In the Matter of the Statement of Issues
Against: STEVE W. MITZNER,

Respondent.

Case No. 2016-0661
OAH Case No. 2016100643

PROPOSED DECISION

This matter was heard by David B. Rosenman, Administrative Law Judge, Office of Administrative Hearing, on May 10, 2017, in Orange, California.

John Shipley, Senior Staff Counsel, represented the California Public Employees' Retirement System (CalPERS). Steve W. Mitzner (respondent) represented himself. Oral and documentary evidence was received, and argument was heard. The record was closed and the matter was submitted for decision on May 10, 2017.

ISSUE

Respondent contends that CalPERS delayed in providing the amount of payment needed for him to pay the outstanding balance due on his purchase of additional retirement service credit (ARSC) and that, as a result, he paid additional interest charges which should be refunded to him. CalPERS contends there is no statutory authority for such a refund.

FACTUAL FINDINGS

1. Carene Carolan made and filed the Statement of Issues in her official capacity as the Chief of the Member Account Management Division of CalPERS.

2. Respondent was employed by the Los Angeles County Schools-Long Beach Unified School District on July 1, 1987. By virtue of this employment, he is a member of CalPERS.
3. In June 2010, respondent requested information about purchasing ASRC and also submitted a retirement application with an effective date of July 1, 2010.

4. On December 6, 2010, CalPERS sent respondent a package of information relating to his request to purchase ASRC. Included in the package was information about lump sum payments, installment payments, and the ability to change the payment plan or make a partial payment or a payment of the total balance due. On December 23, 2010, respondent elected to purchase five years of ARSC at a cost of $66,115.79, payable by making 180 installment payments of $612.44. Respondent was informed that the installment payments include interest through the completion of payments at the rate of 7.75 percent. The payments were made by deducting $612.44 from respondent’s monthly pension payment. When respondent purchased ASRC, it increased his monthly pension amount by $745.33.

5. Respondent decided later to pay off the outstanding balance. On August 24, 2015, respondent submitted a written electronic inquiry requesting his balance, whether he could pay it off, and what interest rate he was being charged for the ARSC he purchased. He received no timely reply. On September 1, 2015, respondent called CalPERS for the same information and was told it would take 30-60 days to process his request. On October 11, 2015, respondent submitted an electronic inquiry requesting a balance due statement for the ARSC he purchased. He received no timely reply. On November 28, 2015, respondent submitted a third inquiry, indicating that he was continuing to pay interest on his monthly payments and wanted to pay off the balance. He wanted to file a grievance due to the delay.

6. Anjanette Crooks is a Retirement Program Specialist in the Member Account Management Division who has worked at CalPERS for 17 years. Her testimony was credible. At the time respondent submitted his requests for information to pay off the outstanding balance, there was a backlog in her department. Respondent’s request was placed in the queue of members’ inquiries until December 7, 2015, when Crooks’ manager assigned the matter to her, indicating it was a priority. Crooks needed to gather relevant information, review respondent’s file, perform computations and verify the computations.

7. On December 9, 2015, Crooks sent a letter informing respondent that his remaining balance through January 31, 2016, was $51,611.15. This payoff balance was computed by including two future monthly payments that would be automatically deducted from respondent’s monthly pension payment through February 1, 2016. Respondent had 60 days to submit a Service Credit Balance Due Election Form and make the lump sum payment.

8. On December 18, 2015, respondent submitted a check for $51,611.15 and the Service Credit Balance Due Election Form.
9. On December 23, 2015, respondent sent a letter to CalPERS disputing the amount of interest charged. Respondent contends that he incurred additional interest charges on the payoff amount as a result of CalPERS not timely responding to his initial August 24, 2015 inquiry.

10. CalPERS conducted a review of respondent’s account and the Public Employees’ Retirement Law (PERL), and determined that it could not approve respondent’s request for a refund because there are no provisions in the PERL that would allow CalPERS to waive or refund interest on service credit purchases. By letter dated March 18, 2016, CalPERS notified respondent of its determination and of his appeal rights. By letter dated April 1, 2016, respondent filed a timely appeal and requested an administrative hearing.

