ATTACHMENT B

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

Prior to 2002, trial court interpreters were hired by trial courts as independent contractors. In 2002, legislation was introduced to “establish the Trial Court Interpreter Employment and Labor Relations Act [the Act], setting forth provisions and procedures governing the employment and compensation of certified and registered trial court interpreters and court interpreters pro tempore, employed by the trial courts.” (Senate Bill 371; Gov. Code section 71800 et seq.). The Act provided:

The intent of the Legislature is to provide that the trial courts shall make an orderly transition from relying on independent contractors to using employees for interpretation services. Accordingly, this Act provides for a transition period up to two years during which the trial courts shall hire as employees court interpreters pro tempore who shall perform as needed on a per diem basis. After the transition period, the trial courts may continue to employ court interpreters pro tempore as well as create other court interpreter classifications.

On September 28, 2002, Governor Davis signed SB 371, and a side letter which states:

To the Members of the California State Senate:
I am signing Senate Bill 371.
In recognition of the State’s current financial pressures, I am signing this bill with the understanding that the proponents have agreed not to commence collective bargaining until 2005.

The Act identified a timeline for trial courts to implement its provisions. It identified a “transition period” from January 1, 2003 to July 1, 2005, “except that the transition period for the region may be terminated earlier by a memorandum of understanding or agreement between the regional court interpreter employment relations committee and a recognized employee organization” (Gov. Code section 71801).

The Act became effective January 1, 2003. The Act required trial courts to hire full time court interpreters on or after July 1, 2003, rather than continuing to use independent contractors (Gov. Code section 71802). The Act mandated “a new employee classification entitled ‘Court Interpreter Pro Tempore’ (CIPT)” be created to “perform simultaneous and consecutive interpretation and sign translation in spoken languages for the trial courts” (Gov. Code section 71803(a)). The parameters of the CIPT classification were:

Unless otherwise provided in a memorandum of understanding (MOU) or agreement with a recognized employee organization, all of the following applies to employees in this classification:
(1) They shall be appointed by the trial court to perform work on an as needed basis.
(2) They shall be paid on a per diem basis for work performed.
(3) They are not required to receive health, pension or paid leave benefits.

During this transitional period, Riverside County Superior Court (Respondent Court) hired Respondents Victor Nuno, Dolores Portillo-Angel, Gloria Ortega, Raisa Slagle and Norma Caucus on July 24, 2003; Respondent Lucia Cardinale on October 2, 2003 and Respondent Sara Bensadoun on October 14, 2004 (together, Respondent Court Interpreters). An MOU between Respondent Court and the California Federation of Interpreters-Communication Workers of America (the Union) was negotiated, ratified and became effective on September 15, 2005. Under the terms of the MOU, CIPTs became employee Court Interpreters and were classified as benefitted employees with regular assignments and hourly pay with overtime.

Between 2008-2009, Respondent Court Interpreters submitted Requests for Service Credit Cost Information/Purchase Service Prior to Membership (SPM) to CalPERS, requesting credit for services provided to Respondent Court during the transitional period.

On various dates in 2009-2010, CalPERS granted all but one of Respondents’ Requests to Purchase SPM for time worked during the transition period. On March 29, 2011, CalPERS denied Respondent Bensadoun’s Request to Purchase SPM based on the provisions excluding pension benefits for CIPTs in the Act.

On September 2, 2009, Respondent Court wrote CalPERS, opposing the decision to credit Respondent Court Interpreters with additional service credit and retirement contributions. Citing Government Code sections 71802 and 71803, Respondent Court argued that CIPTs were ineligible for CalPERS, and not entitled to pension benefits until the second pay period after the labor agreement became effective on September 15, 2005. Respondent Court followed up with several more letters dated May 5, June 21 and August 11, 2010, all of which contested CalPERS’ determinations.

On October 17, 2014, CalPERS sent Respondent Court a determination letter apologizing for the extraordinary delay, and explaining that CIPTs were employees under the Public Employee’s Retirement Law (PERL) from their date of hire (Gov. Code section 20028 (b), “any person in the employ of any contracting agency”); and therefore, CIPTs were eligible for service credit during the transition period. CalPERS also determined that Respondent Court should have enrolled the CIPTs with CalPERS as of their hire dates, and as a result, would be liable for all member contributions and administrative fees (Gov. Code section 20283).
On November 14, 2014, Respondent Court appealed and exercised its right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). Two dates of hearing were held on June 27 and September 14, 2017. Respondent Court was represented by counsel at hearing. Citing Government Code section 71803(a)(3), the Court argued that CIPTs “are not required to receive health, pension or paid leave benefits.”

