed two separate lawsuits alleging a number of  
19 violations against the city, including failure to promote  
20 and retaliation for union related political activity. The  
21 complaints from these lawsuits can be found in members  
22 Exhibits 5 and 6 at Attachment G of the full Board hearing  
23 materials.

24           In April 2009, approximately two months after  
25 they filed their lawsuits, the cases were resolved via an

1 oral settlement agreement reached -- settlement agreement  
2 reached at a settlement conference in Federal Judge Percy  
3 Anderson's courtroom in Riverside. The settlement  
4 agreement was never actually reduced to writing, and so  
5 the only item documenting its contents are the transcripts  
6 from the settlement conference, which can be found at  
7 Attachment F at CalPERS Exhibit 12, as well as Attachment  
8 G, Member's Exhibit 7.

9           The settlement between the members and the City  
10 of Riverside provided both back pay and future pay at the  
11 rate of a top step captain as provided in the city's  
12 publicly available pay schedules. However, as noted, both  
13 members continued to be classified as lieutenants and were  
14 placed on administrative leave until their retirement.

15           The settlement required that both members receive  
16 at least twelve months of compensation at the top step  
17 captain rate prior to their retirement.

18           Following a compensation review by CalPERS, staff  
19 determined that the difference in pay between the  
20 lieutenant and captain rates could not be included in  
21 either member's final compensation calculation because of  
22 the following reasons:

23           One, it did not meet the definition of payrate  
24 under section 20636(b)(1) of PERL; and two, because it  
25 constitutes -- it constitutes final settlement pay, which

1 is expressly excluded from final compensation calculations  
2 by application of Section 20636 of PERL and its  
3 implementing regulations.

4           Upon receipt of staff's determinations, the  
5 members timely appealed their cases to the Office of  
6 Administrative Hearings. After conducting the  
7 consolidated hearing, the administrative law judge issued  
8 two separate but identical proposed decisions. In the  
9 proposed decisions, the administrative law judge reverses  
10 staff's determinations and finds that the items of -- that  
11 the item of pay in dispute, number one, satisfies the  
12 definition of payrate and all other elements of  
13 compensation earnable, and two, does not constitute final  
14 settlement pay, and three is staff is equitably  
15 estopped -- equitably estopped from denying their  
16 inclusion in member's pension calculations.

17           The members argue that the proposed decisions are  
18 legally sound and entirely consistent with PERL, and urge  
19 the Board to adopt them both.

20           Staff, on the other hand, argues that the Board  
21 should reject the proposed decisions and issue its own  
22 revised decisions finding that the pay at issue: One,  
23 does not meet the definition of payrate, does not  
24 constitute final settlement pay -- two, does not  
25 constitute final settlement pay; and three, the members'



1 reliance on equitable estoppel is inaccurate and misplaced  
2 under the circumstances of these cases.

3           The details of each party's position are  
4 presented in the written arguments and the administrative  
5 record before the Board at Agenda Item 10.

6           At this point, Mr. President and members of the  
7 Board, I will conclude my summary this morning so that the  
8 parties may proceed with arguments.

9           PRESIDENT FECKNER: Thank you. Let us now turn  
10 to the preliminary evidentiary issues. As all parties are  
11 aware, we are not here to relitigate factual issues or  
12 resubmit evidence into the administrative record.  
13 However, in rare circumstances, in the interests of  
14 achieving a just result, may require consideration of  
15 newly discovered, relevant documentary evidence, which  
16 could not, with reasonable diligence, have been discovered  
17 and produced before at the hearing before the  
18 administrative law judge, and which therefore is not part  
19 of the administrative record.

20           Under no circumstance, may the Board accept new  
21 witness testimony of any kind or any kind of examination  
22 or cross-examination of anyone, including Board members,  
23 in today's proceeding. Under the Board's procedure,  
24 requests to include and introduction newly discovered  
25 documentary evidence must be submitted in writing to the

1 Board's secretary no later than the due date for written  
2 argument, which in this case was February 5th, 2016.

3 In order to avoid interruption during each  
4 party's respective time today, please let us know now if  
5 either party has any relevant newly discovered evidence,  
6 which could not have been discovered and produced at the  
7 hearing, but it seeks to admitted -- be admitted into the  
8 administrative record today, as to which a timely written  
9 request was submitted to the Board.

10 Either of you?

11 SENIOR STAFF COUNSEL KAUR: No, Mr. President.

12 PRESIDENT FECKNER: Thank you.

13 MR. BOLANDER: None from respondents.

14 PRESIDENT FECKNER: Thank you very much. Seeing  
15 no requests to submit newly discovered evidence, let us  
16 begin oral arguments.

17 Ms. Kaur, please present staff's argument.

18 Please start the clock for ten minutes when she begins to  
19 speak.

20 SENIOR STAFF COUNSEL KAUR: Good morning, Mr.  
21 President and members of the Board. This case is very  
22 similar to the Lewis case that was heard by this Board in  
23 December 2015. Following a full hearing in Lewis, the  
24 Board overturned the ALJ's decision and held that the  
25 settlement proceeds provided to Mr. Lewis were not

1 compensation earnable.

2           We are here today because the ALJ who authored  
3 the decision in Lewis also authored the erroneous decision  
4 in this case. The facts and issues presented in this case  
5 are actually less complex, because the only issues here  
6 are: One, whether the settlement proceeds qualify as  
7 payrate; and two, whether the settlement proceeds should  
8 be excluded as final settlement pay.

9           Here, respondents worked for the city as  
10 lieutenants, both applied for promotion but were rejected.  
11 Dissatisfied with the city's failure to promote them  
12 respondents did what Mr. Lewis had done, they filed a  
13 lawsuit for failure to promote.

14           In April 2010, respondents, as did Mr. Lewis,  
15 entered a settlement agreement with the city, whereby they  
16 agreed to retire as lieutenants and the city agreed to pay  
17 them additional compensation, including back pay, per the  
18 captain's pay scale. Respondents also agreed to  
19 immediately go on administrative leave until their date of  
20 retirement. Essentially, they were never to return to  
21 work again.

