

MEETING  
STATE OF CALIFORNIA  
PUBLIC EMPLOYEES' RETIREMENT SYSTEM  
BOARD OF ADMINISTRATION  
OPEN SESSION

ROBERT F. CARLSON AUDITORIUM  
LINCOLN PLAZA NORTH  
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SACRAMENTO, CALIFORNIA

TUESDAY, AUGUST 14, 2018

9:01 A.M.

JAMES F. PETERS, CSR  
CERTIFIED SHORTHAND REPORTER  
LICENSE NUMBER 10063

A P P E A R A N C E S

BOARD MEMBERS:

Ms. Priya Mathur, President

Mr. Rob Feckner, Vice President

Ms. Margaret Brown

Mr. Richard Costigan

Mr. Richard Gillihan

Ms. Dana Hollinger

Mr. Henry Jones

Mr. David Miller

Mr. Ramon Rubalcava

Mr. Bill Slaton

Ms. Theresa Taylor

Ms. Betty Yee, represented by Ms. Lynn Paquin

STAFF:

Ms. Marcie Frost, Chief Executive Officer

Mr. Matthew Jacobs, General Counsel

Ms. Cara Buchanan, Board Secretary

Ms. Marguerite Seabourn, Assistant Chief Counsel

Mr. John Shipley, Senior Attorney

ALSO PRESENT:

Ms. Lina Balciunas Cockrell, Messing Adam & Jasmine, LLP

Mr. Gary Messing, Messing Adam & Jasmine, LLP

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1 P R O C E E D I N G S

2 PRESIDENT MATHUR: All right. Good morning,  
3 everyone. Welcome to the Board meeting and the full  
4 Board -- the full Board hearing this morning. The first  
5 order of business is to call the roll.

6 BOARD SECRETARY BUCHANAN: Good morning.

7 Priya Mathur?

8 PRESIDENT MATHUR: Good morning.

9 BOARD SECRETARY BUCHANAN: Rob Feckner?

10 VICE PRESIDENT FECKNER: Good morning.

11 BOARD SECRETARY BUCHANAN: Margaret Brown?

12 BOARD MEMBER BROWN: Good morning.

13 BOARD SECRETARY BUCHANAN: John Chiang?

14 PRESIDENT MATHUR: Excused, I guess.

15 BOARD SECRETARY BUCHANAN: Richard Costigan?

16 BOARD MEMBER COSTIGAN: Here.

17 BOARD SECRETARY BUCHANAN: Richard Gillihan

18 PRESIDENT MATHUR: He's excused.

19 BOARD SECRETARY BUCHANAN: Dana Hollinger?

20 BOARD MEMBER HOLLINGER: Here.

21 BOARD SECRETARY BUCHANAN: Henry Jones?

22 BOARD MEMBER JONES: Here.

23 BOARD SECRETARY BUCHANAN: David Miller?

24 BOARD MEMBER MILLER: Here.

25 BOARD SECRETARY BUCHANAN: Ramon Rubalcava?

1 BOARD MEMBER RUBALCAVA: Here.

2 BOARD SECRETARY BUCHANAN: Bill Slaton?

3 BOARD MEMBER SLATON: Here.

4 BOARD SECRETARY BUCHANAN: Theresa Taylor?

5 BOARD MEMBER TAYLOR: Here.

6 BOARD SECRETARY BUCHANAN: And Lynn Paquin for  
7 Betty Yee?

8 ACTING BOARD MEMBER PAQUIN: Here.

9 PRESIDENT MATHUR: Yes. Please note for the  
10 record that Mr. Gillihan is not here. He's recused  
11 himself from this item.

12 BOARD SECRETARY BUCHANAN: Okay.

13 PRESIDENT MATHUR: We do have a quorum.

14 The next order of business is approval of the  
15 August 14th, 2018 Board of Administration timed agenda.

16 BOARD MEMBER JONES: Move approval.

17 BOARD MEMBER HOLLINGER: Second.

18 PRESIDENT MATHUR: Moved by -- thank you. Moved  
19 by Mr. Jones, seconded by Ms. Hollinger?

20 Any discussion?

21 All those in favor say aye?

22 (Ayes.)

23 PRESIDENT MATHUR: All opposed?

24 Motion passes.

25 That brings us to Agenda Item 3, the -- and

1 the -- we open the record for the full Board hearing in  
2 the consolidated appeals of members Robert T. Wolf and  
3 Kenneth L. Hale, CalPERS case numbers 2016-0211 and  
4 2016-0212.

5 Let us first take roll call, please.

6 We'll take -- we've taken the role, but maybe we  
7 should -- I think we've just taken it so it -- do we need  
8 to take it again?

9 GENERAL COUNSEL JACOBS: (Shakes head.)

10 PRESIDENT MATHUR: I see our General Counsel  
11 shaking his head. So I think we are in good shape there.  
12 Thank you.

13 The proposed decision in this case was originally  
14 considered by the Board at the May 2018 Board meeting. At  
15 that meeting, the Board rejected the proposed decision and  
16 scheduled this matter for a full Board hearing on the  
17 question of whether the compensation at issue should be  
18 included in the member's final compensation calculation.

19 I note for the record that all parties have  
20 received notice of this full Board hearing, along with  
21 copies of the statement of policy and procedures for full  
22 Board hearings before the Board. In addition, all parties  
23 have been informed in writing that oral argument will be  
24 limited to 10 minutes for each position, and rebuttal will  
25 be limited to three minutes for each position.

1           Would counsel please take a moment to introduce  
2 themselves starting with staff counsel and then the  
3 members' counsel.

4           ASSISTANT CHIEF COUNSEL SEABOURN: Good morning.  
5 Marguerite Seabourn, CalPERS legal team.

6           PRESIDENT MATHUR: Good morning.

7           SENIOR ATTORNEY SHIPLEY: Good morning. John  
8 Shipley on behalf of CalPERS.

9           PRESIDENT MATHUR: Good morning.

10          MS. BALCIUNAS COCKRELL: Good morning, Lina  
11 Balciunas Cockrell on behalf of respondents Kenneth Hale  
12 and Robert Wolf.

13          PRESIDENT MATHUR: Good morning.

14          MR. MESSING: Gary Messing --

15          PRESIDENT MATHUR: You need to turn on your  
16 microphone. There we go. It's on.

17          MR. MESSING: Okay. Gary Messing, also on behalf  
18 of the respondents.

19          PRESIDENT MATHUR: Good morning.

20          MR. MESSING: Thank you.

21          PRESIDENT MATHUR: Thank -- so let the record  
22 reflect also that Chirag Shah, the Board's independent  
23 counsel on full Board hearings and proposed decisions from  
24 the Office of Administrative Hearings will be here to  
25 advise the Board on procedural and substantive issues, and

1 to answer questions that Board members may have today.  
2 Mr. Shah will also provide a brief summary of the case  
3 before we begin oral arguments.

4 As stated previously, each position will have 10  
5 minutes for oral argument. Mr. Shipley will first have 10  
6 minutes to present staff's argument. And after that, Ms.  
7 Balciunas Cockrell will have 10 minutes to present  
8 argument on behalf of the two members. Neither side is  
9 compelled to use the full 10 minutes. However, if a party  
10 concludes argument in less than the time allotted, it will  
11 not be permitted to carry that time to any other portion  
12 of the proceeding.

13 After both sides have presented oral arguments,  
14 each side will be provided three minutes for rebuttal  
15 arguments in the same order as the original presentation,  
16 first Mr. Shipley for staff, then Ms. Balciunas Cockrell  
17 for the members. Here too, you may, but do not have to,  
18 use the entire time allotted for rebuttal. But if you  
19 decide to use less time, you will not have another  
20 opportunity to use any time remaining in your rebuttal.

21 There is a timer in front of you for -- which  
22 will be set for 10 minutes -- it should be right in front  
23 of me actually. You might -- you'll see it right here --  
24 for the initial argument, and three minutes for rebuttals.  
25 The timer will begin when you start to speak. Please pay



1 close attention to the timer as you make your  
2 presentations in order to avoid going over your allotted  
3 time. When the timer's light turns red your time will  
4 have expired.

5 After all sides' arguments and rebuttals are  
6 concluded, the Board may ask questions of any of the  
7 parties to this proceeding as well as our independent  
8 counsel. The alternatives available to the Board are set  
9 forth at Agenda Item 3 of the Board meeting materials.

10 Any questions so far? Do the parties understand  
11 the procedure?

12 MS. BALCIUNAS COCKRELL: Yes, ma'am.

13 SENIOR ATTORNEY SHIPLEY: Yes, Madam President.

14 PRESIDENT MATHUR: Thank you.

15 Now then, Mr. Shah please provide a brief summary  
16 of the case.

17 MR. SHAH: Thank you. Good morning, Madam  
18 President and members of the Board. As you said, my name  
19 is Chirag Shah and I'm the Board's independent counsel on  
20 full Board hearings. My summary here this morning, as  
21 usual, will be very, very brief. I will let each counsel  
22 educate the Board on the details and the merits of their  
23 respective positions.

24 This consolidated hearing is for two separate but  
25 substantially similar disputes over the calculation of

1 final compensation under section 20636 of the Public  
2 Employees Retirement Law, or PERL. Because of the  
3 similarities and the legal and factual disputes in the two  
4 cases, the parties agreed to consolidate the cases into  
5 one hearing.

6 Members, in this case, are retired firefighters,  
7 battalion chiefs to be more precise, with the California  
8 Department of Forestry and Fire Protection, or Cal Fire as  
9 the agency is more commonly known. At all times relevant  
10 to this appeal, both members were on full-time release for  
11 union business as permitted by the memorandum of  
12 understanding or collective bargaining agreement between  
13 Cal Fire and Cal Fire Local 2881, which is the exclusive  
14 bargaining representative of professional firefighters in  
15 the State of California.

16 During their full-time release, members received  
17 annual mandatory cash-outs of holiday pay as required by  
18 the MOU between Cal Fire and Local 2881.

19 The specific issue before the Board is whether  
20 the annual mandatory cash-outs satisfied the requirements  
21 of subsection (c) and (e) of section 20636 of the PERL and  
22 its implementing regulation at Code of Regulations Title  
23 2, section 571(a)(5).

