

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

In the consolidated cases of Albert Tromp, George Hopkins, Dan Burlingham, Patrick Reilly, Richard Williams, David Darrow, Robin Sherwood, Robert Roach, and Victor Hernandez (Respondents) and the City of El Monte (City), CalPERS determined that the "Master Officer Pay" (MOP), an item of compensation provided to Respondents by the City, failed to meet the definition of "compensation," the definition of "Master Police Officer" pay under Title 2, California Code of Regulations, section 571(a)(1), and the requirements of section 571(b).

In 2009 and 2010, the City experienced financial difficulties and implemented cost saving measures. In 2009, the City deferred the pay increases, 6% for Officers and 7% for Sergeants, for a year. The City also provided incentives for its highest paid employees to retire. In 2010, the City established a MOP, by side letter, between the City and El Monte Police Officers Association (EMPOA). The Side Letter stated:

Master Officer Program – to reward the highest experienced officers, for a twelve month trial period, commencing July 1, 2010, the City will provide Master Officer Pay of 6% for Officers and 7% for Sergeants. To qualify for this pay, the employee must have at least 27 years of service and possess an Advanced Certificate issued by Peace Officers Standards and Training (POST). Unless renewed by the City, this program will terminate on June 30, 2011.

The City argued the MOP also applied to the members of the Police Mid-Management Association (PMMA), Lieutenants and Captains, pursuant to the "me too clause" in the Mid-Management MOU. The MOP provided certain Police Officers and Sergeants a one time, one year pay bump of 6% and 7% respectively. To qualify, the safety officers or sergeants were required to have a POST degree and at least 27 years of service.

The PERL defines "compensation earnable" as the compensation paid by the employer as "payrate" and "special compensation." (Government Code § 20636(b).) "Payrate" is defined as normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours, pursuant to publicly available pay schedules. (Government Code § 20036(b).) A similar definition applies to members who are not considered to be in a group or class.

"Special compensation" is generally defined as payments received by a member for special skills, knowledge, abilities, work assignment, workdays, or other work conditions. Special compensation must be paid pursuant to a written labor policy or agreement or as otherwise required by state or federal law, to similarly situated members of a group or class of employment, in addition to payrate. (Government Code section 20636(c).) The CalPERS Board of Administration (Board), pursuant to statutory mandate, has specifically and exclusively identified what constitutes special compensation and under what conditions payments to a member may qualify as special compensation. (See, 20636(c)(6); Cal. Code Regs., Title 2, section 571.)

“Master Police Officer” pay is a type of special compensation. (Cal.Code Regs., § 571(a)(1).) MOP pay is defined as “[c]ompensation to local police officers, county peace officers and school police or security officers who meet specified requirements, years of employment, performance standards, education, Peace Officer Standard Training (POST) and perform a specialty assignment.”

In addition to being an item that is listed under section 571(a), the compensation must also meet the requirements set forth under section 571(b) to be special compensation.

The hearing took place on December 7, 2015. The Respondents were unrepresented and the City was represented by counsel. Prior to the hearing, CalPERS explained the hearing process to Respondents and the need to support their cases with witnesses and documents. CalPERS provided Respondents with a copy of the administrative hearing process pamphlet. CalPERS answered Respondents’ questions and clarified how to obtain further information on the process.

CalPERS argued the MOP did not meet the definition of “Master Police Officer” pay under section 571(a)(1) because it did not require performance of certain duties, did not look at the performance standards of the officers, and did not require specialty assignment. CalPERS argued the MOP did not meet the requirements of section 20636 and section 571(3) and (4) because the MOP was not provided for “services performed during normal working hours.” Rather, the MOP was a reward because it was paid irrespective of the services or the assignments performed by Respondents. The MOP failed to meet the criteria set out in section 571(b)(6) because it was not historically consistent as it was only offered for a single year and no pre or post contributions will be paid to fund the increased liability. The MOP was paid exclusively in the final compensation period, which is not allowed by section 571(b)(7). CalPERS also argued that the MOP constituted final settlement pay under section 570 and 571(b)(8) because it was provided in connection with and anticipation of Respondents’ separation from employment and was paid exclusively during the period of final compensation. The MOP also resulted in an unfunded liability, which is not permissible under section 571(b)(9).

CalPERS staff testified at the hearing and explained the basis for CalPERS’ determination. The City presented the testimony of Debbie Scot-Leistra, the Human Resource Risk Management Director for the City. Respondents Darrow and Williams testified at the hearing as well. Elizabeth Roach, the spouse of Respondent Roach, also testified at the hearing.

The Administrative Law Judge (ALJ) prepared individual Proposed Decisions for each Respondent.

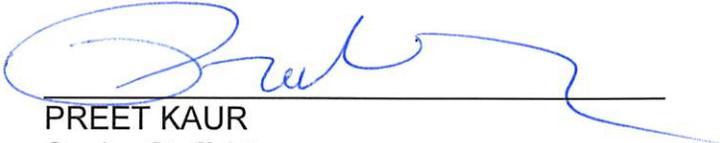
The Proposed Decisions conclude that the MOP fails to meet the definition of “Master Police Officer” pay, as specified in section 571(a)(1) because it does not “contain performance standards and does not involved a specialty assignment.” On that basis,

the ALJ found the MOP is not reportable as an item of special compensation. The ALJ, however, held that the MOP was historically consistent, was not paid exclusively in the final compensation period, did not constitute final settlement pay and did not create an unfunded liability.

Although CalPERS continues to take the position that the MOP is historically inconsistent, was paid exclusively in the final compensation period, constitutes final settlement pay and created an unfunded liability, staff argues the Board adopt the Proposed Decision because it is consistent with CalPERS' ultimate determination, which is that the MOP is not a reportable item of special compensation.

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

June 15, 2016



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