22           And interestingly, the settlement also included  
23 confidentiality provisions. The settlement proceeds  
24 provided pursuant to this custom settlement agreement  
25 failed to meet the definition of payrate as set out in

1 Government Code section 20636. The definition of payrate  
2 is three part.

3 One, payrate is the normal monthly rate of pay,  
4 which is paid to similarly situated members of the same  
5 group or class of employment.

6 Two, it must be for services rendered during  
7 normal working hours;

8 And three, it must be pursuant to a publicly  
9 available pay schedule.

10 To qualify as payrate, all three prongs must be  
11 met, and respondents failed to meet any one of the prongs.  
12 The settlement proceeds provided to respondents were not  
13 available to similarly situated employees.

14 Respondents belonged to the group or class of  
15 lieutenants. When determining which group or class  
16 applies to members, the Prentice court looked at the  
17 information provided by the city to CalPERS instead of  
18 relying on the self-serving statements of respondents.

19 Here, all of the information provided by the city  
20 to CalPERS indicates respondents were lieutenants. In  
21 2011, the city specifically notified CalPERS that  
22 respondents were lieutenants and attached the salary  
23 schedule for lieutenants in reference to respondents'  
24 payrate.

25 The settlement itself repeatedly refers to

1 respondents as lieutenants. In their applications for  
2 disability retirement, respondents stated they were  
3 lieutenants and no longer capable of performing the duties  
4 of lieutenants. There is no evidence demonstrating  
5 respondents ever performed the duties of captain. There  
6 is also no evidence indicating the respondents were ever  
7 promoted.

8           Snow versus Board of Administration requires that  
9 to receive the pension of a higher classification, the  
10 member must be promoted through the civil rules of  
11 service. Now, the city of Riverside is a government  
12 entity. It's run like a public office, the city charter  
13 and the applicable city ordinance state that all  
14 promotions must be merit based.

15           The applicable memorandum of understanding sets  
16 out a four step promotional procedure for lieutenants.  
17 Respondents themselves testified that they were never  
18 promoted through this procedure. The city also notified  
19 CalPERS in 2011 that respondents were never formally  
20 promoted to the rank of captain.

21           The proposed decision here ignores the Snow case  
22 and the civil rules of service. The decision incorrectly  
23 assumes respondents were promoted to captains because the  
24 private settlement agreement references the captain's pay  
25 scale. This reasoning is unsupported by the case law and

1 the facts in this case.

2 Respondents worked as lieutenants and retired as  
3 lieutenants. The settlement proceeds were not available  
4 to other lieutenants, and therefore cannot be included in  
5 payrate.

6 As to the second prong, the second prong is also  
7 not met here, because the settlement proceeds were not for  
8 services rendered. The settlement proceeds were provided  
9 by the city to resolve a legal dispute and to get rid of  
10 respondents. Respondents were not required to render  
11 services, instead to leave service in order to get the  
12 settlement proceeds.

13 Although respondents were provided retroactive  
14 pay at the captain's pay scale, they never performed the  
15 duties of a captain before the settlement agreement.  
16 After the settlement agreement, they were placed on  
17 administrative leave. They were not required to perform  
18 any duties, let alone those of a captain.

19 And as to the last prong, the settlement proceeds  
20 failed to meet the last prong because the rate of pay was  
21 not pursuant to publicly available pay schedule. Similar  
22 to the Lewis case, the ALJ reasoned that because the  
23 settlement agreement compensates respondents as if they  
24 were captains, the settlement proceeds were pursuant to  
25 the publicly available pay schedule for captains.

1           This type of reasoning is erroneous, because the  
2 settlement proceeds were provided pursuant to a settlement  
3 agreement, not a publicly available pay schedule. The  
4 Molina versus Board of Administration case, and CalPERS  
5 precedential decision in re Randy Adams, specifically  
6 state that individual settlement agreements do not  
7 constitute a publicly available pay schedule.

8           This custom agreement here, which included  
9 confidentiality provisions, is far from meeting the  
10 requirements of a publicly available pay schedule. And  
11 aside from me -- failing to meet the payrate definition,  
12 the proceeds also should be considered final settlement  
13 pay.

14           Under Government Code section 20636(f),  
15 "Compensation provided in anticipation of separation of  
16 employment is considered final settlement pay and must be  
17 included from compensation earnable". Here, the proceeds  
18 were provided in anticipation of respondents retiring from  
19 agreement. Respondents testified they retired in exchange  
20 of receiving their settlement proceeds.

21           The settlement proceeds cannot be considered a  
22 pensionable promotion pursuant to the civil rules of  
23 service. A merit based promotion in the city's MOU  
24 requires the employee to perform more complex duties and  
25 services, not go on administrative leave and retire.

1           Even the ALJ at first acknowledged that the  
2 settlement proceeds were final settlement pay, but failed  
3 to provide -- to apply the provision of the PERL out of  
4 fear that it will interfere with the respondent's  
5 employment agreement.

6           And lastly, the proposed decision incorrectly  
7 relies on the doctrine of equitable estoppel in granting  
8 respondents the relief they requested. First, there is no  
9 evidence of any wrongdoing on CalPERS part. At the time  
10 of the settlement, respondents were represented by an  
11 attorney. The city was represented by two attorneys.  
12 Yet, now they point the finger at CalPERS and claim  
13 someone from CalPERS informed city staff that the  
14 settlement agreement was acceptable to CalPERS.

15           The documents presented by CalPERS do not show  
16 any record of any discussion or inquiry concerning the  
17 settlement agreement in 2010. Respondents failed to  
18 present any evidence demonstrating CalPERS provided  
19 incorrect information, other than the city attorney's  
20 vague testimony.

21           Also, equitable estoppel isn't available here as  
22 a matter of law. Granting relief under this doctrine will  
23 violate section 20636 and other provisions of the PERL.  
24 Estoppel cannot entitle respondents to benefits that are  
25 otherwise unavailable under the PERL.



1           The proposed decision is contrary to case law and  
2 sets bad precedent. CalPERS requests the Board reject the  
3 decision and find the settlement proceeds are not  
4 pensionable as payrate and must be included as final  
5 settlement pay.