24 Cal Fire, which has not entered an appearance in  
25 this matter, did not report the mandatory cash-outs as

1 compensation earnable, but requested that they be  
2 considered by CalPERS at the urging of the union. The  
3 parties appearing before you today agree that the material  
4 facts are not in dispute as outlined by the administrative  
5 law judge in the proposed decision.

6 The details of the case, the history of the  
7 litigation, and the merits of each party's position are  
8 presented in the written arguments in the administrative  
9 record before the Board at agenda item 3.

10 Madam President and Board members, that concludes  
11 my brief summary of the case.

12 Thank you.

13 PRESIDENT MATHUR: Thank you very much, Mr. Shah.

14 Let us now turn to preliminary evidentiary  
15 issues. As all parties are aware, we are not here to  
16 relitigate factual issues or resubmit evidence into the  
17 administrative record. However, in rare circumstances,  
18 the interests of achieving a just result may require  
19 consideration of newly discovered relevant documentary  
20 evidence, which could not with reasonable diligence have  
21 been discovered and produced at the hearing before the  
22 administrative law judge, and which therefore is not part  
23 of the administrative record.

24 Under no circumstance may the Board accept new  
25 witness testimony or any kind of examination or

1 cross-examination of anyone, including Board members in  
2 today's proceedings. Under the Board's procedure,  
3 requests to introduce newly discovered documentary  
4 evidence must have been submitted in writing to the Board  
5 secretary no later than the due date for written  
6 arguments, which in this case was August 3rd, 2018.

7 In order to avoid interruptions during each  
8 party's respective time today, please let us know now if  
9 either party has any relevant, newly discovered evidence,  
10 which could not have been discovered in and produced at  
11 the hearing that it seeks to be admitted into the  
12 administrative record today as to which a timely written  
13 request was submitted to the Board.

14 SENIOR ATTORNEY SHIPLEY: No, Madam President.

15 PRESIDENT MATHUR: Thank you.

16 MS. BALCIUNAS COCKRELL: No, Madam President.

17 PRESIDENT MATHUR: Thank you.

18 Mr. Shipley, do you have a -- oh, sorry.

19 Mr. -- since -- seeing that there are no requests  
20 to submit newly -- sorry, I'm reading a bit of a script.

21 Seeing that there are no requests to submit newly  
22 discovered evidence, let us begin oral arguments at this  
23 time.

24 Mr. Shipley, please present staff's argument.  
25 Please start the clock for 10 minutes when Mr. Shipley

1 begins the argument.

2 SENIOR ATTORNEY SHIPLEY: Good morning, Madam  
3 President Board members. We're here today because  
4 respondent received benefits, vacation leave and holiday  
5 cash-outs that none of Cal Fire's other 6,000 plus  
6 firefighters received. These cash-outs were never  
7 reported to CalPERS as pensionable income, and neither Cal  
8 Fire for respondents ever paid contributions on the  
9 cash-outs.

10 Through this appeal, respondents are seeking a  
11 second benefit that no other Cal Fire firefighter  
12 receives. They're seeking to boost their pension benefits  
13 by including the holiday cash-outs as compensation  
14 earnable. The PERL says this is not allowed.

15 Why not?

16 First, and item of special compensation must meet  
17 the specific definition provided for in the PERL to be  
18 pensionable.

19 Second, the PERL requires special compensation be  
20 available to all members of a group or class to ensure  
21 that everyone has the same opportunities and are treated  
22 equally. As the California Court of Appeals said in  
23 Prentice case, the central role of the limitations on  
24 compensation earnable is to prevent agencies from  
25 artificially increasing a preferred employee's retirement

1 benefits by providing the employee with compensation  
2 increases which are not available to other similarly  
3 situated employees.

4           So let's look at the facts here. Both  
5 respondents were firefighters with Cal Fire, and their  
6 compensation and benefits were entirely dependent on their  
7 bargaining unit's MOU and their firefighter rank. They  
8 were elected as union officers and placed on full-time  
9 relieve for the terms of the firefighters' MOU. But they  
10 remained Cal Fire employees, and their compensation and  
11 rights, including their designation as a State safety  
12 member with CalPERS, continued to be entirely dependent on  
13 their job classification with the State, which was their  
14 rank.

15           They both promoted to a higher rank while on  
16 leave. They both promoted from Fire Captain to Battalion  
17 Chief. Once they promoted, their job classification with  
18 the State changed to their new rank, and they received  
19 compensation and benefits equal to that of CalFire's other  
20 Battalion Chiefs.

21           I think that bears repeating. They were paid as  
22 if they were working as Battalion Chiefs despite the fact  
23 they were on leave and never actually worked as Battalion  
24 Chiefs.

25           Although they generally worked out of the union

1 offices from 9 to 6, they received the same pay and  
2 benefits as other firefighters of the same rank, meaning  
3 their regular schedule called for them to work 45 hours a  
4 week, but they were paid as if they worked 72 hours a  
5 week.

6 Like other firefighters, they were allotted  
7 floating holidays based on the number of State-approved  
8 holidays each year. And they received approximately 19  
9 hours of annual leave each month, or 28 days per year,  
10 again based on the firefighter's MOU.

11 Respondents were the only firefighters who were  
12 able to and did cash out their vacation and holiday leave  
13 credits. Respondents did not use a single vacation or  
14 holiday credit during the entire time they were on work  
15 release. So they cashed out 40 to 41 days of leave each  
16 year. No other Cal Fire firefighter was ever able to cash  
17 out this leave on a yearly basis.

18 To repeat that, no other Cal Fire firefighter was  
19 ever able to cash out this leave on a yearly basis.

20 Beyond that, no other Cal Fire retiree has ever  
21 been able to claim that her or his leave cash-outs should  
22 increase her or his retirement benefits. So at the  
23 general principle level, the PERL says that the cash-outs  
24 these two men received is not pensionable, because the  
25 cash-outs weren't available to any of their colleagues.

1           The PERL requires that an item of special  
2 compensation be available to all members of a group or  
3 class of employment, and respondents were the only  
4 firefighters who received the benefit of being able to  
5 cash out holiday pay. That general principle that income  
6 is only pensionable if it is available to all on an equal  
7 basis then drives the specific provisions that apply here.

8           The specific item that respondents want to make  
9 pensionable is holiday pay. It is legally defined as  
10 additional compensation for employees who are normally  
11 required to work on an approved holiday because they work  
12 in positions that require scheduled staffing without  
13 regard to holidays.

14           For an item of pay to be pensionable, it must  
15 meet this definition, meaning there's essentially two  
16 requirements: employees must be normally required to work  
17 on an approved holiday, and they work in positions that  
18 require scheduled staffing without regard to holidays.

19           Were respondents in positions that required  
20 scheduled staffing without regard to holidays?

21           The answer is no.

22           Was there even a schedule?

23           The undisputed evidence was that there was not.  
24 Prior to respondents being on full time release, they had  
25 a schedule that told them who was working, what each



1 person was doing, and when they had to do it. But once  
2 they became union officers, they had nothing similar.

3 Now, the argument respondents advance is that  
4 there was no schedule because they literally worked all  
5 the time, 24 hours a day, 7 days a week, 365 days a year.  
6 So they argue the necessary scheduled staffing is a  
7 simulated yearly calendar that showed them on duty every  
8 day of the year without a single day off. And they kept  
9 that schedule for 10 and 8 years respectively.

10 That can't be what scheduled staffing means.  
11 Their real schedule was 9 to 6 five days a week. When  
12 they worked on other days, that's more accurately  
13 characterized as standby or on-call work. For example,  
14 remember what Mr. Hale said about his trip to Hawaii. A  
15 trip to attend training that he extended by three days to  
16 spend time with his wife in Kauai. He testified that he  
17 took some calls while he was there. Does that qualify as  
18 working?

19 In his words, Mr. Hale describes his holidays as  
20 sometimes being interrupted by calls. And remember, Mr.  
21 Hale also said that if he did receive an urgent call and  
22 wasn't available, the call would just have to wait. Based  
23 on these facts, you cannot conclude that he was normally  
24 required to work on holidays. Someone who is required to  
25 work without regard to holidays cannot have their holidays

1 interrupted by calls. They don't get a holiday because  
2 they are working.

3           What respondents did was standby or on-call work,  
4 which is not pensionable. And remember, respondents were  
5 getting paid as if they worked 72 hours. The last 19  
6 hours each week treated as pensionable overtime pay. So  
7 they were compensated working -- for working outside of  
8 their scheduled time for work. In fact, they were  
9 compensated as if they worked 10 hours a day, 7 days a  
10 week. And that pay was pensionable and used when  
11 determining their retirement benefits.

12           What respondents are trying to do through this  
13 appeal is tack on additional pensionable income to work  
14 they already received compensation to perform, and  
15 pensionable compensation at that. The PERL does not allow  
16 this.

17           But even if respondents had a schedule that  
18 called on them to work every day of the year, the question  
19 is whether their positions required such staffing, i.e.,  
20 staffing without regard to holidays. We all know jobs  
21 that require staffing without regard to holidays, police  
22 officers, correctional officers, hospital doctors and  
23 nurses, and yes firefighters. There's a requirement that  
24 these positions be staffed at all time.

25           By contrast, nothing required respondents' union

1 officer positions to be staffed at all times. In short,  
2 respondents failed to establish that they worked in  
3 positions that required scheduled staffing without regard  
4 to holidays. Their appeal fails on that basis alone.

5 But in addition, respondents also failed to  
6 establish the second prong of the test, that they were  
7 normally required to work on approved holidays. There is  
8 no evidence that they were. What they said is that the  
9 membership expected them to be able to answer the phone  
10 when they called, and they did so. That's admirable, but  
11 it's not the same as being required to work on holidays.

12 As I stated a moment ago, there's a term for  
13 that, it's called standby work. And pay for standby work  
14 is not pensionable.

