

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

WEDNESDAY, APRIL 20, 2016

9:26 A.M.

JAMES F. PETERS, CSR
CERTIFIED SHORTHAND REPORTER
LICENSE NUMBER 10063

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, represented by Mr. Grant Boyken and Mr. Eric Lawyer

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

Mr. Matthew Jacobs, General Counsel

Ms. Donna Lum, Deputy Executive Officer

Mr. Doug McKeever, 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. Alan Milligan, Chief Actuary

Mr. Brad Pacheco, Deputy Executive Officer

Ms. Mary Anne Ashley, Chief, Legislative Affairs Division

Ms. Kara Buchanan, Board Secretary

Mr. Christopher Phillips, Senior Staff Attorney

Ms. Marguerite Seabourn, Assistant Chief Counsel

ALSO PRESENT:

Ms. Alison Hightower, Littler Mendelson, representing
Santa Clara County Health Authority

Mr. George Linn, Retired Public Employees Association

Mr. Mark Renner, Wylie, McBride, Platten & Renner,
representing Ms. Kathleen King

Mr. Chirag Shah, Shah and Associates

Mr. Larry Woodson, California State Retirees

I N D E X

	PAGE
1. Call to Order and Roll Call	1
2. Pledge of Allegiance	3
3. Board President's Report	3
4. Executive Reports	
a. Chief Executive Officer's Report (Oral)	5
b. Chief Investment Officer's Report (Oral)	11
5. Consent Items	13
Action Consent Items:	
a. Approval of the March 16, 2016 Board of Administration Meeting Minutes	
b. Board Travel Approvals	
6. Consent Items	13
Information Consent Items:	
a. Board Meeting Calendar	
b. Draft Agenda for the May 18, 2016 Board of Administration Meeting	
c. General Counsel's Report	
d. Communications and Stakeholder Relations	
7. Committee Reports and Actions	
a. Investment Committee (Oral)	14
b. Pension & Health Benefits Committee (Oral)	16
c. Finance & Administration Committee (Oral)	16
d. Performance, Compensation & Talent Management Committee (Oral)	21
e. Risk & Audit Committee (Oral)	23
f. Board Governance Committee (Oral)	25
Action Agenda Items	
8. Proposed Decisions of Administrative Law Judges	26
a. Antoinette M. Key	
b. Gracie Jimenez	
c. Andrew Miller	
d. Julieto E. Acedilla	
e. Paul A. Cabacungan	
f. Steven Hubert	
g. Brent Johnston	
h. Eric Faul	
i. Keith Brown	
j. Oscar Fuentes	

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

	PAGE
k. Bryan Rankin	
l. Yvette Bravo	
m. Paul Mast	
n. James Nicholas	
9. Petitions for Reconsideration	31
a. Diane D. Euer	
10. Full Board Hearing	45
a. Santa Clara County Health Authority and Kathleen King	
CLOSED SESSION	
Deliberate on Full Board Hearing (Government Code section 11126(c)(3))	
b. Santa Clara County Health Authority and Kathleen King	112
OPEN SESSION	
Announcement of Action taken on Full Board Hearing	
c. Santa Clara County Health Authority and Kathleen King	112
Information Agenda Items	
11. State Legislation Update	32
12. Summary of Board Direction	35
13. Public Comment	35
Closed Session	
Upon Adjournment or Recess of Open Session (Government Code sections 11126(a)(1), (e), and (g)(1))	
14. Litigation Matters	34
a. In re: City of San Bernardino (U.S. Bankruptcy Court, Central District of CA, No. 2-BK-28006)	
b. Sanchez, et al. v. CalPERS, et al. (Los Angeles County Superior Court, Case No. BC517444)	

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

	PAGE
15. Chief Executive Officer Search Update	34
Adjournment	113
Reporter's Certificate	114

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

2 PRESIDENT FECKNER: Good morning, everyone. We'd
3 like to call the Board of Administration meeting to order.

4 The first order of business will be to call the
5 roll, please.

6 BOARD SECRETARY BUCHANAN: Good morning.

7 PRESIDENT FECKNER: Good morning.

8 BOARD SECRETARY BUCHANAN: Rob Feckner?

9 PRESIDENT FECKNER: Good morning.

10 BOARD SECRETARY BUCHANAN: Henry Jones?

11 VICE PRESIDENT JONES: Here.

12 BOARD SECRETARY BUCHANAN: Michael Bilbrey?

13 BOARD MEMBER BILBREY: Good morning.

14 BOARD SECRETARY BUCHANAN: Grant Boyken --

15 ACTING BOARD MEMBER BOYKEN: Here.

16 BOARD SECRETARY BUCHANAN: -- for John Chiang?

17 Sorry.

18 Richard Costigan?

19 BOARD MEMBER COSTIGAN: Here.

20 BOARD SECRETARY BUCHANAN: Richard Gillihan?

21 BOARD MEMBER GILLIHAN: Here.

22 BOARD SECRETARY BUCHANAN: Dana Hollinger?

23 BOARD MEMBER HOLLINGER: Here.

24 BOARD SECRETARY BUCHANAN: J.J. Jelincic?

25 BOARD MEMBER JELINCIC: Here.

1 BOARD SECRETARY BUCHANAN: Ron Lind?

2 BOARD MEMBER LIND: Here.

3 BOARD SECRETARY BUCHANAN: Priya Mathur?

4 BOARD MEMBER MATHUR: Good morning.

5 BOARD SECRETARY BUCHANAN: Good morning.

6 Bill Slaton?

7 BOARD MEMBER SLATON: Here.

8 BOARD SECRETARY BUCHANAN: Theresa Taylor?

9 BOARD MEMBER TAYLOR: Here.

10 BOARD SECRETARY BUCHANAN: And Lynn Paquin for
11 Betty Yee?

12 ACTING BOARD MEMBER PAQUIN: Here.

13 PRESIDENT FECKNER: Thank you.

14 Before we begin, I do want to make some
15 procedural changes or corrections here. Item 15, the
16 Chief Executive Officer's search under closed session is
17 going to move up to -- let's see, it will be moving up to
18 just after Item 11, so at the end of State Legislation
19 Update. And the full Board hearing will go down to the
20 end of the agenda. So the full Board hearing will be the
21 last thing that we do, other than the Item 14.

22 So the CEO search update, Item 15, will be moving
23 up to right after Item 11, and the full Board hearing Item
24 10 will move down to after Item 12 before public comment.

25 All right. The next order of business will be

1 the Pledge of Allegiance. I've asked Ron Duva, the new
2 Chair of the California School Employees Retiree Unit to
3 lead us in the pledge. Will you all please rise?

4 (Thereupon the Pledge of Allegiance was
5 recited in unison.)

6 PRESIDENT FECKNER: Thank you.

7 That brings us to Item 3, the Board President's
8 Report.

9 Good morning, everyone. I want to, first of all,
10 start off by saying that -- giving you an update on our
11 search for the new Chief Executive Officer. The
12 subcommittee of the Board was appointed to conduct the
13 search will be meeting again next week to review the
14 applications and resumes that we've received to date
15 through our search firm. We'll then use this time to
16 select the individuals who will continue throughout the
17 process. Again, our goal is to have a new CEO in place,
18 or at least named, by the end of June, in order to have a
19 smooth transition.

20 Last month, our Board meetings -- after our Board
21 meetings concluded, we held our annual CalPERS Night at
22 the Sacramento Kings, another great attended event. We
23 had more than 230 CalPERS employees, friends, and family,
24 as well as Board members cheering on the Sacramento Kings.
25 Now, while they lost to the Pelicans -- how do you lose to

1 a Pelican --

2 (Laughter.)

3 PRESIDENT FECKNER: But they lost to the
4 pelicans, but we did have the opportunity to go out on
5 center stage -- center court after the game and have a
6 group photo taken, which is always a nice opportunity.

7 And what made it even more special is that that
8 was the last time that we would be able to have a Night at
9 the Kings in the old Sleep Train Arena. So we're looking
10 forward to the opportunity to perhaps next year having
11 going to -- attending a game at the new arena downtown,
12 the Golden 1 Center, one that we can actually walk to from
13 here, which would be nice also.

14 Next I'd like to take a moment of personal
15 privilege to recognize a long-term CalPERS employee.
16 After more than 22 years of service with CalPERS Lori
17 McGartland is retiring. As many of you know, Lori has
18 been the Chief of our Customer Service and Outreach
19 Division since its inception in 2011. She has been a
20 valued member of the CalPERS family since 1994.

21 Lori has been instrumental in approving our
22 customer service and outreach through our innovative
23 thinking, technical knowledge, and commitment to success.
24 Through her leadership, our members and employers have
25 been better served.

1 On behalf of the CalPERS Board, I want to thank
2 Lori for her service to us and to our members and our
3 employers. We're going to miss her and we wish you the
4 very best in your retirement.

5 Please stand, Lori.

6 (Applause.)

7 PRESIDENT FECKNER: Thank you.

8 That brings us to Agenda Item 4, the Chief
9 Executive Officer's Report, 4a, Ms. Stausboll.

10 CHIEF EXECUTIVE OFFICER STAUSBOLL: Good morning,
11 Mr. President, members of the Board. I'd like to start
12 this morning with a staffing update. I'm pleased to
13 announce that Wayne Davis has been appointed as Chief of
14 our Office of Public Affairs. Wayne most recently served
15 as Assistant Chief of the Public Affairs Office. As
16 Chief, he'll be responsible for external communications
17 and media relations, serve as the chief spokesperson for
18 the organization, and he'll advise us on communication
19 strategies, and the public affairs implications of policy
20 decisions.

21 This is the position that Brad Pacheco most
22 recently held. Before coming to CalPERS, Wayne's
23 experience included 20 years as an editor and bureau chief
24 with the Sacramento Bee. So he has lots of pertinent
25 experience.

1 I think he's standing way in the back at the
2 table there. So please join me in welcoming Wayne to his
3 new position.

4 (Applause.)

5 CHIEF EXECUTIVE OFFICER STAUSBOLL: And I just
6 want to also take a moment to recognize Lori McGartland
7 who's retiring, as the President said, after 22 years of
8 service. She's been Chief of our Customer Service and
9 Outreach Division since its inception in 2011, and has
10 served in many leadership positions here at CalPERS. In
11 fact, I think we started around the same time.

12 So on behalf of all of us here and on behalf of
13 staff, I just want to thank Lori for everything she's done
14 overall the years, and wish her a long healthy and happy
15 retirement.

16 (Applause.)

17 CHIEF EXECUTIVE OFFICER STAUSBOLL: So we'll clap
18 again. She deserves it.

19 Moving on to current priorities. Health rate
20 negotiations. We're reaching the end, as you know, of our
21 annual health rate negotiations. We'll present the
22 preliminary rates to the Pension and Health Benefits
23 Committee during its May 17 meeting, and we'll bring back
24 the final rates in June. There will also be an open
25 session presentation in May, so we can inform our

1 stakeholders early of the anticipated changes.

2 This year as we finalize rates and we're getting
3 ready for open enrollment, we're also transitioning to the
4 new practice we've shared with you of providing on-line
5 annual member health plan statements. So our members will
6 be able to access their information and their other open
7 enrollment materials through my|CalPERS, unless they opt
8 to continue receiving the statements by hard copy in the
9 mail. So as we announce the open enrollment dates in the
10 coming weeks, we'll also be continuing to emphasize those
11 changes to make sure everyone's informed.

12 This is also the time of year we prepare the
13 State and school employer contribution rates. Those were
14 considered yesterday at Finance and Administration
15 Committee, and will be coming before you shortly. Those
16 proposed rates incorporate a lot of work that we've done
17 and the Board has done over the past couple of years to
18 provide our employers with more rate predictability. They
19 incorporate the updated assumptions and ensure the
20 long-term sustainability of the fund.

21 And as you heard yesterday, if you were here, the
22 proposed rates are lower than were originally projected,
23 so that's some good news. And then the final valuation
24 reports, as always, will be completed by the end of June.

25 On the investment side, this is proxy season.

1 And spring marks the busiest time of year for our Global
2 Governance staff, and it's definitely true this year.
3 There's a lot going on. Our staff expects to vote at over
4 7,300 company meetings, and on over 75,300 individual
5 ballot items. So as you know, our main themes this year
6 are proxy access, climate risk reporting, and board
7 diversity. And we've already received quite a bit of
8 attention in the last couple of weeks around our efforts
9 with several prominent media stories. So the season has
10 gotten off to a good start.

11 On the subject of the work on climate change,
12 this Friday is Earth Day. And on that same day, the
13 United Nations is holding the signing ceremony for the
14 Paris agreement. And I am pleased to share that I was
15 invited to represent CalPERS at this landmark event. And
16 I think that's really a testament to the leadership of
17 CalPERS and to this Board. So I'm looking forward to
18 that.

19 Right now, we're also focusing on the development
20 of our next strategic plan. The executive team has been
21 undertaking a SWOT analysis. We've included a number of
22 inputs. We've been looking at what's been accomplished
23 under the existing plan, current and emerging risks,
24 demographics in our workforce, and budget trends among
25 other things. And this month we're focusing on obtaining

1 input from a wide range of our stakeholders, so you may
2 hear about that.

3 The next step that you all will be involved in is
4 a workshop for the Board in June, where we'll present the
5 inputs and themes that we've gathered to date.

6 Turning to events. Last week we hosted a very
7 well attended Benefit Education Event. It was in Oakland.
8 There were over 3,000 members there, and we had a good
9 turnout. And then the final event -- final CBEE of the
10 year for Northern California will be held in Redding on
11 May 20 and 21.

12 And last but not least, this is the time of year
13 when I hold my annual coffee get-togethers with employees
14 from throughout the organization. It will be eighth year.
15 I've done it every year. And, of course, this is my last
16 year, which will make it more special than usual. We've
17 dubbed them the final cup. They begin May 10th, and I'll
18 be doing 12 sessions during May and June.

19 We received yet another award last week. This
20 was a gold award that we got from the California
21 Association of Public Information Officers. And it
22 recognized CalPERS for excellence in our new website
23 redesign.

24 As you'll remember, we launched this in July.
25 The site was rebuilt from the ground up. It has a very

1 clean and simple design that's a lot easier to navigate.
2 And we've received very positive feedback on it since
3 launch. So congratulations to our Public Affairs team.

4 And then finally, turning to our monthly staff
5 recognition, I wanted to take a moment on sustainability.
6 This is a common theme in the work we do, both with our
7 companies and internally.

8 Yesterday, the Finance Committee received the
9 annual report on operational sustainability. I believe it
10 was a consent item, but I encourage you to look at it.
11 There's a lot to be proud of there. We've surpassed many
12 of the goals that were set for us.

13 And I just thought I'd share a few and then
14 introduce you to the team. We've reduced our water
15 consumption by 44 percent, and that represents more than
16 14 million gallons of savings since 2013, exceeding the 20
17 percent goal. We've diverted -- we divert 4.5 cubic yards
18 of recycling every week, and over 18 tons of food waste
19 from landfills that goes to alternative fuel here in
20 Sacramento. And we achieved a 79 percent reduction of
21 greenhouse gas emissions and decreased our data center
22 energy use by 28 percent.

23 So those are some great results, and they really
24 reflect CalPERS commitment to conserving our resources.
25 And this work could not be accomplished without the

1 leadership of a team of employees in the Operations
2 Support Services Division that's led by Kim Malm and
3 Dallas Stone, and the property management team at Colliers
4 also play a really important role. So I'd like them all
5 to stand and be recognized.

6 (Applause.)

7 CHIEF EXECUTIVE OFFICER STAUSBOLL: Thank you.

8 Before concluding, as a reminder, next month
9 we're going to have an educational workshop for the Board
10 on risk and compliance. It will be presented by Bob
11 Yetman from the UC Davis Graduate School of Management,
12 date to be determined, most likely Tuesday.

13 Thank you, Mr. President. That concludes my
14 remarks.

15 PRESIDENT FECKNER: Thank you.

16 That brings us to Agenda Item 4b, Chief
17 Investment Officer's Report. Mr. Eliopoulos, please.

18 CHIEF INVESTMENT OFFICER ELIOPOULOS: Good
19 morning, Mr. President and members of the Board. I have a
20 brief update on the performance of the Public Employees'
21 Retirement Fund as of February 29th, 2016.

22 The total fund performance for the fiscal year as
23 of that date is negative 5.8 percent, which reflects a
24 difficult period for the public equity markets, for
25 instance -- or, for example, the public equity portfolio

1 was down a negative 11.5 percent for the fiscal year
2 through the end of February.