6           Thank you.

7           PRESIDENT FECKNER: Thank you.

8           Please reset the clock for ten minutes, when Mr.  
9 Bolander begins.

10          MR. BOLANDER: Thank you, Mr. President --

11          PRESIDENT FECKNER: Please, your microphone.

12          There you go. It's on.

13          MR. BOLANDER: Okay. Thank you, Mr. President  
14 and members of the Board. The proposed decision of the  
15 ALJ should be adopted, and the appeals of respondents  
16 Timothy Bacon and Darryl Hurt should be granted.

17                 For close to three decades each respondent served  
18 and protected the citizens of Riverside, California,  
19 putting their own lives in danger. They are not, as  
20 staff's counsel refers to them in their brief,  
21 dismissively, I think, disgruntled employees.

22                 Respondents tested for captain through the  
23 ordinary promotional process in the normal course. They  
24 were not selected. And as is alleged in their lawsuit,  
25 the reason for that was unlawful retaliation for their

1 union activities and first amendment speech. They filed a  
2 lawsuit to right this wrong.

3           And as part of the resolution of that lawsuit,  
4 they were given all the benefits of the captain's  
5 position. The only thing they did not receive was the  
6 captain's title. They remained employed for a period of  
7 time after the settlement agreement was reached, and they  
8 were paid as captains during this period. We submit that  
9 this is a matter of form over substance.

10           Respondents were made captains close to a year  
11 before their respective retirements. They would have been  
12 made captains more than a year before that, if not for  
13 what they alleged to be unlawful retaliation. They should  
14 have received their retirement benefits they earned, the  
15 retirement benefits befitting the captains that they are,  
16 and the captains that they retired as.

17           You have the record and the briefs. I won't read  
18 through it in that sense -- and, you know, directly  
19 through each argument. But I will address a couple of the  
20 main points raised by staff's counsel.

21           The captain's pay here qualifies as payrate under  
22 the government code, under section 20636. Here, the  
23 captain's pay increases were available to others of the  
24 same class, and that as captains. And it was paid  
25 according to a publicly available pay schedule, the

1 captain's pay schedule.

2           There's some -- there was some discussion of the  
3 settlement agreement being confidential. No public entity  
4 settlement agreement is confidential. Any Public Records  
5 Act requests could receive the settlement agreement, the  
6 terms of it. And additionally, I mean, the -- there was  
7 actually -- never reduced to writing with a  
8 confidentiality provision in it.

9           And secondly, much of CalPERS staff's argument is  
10 based on the notion that a promotion received outside of  
11 the typical course is somehow not a promotion for PERL  
12 purposes. I think that's inconsistent firstly with the  
13 record before you.

14           The CalPERS analyst at hearing testified that  
15 CalPERS does not get in to telling employees -- employers  
16 how to promote their employees or why to promote their  
17 employees. So that's -- I think it's inconsistent with  
18 the record, but also inconsistent with the precedent.

19           The case of Snow v. Board of Administration  
20 referred to I believe is materially distinguishable in a  
21 couple of respects. First, the employee -- and Snow was a  
22 state employee, subject to the specific Government Code  
23 provisions related to civil service within the State  
24 system.

25           Certainly, the City of Riverside has -- is also a

1 public entity and has its own process, but there was  
2 nothing submitted that indicated that the chief or city  
3 manager did not have discretion to promote Hurt or Bacon.  
4 Nothing came in at hearing with respect to that. And  
5 again, we're stuck with the record that we have.

6           And additionally, I think distinguishable from  
7 Snow, in Snow, the employee never tested for the position,  
8 was never placed on a list. So the issue was, you know,  
9 could they be promoted? That was not the case here.

10           Hurt and Bacon both tested for the position, and  
11 were passed over. And so we believe there is nothing  
12 within the civil service rules the City of Riverside that  
13 would prevent a promotion in the fashion that they  
14 received. And also, I mean, these -- this happens often  
15 out of litigation, where injunctive relief can be granted  
16 for forcing a public entity to promote an employee or put  
17 an employee in a position, rehire an employee. Those were  
18 certainly -- would certainly be -- would pass muster with  
19 PERL in our view.

20           Additionally, the argument, we believe that the  
21 payments were not for services rendered, is inconsistent  
22 with the record. The testimony at hearing was that Hurt  
23 and Bacon were placed on administrative leave, correct,  
24 but they performed all of the duties that a captain would  
25 perform on administrative leave. They answered calls from

1 subordinates.

2           Hurt testified that he -- excuse me, Mr. Bacon  
3 testified that he appeared at a parole hearing. These  
4 were the duties they were assigned. These were the duties  
5 they performed. CalPERS submitted no evidence suggesting  
6 that was not the case.

7           And on to the issue of whether or not the  
8 captain's pay was final severance pay. We contend that it  
9 was not. There were two portions of the settlement here.  
10 There was a lump some non-economic Molina-type component  
11 that was we do not argue for in introduction. But the  
12 captain's pay adjustment, here again, was directly related  
13 to their captains' promotions.

14           We believe that the PERL is being with respect to  
15 the regulations government -- and the Government Code  
16 section 20636 and Code of -- California Code of  
17 Regulations Title 2, section 570 are being interpreted too  
18 narrowly here. And that is against the mandate of the  
19 case law, where there is any ambiguity, these laws should  
20 be interpreted in favor of the pensioner.

21           And I believe it ignores the context of the  
22 anticipation of and connection with retirement terms as  
23 applies to these facts. First, respondents remained  
24 employed after the settlement agreement. They further --  
25 you know, the settlement agreement also related to payrate

1 adjustments based on promotional opportunities from, you  
2 know, three years prior to this where retirement was never  
3 contemplated or anticipated.

4           So additionally, I think it ignores the context  
5 that it's not uncommon in contentious employment  
6 litigation that separation is beneficial for both parties,  
7 often necessary. And that's what this was. I think that,  
8 along with the industrial injuries of respondents, was the  
9 source of the retirement. So it wasn't so much a bargain  
10 for a part of the exchange, as it was just an inevitable  
11 reality that grew out of the litigation itself and the  
12 time the litigation took, where everybody found themselves  
13 at the end of it.