15 For 6,000 plus of Cal Fire's firefighters, the  
16 men and women who are out there right now fighting fires,  
17 they are in positions that require them to work on  
18 holidays and requires scheduled staffing. However, none  
19 of these men and women are allowed to cash out the holiday  
20 credits they receive. They either use them to take time  
21 off or they wait until they retire to cash them out. And  
22 like every other CalPERS member who cashes out vacation or  
23 holiday credits when they retire, the compensation is not  
24 pensionable.

25 Here, respondents are the only firefighters with

1 Cal Fire who received holiday pay cash-outs, and they are  
2 insisting on being the only firefighters to have the  
3 cash-outs, included as part of their pensionable  
4 compensation. Think about that again. The other  
5 firefighters are in positions that actually require them  
6 to work on holidays. And unlike respondents, when they're  
7 working on holidays, they don't have the option of  
8 spending time at home with their friends and family.

9           None of Cal Fire's other firefighters received  
10 holiday pay cash-outs and none of them have appealed to  
11 have their retirement benefits increased. The  
12 firefighter's MOU states respondents should not lose  
13 compensation while on release.

14           However, it does not say respondents are entitled  
15 to receive compensation retirement benefits above whatever  
16 everyone else gets.

17           There are three independent reasons why CalPERS  
18 could not legally give respondents what they want here.  
19 They did not work in positions that required scheduled  
20 staffing without regard to holidays. They were not  
21 normally required to work on approved holidays, and they  
22 were the only members of their group or class to receive  
23 the items of special compensation.

24           They administrative law judge agreed. The  
25 administrative law judge correctly applied the facts to

1 the law when reaching his conclusion. For these reasons,  
2 CalPERS respectfully requests that this Board affirm  
3 CalPERS' team determination and adopt the proposed  
4 decision following remand.

5 Thank you.

6 PRESIDENT MATHUR: Thank you, Mr. Shipley.

7 Ms. Balciunas Cockrell, it's your turn to present  
8 members' argument, and you will also have 10 minutes.

9 MS. BALCIUNAS COCKRELL: Thank you, Madam  
10 President.

11 One of the biggest problems we have had in this  
12 case over both hearings is trying to analogize the  
13 positions of the Union officers to other State employment.  
14 And I think it's pretty undisputed that we cannot. These  
15 are unique positions in State employment. The record  
16 reflects that Mr. Hale and Mr. Wolf did not have  
17 supervisors at Cal Fire. They did not have supervisors  
18 within the State. They did not receive performance  
19 evaluations. They were not paid for the time actually  
20 worked, which is different than had they been in Battalion  
21 Chief positions, in a Ranger Unit.

22 And Mr. Hale testified that he had been working  
23 as a Fire Captain in the Nevada Yuba Placer Unit before he  
24 was elected into his full-time union officer position.  
25 And the 72 hours that they continued to report on their

1 time cards is a straight 72-hour schedule.

2           It is as if he worked from day to night to day to  
3 night to day to night over 72 hours. So it is not  
4 necessarily 7 days of 10 hours a day. The Battalion  
5 Chiefs on the -- in the units don't get paid that way, and  
6 neither did the union officers.

7           The difference between -- with the Battalion  
8 Chiefs in the units is that outside of those straight 72  
9 hours, they work additional time and get paid overtime for  
10 that. And while that overtime is not pensionable, it can  
11 be factored into retirement by the firefighter due to  
12 their own financial planning.

13           The union officers did not have that option.  
14 They were paid for the straight 72, and only the straight  
15 72, throughout their time in office.

16           The pension law is certainly not clear that this  
17 item is not pensionable. And, in fact, due to the plain  
18 language of the law, it's clear that the cash-outs are  
19 pensionable. And if I may draw your attention to section  
20 20636(e)(1) that defines group or class of employment. It  
21 is a number of employees considered together because they  
22 share similarities in job duties, work location,  
23 collective bargaining unit, or other logical work-related  
24 grouping.

25           Now, the ALJ, the administrative law judge, in

1 both hearings, the original hearing and the remand  
2 hearing, focused on rank because of the salary, benefits,  
3 and promotional opportunities. None of these things are  
4 listed in subsection (e)(1). The statute goes on to say  
5 that one employee may not be considered a group or class.  
6 So the question is not whether these cash-outs were  
7 available to all 6,000 members of the bargaining unit, the  
8 question is whether the cash-outs were available to all  
9 members of the group or class that could not be a single  
10 employee. Therefore, it is logical to infer that two  
11 employees could be considered a group or class.

12           The other problem with the administrative law  
13 judge's and with counsel's interpretation is it fails to  
14 account for other clearly indisputably pensionable pay  
15 differentials that cut across rank or employment  
16 classification. And the ones that were -- we had direct  
17 evidence of at the remand hearing from Mr. Hale, then  
18 current President Mike Lopez, and current State Rank and  
19 File Director Tim Edwards, for example, are longevity pay.  
20 If you work for the State for a certain amount of time,  
21 you get a pay differential that is expressly pensionable,  
22 undisputedly pensionable, but it doesn't matter what your  
23 rank or classification is. And some firefighters choose  
24 to be on the fire lines, not try to ascend the ranks  
25 through their whole career. They still get the same

1 longevity pay, as does a Battalion Chief at the top of the  
2 bargaining unit.

3 Another one is the educational incentive. If you  
4 qualify for the educational incentive, you get it across  
5 the Board. And CalPERS has recognized this in another  
6 case that just came to our attention last week that I  
7 wanted to draw your attention to, and I do have copies.  
8 It is judicially noticeable if we were in court, and  
9 officially noticeable here.

10 But it is the matter of George B. Magallanes.  
11 This was adopted by the Board at the March 21st meeting of  
12 this year. And it involved a deputy law enforcement  
13 officer down south who was seeking to have pensionable a  
14 patrol and custody training pay, as well as a patrol  
15 station retention bonus.

16 And the ALJ found that the information available  
17 regarding these pay differentials was limited, but that  
18 the record did establish that the county provided the  
19 patrol station retention bonus to those deputies who were  
20 assigned to a patrol station for 36 consecutive months, if  
21 the deputy was at the top step of the pay range during 12  
22 of those months. In those cases, the deputy was entitled  
23 to a lump sum bonus.

24 Now, during the hearing, CalPERS took the  
25 position that -- similarly to this case, that the bonus



1 was not available to all of the deputies, and therefore,  
2 it could not be pensionable. In the proposed decision,  
3 the administrative law judge noted section 20636(c)(1)  
4 that special compensation of a member includes payment  
5 received for special skills, knowledge, abilities, work  
6 assignment, work days, or house or other work conditions.

7           And the decision noted that there were many other  
8 positions within this law enforcement category that  
9 received pay differentials, being on patrol being one of  
10 them. And again, it didn't matter how long you had been  
11 in your position. You could have been there for a year,  
12 you could have been there for 20 years, you still got the  
13 pay differential. And therefore, your rank, or your  
14 employment classification, was not the determining factor  
15 for whether this item was pensionable.

16           Ironically, Mr. Shipley was also CalPERS's  
17 attorney in that matter, and recommended to the Board that  
18 this decision be adopted where the administrative law  
19 judge did find that this patrol station retention bonus  
20 and patrol and custody training pay was pensionable and  
21 the Board adopted the decision in the March 2018 meeting.

22           Turning over to the scheduled staffing element of  
23 the union officers here, Mr. Hale testified at the remand  
24 hearing that the purpose of his schedule when he was in  
25 the Nevada/Yuba/Placer unit was to ensure that the

1 position was filled, and that his colleagues knew who was  
2 on duty at what time. There was no need for a written  
3 schedule for the union officers, the position of President  
4 and State Rank and File Director were filled by the two  
5 gentlemen in office, and they were always on duty.

6           And it's hard to conceptualize a job where you  
7 don't come in and sit at your desk and do your paperwork  
8 and then you're done. As we see now, fire season is  
9 year-round. The gentlemen on the fire lines don't get to  
10 take time off. They have issues all the time regarding  
11 their safety, regarding their sleeping arrangements,  
12 regarding their pay. They are not able to negotiate  
13 individually or bring their concerns individually to the  
14 State. That would just be unmanageable.

15           The Union does that for them. And these  
16 gentleman, Mr. Hale and Mr. Wolf, gave up their careers to  
17 speak on behalf of the 6,000 men and women who are out  
18 there keeping our state as safe as it can possibly be  
19 during this horrendous positions -- conditions.

20           And Mr. Hale testified that actually during a  
21 time of extreme emergency, a few years into his tenure as  
22 the State Rank and File Director, he went and requested to  
23 be placed out on the fire line, because he had tremendous  
24 experience, and tremendous skills, and could be an asset.  
25 And that request was rejected because of his union officer

1 position.

2           So they gave up benefits that they would have  
3 received had they stayed in their positions as Battalion  
4 Chiefs in a Ranger Unit. And that this is a very minimal  
5 request that they're making, because they spent so much  
6 time over such a long period of time directly addressing  
7 the needs of the members, the needs of the State, the  
8 needs of Cal Fire. And it's undisputed in the record that  
9 the State expected Mr. Hale and Mr. Wolf to be on duty 24  
10 hours a day, and that Cal Fire expected Mr. Hale and Mr.  
11 Wolf to be on duty. And that includes for the State, the  
12 Governor's office as well.

13           And if there was an accident, if there was a  
14 major critical condition, things could not move forward  
15 without Mr. Hale and Mr. Wolf providing the appropriate  
16 union representation and response. And failure to do  
17 that, failure for Mr. Hale and Mr. Wolf to be available to  
18 be on duty at that time would prevent the response from  
19 moving forward and impair the safety of the personnel  
20 involved.

21           So these were critical positions. This was not a  
22 cush job seeking a cush retirement for pension spiking at  
23 the end. They gave their hearts and soul to these  
24 positions, gave up their families, gave up their holidays,  
25 and are asking just for the cash out that they were

1 required to take, that they could not bank and take months  
2 off altogether at the end, that these be pensionable.

