ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Jose Fernandez (Respondent) was employed by Respondent Centinela Valley Union High School District (Respondent District) as District Superintendent from 1999 until he was terminated on August 20, 2014.

On July 1, 2009, Respondent District entered into an employment agreement with Respondent, wherein he was paid a salary of $198,938/year; a Longevity Pay adjustment of 9% increase per year and Bonus Pay for any additional time spent at work over his contracted full time base of 215 days.

On September 24, 2013, Respondent Los Angeles County of Education (LACOE) requested an audit of Respondent's compensation. On September 30, 2013, CalPERS notified LACOE of non-compliant compensation items, including Payrate, Longevity Pay and Bonus Pay.

On April 15, 2014, Respondent District placed Respondent on administrative leave, pending investigation into salary improprieties. On August 20, 2014, Respondent District terminated Respondent.

On July 8, 2014, CalPERS notified Respondent that the Payrate, Longevity Pay and Bonus Pay reported by Respondent District were not in compliance with the California Public Employees' Retirement Law (PERL).

On August 6, 2014, Respondent appealed CalPERS' determination. On November 21, 2014, Respondent submitted his Application for Service Retirement. A hearing was completed on February 19 and April 26, 2016. Respondent was represented by counsel at all stages of his appeal.

PAYRATE

Respondent's base salary was set by agreement at $198,938/year. From 2009 to 2014, Respondent District never maintained a salary schedule that included the salary for District Superintendent. The closest position on the salary schedules is Assistant Superintendent, with a base salary of $12,998/month with no step increases.

On January 14, 2014, during investigation into Respondent's salary by CalPERS (and other agencies), Respondent District adopted a Resolution as the official salary schedule for all District senior management, including Respondent. Respondent's "Daily Base Pay Rate" was listed as $1,519.98/day.

LONGEVITY PAY

Respondent's employment contract provides for an annual 9% increase for "long term service to the District". Other management employees in the District were entitled to only a 3% salary increase at 5, 10, 15 and 20 years of service. No other employee was given a 9% per annum increase.

BONUS PAY

Respondent's contract specified his full time base as 215 days. Respondent could also authorize his own work beyond the 215 days, and he could authorize his pay for the extra days of work at his daily pay rate. Respondent received in excess of $50,000/year in additional Bonus Pay.

CALPERS' CALCULATIONS

Because there was no salary schedule pertaining to Respondent's position prior to January 14, 2014, CalPERS used the Assistant Superintendent's monthly salary of $12,998 to compute Respondent's final compensation. CalPERS did not adjust the payrate based on COLAs provided to other similarly situated employees, or longevity increases available to other managerial employees.

THE ALJ'S FINDINGS

The Administrative Law Judge (ALJ) agreed with CalPERS that Respondent was not part of a group or class with a shared salary structure. Respondent's "payrate" means "the monthly rate of pay or base pay, paid in cash and pursuant to publicly available pay schedules, for services rendered on a full-time basis during normal working hours." Gov. Code §20636.1. Without a salary schedule available for Respondent's position until January 14, 2014, it was within CalPERS' sole discretion to determine Respondent's payrate pursuant to CCR §570.5(b).

The ALJ found that CalPERS' selection of the closest published salary of Assistant Superintendent was a reasonable exercise of that discretion. The ALJ also found that Respondent's payrate should be based on his final 12 months of service. For the period of time before January 14, 2014, the ALJ found that Respondent's salary should be based on the Assistant Superintendent's published salary. For the period after January 14, 2014, Respondent's salary should be based on the January 2014 salary schedule. For the period of time prior to January 2014, Respondent should receive any COLAS the District provided to other certificated management employees. For the period after January 2014, Respondent should receive his COLA increases based on the Los Angeles Consumer Price Index.

The ALJ next found that Respondent's Longevity Pay increases did not meet the requirements of the PERL because they were not part of a written labor policy or agreement. Respondent's employment contract does not qualify as a labor agreement. Moreover, the specific requirements for such agreements were not satisfied, including public access to the agreement. Thus, the ALJ found Longevity Pay did not qualify as special compensation and should not be part of Respondent's final compensation.

The ALJ next found that the annual payments of over $50,000 in Bonus Pay were disallowed as overtime. Gov. Code §20636.1. Respondent's annual pay was for work done on a full time base of 215 days. There was nothing in the employment agreement providing for extra compensation for days worked beyond the 215 days. Reasonably interpreted, the 215 days constituted the *minimum* number of days that Respondent was expected to work during any particular work year. Moreover, the $50,000 increases would exceed the average increase in compensation earnable received during the same period for other District management employees.

The ALJ ordered:

1. Respondent's final compensation shall be based on his last 12 months of service prior to his termination on August 20, 2014.
2. For the period of time before January 14, 2014, Respondent's compensation earnable shall be $12,998/month plus a 9% increase based on Respondent's longevity with the District.
3. For the period of time after January 14, 2014, Respondent's compensation earnable shall be $16,578/month, plus LA CPI compounded increases of 1.8% in 2010, 1.8% in 2011, 1.6% in 2012, and 1.4% in 2013.
4. Respondent's annual longevity increases are disallowed.
5. Respondent's appeal of his 9% annual salary increases and bonus payments are denied.

The ALJ admitted that the "amalgamation of payrates is admittedly awkward", but held that it reflects CalPERS' determination of an appropriate payrate during the time Respondent's salary was not part of a publicly available pay schedule, and Respondent's pay once that deficiency was corrected.

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.

Because the Proposed Decision applies to the law and 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.

August 17, 2016

Elizabeth Yelland

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