

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

## STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Paul E. Davenport (Respondent Davenport) was employed by the City of Claremont (City) as a Police Lieutenant. By virtue of his employment, Respondent Davenport was a local safety member of CalPERS. On October 27, 2009, Respondent Davenport signed an application for service retirement with a requested retirement date of November 20, 2009.

In November 2012, Office of Audit Services (OAS) completed a Public Agency Review of City and found that City reported compensation to CalPERS that failed to qualify as "compensation earnable" and that compensation used in Respondent Davenport's retirement benefit calculation was in error. A pre-deprivation letter was sent to Respondent Davenport in November 2013 requesting any additional information that would contradict the determination. The response did not provide information that would change the determination and CalPERS issued a formal determination letter to Respondent Davenport and City on March 5, 2014. Respondent Davenport timely appealed.

In 2007, the City entered into a memorandum of understanding (MOU) with the Claremont Police Management Association (CPMA). Respondent Davenport is a member of CPMA. The MOU called for four percent COLA adjustments to take effect on July 1, 2008, and July 1, 2009. Due to the financial crisis in 2008, the City asked its employees, including CPMA members, to agree to concessions in their salaries and benefits to minimize the City's budget shortfall. On March 2, 2009, the CPMA agreed to eliminate the COLA increase scheduled for July 2009 in a Side Letter Agreement

A second document called *Implementation Schedule* dated March 20, 2009, stated the following:

The July 1, 2009 4% COLA shall be replaced with a 4% adjustment to salary ranges for all unit members. Salaries for unit members shall be capped at salary step 16 **with the exception of members who are within one year of retirement. These members shall receive a 4% COLA. To be eligible for this benefit, unit members shall provide formal written notification of their intent to retire and retirement date to the Police Chief and Personnel Division...**(emphasis added)

The City reported to CalPERS the four percent COLA increase for Respondent Davenport from July 1, 2009, until his retirement in November 2009. CalPERS determined that this four percent increase should be excluded from Respondent Davenport's final compensation because it constitutes pay in anticipation of separation from employment in violation of Government Code section 20636(f), and because all employees within Respondent Davenport's class of employment were not eligible to receive the increase in violation of Government Code section 20636(b)(1).

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

Respondent Davenport represented himself at the hearing and called one witness in addition to his own testimony. John Traber, president of the CPMA, explained the circumstances of the side letter and implementation schedule. Based on Mr. Traber's testimony and his own, Respondent Davenport argued that the City and CPMA did not intend to create a COLA adjustment that conflicted with the PERL.

The Administrative Law Judge (ALJ) found that the four percent COLA constituted final settlement pay in anticipation of Respondent Davenport's retirement and was not available to all members of his classification. As such, it should be excluded from Respondent Davenport's final compensation pursuant to Government Code section 20636, subdivisions (b)(1) and (f).

The ALJ concluded that Respondent Davenport'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 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.

December 21, 2016

  
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CHRISTOPHER PHILLIPS  
Senior Staff Attorney