3 Thank you very much.

4 PRESIDENT MATHUR: Thank you very much.

5 Mr. Shipley, would you like to offer rebuttal at  
6 this time?

7 SENIOR ATTORNEY SHIPLEY: Yes, Madam President.

8 PRESIDENT MATHUR: Okay. If you could turn on  
9 your microphone, please. Thank you.

10 Please start the clock for three minutes for  
11 staff's rebuttal. And you may proceed.

12 SENIOR ATTORNEY SHIPLEY: First, I'd like to just  
13 briefly dress, counsel has brought up the Magallanes  
14 decision. That case was based on the specific facts and  
15 the specific evidence of that case.

16 What we're here today to discuss is the specific  
17 evidence and facts of this case. And I agree, this  
18 really -- these individuals, they're on full-time leave.  
19 They just don't quite fit into what we conceive as  
20 typically a group or class. But I think if you take a  
21 step back, they actually really do.

22 The PERL defines group or class as a number of  
23 employees considered together because they share  
24 similarities in job duties, work, location, collective  
25 bargaining and other logical work-related groupings.

1            Respondents are critical of CalPERS and the ALJ,  
2 because there was a focus on compensation as the critical  
3 factor in determining their group or class. Respondents  
4 go as far to argue as the statute doesn't even mention  
5 compensation, so why would compensation be something that  
6 should be considered?

7            It's true that that specific statute, that  
8 specific subsection doesn't mention compensation. But  
9 when you take a step back and look at the bigger picture,  
10 that specific subsection is contained within the  
11 definition of compensation earnable. So the whole idea is  
12 what group or class should they be in when you're  
13 considering what their compensation earnable is.

14            So, their job duties. Did respondents' job  
15 duties with the union in any way impact their compensation  
16 earnable? No. Their pay rate was based on their rank.

17            Did respondents' job location in any way impact  
18 their compensation earnable?

19            No. Their job location in no way impacted their  
20 compensation earnable.

21            Did respondents' rank within Cal Fire determine  
22 their pay rate? Yes, it did.

23            Did respondents' MOU determine the compensa --  
24 special compensation they received? Yes.

25            So when you think about what factors are relevant

1 in determining what their group or class is for purposes  
2 of determining their compensation earnable, it's their  
3 rank and it's their MOU. The fact that they were on  
4 full-time leave -- and they've argued this. Different  
5 people in different ranks come into the positions, but  
6 that doesn't impact their compensation earnable at all.  
7 It's the fact that they -- what their rank is with Cal  
8 Fire.

9 But that's not really the critical key here. The  
10 critical key is do they meet the definition of holiday  
11 pay, and they don't. Their argument that they work 24  
12 hours, 7-day week, 365 schedule just defies logic.

13 A trip to Hawaii, the holidays being interrupted  
14 by calls. If respondents were truly working on holidays,  
15 if they were in positions that required scheduled staffing  
16 on holidays, like Cal Fire's other firefighters, the  
17 testimony would have been their work was inter -- would  
18 have -- was interrupted by calling friends and loved ones  
19 on holidays, not the other way around.

20 Thank you.

21 PRESIDENT MATHUR: Thank you, Mr. Shipley.

22 Ms. Balciunas Cockrell, would you like to offer a  
23 rebuttal?

24 MS. BALCIUNAS COCKRELL: Thank you, Madam  
25 President, yes.

1           PRESIDENT MATHUR: Please -- so the clock has  
2 been started for another three minutes for your rebuttal.

3           MS. BALCIUNAS COCKRELL: Thank you.

4           Mr. Shipley refers to rank and MOU being the  
5 determining factor. And it is the MOU from which the  
6 cash-outs are derived. It is a mandatory cash-out. And  
7 one of the -- just to clarify, section 10.1.6 of the MOU  
8 actually gives employees at their option to cash out up to  
9 four holidays per fiscal year. In contrast, for the union  
10 officers, section 2.8.2 requires that the holidays be  
11 cashed out each year.

12           And that was -- it is easily inferred that that  
13 was with the understanding that the union officers would  
14 be on duty all the time. They would not have flexibility  
15 with -- being able to take the holidays and being  
16 untouchable during those holidays, such that if there was  
17 a time when the union officers left their positions and  
18 went back to a Ranger Unit, they would not be bringing  
19 these huge leave balances with them, because they had  
20 spent so much time being unable to take vacation and  
21 holidays.

22           And so that is where the uniqueness of their  
23 position is recognized by the State in its negotiations  
24 with Bargaining Unit 8 for the MOU.

25           Much is made of the Hawaii trip, which was taken

1 for business purposes, and in an attempt to try to take  
2 some vacation time afterwards, and realizing that it just  
3 simply wasn't possible because of the necessity of being  
4 on duty during that time. And as we've noticed the  
5 demands of the fire season have increased in both time and  
6 severity as time has gone on, and that has been the case  
7 for the union officers as well.

8 I think certainly there was a time in the past  
9 where we could say that there was an off-season and  
10 perhaps some more flexibility. But as Mr. Wolf and Mr.  
11 Hale came into office, that diminished and disappeared.

12 So they have been catering to the needs of our  
13 statewide fire safety personnel, and have done so without  
14 regard to their own schedule for nearly a decade. And  
15 that is where the cash-outs are reflected as part of their  
16 compensation and their special compensation.

17 And they fit into every other part of section  
18 20636(e)(1) with the duties -- the uniqueness of the  
19 duties, the uniqueness of the work location, and all of  
20 the different logical work-related groupings that apply to  
21 them and only to them. And that is why they should be  
22 considered as a group or class of two. There is nothing  
23 in the PERL that prevents them from being considered a  
24 group or class of two. And there's nothing in the PERL  
25 that requires a written schedule, so as to meet the



1 requirements of section 571.

2 Thank you so much.

3 PRESIDENT MATHUR: Thank you.

4 So at this time, I will entertain questions from  
5 Board members.

6 Mr. Costigan.

7 BOARD MEMBER COSTIGAN: I guess I'll go first. I  
8 didn't mean to do that first. I just want -- you guys  
9 need a sidebar?

10 MS. BALCIUNAS COCKRELL: I'm sorry?

11 BOARD MEMBER COSTIGAN: You need a sidebar?

12 MS. BALCIUNAS COCKRELL: Oh, no. Sorry, sir.

13 BOARD MEMBER COSTIGAN: Just on the question of  
14 the classification. Are you saying they are in the class  
15 of Battalion Chief or are they a subset of the class of  
16 Battalion Chief?

17 MS. BALCIUNAS COCKRELL: That's what we wrangled  
18 about for about three hours with the ALJ following the  
19 evidentiary hearing. It's -- I guess for practical  
20 purposes you would say it was a subset. You would have  
21 the bargaining unit up here, which is everybody --

22 BOARD MEMBER COSTIGAN: No, I understand the  
23 classification.

24 MS. BALCIUNAS COCKRELL: -- and then the  
25 Battalion Chief, and the pay differentials being subsets

1 down below.

2 BOARD MEMBER COSTIGAN: I just want to be clear,  
3 you're not saying that they are in any other class than  
4 that of a Battalion Chief?

5 MS. BALCIUNAS COCKRELL: Not for their rank, no.

6 BOARD MEMBER COSTIGAN: Okay. Because in your  
7 letter brief, you tend to make the argument that they're a  
8 special class. And as you know, the only folks that can  
9 create classifications are the State Personnel Board.

10 MS. BALCIUNAS COCKRELL: Oh, correct, sir.

11 BOARD MEMBER COSTIGAN: So I just want to be --  
12 make sure that we are clear --

13 MS. BALCIUNAS COCKRELL: Yes.

14 BOARD MEMBER COSTIGAN: -- on the classification  
15 designation as a Battalion Chief?

16 MS. BALCIUNAS COCKRELL: Yes. No, that is  
17 correct, sir. And what we were trying to clarify with the  
18 ALJ and with the Board, that class of employment, which,  
19 yes, of course, the -- a class could not be created as far  
20 as an employment classification is different from a class  
21 of employment under 20636(e)(1).

22 BOARD MEMBER COSTIGAN: Because you relate it to  
23 pay. And I just can't lay my hands on the letter right  
24 now. But in your -- just again in the cover letter -- I'm  
25 sorry. I didn't think you were going to call on me first.

1 My apologies.

2 PRESIDENT MATHUR: That's all right.

3 BOARD MEMBER COSTIGAN: Let me pull this back up.  
4 The letter. Because if you -- I think it was on page two  
5 of your letter second paragraph. I just want to make sure  
6 that we're just on the same page. Let me see if I can  
7 pull it up real quick.

8 If you want to come back Madam President --

9 PRESIDENT MATHUR: Would you like me to come back  
10 to you, Mr. Costigan?

11 BOARD MEMBER COSTIGAN: -- just come back to me,  
12 please. Yes. Thank you.

13 PRESIDENT MATHUR: Okay. We'll do that.

14 Ms. Brown.

15 BOARD MEMBER BROWN: Thank you.

16 My question is for Mr. Shipley. I heard opposing  
17 counsel state that in accordance with MOU 10.1.6, there  
18 was a mandatory payout of holiday pay. But for the rest  
19 of the members, they could take up to four days cash out  
20 of holiday pay. And my question is were those four days  
21 pensionable for other people in that class?

22 SENIOR ATTORNEY SHIPLEY: They -- they would have  
23 been pensionable if they had been allowed. But even  
24 though the MOU says that they could possibly receive that  
25 pay, Cal Fire never actually allowed anybody to cash out

1 the holiday pay. So even though it's put in the MOU, and  
2 I think it basically says if the -- if the budget allows  
3 or if the unit allows. It was never allowed. So no other  
4 member of -- no other firefighter of Cal Fire actually  
5 ever received any cash-outs, even though their MOU says  
6 it's a possibility.

7 BOARD MEMBER BROWN: And we're certain of that  
8 fact. Nobody else ever received the four day --

9 SENIOR ATTORNEY SHIPLEY: The testimony from Mr.  
10 Hale and Mr. Wolf was that during their tenure, they were  
11 not aware of anybody ever receiving -- anybody else in Cal  
12 Fire ever being able to do that.

13 BOARD MEMBER BROWN: Thank you.

14 PRESIDENT MATHUR: Thank you.

15 Ms. Taylor.

16 BOARD MEMBER TAYLOR: Thank you.

17 This is for opposing counsel. I just had a quick  
18 question on the MOU and the mandatory cash-out. Do you  
19 have any idea when that was put into the MOU?