14           And finally, as to the estoppel argument, CalPERS  
15 staff argues essentially that respondents and State  
16 Senator Richard Roth are simply just not considerable.  
17 That's not what the ALJ found. To suggest that no  
18 evidence was presented that CalPERS analyst had told the  
19 parties that the settlement agreement, as constituted,  
20 would pass muster under the PERL for purposes of ensuring  
21 the captain's retirement for Hurt and Bacon is simply  
22 incorrect. Senate Senator Richard Roth, who represented  
23 the city at the time when he was in the private sector as  
24 an attorney testified very credibly that -- that the city  
25 called and confirmed this, then relayed that to

1 respondents' counsel, at which point in time the  
2 settlement agreement was entered into.

3           So I think -- and the ALJ heard these -- this  
4 testimony, weighed credibility, and -- frankly unrebutted  
5 testimony, and came out on the side of accrediting that  
6 testimony.

7           So with that in mind, we -- and in recognition of  
8 that fact, we ask that the Board adopt the proposed  
9 decision.

10           And I would cede any of my remaining time to the  
11 city's counsel, if he'd like to speak.

12           PRESIDENT FECKNER: Thank you.

13           Mr. Okazaki.

14           MR. OKAZAKI: Well, thank you. Thank you, Mr.  
15 President. Thank you, ladies and gentlemen. I do think  
16 that this is an interesting issue, and I do think that the  
17 ALJ gave great attention to the testimony that was  
18 received.

19           The staff counsel argued that there was a failure  
20 to, on the behalf of the respondents, to provide any  
21 evidence, except the vague testimony of the city's former  
22 attorney. And I do think that the testimony of Senator  
23 Roth was actually quite persuasive, and I think that  
24 formed the basis for the ALJ's decision. There was no  
25 testimony from CalPERS that such statements were not made.

1 And, in fact, Mr. Bacon testified that Mr. Roth's  
2 testimony was -- at least as it related to the proceedings  
3 in court, was consistent with his understanding of how the  
4 process went there, which lends to his credibility.

5 I think that this is simply a case of a failure  
6 to promote. That matter was settled. Duties were  
7 performed while on administrative leave, and the  
8 administrative law judge gave great interest and  
9 deliberation regarding these issues.

10 And upon that, I'll submit to the wisdom of this  
11 Board. Thank you for your time.

12 PRESIDENT FECKNER: Thank you. Thank you, Mr.  
13 Bolander and Mr. Okazaki.

14 Ms. Kaur, would you like to offer rebuttal?

15 SENIOR STAFF COUNSEL KAUR: Yes, please.

16 PRESIDENT FECKNER: Please set the clock for  
17 three minutes.

18 SENIOR STAFF COUNSEL KAUR: CalPERS actually did  
19 present evidence to counter Mr. -- to counter Senator  
20 Roth's testimony. We presented records that CalPERS  
21 retains the my|CalPERS notes, which show no record of any  
22 discussion taking place, and the testimony that was  
23 provided by Senator Roth.

24 And I say he was vague, because he couldn't  
25 recall who from CalPERS provided the information. He



1 couldn't recall when the call was made. There was some  
2 sort of discussion, according to him, and it was between  
3 the city staff and CalPERS staff. He doesn't know who the  
4 CalPERS staff was, whether they have authority to make the  
5 representations they may have made. He couldn't recall  
6 exactly what was discussed. And the city didn't present  
7 the staff from the city who were involved in the  
8 discussion.

9           So the only thing CalPERS could have done was  
10 obtained information from Mr. -- from Senator Roth to  
11 determine if we could identify the staff person, but we  
12 weren't even provided enough information to be able to  
13 determine who it was, what was discussed, if they were  
14 provided all the information -- if they were given all the  
15 information in the settlement agreement. So that's why we  
16 say the testimony of Senator Roth was very vague.

17           And in terms of there was some discussion by  
18 opposing counsel concerning the second prong that the  
19 respondents performed the duties of captain while they  
20 were on administrative leave. If you look at the record,  
21 there is no record demonstrating they actually performed  
22 the duties that are performed by captains, while they were  
23 on administrative leave.

24           The duties that they testified about performing  
25 during administrative leave were basically the work they

1 were wrapping up that they had left behind as lieutenants,  
2 going to hearings, answering phone calls on technical  
3 issues and so forth. So there is no record demonstrating  
4 they ever performed the duties of a captain prior to the  
5 settlement agreement, which they received retroactive pay  
6 for or after the settlement agreement.

7 And they were never promoted through the civil  
8 rules of service. This case is not distinguished -- Snow  
9 is not distinguishable here. Snow, the plaintiff in that  
10 case, was a State employee, but the civil rules of service  
11 also apply to employees who are retained by local  
12 agencies, as we saw in Lewis.

13 So the Board is very knowledgeable on this -- in  
14 this area of law. The issues presented here are not a  
15 first impression. The issues were heard in the Lewis  
16 matter, and we urge the Board to rule as they did in Lewis  
17 and uphold CalPERS determination.

18 PRESIDENT FECKNER: Thank you.

19 Mr. Bolander, would you like a rebuttal?

20 MR. BOLANDER: Thank you, Mr. President. Just  
21 briefly on a couple of the points.

22 The analyst testified with respect to the -- I  
23 believe the touchpoint records, the call records. He also  
24 testified that not every call is recorded. And really  
25 this comes down to a credibility call. I mean, do we

1 think that the State Senator came into the hearing and  
2 lied? The ALJ heard him and said she did not. I think  
3 that testimony has to be credited.

4 Duties unrelated to the issue of respondents,  
5 duties while on administrative leave, again they were  
6 performed what duties that are performed on administrative  
7 leave, calling in the administrative leave line, you know,  
8 and again dealing with subordinates on issues related to  
9 the police force.

10 So there was no evidence in the record from, you  
11 know, beyond the testimony of respondents as to what those  
12 duties would have been for captains. And that presumably  
13 would have been available to CalPERS, but it wasn't  
14 presented. So I think on the record that we have, it has  
15 to be credited that Cal -- that respondents performed the  
16 duties of captains while on administrative leave.

17 PRESIDENT FECKNER: Mr. Okazaki, anything to add?

18 MR. OKAZAKI: No, Mr. President. The City of  
19 Riverside thanks you for your time and your consideration  
20 in this matter.