3 We do like to look at much longer time periods,
4 as they are more meaningful for measuring our performance.
5 And in that regard, the three-year return is a positive
6 5.3 Percent, the five-year return is 6 percent, the
7 ten-year return is 4.5 percent, and the 20-year return of
8 the total fund is 6.8 percent.

9 The recent performance of the total fund
10 demonstrates the vulnerability of the fund to the
11 volatility of the public equity markets. The public -- it
12 is worth noting that the public equity markets have since
13 rallied in the subsequent months of March and April, a
14 reminder that volatility can be both or either negative or
15 positive.

16 Mr. President, that is -- oh, one more point.
17 The total fund assets as of February 29th, 2016 are valued
18 at \$278.9 billion.

19 Mr. President, that is my report.

20 PRESIDENT FECKNER: Thank you.

21 Mr. Jelincic.

22 BOARD MEMBER JELINCIC: Ted, I think we ought to
23 take advantage of the opportunity to point out that
24 there's a portfolio, not just private equity, because we
25 frequently are criticized when our whole portfolio doesn't

1 perform as well as the S&P 500, but I'm not expecting a
2 lot of criticism that we were only down roughly six when
3 the stock market was down 11. You know, so there are --
4 you know, to compare us strictly to the stock market it
5 really is an invalid observation on behalf of our critics.

6 CHIEF INVESTMENT OFFICER ELIOPOULOS: Okay.
7 That's an interesting observation. Thank you.

8 PRESIDENT FECKNER: All right. No other
9 requests. Thank you.

10 That brings us to Agenda Item 5, the consent
11 calendar. 5a and b is action consent. Seeing no requests
12 to move anything, what's the pleasure of the Board.

13 BOARD MEMBER JELINCIC: Move it.

14 BOARD MEMBER LIND: Second.

15 PRESIDENT FECKNER: Moved by Jelincic, seconded
16 by Lind.

17 All in favor say aye?

18 (Ayes.)

19 PRESIDENT FECKNER: Opposed, no?

20 Motion carries.

21 Item 6 is the consent item calendar. Having no
22 requests to pull anything off, we move to Item 7, the
23 Committee reports.

24 7a is the Investment Committee. For that, I call
25 on the Chair, Mr. Jones.

1 VICE PRESIDENT JONES: Thank you, Mr. President.
2 The Committee met on April 18, 2016. The Committee
3 approved the following:

4 Agenda Item 5a, the selection of Courtland
5 Partners and Pension Consulting Alliance as finalists for
6 interview during the May Investment Committee.

7 Agenda Item 6a, to maintain the current asset
8 allocation for the Public Employees' Health Care Fund
9 Reserve Fund.

10 Agenda Item 7a, the real assets 2016 strategic
11 plan.

12 Agenda Item 8a, the revised Total Fund Investment
13 Policy without updates to the divestment section.

14 Agenda Item 9a, a plan to revisit the tobacco
15 investment in 12 to 24 months, including a financial and
16 risk analysis and stakeholder outreach, and to adopt a
17 Threshold Loss Mitigation Policy for all other
18 divestments.

19 The Committee also received reports on the --

20 PRESIDENT FECKNER: Mr. Boyken.

21 ACTING BOARD MEMBER BOYKEN: Thank you. I wanted
22 to speak on Item 9a. So in 2008, when Treasurer Chiang
23 was Controller Chiang, he was also a Board member of
24 CalSTRS. And at that time, he made the decision, along
25 with the Board at CalSTRS, not to get back -- not to

1 reinvest in tobacco. His position remains unchanged. He
2 believes that the industry -- the tobacco industry poses a
3 menacing threat to public health. It's not ancillary but
4 part and parcel of what they do, and also poses -- is --
5 the industry is subject to regulation and litigation risk.

6 And for that reason on Monday, I made a motion
7 not to recommend -- or not to revisit the issue, but just
8 to keep what we've been doing. I understand procedurally
9 we can't make that motion here, but I'd like to request
10 that the Chair of the Investment Committee consider adding
11 that agenda item back to the May agenda.

12 VICE PRESIDENT JONES: Yes, that's fine. We can
13 have that discussion.

14 ACTING BOARD MEMBER BOYKEN: Thank you.

15 VICE PRESIDENT JONES: Okay. Okay. Then the
16 Committee also received reports on the following topics:

17 An overview of the role of diverse boards play in
18 achieving better returns, and the Global Governance
19 Program's social portion of the ESG priorities with an
20 emphasis on Board diversity and other human capital work.

21 The Committee heard public comment on the
22 proposed divestment policy and the tobacco divestment.

23 At this time, I would like to share some
24 highlights of what to expect at the May Investment
25 Committee meeting.

1 The Investment Office Roadmap and Target
2 Operating Model update, and a report from the CEM
3 benchmarking on investment cost.

4 The next meeting of the Investment Committee is
5 scheduled for May 16, 2016 in Sacramento, California.

6 And that concludes my report, Mr. President.

7 PRESIDENT FECKNER: Thank you, Mr. Jones.

8 That brings us to Item 7b, Pension and Health
9 Committee. There was no open session, so there is no
10 report.

11 Item 7c, Finance and Administration Committee. I
12 call on the Chair, Mr. Costigan.

13 BOARD MEMBER COSTIGAN: Thank you, Mr. Feckner.

14 The Finance and Administration Committee met on
15 April 19th, 2016.

16 The Committee recommends and I move the Board
17 approve the following:

18 Agenda Item 5a, the 2016/17 annual budget
19 proposal, and approve the fiscal year 2016/17 annual
20 budget proposal as a second reading in the amount of 1
21 billion 788 million and 2,872 positions with an additional
22 500,000 budget for the review of the System's existing
23 divestment initiatives, including tobacco, and approve the
24 transmittal of this agenda item to the Joint Legislative
25 Budget Committee, fiscal committees of the legislature,

1 the State Controller, and the Department of Finance in
2 accordance with the Budget Act of 2015, and to the
3 Legislative Analyst's Office, Government Operations
4 Agency, and the Office of Legislative Counsel.

5 PRESIDENT FECKNER: On motion by Committee.

6 Any discussion on the motion?

7 Seeing none.

8 All in favor say aye?

9 (Ayes.)

10 PRESIDENT FECKNER: Opposed, no?

11 Motion carries.

12 BOARD MEMBER COSTIGAN: Agenda item 6a, the
13 Treasury Management Policy Review, second reading, to
14 approve the Treasury Management Policy with the proposed
15 changes.

16 PRESIDENT FECKNER: On motion by Committee.

17 Any discussion on the motion?

18 Seeing none.

19 All in favor say aye?

20 (Ayes.)

21 PRESIDENT FECKNER: Opposed say no?

22 Motion carries.

23 BOARD MEMBER COSTIGAN: The Committee recommends
24 and I move the Board approve the following:

25 Agenda Item 7a, the Annual Review of the Board

1 Member's Employer Reimbursements, and approve the proposed
2 elected Board member percentage of times to be spent on
3 Board-related duties, based on Board and Committee
4 selections held in January, February, March and April
5 2016, and the percentages approved in April would be
6 effected as of the Committee's selection date.

7 PRESIDENT FECKNER: On motion by Committee.

8 Any discussion on the motion?

9 Seeing none.

10 All in favor say aye?

11 (Ayes.)

12 PRESIDENT FECKNER: Opposed, no?

13 Motion carries

14 BOARD MEMBER COSTIGAN: Agenda Item 8a, the State
15 Actuarial Valuation and Employer Contribution Rates. That
16 we approve staff recommendations that the Board adopt the
17 employer contribution rates for the period July 1, 2016 to
18 June 30th 2017.

19 PRESIDENT FECKNER: On motion by Committee.

20 Any discussion on the motion?

21 Seeing none.

22 All in favor say aye?

23 (Ayes.)

24 PRESIDENT FECKNER: Opposed, no?

25 Motion carries.

1 BOARD MEMBER COSTIGAN: Agenda Item 8b, the
2 school's actuarial valuation employer contribution rates,
3 that we approve the staff recommendations that the Board
4 adopt the employer contribution rates of 13.888, and
5 maintain current employee contribution rates for the
6 period of July 1, 2016 through June 30th, 2017 for the
7 schools pool.

8 PRESIDENT FECKNER: On motion by Committee.

9 Any discussion on the motion?

10 Seeing none.

11 All in favor say aye?

12 (Ayes.)

13 PRESIDENT FECKNER: Opposed, no?

14 Motion carries.

15 BOARD MEMBER COSTIGAN: Agenda Item 8c, review of
16 the actuarial cost method policy and amortization policy,
17 second reading. That we approve the adoption of staff
18 consolidation of the actuarial cost method and actuarial
19 amortization policies.

20 PRESIDENT FECKNER: On motion by Committee.

21 Any discussion on the motion?

22 Seeing none.

23 All in favor say aye?

24 PRESIDENT FECKNER: Opposed, no?

25 Motion carries.

1 BOARD MEMBER COSTIGAN: The Committee received
2 reports on the following topics: The review of the
3 Actuarial Assumption Policy, first reading; the semiannual
4 self-funded health plan reports; and the final update on
5 stakeholder Assessment Project.

6 The Committee did hear public comment from Neal
7 Johnson of SEIU.

8 At this time, I would like to take up some
9 highlights of what to expect at the September -- and
10 please note our next Board meeting -- our next Committee
11 meeting is set for September -- Finance and Administration
12 Committee, the second reading of Actuarial Assumption
13 Policy, the review of actuarial valuation of the
14 terminated agency pool, the annual diversity report, the
15 annual Customer Service Cost Effectiveness Measure update,
16 and the closeout report of the CalPERS 2015/17 business
17 plan.

18 The next meeting of Finance and Administration is
19 schedule for September 20th, 2016 in Sacramento,
20 California.

21 Thank you, Mr. President.

22 PRESIDENT FECKNER: Thank you.

23 Mr. Jelincic.

24 BOARD MEMBER JELINCIC: On this committee, I
25 noticed that 3b, the semi-annual contracting perspective

1 report was not reported out it. It had originally been a
2 consent item. I don't know if it -- I don't know if it
3 should have been, or -- but I raise that issue just --

4 CHIEF EXECUTIVE OFFICER STAUSBOLL: The question
5 is whether Item 3b, the consent report -- consent contract
6 report should have been reported out.

7 BOARD MEMBER JELINCIC: Yeah, it was just
8 whether -- whether it should have been reported out. And
9 I don't know the answer.

10 CHIEF FINANCIAL OFFICER EASON: It's our
11 understanding that it isn't reported out, but we can
12 certainly check and get back to the Committee.

13 BOARD MEMBER JELINCIC: I would appreciate it.
14 And as I said, I really don't know. I was just asking.
15 Thank you.

16 PRESIDENT FECKNER: All right. Seeing nothing
17 else. That brings us Agenda Item 7d, Performance,
18 Compensation and Talent Management Committee. For that I
19 call on the Chair, Mr. Bilbrey.

20 BOARD MEMBER BILBREY: Thank you, Mr. Chair. The
21 Performance, Compensation and Talent Management Committee
22 met on April 19, 2016.

23 The Committee recommends and I move the Board
24 approve the following:

25 Agenda Item 5, Compensation Review Project,

1 Proposed Design Concepts. Recommend approval of the
2 proposed compensation program design concepts as
3 presented, and direct the Board's compensation consultant
4 to prepare a draft policy containing proposed compensation
5 philosophy and design, pay ranges, incentive ranges, and
6 metrics for review and approval at the May 2016 Committee
7 meeting.

8 PRESIDENT FECKNER: On motion by committee.

9 And discussion on the motion?

10 Seeing none.

11 All in favor say aye?

12 (Ayes.)

13 PRESIDENT FECKNER: Opposed, no?

14 (Noes.)

15 PRESIDENT FECKNER: Motion carries. Please note
16 Mr. Jelincic as abstaining.

17 BOARD MEMBER BILBREY: At this time, I would like
18 to share some highlights of what --

19 PRESIDENT FECKNER: Right, two noes, yes. Mr.
20 Costigan and Mr. Gillihan.

21 BOARD MEMBER BILBREY: At this time, I'd like to
22 share some highlights of what to expect at the May
23 Performance, Compensation and Talent Management Committee.
24 The Committee will receive Compensation Review Project
25 recommendations for implementation in fiscal year 2016/17,

1 including a first reading of a revised incentive
2 compensation policy, proposed pay and incentive ranges,
3 and proposed performance metrics.

4 So the next meeting of the Performance,
5 Compensation and Talent Management Committee is scheduled
6 for May 17, 2016 here in Sacramento.

7 Thank you, Mr. President.

8 PRESIDENT FECKNER: Thank you. Moves on to
9 Agenda Item 7e, Risk and Audit. For that, I call on the
10 chair, Mr. Lind.

11 BOARD MEMBER LIND: Thank you. The Risk and
12 Audit Committee met on April 19th, 2016. The Committee
13 held an election for Chair and Vice Chair. Ron Lind was
14 re-elected as Chair, Dana Hollinger was elected as Vice
15 Chair.

16 The Committee recommends and I move the Board
17 approve the following:

18 Item 6, Risk and Audit Committee Delegation. The
19 Committee reviewed the delegation for from the Board to
20 the Committee and recommended changes that will be brought
21 to the Board in May for a final approval, along with the
22 other Committee delegations.

23 PRESIDENT FECKNER: On motion by Committee. Any
24 discussion on the motion?

25 Seeing none. All in favor say aye?

1 (Ayes.)

2 PRESIDENT FECKNER: Opposed, no?

3 Motion carries.

4 BOARD MEMBER LIND: Item 7a, Review of
5 Independent Auditor's Management Letter. Accept the draft
6 independent auditor's management letter as prepared by
7 Macias, Gini & O'Connell LLP for the year ended June 30th,
8 2015.

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 say no?

15 Motion carries.

16 BOARD MEMBER LIND: The Committee received
17 reports on the following topics: Audit Resolution Policy
18 revision and semiannual compliance plan update.

19 The Chair directed staff to come back in June
20 with a final audit resolution policy revision for the
21 Committee to approve.

22 Some highlights of the June Risk and Audit
23 Committee meeting: Review of the 2016/17 Enterprise
24 Compliance Risk Management and Office of Audit Services
25 plans, independent auditor's 2016 annual plan, and the

1 semi-annual enterprise risk reports, the dashboard.

2 The next meeting of the Risk and Audit Committee
3 is scheduled for June 14th, 2016 in Sacramento.

4 That concludes my report.

5 PRESIDENT FECKNER: Thank you.

6 That brings us to Item 7f, Board Governance
7 Committee. For that, I call on the Chair Mr. Slaton.

8 BOARD MEMBER SLATON: Than you, Mr. President.

9 The Committee met this morning.

10 The Committee recommends and I move the Board
11 approve the following:

12 Agenda Item 6, Chief Executive Officer Delegation
13 of Authority. Approve the proposed amendments to the
14 Board's delegation resolution for the Chief Executive
15 Officer as identified in the agenda item.

16 PRESIDENT FECKNER: On motion by Committee.

17 Any discussion on the motion?

18 Seeing none.

19 All in favor say aye?

20 (Ayes.)

21 PRESIDENT FECKNER: Opposed say no?

22 (No.)

23 PRESIDENT FECKNER: Motion carries.

24 BOARD MEMBER SLATON: Agenda Item 7, Delegation
25 of CEO selection. Move paragraph 2 from the powers

1 delegated to the Performance, Compensation and Talent
2 Management Committee, which reads, "Conduct the hiring and
3 termination of the Chief Executive Officer(CEO), and Chief
4 Investment Officer(CIO) with input from the CEO regarding
5 the hiring and termination from the CIO", and to move that
6 delegation from the Performance, Compensation and Talent
7 Management Committee to the full Board of Administration
8 as a power reserved to the Board.

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: All opposed say no?

15 Motion carries.

16 BOARD MEMBER SLATON: The next meeting of the
17 Board Governance Committee is tentatively scheduled for
18 May 17th, 2016 in Sacramento, California.

19 PRESIDENT FECKNER: Thank you.

20 That brings us to Agenda Item 8, the proposed
21 decisions of administrative law judges. I do want to say
22 before we begin that Chirag Shah the Board's independent
23 counsel for administrative hearings procedures is with us
24 here today.

