

**ATTACHMENT B**  
**STAFF'S ARGUMENT**

## STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

The issue in this case is whether CalPERS erred when it refused to allow Respondent Christian Canales (Respondent) to purchase 5 years of Additional Retirement Service Credit (ARSC). A hearing was completed on July 14, 2016. Respondent was represented by counsel at hearing.

Respondent was employed by the City of Burbank (City) beginning November 6, 2000. On June 16, 2010, the City terminated Respondent's employment and Respondent appealed. In October 2013, a decision was issued which found that the City did not have just cause to terminate Respondent and ordered the City to reinstate him as of the day he was terminated with full back pay, seniority and benefits. The City provided Respondent back pay and benefits for the period from June 26, 2010 to June 7, 2014. He returned to work as a Police Sergeant for the City on June 9, 2014.

Prior to January 1, 2013, CalPERS members had the right to purchase ARSC if certain criteria were satisfied (Gov. Code §20909.) The ability to purchase ARSC was repealed by the Legislature by PEPR, effective on January 1, 2013. Gov. Code §20909(g).

On four separate occasions (December 2005, February 2006, October 2006, and January 2008), Respondent submitted Requests to Purchase ARSC to CalPERS. CalPERS responded to each Request by sending him an ARSC Cost Packet. In each cost packet, Respondent was advised:

- If you are not interested in purchasing the additional service credit at this time, no response is needed. You may request to purchase this service any time prior to your retirement date, while still in eligible employment.
- If you wish to purchase the additional service credit, review the remaining information within this packet, complete, sign and return the enclosed Employment Certification and Your Payment Options worksheet along with the Election to Purchase ARSC to the address provided. *The Election to Purchase ARSC is irrevocable and must be returned within 60 days. If not received within this time frame, you must submit a new request for ARSC cost information, which may affect your eligibility and the cost to purchase this service credit.*

Respondent never followed through with the documents and payment needed to go forward with any of the purchases. He testified at hearing that he was "trying to figure out how to pay for the ARSC purchase," that he "lost track of time" and "his mind was somewhere else." Respondent did not submit any further Request to Purchase ARSC after January 2008.

Respondent testified that he called CalPERS sometime in either May or June 2010 to request to purchase ARSC. When a member contacts CalPERS, staff documents the contact in the Customer Touch Point System (CTP Notes). The CTP Notes show no entries for any contacts between Respondent and CalPERS during May or June 2010.

The Administrative Law Judge (ALJ) found that Government Code section 20909 gave CalPERS members the right to purchase ARSC, but the purchase must have begun prior to January 1, 2013. The ALJ found no evidence of a valid Request to Purchase ARSC submitted by Respondent prior to January 1, 2013. The last Request was submitted January 2008, and it expired on July 19, 2008, with no action taken by Respondent to complete the purchase.

The ALJ then considered and rejected Respondent's estoppel argument. Respondent argued that he should still be allowed to purchase ARSC because he "was in the process" of purchasing 5 years of ARSC when he was terminated by the City in June 2010. He claims his termination interrupted him from completing the purchase, and he had to wait until he was reinstated to complete the purchase process. The ALJ found his contention without merit. First, the arbitration award which reinstated Respondent to employment did not override the requirements and timing of Government Code section 20909(g). Second, Respondent's contention that he was "in the process" of purchasing ARSC in May 2010, was unsupported. The only evidence showed that the last valid Request was dated January 2008. There was no evidentiary support for Respondent's statements that he made a request to purchase during a phone call, and furthermore, Government Code section 20909 requires an election to purchase ARSC be made in writing. Finally, the ALJ was convinced that Respondent knew the requirements of purchasing ARSC, since he had made 4 separate requests for service credit cost information between 2005 and 2008.

The ALJ found that Respondent had the burden of proof to show that he is eligible to purchase ARSC. The ALJ found no legal authority to allow him to purchase ARSC after changes in the law eliminated that purchase as of January 1, 2013. The ALJ found no basis for CalPERS to allow him to purchase ARSC at this late date as a correctable mistake pursuant to Government Code section 20160(b). Since there was no pending or active application to purchase ARSC at the time of his termination, his case presented no correctable action by CalPERS. The ALJ denied his appeal.

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. The member may file a Writ Petition in Superior Court seeking to overturn the Decision of the Board.

September 21, 2016.

  
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