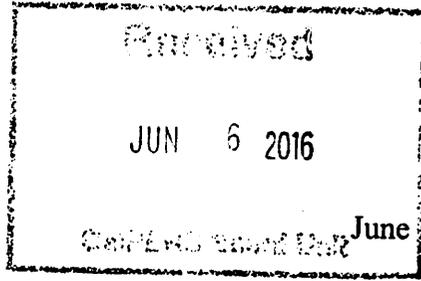


**ATTACHMENT C**  
**RESPONDENTS ARGUMENT**



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CalPERS Board of Administration  
c/o Cheree Swedensky, Assistant to the Board  
CalPERS Executive Office  
P.O. Box 942701  
Sacramento, CA 94229-2701

**Re: *Written Argument In Opposition to the Proposed Decisions of Administrative Law Judge***

**In re: Matters of the Calculation of Final Compensation for Dan Burlingham, George Hopkins, Albert Tromp, Patrick Rielly, Richard Williams, David Darrow, Robin Sherwood, Robert Roach and Victor Hernandez; City of El Monte  
CalPERS Case Nos. 2014-70, 2014-71, 2014-695, 2014-1277, 2014-1278, 2014-1279, 2014-1280, 2015-309, 2015-310**

To the Board of Administration:

The City of El Monte urges the Board of Administration to reject the Proposed Decisions of the Administrative Law Judge (“ALJ”) in the above entitled matters and decide the case upon the record, including the transcript, or upon an agreed statement of the parties, with or without taking additional evidence. (Cal. Govt. Code 11517(b)(2)(E).) Contrary to the findings in the Proposed Decisions, an item of compensation for the City’s peace officers, the “Master Officer Pay,” was an item of pensionable special compensation that should be included in the final compensation of the City’s retired peace officers (herein, the “Respondents”).

As agreed to in a side letter agreement to the memorandum of understanding (“MOU”), the City offered an item of special compensation to members of the Police Officers Association (“POA”) and the Police Mid-Management Association (“PMMA”) which stated as follows:

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 individual Respondents in this matter were employees covered under the POA or PMMA MOU and received the Master Officer Pay (“MOP”) between July 1, 2010 and June 30, 2011. After June 30, 2011, the MOP was discontinued due to the City’s economic limitations. The individual Respondents all retired at various times after June 30, 2011 and all but one Respondent had the MOP *included* in their final compensation for purposes of calculating their CalPERS retirement allowance. After several months of receiving a retirement allowance that included the MOP, CalPERS changed course and notified respondents that the MOP would not be included in their final compensation and thus, their retirement allowances were reduced and Respondents ordered to repay CalPERS for the alleged overpayment. This had a significant impact on Respondents’ income, forcing some to obtain employment to supplement their retirement allowance.

Respondents filed individual appeals with CalPERS and the matter was heard before ALJ Samuel Reyes on December 7, 2015. On April 21, 2016, the ALJ issued nine separate Proposed Decisions for each of the Respondents. The Proposed Decisions, while finding the MOP satisfied several of the statutory and regulatory requirements for compensation earnable, did not ultimately meet the statutory definition of an enumerated item of special compensation, thus recommending that the MOP be excluded from respondents’ final compensation. The City respectfully disagrees with the Proposed Decisions’ ultimate finding.

As an initial matter the City agrees with the Proposed Decisions’ findings as follows:

- The MOP was a payment received for special skills, knowledge, abilities, work assignment, workdays or hours, or other work conditions. (Gov. Code §20636(c)(1))
- The MOP was provided to represented employees pursuant to a collective bargaining agreement (i.e., offered to similarly situated employees in a group or class). (Gov. Code §20636(c)(2))
- The MOP was paid for “services rendered during normal working hours.” (Gov. Code §20636(c)(3))
- The MOP was historically consistent with prior payments for the job classification. (2 C.C.R. §571(b)(6))
- The MOP was *not* structured to be paid only in the final compensation period. (2 C.C.R. §571(b)(7))
- The MOP did *not* create the conditions for an unfunded liability. (2 C.C.R. §571(b)(9))
- The MOP was *not* final settlement pay. (Gov. Code §20636(c)(3)(A))

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Therefore, upon these findings of the ALJ, the MOP otherwise satisfied the prerequisites for compensation earnable. However, the ALJ's ultimate decision was based on a finding that the MOP did not allegedly meet the conditions of "Master Police Officer" under CalPERS Regulation §571(a)(1) Incentive Pay. "Master Police Officer" pay is "[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." (2 C.C.R. §571(a)(1) Incentive Pay) As the ALJ found, the MOP was offered to local police officers who had specific years of employment (27 or more years of service) and required a POST advanced certificate. However, the ALJ concluded that the MOP did not require performance standards or a specialty assignment; the City respectfully disagrees.

As an initial matter, CalPERS' final determination letters to respondents informing them that the MOP would no longer be included in their final compensation never contended that the MOP was disallowed because it did not allegedly contain a "specialty assignment" component. (See CalPERS Exs. 3, 6, 9, 13, 17, 21, 25, 29, and 33.) Nor was the lack of a specialty assignment raised by CalPERS in the Statements of Issues. (See CalPERS Exs. 1, 5, 8, 15, 19, 23, 27, and 31.) Accordingly, the ALJ erred in not finding that CalPERS waived any argument in this regard.

Nonetheless, the evidence proves all components of the Master Police Officer pay under section 571(a)(1) Incentive Pay were satisfied. The amount of the MOP was conditioned on the employee's assignment, that is, assignment as a police officer, sergeant, lieutenant or captain. The duties performed by sergeants, which are supervisory in nature, are different than those of a police officer, a non-supervisory position. Similarly, lieutenants and captains perform higher level managerial duties unlike sergeants and police officers. Therefore, because these classifications performed different duties and assignments, the MOP satisfied the requirement of specialty assignment.

Next, the MOP also contained educational requirements and performance standards, to wit, recipients were required to hold an Advanced Certificate from POST. Inherent in the Advanced Certificate from POST is an educational requirement and performance standard. The applicant for an Advanced Certificate from POST must possess either: (1) a Master's Degree and four years of law enforcement experience; (2) a Bachelor's Degree and six years of law enforcement experience; (3) an Associate's Degree and nine years of law enforcement experience; (4) 45 education units, nine years of law enforcement experience, and 45 POST training points; or (5) 30 education units, 12 years of law enforcement experience and 30 POST training points. (11 C.C.R. §1011, subd. (a)(8).) The performance standard is further reflected in the MOP's condition that it "reward the highest experienced officers." Therefore, the MOP contained an inherent educational requirement and performance standards.

Accordingly, the City respectfully requests that the Board of Administration reject the Proposed Decisions of the ALJ and decide the case upon the record, including the transcript, or

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upon an agreed statement of the parties, with or without taking additional evidence (Gov. Code 11517(b)(2)(E)), include the MOP in Respondents' final compensation, and make the Respondents whole.

Very truly yours,

LIEBERT CASSIDY WHITMORE

A handwritten signature in cursive script, appearing to read "Frances E. Rogers", with a long horizontal flourish extending to the right.

Frances E. Rogers

FER:pat

cc: Preet Kaur