

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

## **STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION**

Respondent George A. Perez (Respondent Perez) retired for service effective March 29, 2011, and has been receiving his retirement allowance from that date. By virtue of his employment with Respondent City of Cudahy (City), Respondent Perez was a local miscellaneous member of CalPERS. Respondent Perez qualified for service retirement based upon his years of service and his age at retirement.

Respondent Perez earned 17.052 years of service credit with City, beginning as a maintenance worker and working up through the ranks to eventually become the City Manager. When Respondent Perez became the City Manager, he worked under a series of employment contracts from August 30, 2000, until his termination in March 2011.

The monthly final compensation for Respondent Perez, as reported by City, was \$15,604. Based on the reported final compensation, CalPERS staff calculated an unmodified monthly retirement allowance of \$5,694.05. Thereafter, media stories about corruption and mismanagement by elected officials and management at City began surfacing, ultimately leading to criminal indictments. CalPERS staff then undertook a review of the final compensation for Respondent Perez that was reported by City.

After further investigation, CalPERS staff determined that the final compensation, as reported by City was unlawful and required a correction that ultimately resulted in a reduction of the benefit amount. Specifically, CalPERS staff determined that Respondent Perez's payrate for the position of City Manager was not published on a publicly available pay schedule; the reported payrate was not publicly approved and adopted in open City Council meetings; and, Respondent Perez was the only employee that received annual eight percent raises. To determine the appropriate final compensation for Respondent Perez, CalPERS staff used the highest salary available under a publicly available pay schedule for a position he previously held, Director of Parks & Recreation.

Respondent Perez timely appealed and City joined. Both Respondent Perez and City were represented by counsel at the hearing that was held on November 8, 2016. Respondent Perez argued that if the final compensation reported by City did not meet legal requirements under the California Public Employees' Retirement Law (PERL) for compensation earnable, it was by no fault of his and he should not be punished for City's actions. Respondent Perez also argued that the requirements for a publicly available pay schedule contained in Regulation 570.5 should not apply because the regulation was not effective at the time of his retirement.

City argued that Regulation 570.5 cannot be applied retroactively, and that even if it did, Respondent Perez's employment contracts comply with the requirements. City also argued that CalPERS should have performed a salary survey of other city managers to determine the appropriate compensation earnable for Respondent Perez rather than using the Director of Parks and Recreation salary schedule. Lastly, City argued that

CalPERS unreasonably delayed in reaching its determination and should be estopped from performing the correction.

The Administrative Law Judge (ALJ) performed a comprehensive review of the applicable statutes, regulations, case law and precedential decisions relevant to this appeal and distilled them into a well written and reasoned opinion. The ALJ found that the various employment contracts did not satisfy the publicly available pay schedule requirement and that CalPERS was justified in utilizing the highest payrate for Respondent Perez that conformed with the requirements of the PERL. The ALJ dismissed respondents' other contentions relating to delay, estoppel and laches. There was no evidence of reliance by Respondent Perez; no authority was cited by respondents that the doctrine of laches may be used to prevent CalPERS from complying with obligations mandated by a statute that intentionally imposes no time limitation on corrective actions (section 20160(b)); and, there was no unreasonable delay by CalPERS in issuing the determination.

The ALJ concluded that Respondents' 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 or City may file a Writ Petition in Superior Court seeking to overturn the Decision of the Board.

March 15, 2017



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CHRISTOPHER PHILLIPS  
Senior Staff Attorney