

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Patricia Miller (Respondent Miller) was employed by Respondent City of Goleta (City). The City contracted with California Public Employees' Retirement System (CalPERS) to provide retirement benefits to their qualified employees. By virtue of her employment, Respondent Miller was a local miscellaneous member of CalPERS. In November 2011, Respondent Miller sustained a work-related injury. Respondent Miller did not return to work and retired for disability effective February 17, 2014. Respondent Miller's last day on paid status for the City was June 22, 2012.

On December 26, 2012, Respondent Miller submitted to CalPERS a completed Request for Service Credit Cost Information, requesting cost information regarding the potential purchase by her of two (2) years of Additional Retirement Service Credit (ARSC). On August 20, 2013, Staff sent Respondent Miller a request that she provide proof of being in compensated employment. By letter dated November 19, 2013, Respondent Miller advised that she was on leave, without pay, due to the 2011 incident and stated that she was receiving Workers' Compensation benefits from York Risk Services Group. On December 27, 2013, CalPERS staff denied Respondent Miller's request to purchase two years of ARSC because, at the time that she filed her request (12/26/12), Respondent Miller was not in compensated employment with the City, and therefore, Respondent Miller was not eligible to purchase ARSC. Respondent Miller sought reconsideration of CalPERS staff's determination and on May 28, 2014, CalPERS staff again denied her request to purchase ARSC. Respondent Miller appealed CalPERS staff's denial of her request and a hearing was held on March 30, 2016.

Prior to the hearing, CalPERS explained the hearing process to Respondent Miller and the need to support her case with witnesses and documents. CalPERS provided Respondent Miller with a copy of the administrative hearing process pamphlet. CalPERS answered Respondent Miller's questions and clarified how to obtain further information on the process. Prior to and during the hearing Respondent Miller was represented by counsel.

There were no factual disputes between Respondent Miller and CalPERS. The parties stipulated to the introduction into evidence of relevant documents and stipulated to the existence of pertinent facts. The City did not elect to participate in the administrative appeal hearing.

The matter was submitted to the Administrative Law Judge (ALJ) for his review and consideration, which involved interpretation of the controlling statute; Government Code section 20909.

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Government Code section 20909 states, in relevant part, as follows:

(a) A member who has at least five years of credited state service, may elect, by written notice filed with the board, to make contributions pursuant to this section and receive not less than one year, nor more than five years, in one-year increments, of additional retirement service credit in the retirement system.

(b) A member may elect to receive this additional retirement service credit at any time prior to retirement by making the contributions as specified in Sections 21050 and 21052. [¶] . . . [¶]

(e) This section only applies to the following members:

(1) A member while he or she is employed in state service at the time of the additional retirement service credit election. [¶] . . . [¶]

(f) For purposes of this section, "state service" means service as defined in Section 20069. [¶]

Section 20069, subdivision (a) defines 'state service' as "service rendered as an employee or officer (employed, appointed, or elected) of the state, ...and employees of...a contracting agency, for compensation, and only while he or she is receiving compensation from that employer...."

The ALJ concluded:

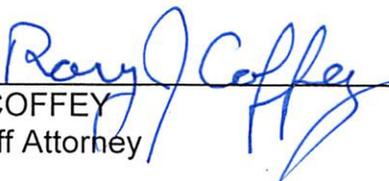
The Legislative intent with respect to eligibility for ARSC benefits is clear....the Legislature emphasized employer compensation in qualification for the benefit, regardless of whether the member was working or on leave. Here, [Respondent Miller] had stopped receiving compensation from her employer [City] in June 2012, well before she filed the request to purchase ARSC. At the time she filed the request to purchase ARSC, [Respondent Miller] was receiving insurance benefits from York Risk Services Group pursuant to the Labor Code, not compensation from Respondent City. Accordingly, [Respondent Miller] is not qualified to purchase ARSC because [she] was not employed in state service at the time she filed the request to purchase ARSC.

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

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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



RORY J. COFFEY
Senior Staff Attorney