

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

## STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Steven Hubert (Respondent Hubert) began providing graphic design services to Respondent San Diego County Water Authority (SDCWA) pursuant to numerous successive independent contractor agreements, starting in May 2001.

SDCWA hired Respondent Hubert as a full-time employee effective July 8, 2004. On June 27, 2011, Respondent Hubert requested Service Prior to Membership from CalPERS. CalPERS denied his request because it determined he had been an independent contractor prior to July 8, 2004. Respondent Hubert timely appealed the denial.

The hearing was held on January 21, 2016. The sole issue for determination was whether Respondent Hubert was an independent contractor or an employee during the time period from May 16, 2001, through June 30, 2004. The record was left open to allow post-hearing briefing. The matter was deemed submitted for decision on February 5, 2016. Respondent Hubert was represented by counsel at all phases of his hearing.

The evidence showed that Respondent Hubert provided graphic design services to SDCWA between May 16, 2001, through June 30, 2004, pursuant to several separate independent contractor agreements between SDCWA and Respondent Hubert. Despite the language in the contracts, Respondent Hubert presented evidence in the form of his own testimony and the testimony of his two prior co-workers, Mr. Alex Newton and Ms. Gina Molise, that he was treated like a SDCWA employee.

When all the evidence was considered, the Administrative Law Judge (ALJ) concluded that Respondent Hubert had shown by a preponderance of the evidence that he was a common law employee of SDCWA beginning May 16, 2001. The ALJ considered most persuasive the fact that SDCWA controlled Respondent Hubert's manner and means of accomplishing his work. Specifically, Respondent Hubert's day-to-day activities and circumstances remained exactly the same after he was hired as a full-time employee. Therefore, the ALJ found that Respondent Hubert was a common law employee from May 16, 2001, through June 30, 2004, and therefore was eligible to purchase Service Prior to Membership. Accordingly, the ALJ granted Respondent Hubert's appeal.

Because the Proposed Decision is supported by the law and the facts, staff argues that the Board adopt the Proposed Decision.

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

April 20, 2016

  
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MARGUERITE SEABOURN  
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