20 MS. BALCIUNAS COCKRELL: It was about 20 years  
21 ago. 1999 was when it first came in.

22 BOARD MEMBER TAYLOR: Okay. So I assume that Cal  
23 Fire has had other union officers all the way back?

24 MS. BALCIUNAS COCKRELL: One -- going back to  
25 1999, I believe there was one set of predecessors to Mr.

1 Wolf and Mr. Hale.

2 BOARD MEMBER TAYLOR: Just one set?

3 MS. BALCIUNAS COCKRELL: I believe so.

4 BOARD MEMBER TAYLOR: Okay. And they did not ask  
5 for this as special compensation?

6 MS. BALCIUNAS COCKRELL: That is correct.

7 BOARD MEMBER TAYLOR: Okay. Thank you.

8 MS. BALCIUNAS COCKRELL: There was -- well, it  
9 would be outside -- the record showed that there was a  
10 period of time where the -- for Mr. Wolf it was not being  
11 cashed out. Either it was forgotten, or misplaced, or  
12 there was some sort of a bureaucratic issue. And then  
13 everybody got on track, and it's been cashed out ever  
14 since that time. So what happened before Mr. Wolf and Mr.  
15 Hale may have.

16 BOARD MEMBER TAYLOR: So you're saying you're not  
17 sure if they even got the cash out.

18 MS. BALCIUNAS COCKRELL: We're not sure.

19 BOARD MEMBER TAYLOR: Okay. Thank you.

20 PRESIDENT MATHUR: Thank you.

21 Mr. Slaton.

22 BOARD MEMBER SLATON: Thank you, Madam President.  
23 I want to ask respondents' counsel about this on-call  
24 versus required to work during a holiday. So I spent 30  
25 years in my career essentially being on-call all the time,

1 and worked sometimes on holidays. But it was at my option  
2 to do it. Where in the documentation is there the  
3 requirement for these two men to answer the phone?

4 MS. BALCIUNAS COCKRELL: And, sir, there is  
5 nothing in the documentation. Otherwise, I feel like we  
6 probably would not be here, if we had documentation.  
7 There's nothing in the bylaws or the constitution of Local  
8 2881. There is no employee handbook that sets the  
9 schedule for the President and the State Rank and File  
10 Director. I -- there could be any number of reasons for  
11 this perhaps, because there has not needed to be. There  
12 has not been an issue of the President and State Rank and  
13 File Director being unavailable when necessity  
14 has demanded it.

15 BOARD MEMBER SLATON: Well, certainly there's  
16 a -- yeah, I mean, certainly it's clear that they took  
17 their jobs very seriously, and felt an obligation to be  
18 responsive. But I want to just understand, if these  
19 gentlemen over 10 years -- 8 and 10 years respectively  
20 spent time, had a Thanksgiving meal with their family, and  
21 their phone rang, that the option of taking that call,  
22 that was an option for them to do that. They were not  
23 mandated to take that call?

24 MS. BALCIUNAS COCKRELL: And Mr. Hale -- at the  
25 remand hearing, Mr. Hale, Mr. Lopez, and Mr. Edwards

1 testified that based on their observations coming up  
2 through the ranks in the union and their conversations  
3 with their predecessors, that they did not have the option  
4 to disregard the call, put it on hold, respond later, that  
5 it was required. That when the phone rang -- and that  
6 is during the week days, non-holidays as well, that their  
7 job was not to come sit at a desk and write a brief like  
8 mine is, but to more answer the phone and respond to the  
9 needs of the members and the state, you know, as those  
10 needs occur. And those needs are constant.

11 BOARD MEMBER SLATON: Okay. So if -- But if they  
12 had not taken the call -- let's take a sample situation  
13 where they just didn't take the call, let it go to  
14 voicemail, what were the ramifications? Who would be in  
15 charge of admonishing them or saying you didn't do what  
16 you signed up to do? What would be the ramifications of  
17 not taking the call?

18 MS. BALCIUNAS COCKRELL: Mr. Hale testified that  
19 he believed he would have been fired, if he did not take  
20 the call. Now, that would have obviously only been able  
21 to come -- as far as his employment, to come from the  
22 state. The executive board of Local 2881 would be the  
23 authority to remove him from office.

24 BOARD MEMBER SLATON: I see. And it wouldn't  
25 require an election --

1 MS. BALCIUNAS COCKRELL: No.

2 BOARD MEMBER SLATON: -- to remove him?

3 MS. BALCIUNAS COCKRELL: No.

4 BOARD MEMBER SLATON: I see. Okay. All right.

5 I may have more questions later, but thank you.

6 PRESIDENT MATHUR: Thank you.

7 Ms. Hollinger.

8 BOARD MEMBER HOLLINGER: Thank you.

9 A couple of questions. And I think for CalPERS  
10 counsel, my question to you is this, so they're being  
11 ranked as Battalion Chiefs. So then how are they able to  
12 carve out a class of two?

13 SENIOR ATTORNEY SHIPLEY: Well, I would argue  
14 that they would not be able to.

15 BOARD MEMBER HOLLINGER: Right.

16 SENIOR ATTORNEY SHIPLEY: That -- that they can't  
17 carve out a class of two. And I think part of the -- and  
18 what I think Mr. Costigan --

19 BOARD MEMBER HOLLINGER: But I'm trying to -- I'm  
20 not hearing the rationale of how you're doing that,  
21 because I'm -- my concern is you would be creating a very  
22 dangerous precedent of going forward, so I --

23 SENIOR ATTORNEY SHIPLEY: And I think that's  
24 CalPERS -- and that's what led to CalPERS determination,  
25 that you have to look at the most logical grouping. And



1 the most logical grouping would be that they would be with  
2 other firefighters of similar rank.

3 BOARD MEMBER HOLLINGER: Right. But you stated  
4 that they're Battalion Chiefs, so now you want to create a  
5 subset.

6 MS. BALCIUNAS COCKRELL: Well --

7 BOARD MEMBER HOLLINGER: How -- I mean, where is  
8 it written?

9 MS. BALCIUNAS COCKRELL: Well, the employment  
10 classification is Battalion Chief. Their rank or  
11 employment classification is Battalion Chief. But then  
12 there are -- and we have used the term I guess subsets or  
13 different groups or classes that receive pay differentials  
14 within that rank. And, for example, a Hazmat, there's  
15 Hazmat personnel in the MOU. That's a limited number of  
16 Hazmat personnel. I'm not sure the number, but they  
17 received a pay differential for being in that Hazmat  
18 position that is independent of their rank. They could be  
19 an Engineer or a Captain or Battalion Chief.

20 BOARD MEMBER HOLLINGER: But they're --

21 MS. BALCIUNAS COCKRELL: But if they pulled one  
22 of those limited positions, they get that pensionable pay  
23 differential.

24 BOARD MEMBER HOLLINGER: And, Mr. Shipley, my  
25 question to you is to be pensionable as comp, is there

1 ever a situation where someone is pensionable at comp when  
2 they did not pay the contribution?

3 SENIOR ATTORNEY SHIPLEY: I think there would be  
4 a requirement that they would have to pay the  
5 contributions, that the employer and the member would have  
6 to pay contributions.

7 BOARD MEMBER HOLLINGER: And that wasn't done  
8 here, correct?

9 SENIOR ATTORNEY SHIPLEY: That's correct.

10 BOARD MEMBER HOLLINGER: Okay. Thank you.

11 PRESIDENT MATHUR: Thank you, Ms. Hollinger.  
12 Mr. Jones.

13 BOARD MEMBER JONES: Yeah. Thank you, Madam  
14 President.

15 Yeah. My question is similar to Ms. Hollinger.  
16 Mr. Shipley, you made the statement in your opening  
17 comments that the data was never reported to CalPERS that  
18 would be considered pensionable. So my question to the  
19 opposing counsel is why not?

20 MS. BALCIUNAS COCKRELL: We don't know the answer  
21 to that either. Either it was an oversight based on, as I  
22 explained to Ms. Taylor, whether it was actually paid out  
23 in the early years for Mr. Hale and Mr. Wolf's  
24 predecessors or -- we're not sure why it was not reported  
25 as pensionable from the beginning. But certainly, the

1 respondents would be acknowledging and be expecting that  
2 contributions would need to be made for this to be  
3 pensionable, including retroactively.

4 BOARD MEMBER JONES: And how many years did this  
5 data was not reported?

6 MS. BALCIUNAS COCKRELL: It would be eight for  
7 Mr. Wolf, I believe, and 10 for Mr. Hale.

8 BOARD MEMBER JONES: Okay. Thank you.

9 PRESIDENT MATHUR: Thank you.

10 Mr. Costigan, we're back to you.

11 BOARD MEMBER COSTIGAN: Okay. Now, I'm ready.

12 So first, before I get into my questions, I want  
13 to thank you all behind you for all that you do. I  
14 appreciate what Cal Fire has done. I think you know the  
15 work we've done at SPB. Recently, we had the  
16 classification attesting issue. So my questions are not  
17 directed to you as individuals. I mean, I know we lost  
18 another firefighter last night. So I truly appreciate all  
19 of the hard work that you do. And I think, as we saw;  
20 particularly at our SPB we take the issues related to Cal  
21 Fire extremely seriously. So again, I just want to make  
22 sure that you understand these are technical questions.  
23 And the reason we're here is that reasonable minds are  
24 clearly disagreeing on the interpretation of a statute or  
25 the lack of a regulation or statute, so I just want to set

1 that.

2           The concern I have really is I think we're  
3 interchanging words here "classifications" and "classes".  
4 Okay. They're two separate things here. I just want to  
5 first agree, only the State Personnel Board can create  
6 classifications. And there's no disagreement, they are  
7 Battalion Chiefs for purposes of the classification.

8           MS. BALCIUNAS COCKRELL: Yes.

9           BOARD MEMBER COSTIGAN: And there is no subset as  
10 it relates to a Battalion Chief. What we have are  
11 differentials in pay. And I understand Hazmat,  
12 educational, smoke jumper, whatever it may be. And then  
13 we do that across all classes on it.