11. a. Crooks testified that it was standard practice, when providing a payoff balance for ARSC purchased by monthly payment, to include an additional two months of future payments in the computation to allow time for the member to arrange for the payoff. It was possible to provide a payoff balance with less than the added two months. Notes were made to respondent’s file of various contacts and actions (exhibit 18), and Crooks was aware from the notes that respondent was upset with staff at the CalPERS office on December 18, 2015, about the extra payments. More specifically, that he was paying interest of 7.75 percent with each monthly payment and there had been delays in getting a reply to his request for the balance due. Crooks spoke by phone with respondent on December 23, 2015, explained the backlog, apologized for the delay, and explained how she did the computation.

   b. Crooks had checked with her manager and was authorized to reduce the balance due based on one future monthly payment being made, not two. She told respondent about this. Respondent stated he wanted a refund for a few months, due to CalPERS’ delays. Crooks gave respondent information on how to write to her manager to make his request. Respondent told Crooks that if management was not awarding him a refund, he would go to court. Respondent sent a letter to the manager dated December 23, 2015, indicating it was unfair for CalPERS to require him to pay several extra months of interest. Respondent listed the monthly interest at $612.44. This amount is incorrect. Respondent paid $612.44 per month, which was comprised of principal and interest. A chart lists the amount of interest and principal related to each monthly payment. (Ex. 14.) Respondent did not provide an exact figure of extra interest paid or make a specific demand that CalPERS pay him a specific amount. Rather, he indicated he would make his arguments to a judge. Again in his March 1, 2016 letter of appeal and request for hearing, respondent refers to interest due, but uses the figures for the total of each monthly payment, which included principal and interest.

12. Respondent testified credibly about the family circumstances that resulted in his need to retire to care for a family member, as well as the factors in his decision to purchase ARSC. Respondent also provided details that justified removing money from a retirement account to pay off the balance due on his ARSC purchase. One of his goals was to make the payoff quickly and avoid extra interest payments. Respondent thought he was told in September 2015 that it would take 30 days for CalPERS to provide the payoff amount.
13. CalPERS sent incorrect information to respondent concerning the number of monthly payments received by deductions from his pension payments. Crooks explained the error was due to a conversion at CalPERS from one computer accounting system to another. Respondent made numerous contacts with his bank and requested and received years' worth of monthly bank statements to be able to trace the history of automatic deposits of his monthly pension payments. Respondent also received records he requested from CalPERS. The process was time consuming and difficult. CalPERS eventually sent corrected information to respondent concerning the monthly deductions. Among other things, respondent contends that he should be paid for his estimated 70 to 80 hours of work on the issue of the balance payoff. Respondent argues that due to the delay, CalPERS was making money on the interest it charged him.

LEGAL CONCLUSIONS

1. This case is governed by various sections of the Government Code, some of which are summarized or quoted below.¹

2. If certain requirements are met, section 20909 authorizes CalPERS to allow a member to purchase ARSC any time before retirement. Respondent met the requirements.

3. Under section 21050, ARSC can be purchased by a lump sum payment or by installment payments. The principal and interest amounts for installment payments for ARSC are addressed in sections 21051 and 21052. Section 21051 states:

(a) A member electing to receive credit for service subject to this section shall contribute, in accordance with Section 21050, an amount equal to the following:

(1) The contributions the member would have made to the system for the period for which current service credit is granted, assuming that the rate of contribution under his or her employer's formula at the rate age applicable to him or her at the beginning of his or her first subsequent period of service in membership and his or her compensation earnable on that date had applied to the member during the period for which credit is granted.

(2) The interest that would have accrued on those contributions if they had been deposited at the beginning date of his or her first subsequent period of service in membership, from that date until the date of completion of payments.

(3) If the member is authorized under Section 21050 to contribute in other than a lump-sum payment, interest on the unpaid balance of the amounts

¹ Statutory references are to the Government Code unless otherwise indicated.
payable under paragraphs (1) and (2), which interest shall begin to accrue as of the date of the election to receive credit.

(b) The beginning date of the first subsequent period of service, for purposes of computation of contributions and interest, shall be deemed to be the end of the period of service credited for a member who has no subsequent return to service.

4. Section 21052 states:

A member or retired former employee who elects to receive service credit subject to this section shall contribute, in accordance with Section 21050, an amount equal to the increase in employer liability, using the payrate and other factors affecting liability on the date of the request for costing of the service credit. The methodology for calculating the amount of the contribution shall be determined by the chief actuary and approved by the board. A member or retired former employee electing to receive service credit for service subject to Section 21076, 21076.5, or 21077 shall pay the contributions as described.

5. The principal and interest amounts for installment payments through payroll deduction are also addressed in California Code of Regulations, title 2, section 575.1, which states:

Any deposit of contributions for, but not limited to, service credit elections, except those made pursuant to Government Code section 21073.1, to be made in installments, must be made by payroll deduction upon such installment plan as may be elected, subject to the following conditions:

(a) Installments must be uniform for each payroll period;

(b) The installments may not be less than $15.00 per month (or the semi-monthly, bi-weekly or quadri-weekly equivalent); and

(c) The number of installments may not exceed 180 monthly (or the semi-monthly, bi-weekly or quadri-weekly equivalent) payroll periods.

(d) Interest on the unpaid balance of the amount payable to the Public Employees' Retirement Fund, except as provided in subsections (e) and (f), shall accrue at the member interest crediting rate provided in section 20178 on the effective date of the member's election or contribution adjustment.