25 Good morning, Mr. Shah.

1 MR. SHAH: Good morning.

2 PRESIDENT FECKNER: Mr. Jones, please.

3 VICE PRESIDENT JONES: Yeah. Thank you, Mr.
4 President.

5 PRESIDENT FECKNER: Just a second, Mr. Jones.
6 Mr. Costigan.

7 BOARD MEMBER COSTIGAN: I'm very sorry to do
8 this. I have not been able to verify on Items 5 and 9,
9 since the underlying actions may involve a termination
10 matter, if they're pending at my other board, so could we
11 separate those out.

12 PRESIDENT FECKNER: You mean -- they're by
13 letters. E?

14 BOARD MEMBER COSTIGAN: I'm sorry. Agenda Item
15 8e and 8i.

16 VICE PRESIDENT JONES: 8e, and what's the other?

17 PRESIDENT FECKNER: "i".

18 BOARD MEMBER COSTIGAN: "i". I just have not
19 been able to verify if there's a pending case.

20 PRESIDENT FECKNER: All right.

21 Mr. Jones.

22 VICE PRESIDENT JONES: Okay. I move to adopt the
23 proposed decisions at Agenda Items 8a through 8l, excluding
24 8e and i and agenda item 8n, as the Board's own decision
25 with the minor modifications to Agenda Item 8k as argued

1 by staff.

2 PRESIDENT FECKNER: M is separate, correct?

3 VICE PRESIDENT JONES: Yeah.

4 PRESIDENT FECKNER: All right. Is there a
5 second?

6 BOARD MEMBER LIND: Second.

7 PRESIDENT FECKNER: It's been moved by Jones,
8 seconded by Lind to take up Items 8a --

9 VICE PRESIDENT JONES: E.

10 PRESIDENT FECKNER: 8A through l, correct, minus
11 e and i, correct?

12 VICE PRESIDENT JONES: Right.

13 PRESIDENT FECKNER: All right. Motion being
14 before you. All in favor say aye?

15 (Ayes.)

16 PRESIDENT FECKNER: All opposed say no?

17 Motion carries.

18 Mr. Jones.

19 VICE PRESIDENT JONES: Okay. I move to adopt the
20 proposed decision at Agenda Item 8e and 8i.

21 PRESIDENT FECKNER: Is there a second?

22 BOARD MEMBER LIND: Second.

23 PRESIDENT FECKNER: It's been moved by Jones,
24 seconded by Lind to take the items 8e and 8i.

25 Any discussion on the motion?

1 Mr. Costigan.

2 BOARD MEMBER COSTIGAN: Again, I just note that
3 I'm not voting on this pending the State Personnel Board.
4 Thank you.

5 PRESIDENT FECKNER: Very good. Seeing no other
6 requests for questions.

7 All in favor say aye?

8 (Ayes.)

9 PRESIDENT FECKNER: Opposed say no?

10 Motion passes. Thank you.

11 Item 9, Mr. Jones.

12 VICE PRESIDENT JONES: Item --

13 PRESIDENT FECKNER: Oh, 8m, I'm sorry.

14 VICE PRESIDENT JONES: 8m, yeah.

15 Okay. I move to schedule Item 8m for a full
16 Board hearing on the limited question of whether staff may
17 recover or recoup any overpayments that may have been made
18 to the member.

19 PRESIDENT FECKNER: Is there a second?

20 BOARD MEMBER LIND: Second.

21 PRESIDENT FECKNER: Motion by Jones, seconded by
22 Lind.

23 Any discussion on the motion?

24 Mr. Jelincic.

25 BOARD MEMBER JELINCIC: Yeah, I would -- since

1 this is largely a technical issues, and I think the
2 lawyers and the administrative law judge probably are more
3 informed and better able to deal with it, so I would
4 actually encourage us to, rather than schedule for Board
5 hearing, send it back for additional testimony and hearing
6 on just that issue.

7 PRESIDENT FECKNER: All right. Are you putting
8 that in the form of a motion?

9 BOARD MEMBER JELINCIC: Well, if -- sure, at
10 least to get it dealt with.

11 BOARD MEMBER MATHUR: Second.

12 PRESIDENT FECKNER: It's been moved by Jelincic,
13 seconded by Mathur.

14 Any discussion on the motion?

15 BOARD MEMBER JELINCIC: Can we ask Shah what he
16 thinks?

17 PRESIDENT FECKNER: Mr. Shah, can you weigh-in,
18 please?

19 MR. SHAH: Yes. Good morning Mr. President and
20 members of the Board.

21 PRESIDENT FECKNER: Good morning.

22 MR. SHAH: My recommendation is to schedule this
23 for a full Board hearing, because it's my view that most
24 of the material facts have been developed, and there
25 aren't really a lot of factual disputes that the

1 administrative law judge could take evidence on. For that
2 reason, I'm recommending a full Board hearing. Of course,
3 the Board has the discretion to remand the matter for
4 taking more evidence than what's been taken so far on this
5 specific question.

6 So I don't have an objection to that, but my
7 recommendation, of course, is to schedule it for a full
8 Board hearing, considering all the material facts that
9 have been developed in this case.

10 PRESIDENT FECKNER: All right. Motion being
11 before you. All in favor of the motion say aye?

12 (Ayes.)

13 PRESIDENT FECKNER: Opposed say, no?
14 Motion carries.

15 PRESIDENT FECKNER: Mr. Jones.

16 VICE PRESIDENT JONES: I move to deny the
17 petition for reconsideration at Agenda Item 9a.

18 PRESIDENT FECKNER: Second?

19 BOARD MEMBER LIND: Second.

20 PRESIDENT FECKNER: Seconded by -- motion by
21 Jones, seconded Lind.

22 Seeing no requests to speak.

23 All in favor say aye?

24 (Ayes.)

25 PRESIDENT FECKNER: Opposed say no?

1 Motion carries.

2 All right. That brings us to Agenda Item 11,
3 State Legislative Update. Ms. Ashley.

4 LEGISLATIVE AFFAIRS DIVISION CHIEF ASHLEY: Good
5 morning, President Feckner and members of the Board. Mary
6 Anne Ashley, CalPERS staff.

7 Included in your Board materials is the updated
8 Legislative summary that notes CalPERS sponsored measures,
9 as well as several other measures that would potentially
10 impact CalPERS. This is a very busy time at the
11 legislature as bills are being amended and moving to and
12 from policy committees. April 22nd is the last day for
13 policy committees to hear and report fiscal bills to the
14 fiscal committees for those bills introduced in the house
15 of origin. And May 3rd is the last day for policy
16 committees to hear and report non-fiscal bills to the
17 floor. June 3rd is the last day for bills to be passed
18 from their house of origin.

19 CalPERS two sponsored measures are being heard --
20 are actually on the consent calendar for today's Assembly
21 PERS Committee hearing. That would be AB 2404, which is
22 the retirement option simplification bill, and AB 2375,
23 which is our annual technical housekeeping bill.

24 Several other bills that staff is currently
25 monitoring and analyzing are also being heard in the

1 committee today. And based on the outcome of the policy
2 committee hearings, and the impact to CalPERS, and also
3 following the Board approved legislative guidelines,
4 several bills may be brought to the Board to the
5 appropriate committees.

6 In May, AB 1878 and AB 2028 will be brought to
7 the PHBC committee, and AB 2833 will be brought to the
8 Investment Committee.

9 And the legislative highlights page of the
10 legislative summary in your Board materials notes the
11 changes to the bills that have made been made since my
12 last report. And I'd just like to highlight a couple of
13 those.

14 AB 2833, which is sponsored by the Treasurer, and
15 would require specified disclosures regarding private
16 equity fees, both CalPERS and CalSTRS have continued
17 working with the Treasurer's office, and the bill has been
18 amended. And we, as noted, intend to bring that bill to
19 the Investment Committee in May.

20 And then AB 2283 was originally introduced as a
21 divestment bill. The bill has since been amended and is
22 no longer a divestment bill. However, we will continue to
23 analyze and monitor the bill as it still impacts CalPERS.

24 Staff is analyzing bills and will continue to
25 engage with stakeholders and update the Board

1 appropriately.

2 And finally, I'd like to provide an update on the
3 Drug Price Relief Initiative. There will be a Joint
4 Health Committee hearing to discuss the initiative at the
5 Capitol on May 10th. And Legislative Analyst's Office is
6 finalizing their analysis of how the initiative would
7 impact CalPERS operations and its fiscal outlook. And
8 they will be presenting at the hearing, but the final
9 analysis should be available for the public by July 26th.

10 And with that, I am happy to answer any
11 questions.

12 PRESIDENT FECKNER: Very good. Seeing no
13 requests to speak.

14 We'll move on to the next agenda item.

15 LEGISLATIVE AFFAIRS DIVISION CHIEF ASHLEY: Thank
16 you.

17 PRESIDENT FECKNER: We now are going to move to
18 Item 15, the Chief Executive Officer's Search Update.
19 This is a closed session item, so we're going to clear the
20 room. This item should take 15 to 20 minutes. So I would
21 assume we will be back in here ready to begin at 10:30.
22 We'll take a little break including that. So about 10:30
23 we'll begin back here in open session.

24 (Off record: 10:02 AM)

25 (Thereupon the meeting recessed)

1 into closed session.)

2 (Thereupon the meeting reconvened
3 open session.)

4 (On record: 11:15 AM)

5 PRESIDENT FECKNER: We're on Item 12 summary of
6 Board direction. Ms. Stausboll had to leave. Mr. Jacobs,
7 are you going to fill in?

8 GENERAL COUNSEL JACOBS: I'm going to try to fill
9 in.

10 (Laughter.)

11 PRESIDENT FECKNER: All right.

12 GENERAL COUNSEL JACOBS: I understand that the
13 only direction was with respect to the divestment matter
14 on tobacco to bring that back to the Investment Committee
15 next month.

16 PRESIDENT FECKNER: Correct. Very good. Thank
17 you.

18 BOARD MEMBER JELINCIC: Are we going to find out
19 3b and Finance?

20 PRESIDENT FECKNER: And 3b and Finance was the
21 other questions that Mr. Jelincic brought up.

22 GENERAL COUNSEL JACOBS: Question to be answered.

23 PRESIDENT FECKNER: Great. That brings us to
24 agenda Item 13, Public Comment. I have two requests from
25 the public. I have Larry Woodson and awe George Linn. If

1 you could please come down to your right, our left. The
2 microphones are turned on for you. You have up to three
3 minutes for your speech. Please give your name and
4 affiliation for the record when you begin.

5 Mr. Woodson -- somebody left their glasses up
6 here, if anybody is missing them. Somebody will be sooner
7 or later.

8 PRESIDENT FECKNER: Mr. Woodson, please begin.

9 MR. WOODSON: Good morning. I'm Larry Woodson,
10 Chair of the Health Benefits Committee, California State
11 Retirees. Chairman Feckner, members of the Board, thank
12 you for the opportunity to comment this morning.

13 I'm speaking to the issue of CalPERS decision to
14 move toward on-line notification of health plan open
15 enrollment and requiring all retirees wishing to continue
16 notification by mail to contact CalPERS by July 1. If
17 they don't, the default is that they must register on-line
18 for my|CalPERS to participate in open enrollment.

19 We understand that the decision has already been
20 made and we continue to have concerns regarding the impact
21 on retirees, especially older retirees. To date, 40,000
22 subscribers have requested continued mailing of open
23 enrollment packages. This represents about only six
24 percent of the now 686,000 retired subscribers.

25 Staff reports that only 40 percent of retirees

1 have ever logged onto my|CalPERS. That means that
2 approximately 411,000 retired subscribers have never used
3 this on-line service. So CalPERS is hoping that by July
4 1, all 411,000 non-users will have carefully read the one
5 notice that was sent and either notify CalPERS they want
6 to continue mailings or will be registering for
7 my|CalPERS.

8 We think it's unrealistic that anywhere that
9 number will take one of those two actions. Those who
10 don't, won't be able to participate in open enrollment.
11 Unfortunately, the CalPERS-only direct mailing headlines
12 and emphasis were on-line health plan statements, rather
13 than open enrollment.

14 The heading quote, "Introducing the On-Line
15 Health Plan Statement", masks what we think the primary
16 message should have been. Most retirees aren't familiar
17 with the term health plan statement, but are familiar with
18 open enrollment. Many of the 411,000 retirees who don't
19 use my|CalPERS may see the headline, "Introducing On-Line
20 Health Plan Statement", have no interest and toss the
21 flier.

22 At the last meeting of the State Coalition Of
23 Retired Employees, SCORE, we reached consensus on making
24 three requests of CalPERS. Number one, mail one more
25 notice to all retirees with headlines to the effect of,

1 "Notice of open enrollment now only available on-line
2 unless you request mail notice". Two, provide retiree
3 groups the financial count of how many requested to
4 continue mailings and how many new retirees have
5 registered for my|CalPERS. And three, in the future when
6 CalPERS is proposing optional changes that affect
7 retirees, the default option should be the existing one to
8 which members are accustomed.

9 Thank you.

10 PRESIDENT FECKNER: Thank you.

11 Ms. Lum, do you have any comment?

12 DEPUTY EXECUTIVE OFFICER LUM: Thank you, Mr.
13 President, and members of the Board. Donna Lum, CalPERS
14 staff. It might be helpful also to hear Mr. Linn's
15 comments and then maybe I can address them all at the same
16 time

17 PRESIDENT FECKNER: Very good. Mr. Linn.

18 MR. LINN: Yes. George Linn, President of RPEA.

19 President Feckner and Board members, my concern
20 is more global than what Larry has talked about, which is
21 a specific situation.

22 One, I know that Customer Service does excellent
23 job in picking up the pieces. And I think this is one
24 situation where they're going to end up picking up the
25 pieces. They do an excellent job in doing this.

1 Number two, I believe that everyone should be
2 paperless. I am paperless, wherever I can be, but I opted
3 to do that. And I think that it should be the policy of
4 the Board to seek areas where we can ask members to be
5 paperless, but ask them to opt-in to being paperless.

6 I think that that's where I am on this, and I
7 think that it should be something moving forward. And
8 frankly, as we move into the 21st century, more things
9 will become optional for paperless. And I think we need
10 to go there, because we save money, we're more efficient,
11 we're more effective. But I think we need to ask the
12 members to make that option. Thank you.

13 PRESIDENT FECKNER: Thank you.

14 Now, Ms. Lum.

15 DEPUTY EXECUTIVE OFFICER LUM: Thank you. Before
16 I share some additional information with the Board, I
17 would again like to thank both Mr. Woodson and Mr. Linn.
18 They have been very forthcoming and engaging with myself
19 and my team with regards to the concerns on the behalf of
20 the retirees and their constituents. And it has been very
21 helpful to hear the information directly from those that
22 are going to be impacted by this change.

23 I think it's helpful for the Board to also know
24 that in addition to the mailing that Mr. Woodson had
25 mentioned, we have done quite a bit in terms of outreach.

1 So we did send letters to all subscribers in May -- or
2 excuse me, in March. We also had a half-page article in
3 the latest PERSpectives, which was very clear that
4 indicated we were going on-line, and it had clear
5 directions on what our members could do, if they decided
6 that they wanted to continue to have their open enrollment
7 and health statement documents mailed to them.

8 We've also partnered with many of the retiree
9 associations and have provided articles and information
10 that they have put into their newsletters to help further
11 get the information out to the retiree associations. In
12 addition to that, we've done a lot of social media
13 outreach through all of our channels. And what that has
14 resulted in, as Mr. Woodson had indicated, is we have
15 about 43,000 subscribers of the 686,000 who have indicated
16 that they want to continue to receive their packages
17 through mail.

18 Just to put things in perspective, 86 percent of
19 the 43,000 that made that election returned the
20 postcard -- the postage paid postcard that was sent out in
21 the March mailing. So we do know, to some degree, that
22 many of our retirees are reviewing the documents.

23 We also have additional outreach efforts that
24 have been planned and communicated with the associations
25 as well. And they include additional social media

1 outreach. In addition to that, in the June retiree
2 warrants, on the very bottom, we are also including a
3 reminder to the retirees of what they can do to continue
4 to get their statements by mail.

5 And in addition to that, we have a planned
6 mailing that will be going out to subscribers that did not
7 return an indication to us that they want it by mail to
8 remind them that it will be only available by mail unless
9 they contact us.

10 Post July 1st, which is the deadline, any member,
11 retired or active, that contacts us, either by phone or by
12 the website, will be able to continue to get their package
13 mailed. So even once we enter into the open enrollment
14 period, anyone requesting to receive a mail package and a
15 printed package will be able to get one.