21 PRESIDENT FECKNER: Thank you very much.

22 Are there any questions from members of the  
23 Board?

24 Ms. Mathur.

25 BOARD MEMBER MATHUR: Thank you, Mr. President.

1           My question is to respondent's counsel. And I'm  
2 looking at -- I draw your attention to Attachment G of the  
3 full Board hearing, Bacon/Hurt Exhibit 7, page two of 12,  
4 which outlines the settlement agreement, reads it into the  
5 record. If you look at the second paragraph beginning  
6 with line seven -- sorry, in the iPad this is page 482.

7           On page seven -- I'm sorry on line seven it says,  
8 "Hurt will retire from the City of Riverside Police  
9 Department as a police lieutenant on January 19th, 2011,  
10 and Bacon will retire as a police lieutenant on July 17th,  
11 2010, both 50 years of age".

12           And if you look at the next page, page three of  
13 12 of that Exhibit, page 483 of -- sorry, not the next  
14 page. It continues to read out the settlement. So if you  
15 go to page four of 12, page 484 of the iPad, the court  
16 asks counsel asks of the respondent's counsel, in that  
17 case the plaintiff's counsel, "All right, Counsel. Do you  
18 agree that those are the terms of the settlement"? And  
19 Mr. Perry, who was plaintiff's counsel says, "Your Honor,  
20 yes, to the extent that there is a couple of  
21 clarifications I need to make though as far as the  
22 confidentiality agreement".

23           So it seems pretty clear that the settlement  
24 agreement was that each of these individuals would retire  
25 as a lieutenant. Could you reconcile that for me with

1 your arguments?

2 MR. BOLANDER: I hope so. We don't contest, and  
3 haven't from the beginning, that respondents did not  
4 receive the title. They did not receive the -- they  
5 weren't labeled lieutenants walking out the door. But  
6 again, in our view, that is a form over substance  
7 argument. They received the benefits attendant with the  
8 position of captain going back to the date that they  
9 should have been promoted to captain. They received --  
10 again, we believe they performed the duties of captains.

11 So though they were not labeled as such in the  
12 settlement agreement, we do degree with that. But again,  
13 I think when you look at the substance of the transaction  
14 here of the promotion, you know, we view it as a  
15 promotion.

16 BOARD MEMBER MATHUR: But if you read the full  
17 language of the settlement agreement, nowhere did I read  
18 that it said that individuals would perform the duties of  
19 captain, only that they would receive the compensation of  
20 captain.

21 MR. BOLANDER: I don't believe the settlement  
22 agreement -- oh, I'm sorry. Never mind.

23 I don't believe the settlement agreement does  
24 speak to their duties, but it does -- it does indicate  
25 that they will remain employed. And when you look at the

1 substance of what they did, as it came out in hearing,  
2 there is nothing -- nothing to suggest that they remained  
3 lieutenants.

4 BOARD MEMBER MATHUR: Does CalPERS counsel have  
5 anything to add?

6 SENIOR STAFF COUNSEL KAUR: As we previously  
7 stated, when they testified at hearing, they testified  
8 they were on administrative leave. They were basically  
9 wrapping up the work they had left behind as lieutenants.  
10 So if they had worked on a case, they would go testify  
11 regarding that case. If they had worked on a matter, they  
12 would be answering phone calls regarding that matter.

13 That was work they performed as lieutenants  
14 before they went on administrative leave. And this is far  
15 away from a promotion. Promotions don't require you to  
16 stay at home and go on administrative leave. A promotion  
17 requires to you perform the duties of a higher position,  
18 which are usually more complex. There is no evidence of  
19 that here.

20 BOARD MEMBER MATHUR: Thank you.

21 PRESIDENT FECKNER: Mr. Jelincic.

22 BOARD MEMBER JELINCIC: Well, Priya asked one of  
23 my questions. But this is directed to our staff. Tony  
24 Oliver used to say, "We don't make the promises. We just  
25 keep them". So my question is why are the two officers

1 not entitled to the benefits of the deal they cut, and why  
2 is the city not on the hook for the deal they cut?

3 SENIOR STAFF COUNSEL KAUR: The deal that they  
4 cut was pursuant to a private agreement. So the PERL  
5 states, and if you look at the code section for the final  
6 settlement pay, it states that if you enter a private  
7 settlement agreement, it doesn't -- it should be excluded,  
8 especially if it's anticipate of leaving employment.

9 So the provisions in the private settlement  
10 agreement are counter to the PERL. And for those  
11 reasons -- and they don't meet the requirements of  
12 payrate. For those reasons, they don't qualify to be  
13 counted as compensation earnable.

14 BOARD MEMBER JELINCIC: And if they had -- if the  
15 city had passed whatever the city equivalent of NOPA is,  
16 Notice of Personnel Action, and had done the promotion,  
17 would we be here?

18 SENIOR STAFF COUNSEL KAUR: I'm sorry?

19 BOARD MEMBER JELINCIC: If the city had done a  
20 NOPA, or whatever the equivalent is --

21 BOARD MEMBER HOLLINGER: What's that?

22 BOARD MEMBER JELINCIC: Notice of Personnel  
23 Action. It's the document the State uses. And I don't  
24 know what the equivalent for the city is. But if they had  
25 done that, would we be here?

1 SENIOR STAFF COUNSEL KAUR: I believe they had  
2 sent a form to CalPERS saying there was a personnel action  
3 and they were providing the -- it was special  
4 compensation. So if they had gone through the procedure  
5 that is set out by the city charter, that's set out by the  
6 ordinance that is -- if they follow the procedure which is  
7 in the MOU, we probably wouldn't be here, because those  
8 qualify and meet the requirements of the civil rules of  
9 service, according to Snow.

10 But they didn't do that. They actually -- and  
11 this agreement was -- as Ms. Mathur had pointed out, it  
12 was confidential. It was to remain confidential. It's  
13 not a publicly available pay schedule. So if they had  
14 done something where it met all the requirements of a  
15 publicly available pay schedule, and also the requirements  
16 of payrate, then we wouldn't be here, but it didn't.

17 BOARD MEMBER JELINCIC: Well, I'm not convinced  
18 that it was all that confidential, if it was described in  
19 open court. But Government Code section 20160(b) says  
20 that, "The Board shall correct all actions or omissions by  
21 the university or contracting agency, State  
22 department...", et cetera. So why do we not correct the  
23 lack of official appointment and simply create one?