14           The disagreement here is not -- and I know -- and  
15 it was just back to your language, and it's just  
16 wordsmithing, I mean, is that they can form their own  
17 group or class of employment pursuant to the Government  
18 Code. We're not saying -- you're not saying that they're  
19 forming their own class of employment as it relates to a  
20 State classification. You're saying by practice of what  
21 they did, they are entitled to a different set of  
22 compensation that is not necessarily spelled out in the  
23 MOU, the regulation, or statute.

24           MS. BALCIUNAS COCKRELL: Correct. I guess it is  
25 spelled out in the MOU. But right, we're not -- we are

1 not trying to adjust or maneuver the State classifications  
2 in any way, shape, or form.

3 BOARD MEMBER COSTIGAN: Okay. And that's what --

4 MS. BALCIUNAS COCKRELL: It's essentially we're  
5 saying that this is a pay differential like all of the  
6 other pay differentials.

7 BOARD MEMBER COSTIGAN: And it's -- the assertion  
8 that the MOU calls that out. And by the fact that they  
9 had bought downtime, that they had bought down holiday pay  
10 sets -- even though we -- the Hazmat is specifically  
11 called out, and education, and longevity. And I  
12 understand on the officer's case, because again the goal  
13 is to have someone there in the community for a number of  
14 period of times.

15 I mean, so again, I want to set the stage this is  
16 not disparaging the work that's being done. This is  
17 just -- I sort of hate black letter law sometimes, because  
18 this is just a statutory regulatory interpretation.

19 So the argument is, even though it is silent, by  
20 the fact that you had two people, the argument is that  
21 created a subset for purposes of pay, not classifications,  
22 but by their actions, that they're entitled to -- even  
23 though it may not be specifically called out the way that  
24 a Hazmat is.

25 MS. BALCIUNAS COCKRELL: Correct, sir. Just as

1 anyone could meet the qualifications of a Hazmat personnel  
2 and earn that pay differential. If it acquired one of  
3 those specific Hazmat positions, anyone in the union can  
4 run for and be elected into one of the two union officer  
5 positions, and then receive that pay differential of being  
6 cashed out for their holiday pay.

7 BOARD MEMBER COSTIGAN: I would say regardless of  
8 the outcome of this case, clearly going into future  
9 negotiations, this is something, because of the way  
10 workload has change. The more clarification that you can  
11 get, the better off we are. And I certainly hope that  
12 regardless of the outcome of this case, that it provides  
13 some guidance as to next steps.

14 So thank you, Madam President.

15 PRESIDENT MATHUR: Thank you, Mr. Costigan.  
16 Mr. Feckner.

17 VICE PRESIDENT FECKNER: Thank you, Madam  
18 President.

19 My concern is -- and first of all, to echo what  
20 Mr. Costigan said, I have the utmost respect for all first  
21 responders. My house was in the evacuation zone last  
22 year, and I was out for nine days. And I watched what  
23 they did daily, and was amazed with the work that was  
24 done.

25 My concern however is when we talk about the word

1 comes up of spiking, et cetera, unless I misunderstood, I  
2 believe you said that these two individuals had no  
3 supervisors, they were not evaluated, et cetera. So if  
4 wasn't written in the MOU, they pretty much made up their  
5 own rules. In most areas where two people work side by  
6 side, they would make an agreement, I'm going to take  
7 vacation now. You cover. I'm going to take this holiday.  
8 You cover.

9           So if there's no written language in the MOU,  
10 they could have done that. Instead, they chose to make  
11 their own rules and not do that. Is there reason why I  
12 should -- I'm not understanding this correctly?

13           MS. BALCIUNAS COCKRELL: Well, as was in the  
14 record, it was not so much making their own rules, and I  
15 guess they could have done so, but they operated from the  
16 past practice from their predecessors, and from  
17 discussions with the expectations of the board, the  
18 expectations that were set out in the past and with each  
19 other, that, yes, they potentially -- well, in theory,  
20 they could have done so, but they in -- for all  
21 practicality, they couldn't. The demands of the job were  
22 just too high, as far as making sure everything got done  
23 when it needed to be done, and all the concerns of both  
24 the State and the members were addressed.

25           And this is a tremendously gray area, as far as

1 the documentation, and the things that are easy to point  
2 to, but it was undisputed throughout the hearing, and  
3 found consistently twice by the administrative law judge  
4 that the union officers worked all holidays.

5 And so then the issue that we felt was, were they  
6 required to work all of the holidays? And we believe it's  
7 clear that they were, because of the demands of the job.

8 VICE PRESIDENT FECKNER: Thank you.

9 PRESIDENT MATHUR: Thank you, Mr. Feckner.

10 Ms. Taylor.

11 BOARD MEMBER TAYLOR: Thank you, Madam President.

12 I think I have a couple of questions for both counsels.

13 Ms. Cockrell, you had said that they -- the  
14 MOU -- it was in 1999 when the MOU was changed to that,  
15 and that they also don't get longevity pay when they're  
16 out or do they?

17 MS. BALCIUNAS COCKRELL: They do, yes.

18 BOARD MEMBER TAYLOR: They do.

19 MS. BALCIUNAS COCKRELL: If they qualify for the  
20 pay differential, they can receive it. But as Mr. Hale  
21 testified, even if he speaks fluent Spanish, he's not in  
22 a --

23 BOARD MEMBER TAYLOR: Bilingual.

24 MS. BALCIUNAS COCKRELL: -- position that's  
25 considered bilingual --



1 BOARD MEMBER TAYLOR: Got it.

2 MS. BALCIUNAS COCKRELL: -- so he can't -- he has  
3 to achieve the position in order to receive the  
4 differential for everything except longevity and education  
5 I believe it was.

6 BOARD MEMBER TAYLOR: Everything except. Okay.  
7 Okay. So that's where I was a little confused. And then  
8 the MOU says it's a mandatory cash-out, and we -- I think  
9 you had stated that no one else gets the mandatory cash  
10 out, and that Cal Fire doesn't actually -- well, Mr.  
11 Shipley had said Cal Fire allows four days in the MOU,  
12 they don't actually a -- themselves allow it. They  
13 haven't -- as far as we know, they have not paid that.

14 MS. BALCIUNAS COCKRELL: That is correct.

15 BOARD MEMBER TAYLOR: Okay. So, Mr. Shipley, I  
16 think I had a concern that might echo Ms. Hollinger's  
17 concern. Is this class -- not classification. So it's a  
18 confusing verbiage to use. But this -- if we determine  
19 for the respondents -- for example, if we were to  
20 determine for the respondents and they are able to have  
21 this as pensionable compensation, what does that mean  
22 going forward for the firefighters? That's where my  
23 concern is. What door are we opening for that  
24 compensation? And then can Cal Fire employees start  
25 working through the MOU or however to get that as

1 additional compensation -- pensionable compensation?

2 SENIOR ATTORNEY SHIPLEY: I think the decision of  
3 the Board today would impact the respondents and it would  
4 impact other -- other Cal Fire employees who were in union  
5 officer on-leave roles.

6 BOARD MEMBER TAYLOR: Only?

7 SENIOR ATTORNEY SHIPLEY: I believe so. I  
8 think -- and I think it's, you know, throughout the record  
9 that you have in front of you, which is rather voluminous.  
10 This other firefighters -- and that's what I was trying to  
11 address in my remarks. The other firefighters who are  
12 required to work on holidays, who are required to staff  
13 their positions regardless -- without regard of holidays,  
14 if they actually received the holiday pay, that would be  
15 pensionable, because it would actually meet the  
16 definition. Everybody would --

17 BOARD MEMBER TAYLOR: Because it would be all of  
18 them in the class.

19 SENIOR ATTORNEY SHIPLEY: And if it was available  
20 to everybody. Now, if it's only available to a couple of  
21 the firefighters, then it wouldn't meet the definition.  
22 But if it was truly available to all of the firefighters,  
23 then it would meet the definition of holiday pay, because  
24 they actually are required to work on holidays, and  
25 they're actually in positions that require staffing.

1           BOARD MEMBER TAYLOR: And therefore it's  
2 pensionable?

3           SENIOR ATTORNEY SHIPLEY: Correct. It meets the  
4 definition found in Regulation 571.

5           BOARD MEMBER TAYLOR: Okay. So that's -- so  
6 you're saying that if -- depending on the determination  
7 here, it only impacts the union officers, as far as you're  
8 concerned?

9           SENIOR ATTORNEY SHIPLEY: I believe so.

10          BOARD MEMBER TAYLOR: So anybody who was elected  
11 into the union positions?

12          SENIOR ATTORNEY SHIPLEY: Correct.

13          BOARD MEMBER TAYLOR: So and I too want to say  
14 that -- that these are just questions. I'm a union  
15 officer myself, so I just -- I appreciate everything that  
16 Cal Fire does. I just -- I want to make sure that we are  
17 addressing all of the technical issues here. So that was  
18 where one of my concerns lie.

19          SENIOR ATTORNEY SHIPLEY: And that's where the --  
20 you know, it was brought up that it is an MOU, that it is  
21 something that's allowed. And so if it was allowed and it  
22 actually was paid out to everybody and everybody had it  
23 available, then it would be something that would meet the  
24 definition.

25          The problem with -- at least in my opinion with

1 the appeal is that nobody else ever got it. It was never  
2 allowed for the people who actually met the definition.  
3 But then you also have to go back to did they meet the  
4 definition of holiday pay? Were they in positions that  
5 required staffing? Were they required to work without  
6 regard to holiday?

7 And I would submit even if you find that there's  
8 a group or class of two, they don't meet that definition.

9 BOARD MEMBER TAYLOR: So you're saying that they  
10 didn't have to work the holidays is your opinion?

11 SENIOR ATTORNEY SHIPLEY: That's my opinion. My  
12 opinion was they were -- they were required to probably --  
13 I don't even think they were required. There was no  
14 mandate that they accept a call. They chose to do so. It  
15 was admirable that they did it. They obviously took their  
16 job seriously. I've previously worked at Cal Fire, and I  
17 saw how seriously they took their jobs, but that's  
18 different than being mandated to work on holidays.