16 In acknowledging the three requests that have
17 been made, by Mr. Woodson, I do think there's an
18 opportunity for us to revisit the mailing that's going to
19 happen to ensure that it's very clear, clearly stated,
20 that we have gone on-line again, and to identify what our
21 retirees need to do in order to get the mail.

22 We have committed to providing the additional
23 information on statistics. And we're watching very
24 closely the demographics and all of the information coming
25 back in. We know exactly what age groups are opting to

1 get mail. We know what age groups have responded either
2 by website, by phone, or by the return postcard.

3 So we do recognize that this has changed. We do
4 know that, in some cases, some of our retirees may not
5 have picked up on all the additional outreach. But I
6 think, as Mr. Linn said, we are prepared to be able to
7 help our members through this transition.

8 I hope you find the additional information to be
9 helpful. Thank you.

10 PRESIDENT FECKNER: Thank you.

11 Mr. Jones.

12 VICE PRESIDENT JONES: Yeah. Thank you, Mr.
13 President. Yes. Thank you Donna. And I do know that
14 Donna and her staff has been very active in trying to
15 communicate the changes to our retirees. And also, our
16 retiree organizations have been very active in also
17 assisting in trying to get this word out. And I've even,
18 since the time that this change was announced, spoke to at
19 least five different retiree organizations. I've also
20 communicated it.

21 But I would be concerned that if, for some
22 reason, a large number of our retirees don't get the
23 information, so I would support one more mailing to just
24 be sure that our retirees are getting the information.

25 PRESIDENT FECKNER: Ms. Mathur.

1 BOARD MEMBER MATHUR: Thank you. I think it's
2 important to note that probably of our general population,
3 not everybody is going to either sign on to my|CalPERS or
4 request a paper copy. What happens is people realize that
5 this is happening, they say, okay, well I'm comfortable
6 with where I'm at, and so I'm not going to make any -- I'm
7 not going to take any action at this point. So it would
8 be interesting, I think, to compare sort of the take-up
9 from our retirees, and compare that to our actives.

10 And I think it's unrealistic to expect, as is
11 noted in Mr. Woodson's item number 2, that the sum of the
12 two would equal -- would equal the total sum of all of --
13 the total number of all retirees. I think that's probably
14 not a realistic goal.

15 So I think if it -- if we're sort of in the same
16 ballpark of requests, then I would feel comfortable that
17 most people are getting the information that they need and
18 making a considered decision.

19 So I guess you might not have that information
20 with you today, and that's fine, but maybe we can continue
21 to report back on that.

22 DEPUTY EXECUTIVE OFFICER LUM: Absolutely. I
23 don't have that information today. But I think, as I
24 mentioned, we are watching all the statistics very
25 closely, and I can report back on that information as

1 well.

2 BOARD MEMBER MATHUR: Thank you.

3 PRESIDENT FECKNER: All right. Seeing no
4 other -- oh, Mr. Jones, you're back?

5 VICE PRESIDENT JONES: Yeah.

6 PRESIDENT FECKNER: Mr. Jones.

7 VICE PRESIDENT JONES: Yeah, thank you, Mr.
8 President. Yeah, I -- in terms of Mrs. Mathur's comment,
9 I think, you know, they may provide a little additional
10 information, but I think we need to be mindful of the
11 different environments. Retirees, when they retire,
12 sometimes they're alone, they're not members of their
13 State retiree's organization, they're not members of the
14 public retiree organizations, and so there's no
15 communication.

16 But employees who are currently working, they
17 have the opportunity to talk to each other on a daily
18 basis, at lunch time, or social gatherings, et cetera,
19 they're always involved with others where these issues may
20 be discussed. So I think you are going to get a better
21 information process with active employees than you would
22 with retirees.

23 PRESIDENT FECKNER: All right. Seeing no other
24 requests. Thank you.

25 Now, we will move to the full Board hearing.

1 Mr. Shah, please come forward.

2 Okay. First of all, good morning, everyone. We
3 now turn to Agenda Item 10, and open the record for the
4 full Board hearing in case number 2014-1087. Let us first
5 take roll, please.

6 BOARD SECRETARY BUCHANAN: 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: Here.

12 BOARD SECRETARY BUCHANAN: Eric Lawyer for John
13 Chiang?

14 ACTING BOARD MEMBER LAWYER: Here.

15 BOARD SECRETARY BUCHANAN: Richard Costigan?

16 BOARD MEMBER COSTIGAN: Here.

17 BOARD SECRETARY BUCHANAN: Katie Hagen for
18 Richard Gillihan?

19 ACTING BOARD MEMBER HAGEN: Here.

20 BOARD SECRETARY BUCHANAN: Dana Hollinger?

21 BOARD MEMBER HOLLINGER: Here.

22 BOARD SECRETARY BUCHANAN: J.J. Jelincic?

23 BOARD MEMBER JELINCIC: Here.

24 BOARD SECRETARY BUCHANAN: Ron Lind?

25 PRESIDENT FECKNER: Excused.

1 BOARD SECRETARY BUCHANAN: Priya Mathur?

2 BOARD MEMBER MATHUR: Here.

3 BOARD SECRETARY BUCHANAN: Bill Slaton?

4 BOARD MEMBER SLATON: Here.

5 BOARD SECRETARY BUCHANAN: Theresa Taylor?

6 BOARD MEMBER TAYLOR: Here.

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

9 ACTING BOARD MEMBER PAQUIN: Here.

10 PRESIDENT FECKNER: Thank you.

11 Let the record reflect that Board Member Ron Lind
12 has recused himself from this full Board hearing and has
13 left the building.

14 But before we begin, I want to note for the
15 record that Alison Hightower, counsel for the Santa Clara
16 County Health Authority requested permission to appear in
17 this hearing telephonically, and we granted that request.
18 Can we please secure Ms. Hightower is on the telephone.

19 MS. HIGHTOWER: Good morning. This is Alison
20 Hightower.

21 PRESIDENT FECKNER: Very good. Thank you.

22 Well, good morning, Ms. Hightower. My name is
23 Rob Feckner. I'm the CalPERS Board President.

24 At your request, we're calling you into this full
25 Board hearing via telephone. At this time, I'm providing

1 a brief summary of the procedures that we will follow in
2 today's hearing.

3 The proposed decision in this case was originally
4 considered by the Board at the February 18th, 2016 Board
5 meeting. At that meeting, the Board rejected the proposed
6 decision and scheduled this matter for a full Board
7 hearing. The Santa Clara County Health Authority, which
8 we'll refer to as the Authority in today's proceedings,
9 and Ms. Kathleen King are both respondents in this matter.
10 It is my understanding that the counsel for the Authority
11 and Ms. King share the same position, and, as such, will
12 be splitting their time for oral argument today.

13 Now then, would counsel please take a moment to
14 introduce themselves for the record starting with staff's
15 counsel, then the Authority's counsel, and then Ms. King's
16 counsel.

17 ASSISTANT CHIEF COUNSEL SEABOURN: Marguerite
18 Seabourn for CalPERS.

19 SENIOR STAFF ATTORNEY PHILLIPS: Christopher
20 Phillips --

21 MS. HIGHTOWER: Good morning. Alison --

22 PRESIDENT FECKNER: Just a second Ms. Hightower.
23 Go ahead.

24 SENIOR STAFF ATTORNEY PHILLIPS: Christopher
25 Phillips for CalPERS.

1 PRESIDENT FECKNER: Now, Ms. Hightower, your turn

2 MS. HIGHTOWER: Thank you. Good morning. Alison
3 Hightower for respondent Santa Clara Family County Health
4 Authority.

5 PRESIDENT FECKNER: Thank you. Mr. Renner.

6 MR. RENNER: Good morning, Mark Renner, counsel
7 for respondent Kathleen King.

8 PRESIDENT FECKNER: Thank you.

9 Let the record also reflect that Chirag Shah,
10 from the Los Angeles-based law firm of Shah and
11 Associates, the Board's independent counsel on full Board
12 hearings and proposed decisions from the Office of
13 Administrative Hearings is here now and will be in
14 attendance for the entire hearing.

15 Mr. Shah will provide a brief summary of the case
16 and serve as the Board's counsel in this full Board
17 hearing. In today's proceeding, the record from the
18 hearing before the administrative law judge hearing stands
19 as is, but the parties have the opportunity to present
20 oral and written arguments. All parties to this matter
21 have submitted written arguments, which are in the Board's
22 packets.

23 I trust that all parties have received copies of
24 the Statement of Policy and Procedures for full Board
25 hearings before the Board. Is that correct, Ms. King?

1 MS. KING: Yes.

2 MR. RENNER: Yes.

3 PRESIDENT FECKNER: Thank you.

4 Ms. Hightower?

5 MS. HIGHTOWER: I believe so.

6 PRESIDENT FECKNER: Great. Mr. Phillips?

7 SENIOR STAFF ATTORNEY PHILLIPS: Yes.

8 PRESIDENT FECKNER: Thank you.

9 As we do with all full Board hearings, we will
10 adhere to the Board's written procedures.

11 First, as previously indicated, Mr. Shah will
12 provide a brief summary of the case. Then we will address
13 any preliminary matters relating to evidentiary issues.

14 After that, we will proceed with argument. Each
15 position will have 10 minutes for oral argument. When we
16 have two parties sharing the same position, the time
17 allocated to one party is split among the parties on a pro
18 rata basis, unless those parties agree amongst themselves
19 to allocate their time differently.

20 Mr. Phillips will first have ten minutes to
21 present staff's argument. After that, we will hear from
22 Ms. Hightower and Mr. Renner. Because the Authority is in
23 the agreement with Ms. King's position, Mr. Renner and Ms.
24 Hightower will be sharing the ten minutes allotted to
25 their position.

1 None of the parties are compelled to use the
2 entire time allocated to that party. In other words, you
3 may, but do not have to, use the entire 10 minutes to
4 present your argument. However, if you conclude your
5 argument in less than the time allocated, you do not get
6 to roll-over any remaining time for your rebuttal or any
7 other portion of this proceeding, so it's use it or lose
8 it.

9 After all sides have presented arguments, each
10 side will be given three minutes for rebuttal arguments in
11 the same order as the original presentation, Mr. Phillips
12 first, then Ms. Hightower, then Mr. Renner.

13 Here, too, you may, but do not have to, use the
14 entire time allocated to you for rebuttal. But if you
15 decide to use less time, you will not have another
16 opportunity for the time remaining. It is forfeited and
17 there is no bank for the time that you can draw upon at a
18 later time.

19 There is a timer the hearing room set for 10
20 minutes. It will begin when you first start to speak.
21 Please pay attention to the timer as you speak to ensure
22 that the complete -- that you complete your argument in
23 the allotted time. Ms. Hightower, you'll have to monitor
24 the time on your own.

25 After all sides' arguments and rebuttals are

1 concluded, the Board may ask questions of any of the
2 parties to this proceeding or seek advice from Mr. Shah
3 our independent counsel. The alternatives available to
4 the board are set forth in Agenda Item A. At the very end
5 of these proceedings, the Board will go into closed
6 session to deliberate and will then come out into open
7 session to vote on the matter.

8 Are there any questions so far?

9 Mr. Phillips

10 MS. PHIPPS: No.

11 PRESIDENT FECKNER: Ms. Hightower?

12 MS. HIGHTOWER: Yes. Mr. Renner and I would like
13 to flip the order between ourselves, so Mr. Renner would
14 like to go first and I would go second within the 10
15 minutes.

16 PRESIDENT FECKNER: Mr. Renner, is that agreeable
17 to you?

18 MR. RENNER: Yes, that would be our preference,
19 Mr. President.

20 PRESIDENT FECKNER: Very good. That will be the
21 order.

22 And as far as the other question, Mr. Renner?

23 MR. RENNER: I have the same question.

24 PRESIDENT FECKNER: No, the question that I was
25 just asking about do you understand the procedure?

1 MR. RENNER: Yes.

2 PRESIDENT FECKNER: Very good. Thank you.

3 Now, then, Mr. Shah, will you please give us a
4 brief summary of the case?

5 MR. SHAH: Thank you, Mr. President. Good
6 morning to you. Good morning to the members of the Board.
7 As you said, my name is Chirag Shah. I'm the Board's
8 independent counsel on full Board hearings. My summary
9 this morning will be very brief. Each counsel will
10 educate the Board on the merits and the details of their
11 respective positions.

12 The case the Board will hear this morning
13 involves a very fact-specific determination of whether Ms.
14 Kathleen King was an employee of the Authority, a CalPERS
15 contracting local agency, from March 31st, 2008 to July
16 1st, 2013, so as to permit her participate -- her to
17 continue participating in CalPERS.

18 The legal issues are governed by a lot of case
19 law, and the circular and unhelpful definition --
20 definitions of employee and employer respectively under
21 Sections 20028 and 20030 of the California Public
22 Employees' Retirement Law.

23 During the relevant time period, Ms. King served
24 as the executive director of the Santa Clara Family Health
25 Foundation, which is now known as the Healthier Kids

1 Foundation. According to the administrative record, the
2 foundation is a tax-exempt entity -- or tax-exempt
3 organization, which was created by the Authority primarily
4 to allow for more latitude in fundraising activities.
5 Now, latitude is my word, not any of the parties to the
6 proceeding.

7 As such, the Foundation's primary function was to
8 raise funds from a variety of sources, including private
9 and nonprofit foundations and individuals. During the
10 relevant time period, the Authority reported Ms. King as
11 its own employee for purpose of CalPERS participation and
12 benefits. The dispute and administrative appeal here
13 arose when CalPERS auditors audited the Authority and
14 determined, after going through all their internal
15 reviews, and giving the Authority an opportunity to
16 respond to their findings that Ms. King was being
17 inappropriately reported as an employee of the Authority
18 for CalPERS pension benefits.

19 The administrative appeal is actually being
20 pursued by both the member and the Authority. And so the
21 Board will hear today from the Authority's counsel, who as
22 Mr. President -- Mr. Feckner said is participating via
23 telephone, as well as the member's counsel who is present
24 in the Board room. Of course, the Board will also hear
25 from staff's counsel.

1 Substantively, the Authority and Ms. King argue
2 that Ms. King was either a common law employee or -- of
3 the Authority or that Ms. King was jointly employed by the
4 Authority and the Foundation during the relevant time
5 period.

6 Now, it is also true that there are other
7 employees who may be impacted by the Board's
8 determination. However, the facts and circumstances
9 concerning those employees are not before the Board today,
10 so we're limited to the administrative record, obviously.
11 The details of each party's position are presented in the
12 written arguments and the administrative record before the
13 Board at Agenda Item 10.

14 With that, Mr. President, I conclude my brief
15 summary of the case this morning.

16 PRESIDENT FECKNER: Thank you, Mr. Shah.

17 So now let us turn to the evidentiary hearing in
18 front of us. As all parties are aware, the Administrative
19 Procedures Act and the Board's procedures governing these
20 hearings expressly provide that the scope of the Board's
21 review in full Board hearings will normally be limited to
22 the administrative record of the hearing before the
23 administrative law judge as it stands.

24 In other words, we are not here to relitigate
25 factual issues or resubmit evidence into the

1 administrative record. However, in rare circumstances, in
2 the interest of achieving a just result, may require
3 consideration of newly discovered, relevant, and
4 documentary evidence which could not, with reasonable
5 diligence, have been discovered and produced at the
6 hearing before the administrative law judge, and which
7 therefore is not part of the administrative record.

8 All this applies only to newly discovered
9 documentary evidence that is relevant to the case. Under
10 no circumstances may the Board accept new witness
11 testimony or any kind of examination or cross-examination
12 of Board members or anyone else in today's proceeding.

13 Under the Board's procedure, requests to
14 introduce newly discovered documentary evidence must be
15 submitted in writing to the Board's secretary no later
16 than the due date for written argument, which in this case
17 was April 8, 2016.

18 Staff has submitted a motion for relief to
19 introduce evidence not contained in the administrative
20 record. In addition, Mr. Renner has submitted a
21 conditional motion for relief to supplement the
22 administrative record.

23 Upon the advice of our counsel, Mr. Shah, I have
24 decided to accept oral argument on both of these motions
25 today. I will give each party two minutes to briefly

1 state its position on the motions.