24 SENIOR STAFF COUNSEL KAUR: I don't think we get  
25 into that. When we look at that code section, what that



1 means is if the city made a mistake in reporting  
2 compensation that's not earnable, that's what we correct,  
3 and that's what we corrected here. They reported  
4 compensation that was not earnable. We looked at it. We  
5 reviewed it, and we corrected it based on the PERL.  
6 That's what we did.

7 BOARD MEMBER JELINCIC: But it was only not  
8 reportable, because they didn't do the other part, which  
9 is actually give them the official promotion.

10 SENIOR STAFF COUNSEL KAUR: At the time that they  
11 had applied in 2006, I believe.

12 BOARD MEMBER JELINCIC: And do the city or the  
13 officers have anything to comment on that?

14 MR. BOLANDER: Thank you. I think that's part of  
15 our form-over-substance argument here. I mean, I think  
16 that sums it up well. We don't think -- we think the  
17 reality of the situation should govern. And, you know, if  
18 that means -- believe me, if that means that this would be  
19 cleared up with a simple retroactive personnel action, you  
20 know, we would pursue that obviously, subject to the city.

21 But I want to say briefly about the issue of, you  
22 know, whether or not this was a typical promotion. And I  
23 mean, that I believe is getting into telling the city how  
24 to promote and why to promote and what to do with their  
25 employees. The city has -- the city is within its right

1 to promote an individual and put them on desk duty. They  
2 may very well pay a political cost for that, a financial  
3 cost, a service cost for not using their employee  
4 efficiently, but that doesn't, in our view, make it any  
5 less of a advancement.

6 BOARD MEMBER JELINCIC: And I will go back to  
7 Priya's point. I mean, it's troublesome that the  
8 agreement said they would retire as lieutenants.

9 MR. BOLANDER: And I understand that. I think --  
10 but I do believe when you look at it in a greater context,  
11 really, I think the ALJ did of this being a common outcome  
12 of litigation, I don't believe it was as much a part of  
13 the exchange. I mean, it states that they will retire.  
14 You know, whether or not if they hadn't that would have  
15 been a breach of the settlement agreement, you know, I  
16 don't believe so.

17 They both submitted industrial disability  
18 applications for retirement. So I think given where  
19 everybody landed at the end of this litigation -- and when  
20 we talk about the fact that it grew out of failure to  
21 promote from 2008, I think it's -- there is a disconnect  
22 there between the retirement and the captain's pay portion  
23 of the settlement.

24 BOARD MEMBER JELINCIC: Thank you.

25 PRESIDENT FECKNER: Ms. Hagen.

1           ACTING BOARD MEMBER HAGEN: Thank you.

2           I just had one question for staff counsel or  
3 perhaps Chirag. I saw that in the exhibits that he  
4 submitted, both actually submitted disability retirement  
5 applications, but I didn't see any indication that they,  
6 in fact, did disability retire or they service retired. I  
7 was just wondering what sort of retirement that they  
8 ultimately --

9           SENIOR STAFF COUNSEL KAUR: I believe they both  
10 received disability retirement ultimately.

11          ACTING BOARD MEMBER HAGEN: Okay.

12          PRESIDENT FECKNER: Mr. Shah, do you want to add  
13 anything?

14          MR. SHAH: No. That's my understanding as well  
15 from the record.

16          ACTING BOARD MEMBER HAGEN: Thank you.

17          PRESIDENT FECKNER: Anything else, Ms. Hagen?

18          ACTING BOARD MEMBER HAGEN: No.

19          PRESIDENT FECKNER: Mr. Slaton.

20          BOARD MEMBER SLATON: Thank you, Mr. President.  
21 So for our counsel's -- first of all, let me make sure I  
22 understand that if there were a conversation with someone  
23 from CalPERS, is -- does that constitute a legal  
24 commitment on our part?

25          SENIOR STAFF COUNSEL KAUR: I don't believe so.

1 It also depends on what the conversation was about, if we  
2 put something in writing, if it was a determination -- a  
3 final determination by CalPERS. At times, as the analyst  
4 testified, a local agency may contact us and ask some  
5 questions. And then if they want a final determination,  
6 they ask us to issue one, and we send a writing -- a  
7 letter basically telling them this is our determination,  
8 and you can file an appeal, if you'd like.

9 BOARD MEMBER SLATON: Do we have a history of,  
10 under subsequent audit, to find that some of those, even  
11 if they've been put in writing, were incorrect, and then  
12 under the PERL we have corrected it?

13 SENIOR STAFF COUNSEL KAUR: Well, that's what the  
14 appeal process is for. So if -- if even that  
15 determination goes before the Board, and the Board finds  
16 against it, then it would be corrected. So it's not  
17 really final in that sense.

18 BOARD MEMBER SLATON: Chirag, do you have a  
19 comment about that?

20 MR. SHAH: I'll just say, Mr. Slaton, a couple  
21 things in response to your comments. Your question is a  
22 really good question. You know, it gets into really  
23 complex stuff about contradictory statements. The general  
24 rule tends to be that a contradictory oral assertion  
25 cannot trump the unambiguous language of the plan or the

1 law.

2           And so a lot of times these equity arguments are  
3 made in court, where a court has the authority to do  
4 equity, to do fairness. And sometimes, in rare occasions,  
5 you find courts ruling in favor of the plaintiff or the  
6 member.

7           But generally speaking, oral or written  
8 assertions that are -- that contradicted the plain  
9 language of the law or the plan document are not allowed  
10 to trump the PERL. That's right.

11           BOARD MEMBER SLATON: Okay. So this is a  
12 question -- now, the other questions are for the  
13 respondent's counsel. So I assume during the settlement  
14 agreement process, respondents were represented by  
15 counsel, is that accurate?

16           MR. BOLANDER: That is correct.

17           BOARD MEMBER SLATON: Okay. So was there any  
18 effort during the settlement agreement process to engage  
19 CalPERS to be a party to that settlement agreement?

20           MR. BOLANDER: I don't believe so. I don't think  
21 that's reflected in the record, other than consulting with  
22 CalPERS on the issue.

