

**ATTACHMENT A**  
**THE PROPOSED DECISION**

BEFORE THE  
BOARD OF ADMINISTRATION  
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM  
STATE OF CALIFORNIA

In the Matter of the Appeal Regarding the  
Final Compensation Calculation of:

MARK S. LADAS,

and

CENTRAL COUNTY FIRE  
DEPARTMENT,

Respondents.

Case No. 2015-1054

OAH No. 2016080368

**PROPOSED DECISION**

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on October 20, 2016, in Oakland, California.

John Shipley, Senior Staff Attorney, represented the California Public Employees' Retirement System (CalPERS).

Respondent Mark S. Ladas appeared and represented himself.

No one appeared for respondent Central County Fire Department (CCFD). Upon proof of compliance with Government Code section 11509 with respect to CCFD, the hearing proceeded as scheduled.

The matter was submitted on October 20, 2016.

**FACTUAL FINDINGS**

1. CCFD is a joint powers authority, which is a special-purpose local government agency formed by other local government agencies. CCFD provides fire protection services within the cities that are CCFD's members. At all times material to this matter, CCFD's members were the cities of Burlingame and Hillsborough.

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RETIREMENT SYSTEM  
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*Ally M. [Signature]*

2. At all times material to this matter, CCFD's "management" employee classification comprised two positions: deputy fire chief and fire chief. CCFD management employees were local safety members of CalPERS. Management employees paid 9% of their compensation to CalPERS to fund their retirement benefits. When a CCFD management employee retired, CCFD had elected to have CalPERS calculate that employee's monthly retirement allowance with reference to his or her compensation during the year immediately preceding retirement.

3. Respondent Mark S. Ladas (respondent) worked in firefighting for many years. Effective April 13, 2013, CCFD promoted respondent from deputy fire chief to fire chief. By agreement among CCFD, the City of Millbrae, and the City of San Bruno, respondent as CCFD's fire chief also served as the fire chief for the cities of Millbrae and San Bruno.

4. Respondent's biweekly salary as CCFD's fire chief was \$7,554.62.

5. On December 11, 2013, CCFD's Board of Directors adopted CCFD Resolution 13-11, changing CCFD's "compensation plan." Resolution 13-11 awarded the CCFD fire chief "an additional 10% of base pay as compensation for additional duties," effective beginning with the first full biweekly pay period in January 2014. Resolution 13-11 also gave all employees in CCFD's "Clerical unit" a 2% pay increase. The evidence did not establish that CCFD revised its published pay schedule for all employees to reflect the increases stated in Resolution 13-11.

6. Upon increasing respondent's compensation as stated in Finding 5, CCFD reported each pay period's compensation for respondent to CalPERS as \$7,554.62 in "earnings" and \$755.46 in "special compensation." Respondent made 9% contributions to CalPERS on all of this reported compensation.<sup>1</sup>

7. On December 2, 2014, CCFD's Board of Directors adopted CCFD Resolution 14-10, again changing CCFD's "compensation plan." Resolution 14-10 authorized "Salary increases" of 2.7% for CCFD's deputy fire chief, service clerk, and administrative assistant and 5% for CCFD's fire chief. In addition, Resolution 14-10 authorized an additional "5% of base pay" as compensation to the fire chief for "additional duties." These pay raises became effective beginning with the first full biweekly pay period in January 2015.

8. Respondent retired for service effective December 15, 2014.

9. On May 28, 2015, CalPERS notified respondent and CCFD by letter that CalPERS would take only respondent's "earnings" as fire chief, and not his "special compensation," into account in determining respondent's monthly retirement allowance.

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<sup>1</sup> If respondent's appeal is unsuccessful, CalPERS will refund these contributions to CCFD, so that CCFD may refund them to respondent. The mechanism and calculation of any refund are not at issue in this proceeding.

Respondent appealed CalPERS's decision and requested a hearing. The evidence did not show that CCFD appealed CalPERS's decision.

10. On August 24, 2016, CalPERS served respondent and CCFD with a statement of issues setting forth CalPERS's reasons for its determination. The statement of issues alleges that the Public Employees' Retirement Law (PERL) does not authorize CalPERS to include respondent's "special compensation" of \$755.46 per pay period in CalPERS's calculation of respondent's monthly retirement allowance.

### LEGAL CONCLUSIONS

1. The CalPERS Board of Administration "shall determine and may modify benefits for service and disability" in accordance with the PERL. (Gov. Code, § 20123.)

2. A CalPERS member's monthly retirement allowance depends on the member's "final compensation." (Gov. Code, § 21350 et seq.) The PERL recognizes two potential components of that compensation: "payrate" and "special compensation." (*Id.*, §§ 20630, 20636.)

3. A CalPERS member's "payrate" is "the normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours, pursuant to publicly available pay schedules." (Gov. Code, § 20636, subd. (b)(1); *see* Cal. Code Regs., tit. 2, § 570.5.) The matters stated in Findings 5, 6, and 7 did not establish that CCFD incorporated the 10% increase in respondent's biweekly pay that became effective in January 2014 into the base pay for CCFD's fire chief position, or that this increase resulted in a revision to CCFD's publicly available pay schedule. For these reasons, the additional payment of \$755.46 per pay period that respondent received in 2014 over and above his \$7,554.62 biweekly salary does not qualify as an increase in respondent's "payrate."

4. A CalPERS member's "special compensation" is individualized for the employee, but must meet criteria CalPERS has established by regulation. (Gov. Code § 20636, subd. (c); Cal. Code Regs., tit. 2, § 571.) "Special compensation" does not include overtime pay. (Gov. Code § 20636, subd. (c)(7)(B).)

5. To qualify as "special compensation," compensation must be available to "all members in the [employee] group or class," and must not be "paid exclusively in the final compensation period." (Cal. Code Regs., tit. 2, § 571, subs. (b)(2), (b)(7), (d).) By reason of the matters set forth in Findings 2, 5, 6, and 8, the additional payment of \$755.46 per pay period that respondent received in 2014 over and above his \$7,554.62 biweekly salary does not qualify as "special compensation."

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**ORDER**

The appeal by respondent Mark S. Ladas of CalPERS's determination that the PERL does not authorize CalPERS to include "special compensation" of \$755.46 per biweekly pay period in CalPERS's calculation of respondent's monthly retirement allowance is denied.

DATED: November 15, 2016

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*Juliet E. Cox*  
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**JULIET E. COX**  
Administrative Law Judge  
Office of Administrative Hearings