2 Mr. Renner, would you like to present a brief
3 two-minute argument on the two motions?

4 MR. RENNER: Yes, I would.

5 PRESIDENT FECKNER: Please set the timer for two
6 minutes.

7 Mr. Renner, go ahead and begin.

8 MR. RENNER: Thank you, Mr. President and Board
9 members. To us, this question is really quite clear. The
10 Board rules do allow for acceptance of evidence after the
11 administrative hearing is closed, but it has to be by the
12 time written argument is submitted, which was 12 days ago.
13 In this case, you're being asked to submit evidence which
14 your rules simply don't allow for. There is no provision
15 for, well, there is reasonable cause even past the
16 deadline. It's not in the rules, so I submit that you
17 would be violating your own rules if you allowed this
18 evidence in.

19 Now, not knowing, of course, the Board's
20 disposition on this motion, I feel I do have to go on in
21 the event that it does want to consider this evidence.
22 That's why I filed the conditional motion to also add
23 additional materials. The point of that was that the
24 reason this evidence is attempting to be admitted is
25 basically to undermine Ms. King's position.

1 That's what parties do in litigation all the
2 time. Due diligence requires counsel to find everything
3 they can before a hearing for anything that might tend to
4 undermine the party's position.

5 In this case, what's been offered are documents
6 to do with litigation, which even CalPERS' counsel
7 concedes it does not contradict any evidence that was
8 produced at the administrative hearing. What the argument
9 is is that there was a different legal position taken in
10 that litigation three years ago. That's because in that
11 litigation, it was submitted that Ms. King was allowed to
12 rely on the administrative services -- administrative
13 services agreement between the two entities to argue that
14 her emails were not public record.

15 But what happened in the litigation issue was
16 told that she was wrong. She was told that her emails
17 were part of the public record. In other words, very
18 consistent with treating her as an employee of a public
19 agency. Consequently, that's why she's taken this
20 position throughout this administrative process and
21 hearing.

22 PRESIDENT FECKNER: Thank you.

23 Ms. Hightower, you have two minutes.

24 MS. HIGHTOWER: Thank you and thank you, members
25 of the Board.

1 Let me just add to Mr. Renner that there is not a
2 showing of due diligence here. The claim that is made by
3 staff that they did not find this purported evidence until
4 after the written argument was submitted on April 8th.
5 They are pointing to something in Mr. Renner's brief of
6 April 8th, which is actually stated in his brief in
7 February, February 5th. So if they were going to do this
8 work, they could have done the same investigation in
9 February, if not sooner, to find this information. And
10 thus, they have not met the standard of due diligence that
11 the Board's rules require. Hence, they should not be
12 permitted to introduce this late-finding evidence -- this
13 late found evidence. It's very prejudicial to the
14 parties.

15 In addition, the Authority took the position in
16 this prior matter, which was three years ago that the
17 records of the Foundation were public records, and thus
18 the Authority to took a consistent position with its
19 position before CalPERS.

20 So for those reasons, the staff's motion should
21 be denied. If the court is going to grant the motion --
22 I'm sorry, the Board is going to grant the motion anyway,
23 then we suggest that in fairness, the order issued by the
24 court in that prior proceeding three years ago finding
25 that the records of the Foundation were public records,

1 should also be considered by the Board.

2 Thank you.

3 PRESIDENT FECKNER: Thank you. Mr. Phillips.

4 SENIOR STAFF ATTORNEY PHILLIPS: Thank you, Mr.
5 President, members of the Board. I think that all of the
6 requirements have been met in this case in order to
7 present this additional evidence, the good cause, the
8 relevance, and that this is evidence that is otherwise
9 admissible under the APA in administrative hearings.

10 Now, with respect to the diligence, the issue at
11 the administrative level was whether or not Ms. King was
12 an employee of the Authority. This was the common law
13 employment test. There is no -- there's no legal position
14 for this innocent party stance that the party -- that the
15 respondents are now taking. And until it was put before
16 this Board, and they are urging this Board to dramatically
17 expand the criteria for membership into this System, there
18 was no reason for CalPERS to search for this type of
19 evidence.

20 Now, it is highly relevant and it's highly
21 probative. Ms. King is taking two diametrically opposed
22 positions. In the verified writ, she's claiming a number
23 of things that are the exact opposite, which she's
24 claiming here today. I think it is highly probative of
25 just the shenanigans that happened in membership cases

1 like this, where the common law employment test is at
2 issue.

3 And I think that substantial compliance with the
4 timing requirement, the fact that the briefs were due on
5 Friday the 8th, this information was discovered two
6 business days later on that Tuesday and the motion was
7 filed the very next day on a Wednesday, would allow this
8 Board to use its discretion in order to admit this
9 evidence.

10 Thank you.

11 PRESIDENT FECKNER: Thank you.

12 So in the past, the Board has accepted late
13 submitted arguments from members as well as employers.
14 There's no reason why we cannot extend the same courtesy
15 to staff, particularly considering the direction of the
16 California Administrative Procedures Act for the Board to
17 admit any relevant evidence that reasonable persons would
18 rely upon to be conducted -- in the conduct of serious
19 affairs.

20 Before I go any further, Mr. Shah, do you have
21 any comment?

22 MR. SHAH: No, not at this time, Mr. President.

23 Thank you.

24 PRESIDENT FECKNER: Thank you. So therefore,
25 having reviewed both motions, and after considering oral

1 arguments based upon and presented on the two motions
2 today, unless there is an objection, I hereby grant both
3 motions and admit the two relevant documents into the
4 administrative record.

5 Board members are instructed to consider both
6 documents in their evaluation of the administrative
7 record.

8 Is there an objection?

9 All right. Seeing none.

10 Now, before we begin oral arguments, I want to
11 remind counsel again, that the only issue that we are
12 permitted to hear today is the question of whether Ms.
13 King was employed by the Authority during the relevant
14 time period from 2008 to 2013. And if so, whether she is
15 entitled to membership in CalPERS.

16 If counsel for any party chooses to devote any
17 time to an issue that is not before the Board, you will
18 not be given any extra time to argue that issue at hand or
19 for any other purpose.

20 On that basis, Mr. Phillips please present
21 staff's argument and let's start the clock at 10 minutes.

22 SENIOR STAFF ATTORNEY PHILLIPS: Thank you very
23 much, Mr. President.

24 PRESIDENT FECKNER: Please pull the mic in front
25 of you. Thank you.

1 SENIOR STAFF ATTORNEY PHILLIPS: Better?

2 PRESIDENT FECKNER: Yes.

3 SENIOR STAFF ATTORNEY PHILLIPS: This is not a
4 complex case. It's not a case of first impression. This
5 type of case has come before and will undoubtedly come
6 again in the future. What makes this case unique is the
7 after-the-fact rationalization that respondents make and
8 their plea to this Board to significantly and
9 substantially expand our membership criteria. I'm here
10 today to tell you why this Board should reject
11 respondent's pleas and adopt the proposed decision.

12 What the case boils down to is promises. We're
13 all here today because of a promise that the Authority
14 made to Respondent King, a promise of a CalPERS pension.

15 The problem with that promise is the Authority
16 can't deliver. And the reason is simple, Respondent King
17 was simply not an employee of the Authority. Now, the
18 facts in this case aren't really in dispute. Respondents
19 were provided a fair hearing, and given every opportunity
20 to present their case in evidence.

21 And here's what happened. The administrative law
22 judge, after hearing all the facts, applied the correct
23 test, the common law employment test. This test is
24 controlling when it comes to membership determinations.
25 Only eligible employers and their common law employees may

1 participate in CalPERS. It's well established and not in
2 dispute that the California Supreme court in Cargill and
3 this the Board's Presidential decisions in Galt and
4 Neidengard require CalPERS to apply the common law
5 employment test to determine who is an employee of a
6 participating agency for purposes of membership into this
7 System.

8 CalPERS must ensure that its contracts with
9 public agencies provide benefits only to the agency's
10 common law employees.

11 Now, this is really important and I'm going to
12 say it again. CalPERS must ensure that its contracts with
13 public agencies provides retirement benefits only to the
14 agency's common law employees.

15 So why is that important? Well, there's this
16 rule known as the exclusive benefit rule. And I'll
17 discuss that in a few minutes.

18 Okay. So back to this test. CalPERS uses the
19 common law employment test both to find membership
20 relation -- I'm sorry to find employment relationships
21 where membership is mandated and to deny pension benefits
22 to any persons who are not the common law employees of the
23 contracting agency. So again, the administrative law
24 judge applied this test correctly and determined that
25 Respondent King was not a common law employee of the

1 Authority, but rather a common law employee of the
2 Foundation.

3 Now, there is no authority in the PERL that
4 authorizes one employer to report services provided to
5 another employer. Allowing this would open the door to
6 providing benefits for services provided to
7 non-participating entities, whether they be private or
8 nonprofit. Again, this is the exclusive benefit rule in
9 action.

10 Okay. So two arguments are being made by
11 respondents. The first is that Respondent King is a
12 common law employee of the Authority. And the second
13 argument is that Respondent King is jointly employed by
14 both the Authority and the Foundation at the same time,
15 and that Respondent King is an innocent party. That
16 quote, "As an innocent participant, the facts here cry out
17 for a finding that these two entities were joint
18 employers", end quote.

19 Now, with respect to the first argument that
20 Respondent King is a common law employee, here's what you
21 need to know, service agreement and control. All of the
22 facts that respondent cite to as demonstrative of an
23 employment relationship, well, they were provided by the
24 Authority pursuant to an administrative services
25 agreement. Payroll functions, office space, computers,

1 training, human resources, all of it provided pursuant to
2 contract. And in any event, these are all secondary
3 factors and secondary considerations under the common law
4 employment test.

5 Additionally, in 2013, the Foundation terminated
6 this services agreement with the Authority. And when
7 there was no more agreement, all of these secondary
8 factors evaporated. The Foundation found their own office
9 space, hired another payroll company, outsourced HR
10 functions, et cetera, et cetera.

11 The fact that there was a complete severance of
12 these two entities when the agreement was terminated is
13 clear evidence that these functions were not provided by
14 the Authority as the employer, but provided as a vendor.

15 Now, what is crucial, what is the most important
16 factor of the common law employment test is control. Now,
17 specifically control over the manner and means of
18 accomplishing one's job. In the proposed decision, the
19 administrative law judge hit the nail on the head with
20 respect to control. She said quote, "Respondent King
21 estimated that under her leadership, the Foundation raised
22 about \$132 million for the Authority". That's great.
23 That's highly commendable. But the judge went on to say,
24 "It was not established that the Authority directed this
25 effort so as to have controlled the manner and means used

1 to accomplish this result", end quote.

2 So essentially, the function of the Foundation
3 was to raise money, and the Authority didn't tell
4 Respondent King how to go about raising money. There was
5 no control. Our auditors got it right, our staff got it
6 right, the administrative law judge got it right, and this
7 Board should get it right by adopting the proposed
8 decision.

9 So now to respondent's second argument, that
10 Respondent King was jointly employed and that she is an
11 innocent party. It's important to remember that the
12 administrative services agreement explicitly provided that
13 the employees of one entity were not the employees of the
14 other. Now, here you have both parties to the agreement
15 disavowing it in its entirety solely for purposes of
16 gaining benefits in CalPERS.

17 It's astonishing for respondents to claim that
18 this case quote, "Cries out for the adoption of joint
19 employment under the PERL", end quote. When the purpose
20 of joint employment, and when it's used in the common law,
21 is to find an employer/employee relationship to protect
22 workers from exploitation, and to ensure that those
23 workers receive their statutory benefits -- I'm sorry,
24 their statutory protections.

25 The California Legislature could have

1 incorporated the theory of joint employment into the PERL
2 if they wanted to do so. But as Respondent King
3 acknowledges in her own brief, they haven't done it.
4 Accepting respondent's interpretation of joint employment
5 would be inconsistent with and undo the common law
6 employment test mandated by Cargill, and further adopted
7 by this Board in precedential decisions as a framework for
8 CalPERS to determine employment status.

9 Allowing public agencies and their business
10 partners to determine membership in this System through
11 contrived organizational structures, usurps this Board's
12 authority to determine who is an employee for purposes of
13 membership.

14 Adopting a theory of joint employment would not
15 further the purposes of the PERL, which is to provide for
16 benefits -- provide for benefits to employees of CalPERS
17 eligible and participating employers, meaning contracting
18 agencies in the State.

19 Because the evidence establishes that Respondent
20 King is the common law employee of the Foundation, which
21 is a private, nonprofit 501(c)(3), and not the common law
22 employee of the Authority, she's simply not entitled to
23 membership.

24 The type of arrangement Respondent King asks this
25 Board to adopt would allow her to claim that she's an

1 employee of the Authority for purposes of CalPERS
2 benefits, and then later down the road, she retires from
3 the Authority. She could still claim to be an employee of
4 the Foundation and avoid having to comply with any of the
5 after -- the working-after-retirement rules. It would be
6 a true double dipper.

7 If there's any injustice here, to the extent that
8 Respondent King claims that she's an innocent party, it's
9 the fault of the Authority and the Foundation. Her
10 recourse is against those two entities. The Foundation
11 can provide her an annuity or other package of
12 compensation, not CalPERS, not the taxpayers of
13 California.

14 And the last thing I want to discuss is the
15 exclusive benefit rule. This rule is found in the State
16 Constitution, in the recently implemented regs, and the
17 Internal Revenue Code. As you know, CalPERS is a
18 tax-exempt entity under the Internal Revenue Code. And in
19 order to remain tax exempt, the System must be operated
20 for the exclusive benefit of the employers, employees, and
21 their beneficiaries.

22 Accordingly, CalPERS must ensure that its
23 contracting agencies provide retirement benefits only to
24 their employees. Failure to do so jeopardizes the
25 tax-exempt status of this System. To find for respondents

1 in this case invites mischief, it creates an extremely
2 difficult environment for staff to make membership
3 determinations, and it seriously subjects this System to
4 substantial risks of violating laws that must be followed
5 to maintain our tax-exempt status.

6 Staff respectfully urges this Board to adopt the
7 proposed decision.

8 Thank you.

9 PRESIDENT FECKNER: Thank you.

10 Mr. Renner, would you like to begin your shared
11 10 minutes?

12 MR. RENNER: Thank you, Mr. President.

13 First of all, I appreciate the opportunity to
14 speak to the Board this morning. I understand that this
15 is, we believe, a fairly unusual case, and this is a
16 fairly unusual procedure. And as you already heard, it's
17 a very fact intensive one. I'll get to that in just a
18 minute. But let me go briefly over the background to
19 this.

20 We are talking about two entities here. There's
21 no question about that. One was the Authority, which had
22 over 100 employees. It is indisputably a CalPERS agency.
23 And it's purpose was to provide health insurance to the
24 uninsured. The other was the Foundation, unquestionably a
25 technically separate legal entity. But that question

1 alone doesn't answer could it be part of the participating
2 contracting agency.

3 The point is these two entities were so
4 interrelated. The Foundation and the Authority were in
5 the same building, they used the same computer system,
6 they used the same email system, the Foundation employees
7 got their paychecks from the Authority. So obviously,
8 they're going to proceed on the assumption that they
9 understand that the Foundation is a separate entity, but
10 they would believe that they're employees of the
11 Authority. We believe that's true under two theories, as
12 you've already heard.

13 Let me go briefly into the legal background as to
14 the Cargill case, which I think both sides agree is the
15 most controlling case, the California Supreme Court case.
16 It basically said that employees of a private labor
17 supplier, who was hired by a public agency, could, in
18 fact, be CalPERS participants. In that case, the public
19 agency was attempting to get out of paying contributions
20 and having them be participants. And the court said, no,
21 there's a possibility they're common law employees.

22 The court emphasized that the important thing was
23 not the fact that the public agency and the private labor
24 supplier entered into a contract - we can all read the
25 contract -- but the important thing is how did the parties

1 function together, what was the real relationship, did the
2 public entities actually control these employees who are
3 ostensibly employed by a private entity?

4 We think that that's the point that staff has
5 overlooked in this case, is that Cargill tells us that you
6 don't just look to the documents to the contract. If you
7 could do that, then all employers could get away with
8 paying employees as independent contractors just by
9 entering into a contract that says that they're an
10 independent contractor and not an employee. But the law
11 does work that way. It does allow you to look behind the
12 documents and look at what the parties actually did.

13 Now, we think that, as we said, Ms. King could
14 either be considered a common law employee under that test
15 or part of a joint employer between the two entities. For
16 common law employment, you have to show that the employer
17 controls significant aspects of the employee's work.