23           BOARD MEMBER SLATON: Okay. But it's a two-party  
24 agreement, correct? Three party --

25           MR. BOLANDER: Three.

1           BOARD MEMBER SLATON:  -- but -- respondent and  
2 the city.

3           MR. BOLANDER:  Yes.

4           BOARD MEMBER SLATON:  Okay.  Was there any effort  
5 on the part of the respondents or counsel to the  
6 respondents to seek indemnity from the city for the part  
7 of this settlement that would be impacted by retirement  
8 benefits.

9           MR. BOLANDER:  Is the question as to whether or  
10 not essentially a contingency as to whether or not the  
11 CalPERS accepted the --

12           BOARD MEMBER SLATON:  Yeah, I mean, your -- this  
13 whole thing is based on the retirement benefit from  
14 CalPERS, who is not a party to the settlement.  And  
15 obviously respondent's are at risk for an interpretation  
16 of the PERL.  And what I'm trying to get to is was there  
17 an effort to make sure that on the respondent's side, that  
18 they had a settlement agreement from the city that where  
19 the city would stand behind what was being offered?

20           MR. BOLANDER:  I think to some degree, we're not  
21 there, meaning we're in the process of exhausting through  
22 our administrative remedies through the Board.  But maybe  
23 the city can speak to that, to what efforts were made  
24 there.

25           We believe it's a material term of the agreement,

1 obviously, from our standpoint. There is not a provision  
2 that provides any sort of indemnity explicitly in that  
3 sense.

4 BOARD MEMBER SLATON: Well, if it's a key term of  
5 the provision of the settlement, it seems to me that you  
6 should be looking to the city in the case -- if we don't  
7 rule in your favor. And what I don't see is that that was  
8 part of the settlement agreement. So it seems to me  
9 maybe, if I were the respondent, maybe I would have liked  
10 my counsel to raise that issue with the city. Does the  
11 cities have a comment?

12 MR. OKAZAKI: Mr. Slaton, the settlement, as  
13 described in these proceeding, is just the transcript of  
14 this court hearing. So there was some discussion on the  
15 record of memorializing that. There was never a  
16 memorialization. So to the extent that we're discussing a  
17 settlement agreement, it's the transcript of this  
18 proceeding that's before all of you that been referenced  
19 earlier. So in terms of was there language within or  
20 without? The entire proceedings of the court are before  
21 you.

22 BOARD MEMBER SLATON: Thank you.

23 PRESIDENT FECKNER: Mr. Costigan.

24 BOARD MEMBER COSTIGAN: Well, that's sort of the  
25 difficulty I have. So you keep talking about form over

1 substance, form over substance. And so we have a record  
2 in front of us that's pretty specific. And there are  
3 processes in place. So I assume this is an area of law  
4 you practice in, correct?

5 MR. BOLANDER: Yes.

6 BOARD MEMBER COSTIGAN: Okay. So the PERL is  
7 pretty straightforward. Compensation is pretty  
8 straightforward. We have a record that actually is fairly  
9 detailed as to what the settlement is. Is there any  
10 dispute that these weren't the terms of the settlement?

11 MR. BOLANDER: The transcript you have before you  
12 is the settlement agreement.

13 BOARD MEMBER COSTIGAN: But you participated in  
14 it. Is this -- is the transcript a reflection of this,  
15 since -- is this a reflection of what the settlement was?  
16 Is this what you told the ALJ the settlement was?

17 MR. BOLANDER: Yes. I mean, subject, of course,  
18 to our --

19 BOARD MEMBER COSTIGAN: Okay. So we'll go  
20 through a few items then. Hunt[sic] will retire -- as Ms.  
21 Mathur said, Hunt[sic] will retire from the City of  
22 Riverside Police Department as a police lieutenant on  
23 January 19th, 2011, and Bacon will retire as a police  
24 lieutenant on July 17 2010, both 50 years of age. Is that  
25 pretty clear?



1 MR. BOLANDER: Hurt, but yes.

2 BOARD MEMBER COSTIGAN: Okay. It's -- but it's  
3 clear, form over substance. So the form here, it says  
4 it's a lieutenant.

5 MR. BOLANDER: I would add that lieutenants don't  
6 receive captain's pay.

7 BOARD MEMBER COSTIGAN: That's a different issue  
8 we're going to get to in a minute. Okay. But that's -- I  
9 just want to through. And then there is a -- well, we can  
10 go through they will retire, they receive a lump sum  
11 payment of 300,000, a lump sum payment of 200 -- very  
12 specific detail as to what the settlement is.

13 MR. BOLANDER: Which we're not claiming inclusion  
14 for, but yes.

15 BOARD MEMBER COSTIGAN: Okay. But very specific.  
16 So again -- because you keep saying we shouldn't look at  
17 the form. And I'm just looking at the form in front of  
18 us.

19 MR. BOLANDER: I'm saying the title should not  
20 control.

21 BOARD MEMBER COSTIGAN: So there is a process in  
22 the City of Riverside for someone that works out of class,  
23 is that correct?

24 MR. OKAZAKI: There are processes. I mean, I  
25 don't want to lead this Board to believe that employees

1 are regularly working out of class, so --

2 BOARD MEMBER COSTIGAN: No, I'm just asking you.  
3 Is there a process at the City of Roseville[sic] for  
4 someone that works out of class to file an appeal -- I'm  
5 sorry, Riverside to stay that they're working out of  
6 class? That I'm performing the duties of a captain, but  
7 I'm only a lieutenant.

8 MR. OKAZAKI: Oh -- and I -- and I misunderstood  
9 your original question. I thought you were asking whether  
10 or not the City of Riverside has a procedure to enable its  
11 employees to work out of class. So I apologize for not  
12 directly answering your question. If an employee wishes  
13 to grieve a violation of city policies or procedures,  
14 there is an internal grievance process to do so, sir.

15 BOARD MEMBER COSTIGAN: Okay. And there was no  
16 appeal, no process -- neither of the two respondents filed  
17 a grievance that they were working out of class?

18 MR. BOLANDER: That is correct.

19 BOARD MEMBER COSTIGAN: Okay. So when we just  
20 look at the record before us, the settlement is they left  
21 as a lieutenant. There are specific settlement terms.  
22 There's a process for working out of class, of which there  
23 is no record that they pursued that.

