

**ATTACHMENT B**  
**STAFF'S ARGUMENT**

## **STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION**

Calvin Sung (Respondent Sung) and Andrea Graham (Respondent Graham) were hired by and became employees of Respondent California State Assembly Committee on Rules (Assembly). Upon being hired by the Assembly, Respondent Sung and Respondent Graham did not automatically become members of CalPERS. Assembly employees are excluded from membership in CalPERS unless they file an "Election of Optional Membership – Legislative Employee" (Election) with CalPERS, stating that they choose to become members. Respondent Sung and Respondent Graham each completed and signed an Election to become members. The Elections were provided to the Assembly, who thereafter reported the information on the Elections to CalPERS.

CalPERS staff, consistent with previous policy and practice, determined that the effective date of membership for Respondent Sung and Respondent Graham was the date that they had signed their respective Elections. The date that the Assembly staff reported or inputted the election information to CalPERS was after, or later than the respective dates of signature by Respondent Sung and Respondent Graham. CalPERS staff advised Respondent Sung, Respondent Graham and the Assembly that they would be responsible for their respective employee and employer contributions for the time between the dates of signature of the Elections and the dates the Elections (or information) were reported to CalPERS. The Assembly appealed CalPERS determination, challenging the employer contribution arrears assessment for Respondent Sung and Respondent Graham. A hearing was held on January 5, 2016.

Prior to the hearing, CalPERS explained the hearing process to Respondents and the Assembly. CalPERS provided Respondents and the Assembly with a copy of the administrative hearing process pamphlet. CalPERS answered Respondents' questions and clarified how to obtain further information on the process. Throughout the appeal, the Assembly was represented by counsel.

Government Code section 20324 governs how and when an Assembly employee may become a member of CalPERS. In relevant part, Section 20324 states:

- (a) An employee of the Senate or the Assembly, or the respective committees thereof, whose salaries or wages are paid from the Senate Operating Fund or the Assembly Operating Fund or the Operating Funds of the Assembly and Senate, shall be deemed a 'legislative employee'. A legislative employee is excluded from membership in this system unless he or she files with the board an election in writing to become a member. The election shall not be required of a legislative employee who was a member of this system on October 1, 1963.

Evidence at the hearing included a CalPERS Circular Letter, dated July 30, 2015, that concerned itself with "Optional; Members of CalPERS." In that Circular Letter, CalPERS advised, in relevant part, as follows:

**Optional Member Enrollment Date**

Optional members may elect membership at any time while in the eligible position, but membership is established on a prospective basis. The recommended membership effective date is the signature date on the optional member election form; however, the date must not be later than the first day of the pay period following the election signature date. (Emphasis added.)

The Assembly provided evidence regarding how it processes Elections received from its employees. When the Assembly's benefit office receives a completed Election an employee, it date-stamps the form, and enrolls (enters information into a database) the employee in the CalPERS system at the beginning of the pay period following the receipt of the Election. Thereafter, the appropriate payroll deductions are made from the employee's check for employee contributions and the required contributions from the Assembly, as employer, are also made. The Assembly does not have a mechanism to initiate payroll deductions and make Assembly contributions prior to the date it receives an employee's Election.

The Administrative Law Judge (ALJ) found that, without a statutory or regulatory definition of the phrase "files with the board", from Section 20324, a plain language interpretation must control the application. Accordingly, the ALJ found that the date an Election is received by CalPERS must be the effective date, not the date that the Election was signed by an individual.

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

Because the Proposed Decision applies the law to the salient facts of this case, the risks of adopting the Proposed Decision are minimal. Respondent Sung or Respondent Graham may file a Writ Petition in Superior Court seeking to overturn the Decision of the Board. The Assembly is not likely to file a petition since it prevailed.

March 16, 2016

  
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RORY J. COFFEY  
Senior Staff Attorney