18 So let me go over what kinds of things the
19 Authority controlled in Ms. King's employment. The
20 Authority hired Ms. King. The Authority in that hire
21 letter reserved the right to fire her at will. The
22 Authority was listed as the employer on her paychecks.
23 She received her W-2 from the Authority, not from the
24 Foundation. She was paid a salary. She was not paid by
25 invoices that she sent to the Authority. She was a

1 long-term employee. This was not some short-term
2 contract. The Authority was the party that granted her
3 the raise. And in another instance, the CEO of the
4 Authority approved a raise for her without any consent
5 from the Foundation board. And yet in another instance,
6 the Authority denied her a request for a salary increase.

7 They also -- the Authority also approved
8 increases for other Foundation employees. The authority
9 controlled all the employment policies and procedures.
10 The Foundation employees received all their employment
11 training from the Authority. Ms. King was required to
12 fill out a Form 700, her conflict of interest form, which
13 you only fill out if you're an employee of a public
14 agency.

15 The Authority controlled when Ms. King could take
16 vacations. The Authority controlled when both her and her
17 employees could leave the facility early. And the
18 Authority, very importantly, controlled whether the
19 Foundation could hire or fire employees.

20 There was one instance where the Authority
21 transferred a Foundation employee to its staff, and it
22 wouldn't allow the Foundation to hire a replacement. In
23 short, the Authority controlled all the significant
24 aspects of Ms. King's employment.

25 Our explanation of the ALJ's decision in this

1 case is we don't have any. The facts were overwhelming,
2 and yet she found otherwise.

3 Let me also add with respect to the matter that's
4 just been admitted. As I said, she just learned from that
5 litigation, immediately after the petition was filed, that
6 she was wrong. She was to be treated as an employee of a
7 public agency. She was told she was wrong in taking the
8 position that they're entirely independent. She based
9 that position on the administrative services agreement,
10 and the agreement, as staff has said repeatedly throughout
11 this case, holds fourth that the two entities are
12 separate, and one does not control the other. But our
13 point is look at what actually happened.

14 With this, I'm going to turn things over to Ms.
15 Hightower.

16 PRESIDENT FECKNER: Ms. Hightower?

17 MS. HIGHTOWER: Thank you. Can I ask how much
18 time is remaining?

19 PRESIDENT FECKNER: Four minutes 37 seconds.

20 MS. HIGHTOWER: Thank you. We agree with Mr.
21 Renner, on behalf of the Authority, that Ms. King was a
22 common law employee of the Authority. Alternatively, the
23 evidence establishes that King was jointly employed by the
24 Authority and the Foundation.

25 Now, the PERL does not mention the common law

1 test or exclude any other definition of the word "employ".
2 As Mr. Shah just said in giving his summary of the case,
3 the statute provides and I'm quoting him, I believe, "A
4 circular and unhelpful definition of an employee".

5 The administrative law judge here agreed with the
6 respondents that the definition of common law employment
7 includes co-employment. And this has been applied in
8 numerous situations in the courts. For example, Federal
9 Express was found to be a joint employer when it imposed
10 company policies and procedures, subjected the worker to
11 the same performance reviews and training, and set
12 compensation and benefits, all despite an agreement which
13 disavowed any employment relationship.

14 As Mr. Renner has described, the evidence here
15 amply established that King was subject to many of the
16 same circumstances as in the FedEx case. All the indicia
17 of control by the Authority Mr. Renner described shows
18 that it exercised significant control over her employment,
19 including her compensation, her benefits, her training,
20 and her policies, similar to the FedEx case. And in
21 addition, the Authority controlled who she could hire and
22 fire, even though she had the title of executive director.

23 She testified she didn't even hire a temp without
24 the Authority saying it was all right. To the extent the
25 Foundation retained formal legal rights via its legal

1 documents, that simply shows that the two entities were
2 sharing responsibilities over her employment. The fact
3 that the Authority had the right to terminate Ms. King at
4 will, with or without cause, is the ultimate control over
5 her employment.

6 The proposed decision conceded that the two
7 entities were admittedly intertwined, but then avoids the
8 obvious conclusion, that King was a joint employee, and
9 blames King for not asserting her rights to avoid the
10 control being exercised by the Authority.

11 But that is not a legitimate criteria for
12 declining to recognize King's true status. Her status is
13 based on the reality of the relationship, not on what
14 relationship she arguably might have experienced. The
15 actual relationship is what governs the employment
16 analysis.

17 And the courts have made it clear, even under the
18 common law test, that legal documents are to be ignored
19 when they contradict that actual relationship. The
20 proposed decision provides no other explanation for its
21 contrary conclusion in favor of CalPERS, which ignores
22 substantial evidence in respondent's favor.

23 For instance, in describe the Authority's
24 response to a questionnaire concerning another individual,
25 the decision omits the Authority's confirmation that the

1 Authority could terminate the worker at any time, as well
2 as the Authority's response to the question, "In your
3 opinion, is the individual an employee of the agency?",
4 to which the Authority said, yes.

5 Given that the Authority controlled the
6 employment policies governing King, who she hired, who she
7 fired, not to mention King's compensation, the Board
8 should find that the Authority controlled sufficient terms
9 and conditions of her employment to be a joint employer.

10 Now, the staff has suggested that the Board
11 should adopt a much narrower view of employee, claiming no
12 decision has expressly utilized joint employment. Again,
13 the ALJ agreed joint employment concept is consistent with
14 the PERL's definition of employee. An application of that
15 concept here to Ms. King on these facts would be a limited
16 ruling on these unusual facts.

17 The Foundation was the fundraising arm of the
18 entity. That's not a typical scenario for public entities
19 to have, nor are private entities typically integrated
20 into the public entity as this and hired at will by the
21 public entity. Further, the Foundation was a public
22 charity not a private business. Accepting King as an
23 employee of the Authority thus will not set a precedent
24 because it is not likely to recur with other contracted
25 agencies.

1 PRESIDENT FECKNER: Your time has ended Ms.
2 Hightower. Thank you.

3 MS. HIGHTOWER: Thank you.

4 PRESIDENT FECKNER: Mr. Phillips, would you like
5 to offer rebuttal

6 SENIOR STAFF ATTORNEY PHILLIPS: I would.

7 PRESIDENT FECKNER: Please set the clock at three
8 minutes and begin your rebuttal. Turn on your microphone,
9 please and pull it down. There you.

10 Thank you.

11 SENIOR STAFF ATTORNEY PHILLIPS: All good. Thank
12 you.

13 Now, first, I'm going to talk about what Ms.
14 Hightower just discussed in respect to her arguments that
15 courts look through governing documents when there are
16 contrary facts that evidence an actual employment
17 relationship. Now, this document that was just admitted
18 into evidence is a signed verified petition, signed under
19 the penalty of perjury by Ms. King herself, which states
20 that the CEO of the Authority and the Foundation are
21 entirely separate and independent agencies. Their
22 relationship is purely contractual, that the Authority
23 should not take any supervisory rule with regard to the
24 Foundation.

25 This document is extremely probative of the

1 opposing positions that respondents are now taking solely
2 for the purpose of getting CalPERS benefits. Now,
3 the common law. When the common law is used to find joint
4 employment, it's found very narrowly for one thing, and
5 it's found in situations where the employees, or the
6 workers, need protections from exploitation, or for in the
7 FedEx case that was mentioned, for reimbursement of
8 business expenses.

9 It's not that they're, all of a sudden, employees
10 for all purposes. It's to -- the courts find joint
11 employment in order to effectuate the purposes of remedial
12 legislation that have been put into place in order to
13 protect various workers, migrant farm workers, for
14 example, various forms of independent contractors, the
15 FEHA, Fair Employment and Housing Act here in California,
16 to address discrimination in employment. Those are all
17 examples where courts use this joint employment doctrine
18 in order to effectuate the purposes of the statutory
19 scheme.

20 Ms. King has no statutory right to CalPERS
21 membership here. She is an employee of a non-contracting
22 agency. It is not the purpose of the PERL to have an
23 expansive view in order to -- or expansive role in order
24 to protect private employees with a public pension.

25 Thank you.

1 PRESIDENT FECKNER: Thank you.

2 Mr. Renner would like to begin your three minute
3 shared rebuttal?

4 MR. RENNER: First, can I ask if I do, by some
5 amazing chance, wind up done before three minutes, can I
6 cede the rest of my time to Ms. Hightower?

7 PRESIDENT FECKNER: No, you're sharing the three
8 minutes.

9 MR. RENNER: No, that's what I mean, within the
10 three minutes.

11 PRESIDENT FECKNER: Whatever is left in the three
12 minutes, the both of you get to do your speech.

13 MR. RENNER: Thank you.

14 PRESIDENT FECKNER: Please start the clock. It
15 will start when you begin, Mr. Renner

16 MR. RENNER: Thank you. First, let me speak to
17 the exclusive benefit rule argument and the alleged tax
18 issue. I'm having trouble understanding that, because if
19 this Board makes a finding that Ms. King was an employee
20 of the Authority for purposes of CalPERS participation,
21 then they're can't possibly be an exclusive benefit rule
22 or an IRS tax exemption problem. If that were true, then
23 what they're saying is that the Supreme Court was wrong in
24 Cargill, that you can never have an employee of a private
25 labor supplier be considered an employee of the public

1 agency. But the Supreme Court said, yes, you could. It
2 depends on the facts.

3 There's no suggestion that the IRS exemption
4 would be in jeopardy, if this Board made the finding that
5 the employees in question is an employee of the public
6 agency for purposes of CalPERS.

7 As far as the Public Records Act litigation,
8 first of all, let me explain the background to that. What
9 Ms. King was attempting to do in filing that petition was
10 to protect donors who thought that their identity and the
11 amounts of their donations would not become part of the
12 public record. That was the sole motivation behind filing
13 that litigation.

14 The paragraph that is cited in terms of a claim
15 that there's some sort of contradiction or inconsistency
16 is paragraph 15 in the petition. What it says is it
17 first -- the first sentence paraphrases the administrative
18 services agreement. The second sentence in that same
19 paragraph quotes it directly. We know what the
20 administrative services agreement says. We know that it
21 says the two entities are separate, but our point is they
22 didn't treat each other that way.

23 Thirdly, let me get to the point of this notion
24 that it's as if there's some sort of underlying malice
25 here in Ms. King trying to participate. The benefits were

1 administered by the Authority. She had no say in that one
2 way or another. She didn't decide who was going to be
3 covered and who wasn't.

4 All of the contributions were made, and we
5 maintain she was a completely innocent participant. There
6 was no scheme to get CalPERS benefits. You can look at
7 the contract and say, oh, well, they were just supposed to
8 provide these services. Well, was she allowing the
9 Authority to decide whether she got a raise or not just so
10 she could set herself up to get CalPERS Benefits?

11 Was she allowing the Authority to decide who gets
12 hired and fired of her employees just so that she could
13 get CalPERS benefits, even though the administrative
14 services agreement does not say -- does not express any
15 kind of control like that at all within the four corners
16 of that document?

17 We submit that the evidence is overwhelmingly
18 clear that she's either a common law employee or part of a
19 joint employment relationship, and that the PERL can allow
20 under the common law for common law -- or for joint
21 employer.

22 PRESIDENT FECKNER: Thank you. Your time has
23 expired.

24 We're now to the question and answer period where
25 Board members can ask questions.

1 Mr. Costigan.

2 BOARD MEMBER COSTIGAN: Thank you, Mr. Feckner.

3 So just a few points. I don't believe she was
4 scheming. So take the questions I'm going to make in that
5 vein. So what I actually see more in the record is a
6 little too cozy of a commingling relationship between a
7 foundation and a public entity. So if we're just going to
8 look at the documents themselves, at the bylaws, of the
9 Santa Clara Family Health Foundation, this is a separate
10 California corporation. It's a -- I mean, it is a
11 separate corporation.

12 MR. RENNER: Absolutely.

13 BOARD MEMBER COSTIGAN: But what you're arguing
14 is there's a commingling between a separate California
15 corporation and the local government entity. And that's
16 what you're arguing, because there's a contract. There's
17 a document where she's hired as the executive director of
18 a separate California foundation.

19 MR. RENNER: Yes, that's correct.

20 BOARD MEMBER COSTIGAN: Okay. And then she's
21 being paid by a local government entity. I mean, that's
22 what I'm looking at in the record. That's what the ADP
23 document shows.

24 MR. RENNER: Yes. She got a W-2 from them.

25 BOARD MEMBER COSTIGAN: So of the 123 million

1 that was raised, where did that money go?

2 MR. RENNER: All of the money goes to the
3 Authority.

4 BOARD MEMBER COSTIGAN: So did the Authority bill
5 the Foundation for her service? Here's what I'm
6 struggling with. She's hired by the Foundation, a
7 separate California corporation. What I don't see in the
8 record -- and I do a lot with foundation boards, so I'm
9 really struggling with this is a little too friendly of a
10 relationship. Employees -- the same thing with the other
11 employees that were hired, where an offer was extended,
12 there is no reference -- for example, and I'm not pick on
13 Ernesto, but it's your document. "We are delighted to
14 extend you an offer of employment. The terms and
15 conditions to join the Santa Clara Family Health
16 Authority, dba Santa Clara Family Health Plan". Where is
17 any records -- is there a reference that this employee
18 works for the Foundation?

19 MR. RENNER: Well, it's -- actually, I think in
20 that offer letter there is a further reference to the
21 Foundation itself.

22 BOARD MEMBER COSTIGAN: It's you will report to
23 the Foundation's finance director. Again, here's the
24 struggle coming the other way, is the city -- or the
25 Authority is making a gift of public assets to a private

1 corporation. You've got -- you've got -- this is not an
2 innocent, simple, straightforward common law issue. I
3 mean, you've got the commingling of the funds. You've got
4 the commingling of entities.

5 She was hired by a board that is specifically set
6 forth in the bylaws, and the paperwork is just processed
7 through ADP. So you're saying the 120 -- the 100 million,
8 which I commend you on raising. That's fantastic. I do
9 have concerns with your statement that people were trying
10 to hide their identity by giving -- they're giving to a
11 non-profit public corporation to take a tax deduction.
12 And now this -- I guess the statement you just said is
13 they were trying to hide their identity, which sort of
14 raises even more issues as to why would anybody be engaged
15 in hiding a donor's identity. That just is a bit of a red
16 flag.

17 But from the standpoint of where is there even
18 a -- I don't see in the record, and I've looked at her
19 payroll records, is there a -- where is the reimbursement
20 document or the -- so the president of the board says I'm
21 going to hire her, here's the salary, and then what, just
22 bill Santa Clara for it?

23 MR. RENNER: Or -- well, actually, I think it
24 worked the other way around, is that the foundation -- or,
25 excuse me, the Authority would invoice the Foundation for

1 their employee costs, so for their payroll, for their
2 benefit costs.

3 BOARD MEMBER COSTIGAN: But at least what I see
4 in the record is that the Foundation hired the executive
5 officer. That the original offer of hire was extended by
6 the Board chair of the Santa Clara Family Health
7 Foundation.

8 MR. RENNER: That's correct.

9 BOARD MEMBER COSTIGAN: Which is the non-profit
10 entity -- which is the California non-profit public
11 benefit corporation. So you're agreeing that she was
12 hired by the Foundation. Now, you just said you're
13 correct. So she was hired by the foundation.

14 MR. RENNER: Yes.

15 MS. HIGHTOWER: She was hired by the Authority.

16 BOARD MEMBER COSTIGAN: No, no. You just -- now
17 we've got two lawyers - and I would have preferred in
18 person. You just said that she was hired by the
19 Foundation.

20 MR. RENNER: That's my belief, yes, based on the
21 record.

22 BOARD MEMBER COSTIGAN: And the offer was
23 extended by the chair of the Foundation.

24 MR. RENNER: Actually, no, I think it comes from
25 the Authority.

1 BOARD MEMBER COSTIGAN: I'll come back. I'll
2 find it in the extensive record.

3 PRESIDENT FECKNER: Thank you.
4 Ms. Hollinger.

5 BOARD MEMBER HOLLINGER: Yeah. What I'm confused
6 here, and I'm not sure maybe Mr. Phillips can shed some
7 light, what's very confusing to me is a couple of things.
8 Number one, I'm confused about the relationship, but then
9 when I look at the paycheck, I see that deductions were
10 made and contributed to CalPERS, and that they made a
11 co- -- a match. And I also then look at the insurance
12 policy they had. And when they look at the holder or the
13 employer, it's written as the -- thank you -- as the Santa
14 Clara County Health Authority. So here -- and it's Santa
15 Clara County Health Authority that's writing her check and
16 taking deductions and contributions to PERS. So can you
17 explain that to me how that happens?

