

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Norman Thorn (Respondent) was hired by the City of El Segundo (City) on May 1, 1994 as an information Systems Consultant (Consultant) and provided services for the City from May 1, 1994 through June 30, 1999 and then from May 1, 2000 through April 24, 2005. On April 25, 2005, Respondent was hired as an employee of the City, as an Information Systems Division Manager, and became a local miscellaneous member of CalPERS beginning April 25, 2005. The City considered him to be an independent contractor prior to April 25, 2005.

On October 26, 2010, Respondent filed a Request for Service Credit Cost Information – Service Prior to Membership, requesting to purchase service credit for his period as a Consultant with the City. CalPERS determined the services provided by Respondent, for the periods of May 1, 1994 through June 30, 1999 and then from May 1, 2000 through April 24, 2005 were that of an employee, not an independent contractor. Based on this conclusion, CalPERS further determined Respondent was eligible to purchase additional service credit for these periods of employment. CalPERS informed Respondent he could purchase service credit for 5.490 years, for the amount of \$46,705.22. Although CalPERS determined Respondent could elect to purchase additional service credit based on his status as an employee, CalPERS determined Respondent did not qualify for CalPERS membership prior to 2005, as he did not work 1,000 hours during any fiscal year between 1994 and 2004.

Government Code section 20305 allows membership to apply to a qualified worker upon completing of 1,000 hours in a fiscal year. Therefore, had Respondent worked 1,000 hours during any fiscal year between 1994 and 2004, his membership in CalPERS would be "effective the first day of the first pay period of the month following the month in which . . . 1,000 hours of service were completed." If he were eligible for CalPERS membership between 1994 and 2004, he would no longer need to purchase additional service credit.

Respondent disagreed with CalPERS determination that he was not eligible for membership between 1994 and 2004 because he failed to work 1,000 hours during any fiscal year between 1994 and 2004. Respondent sent copies of original timesheets and invoices from July 1997 to May 1999. Respondent also sent additional timesheets and invoices for subsequent years in an attempt to demonstrate he worked the required hours during the fiscal year. CalPERS sent the timesheets and invoices to the City, but the City was unable to verify whether the timesheets and invoices were in fact for services performed for the City. CalPERS, therefore, determined the invoices provided by Respondent were insufficient to confirm Respondent worked 1,000 hours in any fiscal year from 1994 to 2004.

Respondent appealed CalPERS determination and a hearing was held on April 28, 2016.

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

Respondent represented himself at the hearing and testified that the services reflected in the timesheets and invoices were only provided to the City and did not reflect the services he provided to any other municipality. Respondent also presented the testimony of Robert Radley, a former Accounting Manager for the City who testified that Respondent worked three, eight-hour days a week in 1996. Respondent also presented his contract from 1998-1999 which required him to work a minimum of eight hour blocks and three days per week.

The ALJ concluded that Respondent's appeal should be granted because the invoices and timesheets provided by Respondent, his testimony, and the testimony of Mr. Radley established Respondent worked over 1,000 hours for the fiscal years 1997-1998, 1998-1999, and 2002-2003. The ALJ therefore held that, pursuant to Government Code section 20305, subdivision (a)(3)(B), Respondent is eligible for membership effective May 1, 1998.

The Proposed Decision is supported by the law and the facts. Staff argues that the Board adopt the Proposed Decision.

Because the Proposed Decision applies the law to the salient facts of this case, the risks of adopting the Proposed Decision are minimal. Since the member partially prevailed, it is not likely that he will file a Writ Petition in Superior Court seeking to overturn the Decision of the Board.

August 17, 2016

A handwritten signature in black ink, appearing to read "Preet", written over a horizontal line.

PREET KAUR
Senior Staff Attorney