19 BOARD MEMBER TAYLOR: Okay. Ms. Cockrell, in  
20 answer to that, not -- you know, they made a choice is  
21 what I'm hearing. And as a union officer, that's -- I  
22 also am a little concerned about that, because I can take  
23 vacation time. I get paid by the State of California  
24 also, but there is requirements of work.

25 So what -- how is it that they were -- you had

1 said earlier, how is it that they were held accountable,  
2 if they did not take those calls?

3 MS. BALCIUNAS COCKRELL: Well, I think the  
4 easiest way to see something on paper is that they were  
5 still required to report their time to the state. And  
6 that was undisrupted in the testimony, that it was -- they  
7 would turn in their time cards each pay period. And for 8  
8 and 10 years, not one time did they report a holiday.

9 Now, someone was reviewing their time cards in  
10 Sacramento -- Sacramento headquarters of Cal Fire. There  
11 was testimony to that effect, and not one time were they  
12 ever challenged for not taking a holiday.

13 And certainly somebody processing and seeing that  
14 these payments are being made year after year for the  
15 cash-out, we would presume they would say, well, wait a  
16 second, you know, you can take holidays. Why are you not  
17 taking holidays? They never did. They accepted that  
18 these union officers were required to work every holiday  
19 year after year, because Cal Fire management expected them  
20 to be on duty when Cal Fire needed them. The Governor's  
21 office expected them to be on duty.

22 And so for 8 and 10 years, Cal Fire never said,  
23 wait a second, you haven't taken a holiday. Don't forget,  
24 you need to take holidays. You have the option of taking  
25 holidays. They cashed out the entirety of the holidays

1 each year.

2 BOARD MEMBER TAYLOR: Okay. So however, you had  
3 stated earlier that they have -- if they weren't  
4 available, that there was a way to remove them from  
5 office. And that is in their policy and procedures, their  
6 bylaws --

7 MS. BALCIUNAS COCKRELL: The --

8 BOARD MEMBER TAYLOR: -- for the union?

9 MS. BALCIUNAS COCKRELL: The CNOP, the operating  
10 procedures, there is a procedure for removing the Union  
11 officers in --

12 BOARD MEMBER TAYLOR: Without a vote. So once --  
13 it's not -- it's -- once they're elected, its's not --  
14 there's -- there is a way to remove an egregious union  
15 officer?

16 MS. BALCIUNAS COCKRELL: Correct. There are  
17 multiple ways to remove. And the most expedient one would  
18 be through the executive board.

19 BOARD MEMBER TAYLOR: Okay.

20 MS. BALCIUNAS COCKRELL: And they're still State  
21 employees, so Cal Fire could terminate them as State  
22 employees.

23 BOARD MEMBER TAYLOR: Well, we're talking about  
24 whether or not they're doing their union duties at this  
25 point. And their union duties, according to you, are

1 being required to work holidays and all 365 days a year?

2 MS. BALCIUNAS COCKRELL: Correct. And  
3 theoretically, although this is probably an exaggeration,  
4 the State could find that if they're not doing their union  
5 duties, they are committing fraud or accepting State money  
6 under false pretenses, and terminate them on those  
7 grounds. So it's not documented in a clear way that would  
8 make it easier for all of us. But based on the practice,  
9 we believe it's clear that they were required.

10 BOARD MEMBER TAYLOR: Well, I will agree with Mr.  
11 Costigan. I think going forward that might be something  
12 you might want to work on.

13 PRESIDENT MATHUR: Thank you.

14 SENIOR ATTORNEY SHIPLEY: May I add one thing to  
15 that?

16 PRESIDENT MATHUR: Yes, Mr. Shipley.

17 SENIOR ATTORNEY SHIPLEY: The argument is that  
18 the evidence says they worked every holiday. And it's  
19 just not true. The question was asked is it fair to say  
20 though that you didn't receive calls every holiday? The  
21 answer was yes. It was asked would it be fair to say that  
22 you kind of worked on half the weekends, and the answer  
23 was yes.

24 So there's no evidence that they did -- that they  
25 worked every single holiday. The evidence is they said

1 they didn't work every holiday.

2 PRESIDENT MATHUR: Thank you.

3 Mr. Miller.

4 BOARD MEMBER MILLER: I have a couple questions.  
5 I guess I'll start with Mr. Shipley, and then also want to  
6 hear from respondents' counsel.

7 So you mentioned -- we were talking about  
8 classification versus a class. So here we're talking  
9 about a class potentially of two, but it sounds like it  
10 actually could be a class of anyone who is a -- you know,  
11 a Cal Fire union officer in a similar circumstance. So  
12 there could be more people affected now retro future, if  
13 you were to consider that a class of people that this  
14 could impact -- this decision could impact.

15 SENIOR ATTORNEY SHIPLEY: I -- if I'm  
16 understanding the question, I think that it would -- if  
17 these two individuals were deemed a class of two, then  
18 that would probably impact the prior union officers who  
19 were in the same position as well as the current.

20 BOARD MEMBER MILLER: I guess that's sort of my  
21 question. Would it -- would it just be deeming these two  
22 a class or would it be deeming people who were in a  
23 similar situation, which could be these two, or these two  
24 plus some other number of people.

25 SENIOR ATTORNEY SHIPLEY: Well, I think you would



1 have to look at the specific facts. The MOU indicates  
2 that these are the only two officers who are on full-time  
3 leave. So if you're -- I think if you're looking at  
4 similarly situated, it really is probably just these two.

5 BOARD MEMBER MILLER: So for now, we're talking  
6 about these two, but it could have implications for others  
7 on a case-by-case basis.

8 SENIOR ATTORNEY SHIPLEY: I believe so.

9 BOARD MEMBER MILLER: Okay. My second question.  
10 And it's kind of a mishmash. It's -- there's so many  
11 moving parts here. I just want to make sure I understand  
12 that for these officers, the leave cash-outs were  
13 mandatory? So they --

14 MS. BALCIUNAS COCKRELL: (Nods head.)

15 BOARD MEMBER MILLER: So they were mandatory  
16 leave cash-outs. And Cal Fire did not report them as a  
17 PERSable income. They did not conduct a contribution.  
18 For other firefighters, those were in theory possible or  
19 available, but Cal Fire did not choose to cash them out.  
20 It wasn't at the firefighter's discretion. It was at the  
21 employers discretion, correct, on that?

22 SENIOR ATTORNEY SHIPLEY: I think it actually  
23 probably was -- Cal Fire had to allow it, and then it was  
24 at -- it would be at the discretion of the firefighter as  
25 to whether they chose to cash the holidays out.

1           BOARD MEMBER MILLER: Okay. And so if Cal Fire  
2 had allowed that and firefighters had elected to cash out  
3 some of that, then Cal Fire would have reported it to  
4 CalPERS as PERSable income. And they would have then  
5 settled up or deducted their contribution, if that had  
6 been the case.

7           SENIOR ATTORNEY SHIPLEY: That's correct.

8           BOARD MEMBER MILLER: And so if it weren't for  
9 this required cash-out, that would have been how things  
10 would have worked for these two union officers as well,  
11 except for those provisions preventing that.

12           SENIOR ATTORNEY SHIPLEY: I would say except for  
13 the definition of holiday pay, which they did not meet.  
14 But yes, if they had met those definitions, it would have  
15 been -- they would -- Cal Fire would have paid the  
16 contributions and the members would have had those  
17 contributions also deducted from the pay.

18           BOARD MEMBER MILLER: Yeah. Thank you.

19           And, Counsel, that's you're understanding as  
20 well?

21           MS. BALCIUNAS COCKRELL: That is correct, sir.

22           BOARD MEMBER MILLER: Thank you.

23           PRESIDENT MATHUR: Thank you.

24           Mr. Slaton.

25           BOARD MEMBER SLATON: So let me build on Mr.

1 Miller's question first. So there's an employee deduction  
2 that happens with a contribution, is that correct,  
3 pensionable?

4 SENIOR ATTORNEY SHIPLEY: Correct.

5 BOARD MEMBER SLATON: Okay.

6 SENIOR ATTORNEY SHIPLEY: Every member has to pay  
7 a percentage of the member contribution.

8 BOARD MEMBER SLATON: Right. So for 8 and 10  
9 years, these two men did not see that deduction happening  
10 from their pay?

11 SENIOR ATTORNEY SHIPLEY: That is correct.

12 BOARD MEMBER SLATON: Okay. So I don't know to  
13 what level of detail people who work for the State follow  
14 these things. But I know I look at deductions and check  
15 and see if the deductions are proper. So does counsel for  
16 the respondents have an answer as to why this was not  
17 raised for this period of time, and they didn't check and  
18 see, well, gee, if this is pensionable, there should be  
19 deductions happening?

20 MS. BALCIUNAS COCKRELL: I don't have an answer  
21 for that, Mr. Slaton. It was -- it was raised upon Mr.  
22 Hale's retirement was what triggered --

23 PRESIDENT MATHUR: Could you speak into the  
24 microphone, please?

25 MS. BALCIUNAS COCKRELL: Oh, I apologize.

1           PRESIDENT MATHUR: Thank you.

2           MS. BALCIUNAS COCKRELL: That -- it was the  
3 calculation of his benefits -- his retirement benefits  
4 that triggered.

5           BOARD MEMBER SLATON: So only get the benefit  
6 time, not at the deduction time?

7           MS. BALCIUNAS COCKRELL: Yes.

8           BOARD MEMBER SLATON: Which went for a period of  
9 8 and 10 years respectively.

10          MS. BALCIUNAS COCKRELL: Any we agreed with  
11 CalPERS counsel in the beginning that we would not look at  
12 the calculations at this juncture. That if it was  
13 determined to be pensionable, obviously, the respondents  
14 don't believe that they can just receive benefits without  
15 making the contribution.

