ATTACHMENT B

STAFF'S ARGUMENT
STAFF’S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Charles Rabaut (Respondent) was employed by the Department of State Hospitals, Coalinga Secure Treatment Facility (Respondent DSH) beginning September 27, 2004, initially as the Chief of Police Services and Security and later as Supervising Special Investigator. By virtue of his employment, Respondent is a safety member of CalPERS. Respondent belonged to the same bargaining unit, M07, during the entire course of his employment with Respondent DSH.

On October 5, 2004, Respondent DSH enrolled Respondent into CalPERS membership through the State Controller’s Office (SCO) with an effective date of September 27, 2004. Respondent DSH reported Respondent’s member contribution at a member reduced contribution rate of 3% due to the retirement relief associated with Respondent’s bargaining unit, M07, under the 3% @ 55 formula for State Peace Officer/Firefighters (POFF) or Local Safety Members. The normal contribution rate for Respondent’s bargaining unit and retirement formula was 8%.

As of October 6, 2004, the SCO processed a mass update, discontinuing the reduced contribution rate of 3% for Respondent’s bargaining unit, as authorized by the Department of Personnel effective October 1, 2004. The SCO never adjusted Respondent’s withholding to reflect the 8% rate.

On December 17, 2010, Respondent signed an application for service retirement. Respondent retired for service effective April 22, 2011, and has been receiving his retirement allowance from that date.

CalPERS performed an administrative review of Respondent’s retirement account and discovered that Respondent’s retirement account was underfunded because his retirement contributions were reported to CalPERS at a reduced rate of 3% for the period of September 27, 2004 through March 15, 2007. CalPERS determined that Respondent’s account was in arrears for retirement contributions and required a mandatory adjustment of $11,098.97, pursuant to Government Code sections 21073, 21051, and 20160.

Government Code sections 21051 and 21073 mandate members make contributions toward their retirement, presume that member contributions will earn interest after contributions are made, and require any repayment of contributions to include such interest.

Government Code section 20160(b) provides that CalPERS “shall correct all actions taken as a result of errors or omissions of the university, any contracting agency, any state agency or department, or this system.”

Respondent appealed CalPERS’ determination and exercised his right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings
A hearing was held on July 31, 2017. Respondent represented himself at the hearing. Respondent DSH did not appear at the hearing.

Prior to the hearing, CalPERS notified Respondent regarding the hearing process and the need to support his case with witnesses and documents. CalPERS provided Respondent with a copy of the administrative hearing process pamphlet. CalPERS also provided Respondent with all documents that CalPERS intended to present at the hearing. CalPERS attempted to contact Respondent by phone prior to the hearing, but Respondent did not answer the phone nor did he return our message.

Respondent testified on his own behalf. Respondent admitted that he owed contributions but requested CalPERS be precluded from recovering due to passage of time (Gov. Code § 20160(a)(1)).

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent’s appeal. The ALJ found that “Respondent DSH or the SCO, or both” failed to adjust Respondent’s contribution rate effective October 1, 2004. The ALJ held that per Government Code section 20160, CalPERS is required to “correct this error and obtain additional payment to fully fund Respondent’s retirement account.” The ALJ held that the six month time limit, under Government Code section 20160(a)(1), is only applicable to errors made by members or beneficiaries.

In the Proposed Decision, the ALJ concludes that “Respondent’s contributions toward his retirement were $11,098.97 lower than required and that Respondent must repay the shortage.”

Pursuant to Government Code section 11517 (c)(2)(C), the Board is authorized to “make technical or other minor changes in the proposed decision.” In order to avoid ambiguity, staff recommends that the date of October 1, 2014, in the second sentence of paragraph 6, page 5, should be amended to state October 1, 2004.

For all of the above reasons, staff argues that the Proposed Decision be adopted by the Board.

September 20, 2017

PREET KAUR
Senior Staff Attorney