24 MR. BOLANDER: They left as lieutenants in title.  
25 We don't dispute that. We don't dispute that

1 BOARD MEMBER COSTIGAN: Okay. Thank you.

2 PRESIDENT FECKNER: Ms. Hollinger.

3 BOARD MEMBER HOLLINGER: Yes. Thank you.

4 This is for Chirag Shah. And it kind of is a  
5 continuum of Ms. Mathur, Mr. Slaton, and Mr. Costigan.  
6 The fact that they went out on a disability leave,  
7 wouldn't that preclude them from ever thinking that they  
8 were performing the duties of a captain?

9 MR. SHAH: Okay. I'm not sure I understand the  
10 question. I mean, the fact that -- well, they went out on  
11 disability leave. So at that time, the determination was  
12 made that they could not perform the duties of lieutenant,  
13 which is the position that they were classified in. That  
14 was the basis that they --

15 BOARD MEMBER HOLLINGER: But for PERL purposes as  
16 well, you have to perform the duties?

17 MR. SHAH: Of a lieutenant. That was the  
18 position they were classified in.

19 BOARD MEMBER HOLLINGER: No. Well, of a captain,  
20 if they wanted the captain's pay?

21 MR. SHAH: Oh, sure. Yeah, they would have to be  
22 classified as a captain by the City of Riverside.

23 BOARD MEMBER HOLLINGER: Right, but class --  
24 okay. Classified. But I'm saying in addition to not  
25 being classified, the -- you know, additionally on a

1 disability leave, there was no reason for them to believe  
2 that they were ever performing those duties of a captain.

3 MR. SHAH: The record doesn't really get into the  
4 disability retirement applications that much.

5 BOARD MEMBER HOLLINGER: Got it.

6 MR. SHAH: They have -- we have the applications,  
7 but the determination itself is not really, you know,  
8 central to the issues presented here.

9 BOARD MEMBER HOLLINGER: Okay.

10 MR. SHAH: But you're right, I mean, if the  
11 contention is that the captain pay is what they should be  
12 receiving pension benefits on, then it would make sense  
13 that their retirements were based on inability to perform  
14 at the captain position.

15 BOARD MEMBER HOLLINGER: Right.

16 MR. SHAH: Is that the --

17 BOARD MEMBER HOLLINGER: Yes, yes.

18 PRESIDENT FECKNER: Mr. Costigan.

19 BOARD MEMBER COSTIGAN: I just want you all to  
20 understand, please don't take it personally. These are  
21 difficult decisions. And when we look at the record and  
22 the questions I ask is you'll come in front of this Board  
23 again at another date, and reference back to our record.  
24 And I spend a lot of time, because I sit on the State  
25 Personnel Board, where we go through this. And process, to

1 me, is extremely important.

2           And when I look at the four corners of the  
3 document, and that's what's in front of us, that's the  
4 struggle we have, because this -- this document is vague,  
5 I mean, from the standpoint is then you get down here, you  
6 even put in here, "Upon retirement, Hurt and Bacon will be  
7 entitled to receive all benefits normally recorded --  
8 accorded retiring police officers under city policy".

9           That's almost a line that says you should have  
10 spelled out what they were retiring as. And I'm just  
11 saying, that's the struggle. Just -- so that's why --  
12 it's kind of like moot court. So thank you.

13           MR. BOLANDER: No. If --

14           BOARD MEMBER COSTIGAN: Go ahead.

15           MR. BOLANDER: If I may, and I think counsel who  
16 was handling this, the intention was to spell these things  
17 out in a long form settlement agreement, and that did not  
18 happen. And so I think there's some -- obviously some  
19 specificity lost there. But if I can make one point on  
20 the issue of not filing a grievance for working out of  
21 class. Again, I think respondents believed that they were  
22 captains. I mean, there was no grievance to file.

23           BOARD MEMBER COSTIGAN: Thank you.

24           PRESIDENT FECKNER: All right. Seeing no other  
25 requests to speak from the Board members, we will now take

1 a recess and the Board will go back into chambers in  
2 closed session. We'll be back out shortly.

3 (Off record: 10:45 AM)

4 (There upon the Board recessed  
5 into closed session).

6 (On record: 11:00 AM)

7 PRESIDENT FECKNER: We're going to call the Board  
8 meeting back to order, please.

9 Mr. Jones.

10 VICE PRESIDENT JONES: Yeah. Thank you, Mr.  
11 President.

12 I move to deny these appeals and revise the  
13 proposed decision as argued by staff.

14 BOARD MEMBER MATHUR: Second.

15 PRESIDENT FECKNER: It's been moved and seconded.  
16 Moved by Jones, seconded by Mathur.

17 Let's please turn on the machine and vote by roll  
18 call electronically.

19 (Thereupon an electronic vote was taken.)

20 BOARD MEMBER JELINCIC: And the motion was to?

21 PRESIDENT FECKNER: The motion was to -- please  
22 restate your motion, Mr. Jones.

23 VICE PRESIDENT JONES: I move to deny these  
24 appeals and revise the proposed decisions as argued by  
25 staff.

1           PRESIDENT FECKNER: Thank you.

2           It's a unanimous decision. The motion passes.

3           That brings us to agenda -- 14, we've already  
4 done that. We are on done. We are on --

5           VICE PRESIDENT JONES: Public comment.

6           PRESIDENT FECKNER: We did public comment  
7 earlier. So unless is there anyone else that wants public  
8 comment, then the open portion of this meeting is  
9 adjourned. And we will move into closed session as soon  
10 as we can clear the room.

11           Thanks, everyone, and we will see you next month.

12           (Thereupon the California Public Employees'  
13 Retirement System, Board of Administration  
14 open session meeting adjourned at 11:01 AM)

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CERTIFICATE OF REPORTER

I, TIFFANY C. KRAFT, a Certified Shorthand Reporter of the State of California, and Registered Professional Reporter, do hereby certify:

That I am a disinterested person herein; that the foregoing hearing was reported in shorthand by me, Tiffany C. Kraft, a Certified Shorthand Reporter of the State of California, and thereafter transcribed into typewriting.

I further certify that I am not of counsel of attorney for any of the parties to said hearing nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of February, 2016.

\_\_\_\_\_  
TIFFANY C. KRAFT, CSR, RPR  
Certified Shorthand Reporter  
License No. 12277