18 SENIOR STAFF ATTORNEY PHILLIPS: Yes, absolutely.
19 So all of these administrative type of functions, payroll,
20 HR, training, those were all done by the Authority for the
21 Foundation pursuant to the administrative services
22 agreement. And counsel for Respondent King just mentioned
23 that there were invoices that the Foundation -- I'm
24 sorry --

25 BOARD MEMBER HOLLINGER: But why would they

1 take -- why would they take contributions --

2 PRESIDENT FECKNER: Just a second.

3 BOARD MEMBER HOLLINGER: Oh. Why would they take
4 a contribution to PERS? Why would they deduct that from
5 her paycheck?

6 SENIOR STAFF ATTORNEY PHILLIPS: Well, it was
7 wrong. The Authority was incorrectly and improperly
8 reporting the Foundation employees, including Ms. King, to
9 CalPERS for membership purposes. They shouldn't have been
10 taking contributions.

11 BOARD MEMBER HOLLINGER: And also why would she
12 be on their payroll?

13 SENIOR STAFF ATTORNEY PHILLIPS: That again is
14 wrong. She shouldn't have been. At that -- this
15 relationship, this services agreement, the Authority was
16 simply acting as, in this instance, as a payroll
17 administrator, just like ADP would. They would --

18 BOARD MEMBER HOLLINGER: Yeah, but is that a role
19 that these entities play?

20 MR. SHAH: It does happen a lot in the non-profit
21 sector, if I may interrupt, where a related entity will
22 perform some ministerial functions. Here, it's clear that
23 the paychecks and other documents were not properly
24 documented. I think that's the position that at least Ms.
25 King's counsel would say.

1 On the other hand, we don't have any information
2 to suggest that the funds actually came from the
3 Authority's -- the funds that were paid to her, her wages,
4 her CalPERS contributions, et cetera, presumably the
5 argument is they came from the Authority's budget, but --

6 BOARD MEMBER HOLLINGER: Well, it appears that
7 way. It's on their check. I mean --

8 MR. SHAH: And it should not have. And that's
9 the contention that CalPERS is making, that the Authority
10 should not have listed her as a CalPERS employee --
11 excuses me, as a CalPERS participant, as their employee.

12 BOARD MEMBER HOLLINGER: Thank you.

13 SENIOR STAFF ATTORNEY PHILLIPS: Ms. Hollinger,
14 can I follow up on that just a second?

15 And it's important to note that when the
16 Foundation terminated the services agreement contract with
17 the Authority, so did all of the payroll reporting, as
18 well as the other services that they provide. And now,
19 the Foundation has its own third-party payroll provider
20 and no reporting is being made to CalPERS.

21 PRESIDENT FECKNER: Ms. Taylor.

22 BOARD MEMBER TAYLOR: So my questions are kind of
23 in that vein. So we don't have any evidence showing
24 whether or not the Authority reimbursed the Foundation --
25 or, I'm sorry, vice versa, the Foundation reimbursed the

1 Authority, because the check was written by Santa Clara
2 County. So did we ever get any evidence that it was
3 reimbursed?

4 SENIOR STAFF ATTORNEY PHILLIPS: I can't remember
5 if that was introduced by respondents or not.

6 BOARD MEMBER TAYLOR: I didn't see it in here.

7 SENIOR STAFF ATTORNEY PHILLIPS: I don't believe
8 CalPERS had that as part of the audit findings.

9 BOARD MEMBER TAYLOR: Okay. So that wasn't part
10 of the findings. That's where my concern is, is because
11 it sounds to me -- there's a couple of problems, and I
12 agree with Mr. Costigan that this relationship was much
13 too cozy for a county to be behaving like this. But my
14 other concern is what -- if she's an employee of the
15 Authority, and apparently the Authority believes she's an
16 employee, and she's paid into CalPERS, what's going to
17 happen to that money?

18 SENIOR STAFF ATTORNEY PHILLIPS: Right. So if
19 the proposed decision is adopted by the Board, the
20 Authority would get a refund -- or a credit of all of the
21 incorrectly reported contributions. Now, the Authority --
22 between the Authority and Ms. King as far as deductions
23 that were taken out of her check, her portion -- her
24 member portion, that's going to be between those two
25 parties, but a full reimbursement would be made.

1 BOARD MEMBER TAYLOR: Okay. And as I understand
2 from some of the information I'm reading here, there were
3 other employees of both the Authority and the Foundation
4 as well. Has that already been taken care of or is that
5 after this decision going to be taken care of?

6 SENIOR STAFF ATTORNEY PHILLIPS: All right.
7 Well, that's a great question. So the scope of the audit
8 that was performed -- and how the audit works is they take
9 a random sampling of all employees and look into the facts
10 of the employment relationship. And in that audit a
11 number of employees that were reported by the Authority
12 were actually pursuant to our determinations employees of
13 the Foundation.

14 Now, after respondents appealed our CalPERS
15 determination, CalPERS asked for additional information of
16 the Authority on all of these potential employees of the
17 Foundation that were reported by the Authority, and they
18 have been uncooperative pending this case. So CalPERS
19 really doesn't know, to the extent, how many employees are
20 potentially involved.

21 BOARD MEMBER TAYLOR: The Authority has been
22 uncooperative?

23 SENIOR STAFF ATTORNEY PHILLIPS: Yes.

24 BOARD MEMBER TAYLOR: Okay. And then --

25 SENIOR STAFF ATTORNEY PHILLIPS: And I'm sorry, I

1 should add, the audit -- CalPERS had no jurisdiction over
2 the Foundation and the audit. And CalPERS has no
3 jurisdiction now to demand any information from the
4 Foundation. So we are restricted essentially to
5 cooperation from the Authority.

6 BOARD MEMBER TAYLOR: So, in essence, that's why
7 we don't have anything showing a reimbursement from the
8 foundation.

9 SENIOR STAFF ATTORNEY PHILLIPS: (Nods head.)

10 BOARD MEMBER TAYLOR: Okay. And then the
11 administrative services agreement states the entities are
12 separate. So then I'm confused as to why Santa Clara
13 County then offers PERS retirement to those employees
14 anyway. I don't know that that's a question you can
15 answer.

16 SENIOR STAFF ATTORNEY PHILLIPS: We are confused
17 as well.

18 BOARD MEMBER TAYLOR: Okay. That's -- I think
19 that takes care of all my questions.

20 Thank you.

21 PRESIDENT FECKNER: Thank you.

22 Mr. Slaton.

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

24 I want to understand -- I think I do, but I want
25 some clarification. If the IRS tax code had been written

1 so that one could donate to the Authority and have it be a
2 tax deductible donation, just the same as to a 501(c)(3),
3 would this entity have even been created? Was the purpose
4 of the creation of this entity in order to avail oneself
5 of the ability to have donors get tax deductions for their
6 contributions?

7 MR. RENNER: I believe that was the thrust of the
8 reason for the creation. But if I could also point out
9 that whether if someone is an employee of one organization
10 or another, can have different answers, depending on which
11 area of law you're applying. So the fact that for IRS
12 purposes it's a separate organization doesn't necessarily
13 answer are employees of that same organization solely
14 employed by them or perhaps someone else for workers'
15 comp, for unemployment compensation, for CalPERS?

16 BOARD MEMBER SLATON: Well, where I'm going with
17 this, was there any other fundraising for anyone else
18 during the time period in question?

19 MR. RENNER: No.

20 BOARD MEMBER SLATON: For any other entity?

21 MR. RENNER: No, the Foundation --

22 BOARD MEMBER SLATON: So all funds were being
23 raised for this purpose?

24 MR. RENNER: Yes, that's correct.

25 BOARD MEMBER SLATON: So had there only been the

1 Authority, the Authority could have gone out and raised
2 the money.

3 MR. RENNER: I think that's true, yes.

4 BOARD MEMBER SLATON: However, they would not
5 have had -- been able to avail themselves of an ability to
6 have donors deduct their contribution -- at least
7 individual donors and corporate donors --

8 MR. RENNER: I believe that's true.

9 BOARD MEMBER SLATON: -- deduct from their income
10 tax? Okay. That's all I have for now.

11 PRESIDENT FECKNER: Thank you. Ms. Mathur.

12 BOARD MEMBER MATHUR: Thank you. This is a
13 complicated case, in the sense that it seems to me, just
14 from reading the record, and I'm -- that perhaps this
15 entity -- and sort of falling on Mr. Slaton's comments and
16 questions -- was created to be controlled by the
17 Authority, but that over time that relationship actually
18 changed, in 2013, perhaps when the agreement was severed.
19 So the closeness of the relationship, which may have been
20 a control relationship -- there are certainly indications
21 that there are elements of that -- changed in 2013.

22 So I guess my question is -- and maybe it's a
23 questions to Mr. Phillips is could there be a period of
24 time where Ms. King was an employee of the Authority and
25 then that relationship changed, and she no longer was?

1 SENIOR STAFF ATTORNEY PHILLIPS: No. We take the
2 position that the split in 2013 simply shows, it
3 evidenced, that the relationship that they had prior to
4 that was pursuant to the contract. As the administrative
5 law judge noted, the actual control over the function of
6 the Foundation was not exerted by the Authority.

7 The Authority didn't tell the Foundation how to
8 raise money, which is what the Foundation did. And
9 without that control, there was no time in which Ms. King
10 or any of the other Foundation employees could have been
11 employees of the Authority.

12 BOARD MEMBER MATHUR: Who established the
13 Foundation? It was the Authority who established the
14 Foundation?

15 MS. HIGHTOWER: Yes.

16 BOARD MEMBER MATHUR: And it was for a purpose of
17 raising funds to support the Authority?

18 MS. HIGHTOWER: Yes.

19 BOARD MEMBER MATHUR: I guess what I'm struggling
20 with a little bit is what does it mean to tell them how to
21 do their business -- I mean, how to do the work? I mean,
22 if you have an employer, they don't necessarily tell you
23 every little minutia about how to do it. As they say, go
24 off and do this -- you know, this is your mandate.

25 So I'm struggling with how detailed does that

1 direction need to be in order to be exerting control or
2 determining the work to be done?

3 SENIOR STAFF ATTORNEY PHILLIPS: Right. Well,
4 that's a good question. And that kind of is what the
5 whole concept about independent contractors are, right?
6 So the master in that relationship says this is the job.
7 And the independent contractor then can go about doing
8 that job in any way that they see fit. In fact, it
9 doesn't even have to be that individual that does that
10 job. They could subcontract, if they wanted to. There's
11 no employment relationship there.

12 Just as here, there's no employment relationship,
13 because the Authority didn't tell the Foundation or exert
14 any control over how they did their job. They simply
15 provided a administrative support.

16 BOARD MEMBER MATHUR: And in terms of doing
17 reviews of Mrs. King, I saw several reviews in here, but I
18 didn't -- and maybe I missed it, but I didn't see one for
19 Mrs. King. Who performed the reviews of Mrs. King?

20 SENIOR STAFF ATTORNEY PHILLIPS: That was part of
21 the HR function at the Authority.

22 BOARD MEMBER MATHUR: So the Authority did
23 perform the reviews of her work, which, in my experience,
24 a review is of -- that is a way of directing work is by
25 telling them whether they've done their work correctly,

1 the work that has been assigned to them.

2 SENIOR STAFF ATTORNEY PHILLIPS: Actually -- so
3 the -- my understanding and memory of the testimony was
4 that while the actual review was part of the functions of
5 the Authority, that within the chain of command inside of
6 the Foundation, for instance, there was testimony from
7 another employee of the Foundation, Emily Hennessy, who
8 was a direct report to Ms. King. Now, Ms. King directed
9 Ms. Hennessy's job and told her what to do and how to do
10 it. So I think just the fact that the Authority was the
11 entity that performed the function of the review
12 isn't -- it isn't the whole --

13 BOARD MEMBER MATHUR: But I'm asking who did the
14 review of Mrs. King?

15 SENIOR STAFF ATTORNEY PHILLIPS: I don't know
16 that that was in evidence. There was test --

17 BOARD MEMBER MATHUR: That wasn't in evidence.
18 Okay, because I didn't -- I didn't find it, and I wasn't
19 sure if I was miss -- if I'd missed it.

20 SENIOR STAFF ATTORNEY PHILLIPS: There was
21 testimony that she was a direct report to the Foundation
22 Board.

23 BOARD MEMBER MATHUR: Okay. Thank you.

24 Mr. Renner, did you provide any -- in your
25 exhibits, and I'm sorry if I've missed it, reviews of Mrs.

1 King and who performed those reviews?

2 MR. RENNER: I'm looking for it, and I'm not
3 finding the citation to the record. It was my belief that
4 there was at least one review of Ms. King done by the
5 Authority, but I'm not finding it in the record.

6 BOARD MEMBER MATHUR: Okay. All right. I didn't
7 find it in the record either, but I just wanted to make
8 sure I hadn't missed it.

9 Okay. Thank you.

10 PRESIDENT FECKNER: Mr. Jelincic.

11 BOARD MEMBER JELINCIC: When I look at the
12 service agreement, I don't see anything that says the
13 Authority can hire and fire Mrs. King. Am I missing it?
14 And if I am not, is there other documentation that says
15 that they can that I also missed?

16 MR. RENNER: That -- you're asking me, correct?

17 BOARD MEMBER JELINCIC: Yes.

18 MR. RENNER: Yes, I would agree that the
19 administrative services agreement does not address that
20 question. There's a lot of things it does not address
21 that we've introduced testimony on, including documents
22 of -- that document does not tell the whole story.

23 We say that the Authority had the ability to fire
24 Ms. King at will, because that's what it says at the
25 bottom of her offer letter, which is document number 56 --

1 or page number 56 of our exhibits.

2 BOARD MEMBER JELINCIC: Okay.

3 MR. RENNER: This is the ambiguous -- somewhat
4 ambiguous offer letter that Member Costigan was asking
5 about, of references to both the Foundation and the
6 Authority in the same letter.

7 BOARD MEMBER JELINCIC: Okay. And in the
8 additional exhibit you entered, the order on the public
9 records issue, when I look at that, it does not really
10 address whether she is an employee or not. What it does
11 say is that these documents, held in the possession of the
12 Authority, were, in fact, public records. From your
13 argument, the intent was to shield the donors. And yet,
14 we give information -- and I'll pick on George Linn,
15 because he's sitting out there. We give information on
16 George Linn's pension on a regular basis, although George
17 is clearly not subject to the public records request. We
18 are because we hold the document. How is that any
19 different in the case that you've submitted?

20 MR. RENNER: The -- excuse me, the records that
21 that other party believed were subject to the Public
22 Records Act that were being sought were emails sent by Ms.
23 King and others who were ostensibly employees of the
24 Foundation. And the email system was maintained by the
25 Authority. So they were seeking emails that the Authority

1 had possession of. And without the Foundation trying to
2 get an injunction to stop them from releasing them, they
3 were going to be released. And, of course, they were
4 released, because they didn't get the order. It went the
5 other way.

6 BOARD MEMBER JELINCIC: So because the Authority
7 held the records is why they were declared public
8 records: --

9 MR. RENNER: Well, I --

10 BOARD MEMBER JELINCIC: -- rather than dealing
11 with the actual content?

12 MR. RENNER: The -- I hate to sound -- I can't
13 think of the word for it. I don't mean to dismiss your
14 question at all, but my only understanding as to what that
15 order means is just the words in the document. And it
16 said basically that your emails are covered by the Public
17 Records Act. And I read into that, even though you're
18 supposed to be just an employee of the Foundation.

19 BOARD MEMBER JELINCIC: Okay. Thank you.

20 PRESIDENT FECKNER: Mr. Costigan.

21 BOARD MEMBER COSTIGAN: Just a couple more
22 points. I just want to point out that in the bylaws that
23 were done in 2011, and again updated in 2013, it's very
24 clear is, "Changes in executive director compensation
25 shall be consistent with the guidelines established by the

1 Board and shall reflect such performances". It's the
2 Board shall set the compensation of the executive director
3 of the corporation.

4 I mean, here's the problem, you're trying -- and
5 I get what you're coming from, but you're trying to create
6 an argument that she was a common law employee, while at
7 the same time ignoring California -- the law as it relates
8 to the creation of the bylaws to this corporation. I
9 mean, you read the purpose of what the corporation was
10 created for. You read the make-up and how the executive
11 director is -- again, I have more concerns about the
12 commingling of a nonprofit and a government entity. I
13 mean, that's basically the argument you're making is that
14 even though the controlling document says the chairperson
15 of the Board of the non-profit Foundation is the only one
16 that can hire and set the compensation, you're actually
17 saying that she was an employee of Santa Clara County and
18 that they set the compensation.