16          BOARD MEMBER SLATON: Of course. Of course not.

17          MS. BALCIUNAS COCKRELL: So, yes.

18          BOARD MEMBER SLATON: Okay. So then I want to  
19 ask you about the -- because it seems to be a lot of this  
20 case rests on the group or class issue to make them a  
21 separate group or class. So in your statement, in your  
22 letter, it says the union officers may be a group or class  
23 of two, not must be.

24                 So you're saying it's permissive, but where is  
25 the documentation in all of this time period, the 8 and 10

1 years that went by, and an MOU, where is the document that  
2 says this is a class of two?

3 MS. BALCIUNAS COCKRELL: There is no such  
4 documentation. I don't know -- similarly in my research,  
5 I could not find documentation in other categories that  
6 says you, State employee, are in this group or class for  
7 the purposes of the pension law section 20636(e)(1). So I  
8 don't know if it's not verbalized or specified for  
9 anybody, or if it was. This situation, I'm sorry, I  
10 simply don't have an answer for that.

11 BOARD MEMBER SLATON: Okay. So there was no  
12 documentation that this was a separate class. There's no  
13 documentation that any contributions were taken out for  
14 it, neither from the employer nor the employee. The  
15 definition of class as you refer to Government Code 206 --  
16 636, is that -- am I reading it correctly?

17 MS. BALCIUNAS COCKRELL: Um-hmm.

18 BOARD MEMBER SLATON: Because they share  
19 similarities in job duties. So describe to me the  
20 similarity or the differences between a President and a  
21 Rank and File Director? What's the difference in the job  
22 duties between the two?

23 MS. BALCIUNAS COCKRELL: The difference in the  
24 job duties is that the Rank and File Director deals with  
25 the more -- I don't -- tangible perhaps is the word, the

1 grievances, the negotiating the MOU, the more detailed  
2 elements. That the President then handles the big picture  
3 of. The President deals directly with the Governor's  
4 office, directly with the management on the bigger union  
5 in the State employment issue, whereas the State Rank and  
6 File Director is going to be handling to the State  
7 Personnel Board disciplinary appeals, grievances to Cal  
8 Fire for the express MOU violations.

9           Whereas, the President is going to be saying,  
10 well, we need to, probably in this scenario, fix the  
11 documentation for the cash out for the purposes of the  
12 PERL. So it's sort of a big picture details thing.

13           BOARD MEMBER SLATON: Okay. So one is a big  
14 picture union issues, and the other one is individual  
15 cases, individual firefighters is the focus?

16           MS. BALCIUNAS COCKRELL: That's probably a  
17 fair --

18           BOARD MEMBER SLATON: So why do you consider  
19 those are similarities in job duties then?

20           MS. BALCIUNAS COCKRELL: Because they are  
21 similar -- they are similar to each other as distinct from  
22 everybody else. The similarities are that they are  
23 running the union, that they are in charge of how the  
24 Union operates both as a whole and as individual members.

25           And there are no other positions in the union, in

1 Cal Fire, or in -- we believe in State employment -  
2 although we don't know that for sure - that are similar to  
3 these two positions.

4 BOARD MEMBER SLATON: Okay. And for CalPERS  
5 counsel, you talked about -- Mr. Miller raised the issue  
6 about whether this applies to others as well. I can see  
7 the focus, obviously in this case, is on Cal Fire. But we  
8 have other unions, not only unions with the State. We  
9 have unions that are -- represent workers in local  
10 government, all over the state of California.

11 So is it fair to say that the ramifications of  
12 this particular case go beyond the issue of people --  
13 union representation for Cal Fire?

14 SENIOR ATTORNEY SHIPLEY: I think it would always  
15 be a fact-specific kind of inquiry. But I could see where  
16 determining how the Board makes its determination on the  
17 group or class of employment issue, that it could impact  
18 other union officers who are on leave to perform union  
19 duties.

20 BOARD MEMBER SLATON: Um-hmm. Well, certainly if  
21 I were in charge of the negotiating an MOU, I'd be paying  
22 attention to this particular case, regardless of whether  
23 it was Cal Fire or someone else.

24 SENIOR ATTORNEY SHIPLEY: Correct.

25 BOARD MEMBER SLATON: Thank you very much.

1 Thank you.

2 PRESIDENT MATHUR: Thank you.

3 Mr. Rubalcava.

4 BOARD MEMBER RUBALCAVA: Thank you. I have two  
5 general questions here.

6 I think most of them have been articulated, but I  
7 just want to get a clarification. Both of you have  
8 testified, or at least one of you have testified, that  
9 there's a law, it's an -- the MOU provision has been there  
10 for some quite time. Does any counsel know the history of  
11 that? Why -- what was -- why was that put in there that  
12 there has to be an mandatory annual cash-out?

13 MS. BALCIUNAS COCKRELL: It was to reduce the  
14 leave balances for union officers returning to the Ranger  
15 Units following their tenure. Now, that actually has not  
16 been put into practice since the cash-out provision was  
17 implemented. The officers have retired rather than  
18 returning to Ranger Units.

19 But the -- they are not required to do so. So it  
20 would be a burden on the State for an officer to come back  
21 to a unit with say 10 years of vacation time, which they  
22 can then -- would then burden the unit with as active  
23 firefighters.

24 BOARD MEMBER RUBALCAVA: So the question is when  
25 these people that were in Bargaining Unit 8, and through



1 the MOU they were able to take leave to do the union  
2 duties, their class specification and their salary never  
3 changed, is that correct?

4 MS. BALCIUNAS COCKRELL: That is correct. Well,  
5 it did not change on account of the union duties. The  
6 evidence showed that Mr. Hale and Mr. Wolf were actually  
7 both promoted shortly after they went into office.

8 BOARD MEMBER RUBALCAVA: Right. Okay.

9 Like Ms. Taylor, I'm not a union officer, but I  
10 familiar with unions and I understand -- and at least in  
11 my particular situation, there's -- when there are civil  
12 service rules permit a leave, but there's always a  
13 separate agreement as terms and conditions. So I believe  
14 that whatever the reason was, there was an intent behind  
15 that MOU provision saying that you have to mandatory cash  
16 out. And that has white -- that's the governing rule  
17 until it's changed. Now, most -- some people have already  
18 stated that it has an impact. It should -- perhaps should  
19 be changed.

20 State law under compensation there's - I forget  
21 the citation - talks about special compensation of certain  
22 things, whether responsible for a guard dog or a bonus for  
23 waxing the floor, or any -- some have determined it to be  
24 pensionable, others have not, like paying a bonus for  
25 special skills.

1           So all those can be -- most pensionable has been  
2 determined by law and CalPERS. And I know because from --  
3 I come from '37 Act counties, and we always look to  
4 CalPERS for guidance. And so sometimes things have to be  
5 determined -- I mean, you have to assume that a law was  
6 put there for a reason until it was changed.

7           So I think what's governing here is there's a  
8 class specification. So I don't think the argument about  
9 whether a subject to -- it's a class spec. And there was  
10 a reason for that MOU provision.

11           So the term "pension spiking" came up a couple  
12 times. And I know that's something that's always heavy on  
13 this case, whether it is or isn't. And on a personal  
14 level, one may think, you know, maybe they didn't work the  
15 holiday. But there's nothing in the agreement between the  
16 parties that said you did or didn't. The agreement was  
17 your class -- you're still your same classification.  
18 You're still -- all provisions apply.

19           So I think it's a question of whether what was  
20 the intent of the parties and whether somebody for -- I  
21 mean, that's what I'll say. I'll say -- anyhow, I'm just  
22 talking. I think -- I asked my questions. Thank you.

23           PRESIDENT MATHUR: Thank you, Mr. Rubalcava.

24           Are there any further questions from the Board at  
25 this time?

1           Seeing none. I would entertain a motion to  
2 recess into closed session for deliberation.

3           BOARD MEMBER TAYLOR: So moved.

4           BOARD MEMBER COSTIGAN: Second.

5           PRESIDENT MATHUR: Moved by Ms. Taylor, seconded  
6 by Mr. Costigan.

7           Any discussion on the motion?

8           Seeing none.

9           All those in favor say aye?

10          (Ayes.)

11          PRESIDENT MATHUR: Any opposed?

12          Motion passes.

13          We will now recess into closed session and we  
14 will reconvene after our deliberations.

15          MS. BALCIUNAS COCKRELL: Thank you for your time.  
16 We appreciate it.

17          (Off record: 10:17 a.m.)

18          (Thereupon the meeting recessed  
19 into closed session.)

20          (On record: 11:04 a.m.)

21          PRESIDENT MATHUR: All right. Well, we are  
22 reconvening the open session of the full Board hearing,  
23 and we are back on the record.

24                 I just want to note that the Controller's  
25 representative and Mr. Miller have recused themselves from

1 this decision. And with that, I will entertain a motion  
2 from the Board.

3 Mr. Costigan.

4 BOARD MEMBER COSTIGAN: Thank you, Madam  
5 President. At this time, I would move that the Board  
6 adopt, as its decision, the decision by the administrative  
7 law judge.

8 BOARD MEMBER HOLLINGER: I'll second it.

9 PRESIDENT MATHUR: Motion made by Costigan,  
10 seconded by Hollinger.

11 Any discussion on the motion?

12 Seeing none.

13 All those in favor say aye?

14 (Ayes.)

15 PRESIDENT MATHUR: All opposed?

16 (Noes.)

17 PRESIDENT MATHUR: Motion passes.

18 That brings us to the end of this full Board  
19 hearing. Thank you all very much.

20 We are adjourned.

21 (Thereupon the California Public Employees'  
22 Retirement System, Board of Administration  
23 open session meeting adjourned at 11:05 a.m.)

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C E R T I F I C A T E O F R E P O R T E R

I, JAMES F. PETERS, a Certified Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing California Public Employees' Retirement System, Board of Administration open session meeting was reported in shorthand by me, James F. Peters, a Certified Shorthand Reporter of the State of California.

That the said proceedings was taken before me, in shorthand writing, and was thereafter transcribed, under my direction, by computer-assisted transcription.

I further certify that I am not of counsel or attorney for any of the parties to said meeting nor in any way interested in the outcome of said meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 18th day of August, 2018.



JAMES F. PETERS, CSR  
Certified Shorthand Reporter  
License No. 10063