Respondent Court Interpreters appeared at hearing, but none of them were represented by Counsel. Prior to the hearing, CalPERS had numerous discussions with Respondent Court Interpreters, to explain the hearing process and each one’s need to independently support their cases with witnesses and documents. CalPERS provided all Respondents with a copy of the administrative hearing process pamphlet. CalPERS answered their questions and clarified how to obtain further information on the process. Each Respondent Court Interpreter provided documents at hearing, all of which were admitted as evidence.

The original issues for hearing were:

1. Were the CIPTs “employees” under the PERL from July 24, 2003 to September 14, 2005, requiring the Court to enroll them in CalPERS?
2. Were the CIPTs specifically excluded from enrollment in CalPERS from July 24, 2003 to September 14, 2005, by the provisions of the Act?

CalPERS argued that the CIPTs should have been enrolled in CalPERS from their date of hire, because they were employees under the PERL. Respondent Court argued the Act specifically exempts CIPTs from pension benefits during the transition period, and therefore CIPTs should not have been enrolled in CalPERS during the transition period.

The ALJ held that Respondent Court had the burden to prove that CIPTs are not eligible for pension benefits during the transitional period, and that the Court met its burden.

The ALJ held that Gov. Code section 71803(a)(3) is a statutory exemption to the PERL, and CIPTs are not eligible for pension benefits or membership during the transition period. Respondent Court met its burden of proof.

The ALJ employed rules of statutory construction to determine which statute controls. In interpreting statutory language, the fundamental rule is to determine the lawmakers’ intent. The key to statutory interpretation is applying the rules in the following sequence (1) plain meaning, (2) legislative history, and (3) reasonableness of a proposed construction.

PLAIN MEANING: The Legislature’s chosen language is the most reliable indicator of its intent. The words of the statute must be given a plain and commonsense meaning, unless the statute specifically defines the words to give them a special meaning. If the statutory language is clear and unambiguous, there is no need for judicial construction because there is nothing for the court to interpret or construe. The ALJ found the language of Government Code section 71803 is simple and unambiguous.
The Act directs all trial courts to create a new employee classification, CIPT; identifies the duties of a CIPT; and defines the terms and conditions of employment for the CIPTs. Trial courts were given a two-year window to execute the Act provisions. From hire through ratification of an MOU, CIPTs were specifically excluded from pension benefits.

LEGISLATIVE HISTORY: Extrinsic aids including the statute’s legislative history, can be used to interpret a statute. The side letter signed by Governor Gray Davis provides information regarding implementation of the Act. The ALJ found that Governor Davis was clearly concerned with the financial cost of adding new state employees in 2003. Therefore, he confirmed his understanding with the Senate that no new costs would be agreed to by the State until 2005 via an MOU. Until the MOU was ratified, the Act changed very little about the working conditions of the CIPTs. Thus, the ALJ found that the Governor’s side letter provides additional support for reading section 71803(a) as an exemption to the PERL.

REASONABLENESS OF CONSTRUCTION: When two statutes conflict, the one passed first must yield to the one passed second. This is so because the most recently enacted statute expresses the most recent will of the Legislature. The PERL was passed first; the Act passed second. The PERL requires all contracting agency employers to enroll employees on date of hire. However, the PERL allows an exception to enrollment in CalPERS by law or contract (PERL sections 20305 and 20502). The plain meaning of the Act provides an exemption for enrolling CIPTs in CalPERS during the transition period. As a result, the ALJ found that the two statutes do not conflict. Even if they did conflict, the ALJ found that the Act was adopted after the PERL, and is more specific than the PERL provisions as to CIPTs, and so the Act must control.

Following Remand, the ALJ held that the CalPERS defined benefit plan is a tax-qualified plan under Internal Revenue Code (IRC) section 401(a). To maintain its tax-qualified status, the Plan must be operated in compliance with plan terms and conditions. The plan provisions are contained in the PERL and implementing regulations. Under the PERL, employees of a contracting agency must be enrolled unless they are specifically excluded from membership by contract or statute. (Gov. Code sections 20305 and 20502; Metropolitan Water District v. Superior Court (Cargill) (2004) 32 Cal.4th 491). In this case, the Act specifically excludes CIPTs from membership in the plan during the regional transition period. Because a statutory exemption exists, the exclusion of CIPTs from membership during the transition period is consistent with the plan provisions, and does not affect CalPERS' tax qualified status under the IRC.

After considering all the evidence introduced, as well as arguments by the parties, the ALJ again granted Respondent Court’s appeal. The ALJ ordered CalPERS to reverse all pension benefits granted to CIPTs, and return all funds taken from Respondent Court’s reserve account.
For all the above reasons, staff argues that the Proposed Decision on Remand be adopted by the Board.

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ELIZABETH YELLAND
Senior Attorney