19 So both of these documents are in direct -- your
20 argument is in direct conflict. So who's wrong? Did the
21 Foundation violate its bylaws by not hiring the executive
22 director?

23 MR. RENNER: Well, at that time, she was already
24 hired, so --

25 BOARD MEMBER COSTIGAN: So --

1 MR. RENNER: And when they changed the bylaws in
2 2011.

3 BOARD MEMBER COSTIGAN: But the -- it's clear in
4 '11 and '13 that only the Board can set the compensation.
5 So did the Board violate its fiduciary duty? Did the
6 board members violate their fiduciary duties by not
7 setting the compensation for the executive director,
8 because that's what you're arguing because she was an
9 employee of the county -- sorry, of the Authority?

10 MR. RENNER: I don't know the answer to that
11 question.

12 BOARD MEMBER COSTIGAN: Thank you.

13 PRESIDENT FECKNER: Mr. Jones.

14 VICE PRESIDENT JONES: Yeah. Thank you, Mr.
15 President.

16 Yeah. My question goes to the same section that
17 Mr. Costigan is referring to. Who are the Board members
18 of the Foundation?

19 MR. RENNER: Well, during some of the period in
20 question, which is between 2008 and 2013, there was a lot
21 of interchange of the board members of the Foundation and
22 of the Authority. The CEO of the Authority also sat on
23 the Foundation board, which tells you something about the
24 dynamics of the relationship and why the Authority was
25 able to exert a lot more authority over the Foundation

1 than you would see within the administrative services
2 agreement.

3 VICE PRESIDENT JONES: And the action taken by
4 the Foundation board, did it have to seek approval of the
5 Authority's board?

6 MR. RENNER: I'm sorry, did --

7 VICE PRESIDENT JONES: The actions that are taken
8 by the Foundation board, did they have to subsequently
9 seek the Authority of approving those actions by the
10 Authority's board?

11 MR. RENNER: Not if the Foundation actually took
12 action on it. I don't think there's any evidence of that
13 on an item that they did take action on. But there is a
14 large vacuum where the Authority would take action on it.
15 And if the Foundation doesn't take any action, then they
16 have the power.

17 PRESIDENT FECKNER: Ms. Taylor.

18 BOARD MEMBER TAYLOR: So I kind of want to go
19 back and find out -- and I'm not sure if I should be
20 asking you or -- and I can't remember her name on the
21 phone.

22 PRESIDENT FECKNER: Ms. Hightower.

23 BOARD MEMBER TAYLOR: Hightower. Why is the
24 Foundation not being forthcoming with -- I would think it
25 would be something that may help your case. My concern is

1 that if we're asking for this information and we're not
2 getting it from the Foundation, it could be detrimental to
3 Ms. King or it could be helpful. And I'm just a little
4 concerned, do you know why the Foundation is not helping?

5 MR. RENNER: I don't understand what is the basis
6 of that statement. First of all, I thought he was talking
7 about the Authority. They were having trouble getting
8 information from the Authority not from the Foundation,
9 but --

10 BOARD MEMBER TAYLOR: No, we can get the
11 information from the Authority. The Foundation, as I
12 understand what you're telling me is, was the one not
13 giving us the information.

14 SENIOR STAFF ATTORNEY PHILLIPS: No. We have no
15 jurisdiction over the Foundation at all to demand any
16 documents. Staff may communications with the Authority to
17 get information on employees that may have been
18 misrepresented. And the Authority is the entity that has
19 been uncooperative until this case is over.

20 BOARD MEMBER TAYLOR: So then --

21 MS. HIGHTOWER: Can I --

22 BOARD MEMBER TAYLOR: -- I had one more --

23 MS. HIGHTOWER: Can I address that?

24 BOARD MEMBER TAYLOR: I had one more question
25 though. If that's the case, did you also -- I think I

1 also understood that the pay documents or the
2 reimbursement documents would be from the Foundation to
3 the Authority, is that correct, that the invoicing, or
4 vice versa, and we didn't receive any of that, and we
5 don't know who is not providing that?

6 SENIOR STAFF ATTORNEY PHILLIPS: Correct.

7 BOARD MEMBER TAYLOR: So we don't know which one
8 is not providing that, the Authority or the Foundation?

9 SENIOR STAFF ATTORNEY PHILLIPS: Well, the
10 Authority is the only one that we have authority over in
11 order to make such a demand. So they're the only ones not
12 cooperating. We haven't made such a request of the
13 Foundation since we don't have --

14 BOARD MEMBER TAYLOR: Okay. So the authority --
15 we have proof that she was being paid by the Authority --

16 SENIOR STAFF ATTORNEY PHILLIPS: Correct.

17 BOARD MEMBER TAYLOR: -- but we don't have any
18 proof whether or not the Authority was invoicing?

19 SENIOR STAFF ATTORNEY PHILLIPS: Correct.

20 BOARD MEMBER TAYLOR: Okay. That's where I was
21 getting confused. So go ahead and explain that.

22 PRESIDENT FECKNER: Ms. Hightower go ahead.

23 BOARD MEMBER TAYLOR: Ms. Hightower.

24 MS. HIGHTOWER: Yes. Thank you. My
25 understanding is the Authority cooperated with CalPERS

1 when they came in and did their audit a number of years
2 ago and provided them all the information that they
3 requested. I do not believe they requested invoices or
4 such records as is are being discussed.

5 In terms of the statement that the Authority is
6 being uncooperative, I disagree with that, and I take
7 offense at that. What has happened is that CalPERS staff
8 went to Authority staff and asked the staff to say which
9 people were employed by the Foundation. And as I
10 explained to CalPERS counsel, it's not something that is
11 so simple for them to answer. And I thought it needed to
12 be done through counsel not staff to staff, and thus it
13 should wait until we have the outcome of this proceeding
14 before we go down that path.

15 We did not refuse to provide any further
16 information. We just said it should be deferred, and it
17 should be handled through counsel, not through staff to
18 staff.

19 BOARD MEMBER TAYLOR: Okay.

20 PRESIDENT FECKNER: Ms. Mathur.

21 BOARD MEMBER MATHUR: Yeah. I was just trying to
22 find this offer letter to Ms. King. It's listed under
23 respondent's exhibits number 56, but I actually don't find
24 it itself in the record. I've been looking many times. I
25 see the offer letter to Ms. Hennessy and the offer letter

1 to Mr. Villalobos. Can somebody direct me to it? Did I
2 miss it?

3 SENIOR STAFF ATTORNEY PHILLIPS: I'm having the
4 same problem. I was looking earlier and my book goes from
5 55 to 57.

6 MS. HIGHTOWER: I believe it is CalPERS Exhibit
7 13.

8 BOARD MEMBER MATHUR: Okay. Thank you.

9 MS. HIGHTOWER: I believe it's also an exhibit
10 from Ms. King.

11 BOARD MEMBER MATHUR: Right. It was listed as an
12 exhibit, but not actually in the record. All right.
13 Thank you. I'll go back and look.

14 PRESIDENT FECKNER: Mr. Slaton.

15 BOARD MEMBER SLATON: Thank you. I want to refer
16 you to -- respondent's counsel to Respondent Kings Exhibit
17 A page 224 of 288. So it's page 224. It's the second
18 page of an email, and I presume this is from the
19 Foundation to the Authority, and this is at the time when
20 you were separating. And I'm interested in number 9 on
21 that page. And I'll quote, "Could Sharon in HR meet with
22 Emily and Kathleen to discuss movement of the Foundation's
23 retirement accounts to another firm". What is being
24 referred to here and what retirement accounts are we
25 talking about --

1 MR. RENNER: I'm sorry. Is that --

2 BOARD MEMBER SLATON: -- because that wouldn't be
3 CalPERS.

4 MR. RENNER: I couldn't find the page while you
5 were reading from it.

6 BOARD MEMBER SLATON: This is page 224 of 288,
7 Attachment 1, Respondent Kings's Exhibit A. It's a
8 two-page email from Dave Cameron to Emily Hennessy. And
9 several people are copied. And actually, it's a
10 forwarding of an email addressed to Dave, and it's signed
11 by Emily Hennessy, who's the Director of Finance and
12 Programs in the Foundation.

13 So, "Could Sharon in HR meet with Emily and
14 Kathleen to discuss movement of the Foundation's
15 retirement accounts to another firm". What is that
16 referring to? Were there some other retirement accounts
17 besides CalPERS that were offered to employees?

18 MR. RENNER: I don't believe so or at least that
19 were a part of the record in this case.

20 BOARD MEMBER SLATON: Is this a request to move
21 out of CalPERS to something else?

22 MR. RENNER: I think that's probably what it was.
23 I'm only guessing, but -- I'm being told it's not.

24 BOARD MEMBER SLATON: Okay. Well, apparently the
25 answer was yes. So apparently there was meeting that must

1 have -- that could have taken place, but it seems a little
2 odd.

3 MR. RENNER: I'm being told that actually this
4 was discussing a separate plan, a non-CalPERS plan, a
5 401(k) plan.

6 BOARD MEMBER SLATON: A non-CalPERS plan. Okay.
7 All right. Thank you.

8 PRESIDENT FECKNER: Ms. Hagen.

9 ACTING BOARD MEMBER HAGEN: Thank you. I'm not
10 sure, maybe this is for our counsel this question. But to
11 the point on the common law employment test, I was
12 wondering if in prior cases that we've heard before the
13 Board we've talked a lot about there needing to be an
14 established pay scale and competitive recruitment and
15 hiring. And I don't see that anywhere in the record. Is
16 that not relevant for the common test -- common law
17 employment test?

18 MR. SHAH: Well, I think that certainly the
19 factor would be important to a judge if it existed to
20 review a pay scale that was established by the Authority,
21 which covered this particular position. It certainly
22 would be relevant, you know, so -- but I don't think it
23 was offered in evidence in this case.

24 ACTING BOARD MEMBER HAGEN: Do we know?

25 SENIOR STAFF ATTORNEY PHILLIPS: So the issue was

1 membership not final compensation or, you know, what your
2 eventual benefits are. So those issues really weren't
3 ferreted out in the administrative hearing.

4 ACTING BOARD MEMBER HAGEN: Thank you.

5 PRESIDENT FECKNER: Mr. Lawyer.

6 ACTING BOARD MEMBER LAWYER: So my question is
7 very much in line with Ms. Hagen's. The Respondent
8 Authority makes the case that the Authority exercised
9 sufficient control to create an employment relationship
10 through, among other things, setting her compensation.
11 How is that authority established?

12 MR. RENNER: Well, first of all, if you look at
13 the administrative services agreement, you could read that
14 and say, well, obviously, the Authority couldn't control
15 their compensation, but it doesn't tell you one way or the
16 other. It's pretty generic. And so what we have is what
17 actually happened in the relationship, which is Authority
18 ran all employment related affairs of the Foundation,
19 which meant they said they had the Authority to grant or
20 deny raises, and that's, in fact, what they did.

21 Now, the ALJ in this case took the attitude of,
22 well, they didn't have to let them do that, and they could
23 have asserted their own authority. But that's -- here's
24 an organization with over 100 employees that supplies
25 everything to them computer systems, emails, the office

1 space. They're a tiny little division -- like a division
2 within it of five or less employees, and that's the way
3 they ran things. And to say, well, they didn't have to
4 accept that is sort of like saying to the employee who's
5 treated as an independent contractor, well, he or she
6 didn't have to accept that. But the fact of the matter is
7 they do accept it, because they keep on getting a check
8 that way. I mean, that's the practical reality of this
9 situation.

10 ACTING BOARD MEMBER LAWYER: Thank. You

11 PRESIDENT FECKNER: Ms. Mathur.

12 BOARD MEMBER MATHUR: Sorry. I'm getting back to
13 this change of arrangement between the -- with the
14 services agreement that took place in 2013. Who -- so
15 currently -- or since 2013, the employees of the
16 Foundation have not had CalPERS deduct -- contributions
17 deducted from their paychecks, is that correct?

18 MR. RENNER: Yes. I believe when the -- about --
19 at a point -- at about the point when the audit findings
20 either were final or almost final, CalPERS said, you know,
21 you're cut off. The contract -- I don't know if
22 technically they said the contract was over, but they said
23 stop making the contributions. We won't accept them
24 anymore, and so they had to make another plan --

25 BOARD MEMBER MATHUR: I see.

1 MR. RENNER: -- with this issue still pending
2 there.

3 BOARD MEMBER MATHUR: It's interesting. I'm now
4 looking again at the offer letter to Ms. King, and there
5 is boilerplate -- there is language at the bottom that
6 says the Santa Clara Health Authority is an at-will
7 employer, but it doesn't actually say in the letter that
8 the Santa Clara Health -- County Health Authority is the
9 employer. It says that the Foundation is the employer.
10 And I'm not -- it's not -- it doesn't -- to me, it doesn't
11 necessarily -- it just looks like boilerplate language
12 that maybe this is just part of all of their work that
13 they've -- you know, this type of work that they do, in
14 terms of every offer letter has the boilerplate language
15 at the bottom. And in this case, they were providing a
16 service to the Foundation, and they -- but they -- that
17 language is just always there, because it doesn't connect
18 actually to the actual offer.

19 Anyway, I just make that observation.

20 PRESIDENT FECKNER: All right. Seeing no other
21 requests to speak, this hearing is concluded. The Board
22 will now move into the back room with its independent
23 counsel. I would assume we'll be back here within 10
24 minutes, so don't everybody run away.

25 SENIOR STAFF ATTORNEY PHILLIPS: Thank you.

1 (Off record: 12:51 PM)

2 (Thereupon the meeting recessed into
3 closed session.)

4 (Thereupon the meeting reconvened in
5 open session.)

6 (On record: 1:00 PM)

7 PRESIDENT FECKNER: All right. We're going to
8 call the Board meeting back into session, please.

9 Mr. Jones.

10 VICE PRESIDENT JONES: Yeah thank you. Mr.
11 President, do we want to wait for the respondents.

12 PRESIDENT FECKNER: Oh, they're going through the
13 metal detector. Give them a second.

14 VICE PRESIDENT JONES: Okay.

15 PRESIDENT FECKNER: That's what happens when I
16 say don't leave.

17 They were standing in the hallway. I think
18 they're trying to come back through.

19 VICE PRESIDENT JONES: I saw him. Did he go the
20 other way. There she is.

21 PRESIDENT FECKNER: Yeah, they're wanding --
22 they're wanding them now. Don't wander off.

23 PRESIDENT FECKNER: Okay. We're back on the
24 record.

25 Mr. Jones.

1 VICE PRESIDENT JONES: Yeah. Thank you, Mr.
2 President. I move to adopt the proposed decision as the
3 Board's own decision in its entirety.

4 PRESIDENT FECKNER: Is there a second?

5 BOARD MEMBER JELINCIC: Second.

6 PRESIDENT FECKNER: It's been moved by Jones,
7 seconded by Jelincic.

8 Please turn on the machine for an electronic
9 vote.

10 (Thereupon an electronic vote was taken.)

11 PRESIDENT FECKNER: 9 yes, 2 noes.

12 Motion passes. Thank you.

13 This hearing is over, and this Board meeting is
14 now adjourned.

15 Thank you very much, everyone.

16 (Thereupon the California Public Employees'
17 Retirement System, Board of Administration
18 open session meeting adjourned at 1:01 p.m.)

1 C E R T I F I C A T E O F R E P O R T E R

2 I, JAMES F. PETERS, a Certified Shorthand
3 Reporter of the State of California, do hereby certify:

4 That I am a disinterested person herein; that the
5 foregoing California Public Employees' Retirement System,
6 Board of Administration open session meeting was reported
7 in shorthand by me, James F. Peters, a Certified Shorthand
8 Reporter of the State of California.

9 That the said proceedings was taken before me, in
10 shorthand writing, and was thereafter transcribed, under
11 my direction, by computer-assisted transcription.

12 I further certify that I am not of counsel or
13 attorney for any of the parties to said meeting nor in any
14 way interested in the outcome of said meeting.

15 IN WITNESS WHEREOF, I have hereunto set my hand
16 this 25th day of April, 2016.

17
18
19
20 

21
22
23 JAMES F. PETERS, CSR
24 Certified Shorthand Reporter
25 License No. 10063