(e) Interest on the unpaid balance of the amount payable to the Public Employees' Retirement Fund for a member's election to receive service credit subject to section 21052 shall accrue at the actuarial interest rate used in the calculation of the benefit liability.
(f) Interest on the unpaid balance of the amount payable to the Judges' Retirement Fund or the Judges' Retirement Fund II for a judge's election to receive service credit, pursuant to section 75030.8 or 75506.5, shall accrue at the actuarial interest rate used in the calculation of the benefit liability.

For purposes of this section, the applicable interest rate provided in subsections (d), (e), and (f) shall be applied from the effective date of the service credit election or contribution adjustment through the completion of payments.

An installment plan elected by a member or judge may be modified to extend the period of payment upon the Board's finding that the existing plan is effecting a hardship for the member or judge provided, however, that the plan as extended does not result in a total number of deductions, including the number already paid, exceeding the maximum permitted under this section and otherwise complies with this section.

6. The Public Employees' Retirement System is a creation of statutes, codified in the Government Code, which grant it certain powers. CalPERS has no authority other than that granted by those statutes. It has the authority to pay benefits to a member only when the statutes authorize it and then only in the amount authorized. (See Hudson v. Posey (1967) 255 Cal.App.2d 89.)

7. Neither party cited any statute specific to the process of converting from monthly installment payments to lump sum payments for ARSC. However, section 21050 allows for both installment payments and lump sum payments for ARSC. Having paid a portion of the amount due for his five years of ARSC by making monthly installment payments, respondent retained the right to make a lump sum payment of any remaining balance due. As noted in Factual Finding 4, the December 6, 2010 package of information sent by CalPERS included information about the ability to change the payment plan or make a partial payment or a payment of the total balance due.

8. a. Respondent cited various authorities in support of his position. Section 800, subdivision (a), allows for damages in a civil action if it was shown that an award or finding "was the result of arbitrary or capricious action or conduct by a public entity or an officer thereof in his or her official capacity." Administrative actions such as this proceeding on a Statement of Issues are not civil actions, so this section does not apply. Similarly, respondent's contention he was deprived of his rights under Title 18, sections 241 and 242 of the United States Code are to no avail in this administrative proceeding, as those code sections relate to crimes and criminal procedure.

b. Respondent cites the provisions of the California Constitution, Article 17, section 17, that a public pension retirement board, such as CalPERS, "shall also have sole and exclusive responsibility to administer the system in a manner that will assure prompt delivery of benefits and related services to the participants and their beneficiaries" (subd.
(a)), and that the members of such a board "shall discharge their duties with respect to the system solely in the interest of, and for the exclusive purposes of providing benefits to, participants and their beneficiaries, minimizing employer contributions thereto, and defraying reasonable expenses of administering the system. A retirement board’s duty to its participants and their beneficiaries shall take precedence over any other duty” (subd. (b)).

9. There were insufficient facts to establish any violation of these Constitutional provisions. The time from respondent’s initial inquiry (August 24, 2015) to Crooks’ letter providing the payoff balance (December 9, 2015) was approximately 115 days. Respondent’s request for a payoff balance was put in a queue of inquiries from other CalPERS members to the Member Account Management Division. Each of those members had the same right as respondent to have their inquiries addressed in the order they were submitted. The backlog established by Crooks’ uncontested testimony delayed responses to each of those member’s inquiries. Respondent actually received special treatment by having his inquiry treated later as a priority. Therefore, his inquiry was addressed out of sequence and leapfrogged over those of other members. While the backlog and delay was unfortunate, it does not rise to the level of a denial of a Constitutional right.

10. As noted above, respondent’s calculations of the amounts of interest he “overpaid” due to CalPERS’ delays was incorrect, as he used monthly payment amounts that included principal and interest. Further, respondent did not reply to Crooks’ suggestion that he could ask in writing for a recalculation based on one additional future monthly payment, not two. Most significantly, respondent is not due any refund of interest. The calculations used to determine the amount of the payoff balance included a reduction in the principal amount premised on two additional future monthly payments that each included an amount of principal. Any earlier calculation of the unpaid balance that did not include additional future monthly payments to be made would have resulted in a higher unpaid balance of principal to be paid. Respondent did not pay a higher unpaid balance and, thus, the interest he paid was exactly what was anticipated under the agreement whereby he initially purchased ARSC. No refund is due under these circumstances.

ORDER

The appeal of respondent Steve W. Mitzner of the Board of Administration, California Public Employees' Retirement System decision denying his request to pay interest and damages is denied.

Dated: May 25, 2017

[Signature]

DAVID B. ROSENMAN
Administrative Law Judge
Office of Administrative Hearings