ATTACHMENT B

STAFF’S ARGUMENT
STAFF’S ARGUMENT TO ADOPT THE PROPOSED DECISION AS MODIFIED

Paul B. Sheffield (Respondent) joined the Police Department with Respondent City of Redwood City (Respondent City) in 1989. By virtue of his employment, he became a local safety member of CalPERS. In January 2016, Respondent submitted an application for industrial disability retirement with an effective date of “upon expiration of benefits.” Respondent retired for service at the rank of Police Lieutenant on March 7, 2016, after 27.054 years of service. He has been receiving his retirement allowance since that date.

CalPERS received Respondent City’s approval of Respondent’s application for industrial disability retirement on March 2, 2016. On April 4, 2016, CalPERS Benefit Services Division (BNSD) requested the Compensation Review Unit (CRU) to expedite the review of Respondent’s compensation so that it could timely issue benefits to him because of the approval of his application for industrial disability retirement.

In connection with Respondent City’s reporting to CalPERS regarding Respondent, Respondent City reported four items as special compensation, but did not specify the category of special compensation for any of them. On April 7, 2016, CalPERS staff requested information and verification from Respondent City regarding the items of special compensation. When Respondent City did not respond by April 26, 2016, the CRU provided interim compensation instructions to the BNSD directing it to calculate Respondent’s benefit using only the base rate for Police Lieutenant ($15,983), and excluding the four items reported as special compensation. Respondent was notified of the interim final compensation amount, and that CalPERS was working with Respondent City to obtain information to resolve the reported compensation items that did not comply with the Public Employees’ Retirement Law (PERL). (Gov. Code, § 20000 et seq.)

Respondent City eventually provided documentation regarding the four items it reported as special compensation. Three of the items were verified by staff, and the CRU instructed the BNSD to include these three items in the calculation of Respondent’s final compensation. The verified items were: bilingual pay; shift holiday worked; and uniform allowance. After these three items of special compensation were included, Respondent's final compensation amount increased to $17,685.18.

Respondent City reported a fourth item, “premium specialty pay,” as special compensation. Nothing in the documents Respondent City provided to CalPERS referenced the term “premium specialty pay” or “custom premium pay” (hereafter premium specialty pay). Premium specialty pay was not listed on a publicly available salary schedule. Premium specialty pay was not listed in a written labor policy or agreement. Premium specialty pay is not listed in the exclusive items that may constitute special compensation found in 2 California Code of Regulations 571.
Based on the information provided by Respondent City, the CRU concluded that the premium specialty pay was not reportable to CalPERS as special compensation. The CRU directed Respondent City to "reverse it out" so that CalPERS could credit the City's account for the contributions Respondent and Respondent City had made on the premium specialty pay.

Respondent City appealed this determination, exercising its right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings. A hearing was held on July 10, 2018. Respondent represented himself at the hearing. Respondent City appeared at the hearing and was represented by counsel.

Prior to the hearing, CalPERS explained the hearing process to Respondent and the need to support his case with witnesses and documents. CalPERS provided Respondent with a copy of the administrative hearing process pamphlet. CalPERS answered Respondent’s questions and clarified how to obtain further information on the process.

The evidence introduced at the hearing showed that Respondent City restructured its Police Department in 2012, which included adding the Police Lieutenant classification. At that time, Respondent City had approximately 16 to 18 Police Sergeants, approximately one-half of whom were close to the retirement age of 50. Respondent, who was a Police Sergeant at the time, was the union representative of the Police Sergeant’s Association (PSA). He was actively involved in the reorganizing process, and in the creation of the Police Lieutenant classification. It was important to the existing Police Sergeants that they not take a pay cut if promoted to the new Police Lieutenant classification. Respondent was the highest paid Police Sergeant at the time by virtue of being supervisor of the Gang Unit, working night shift, and other items of compensation he received.

The City Council approved the creation of the Police Lieutenant classification on July 9, 2012. On September 10, 2012, the City Manager issued a Report to the City Council in connection with the reorganization. The Report proposed a two-tier salary schedule for the new Police Lieutenant classification so that Police Sergeants promoting to Police Lieutenant would not see a loss in pay upon promotion. The City Council then authorized the two-tier salary schedule. The two-tiered salary schedule was then memorialized through a side letter to the Memorandum of Understanding between Respondent City and the PSA. Respondent Sheffield represented the PSA throughout the reorganization process, and negotiated the two-tier salary schedule on the PSA’s behalf.

Respondent testified regarding the reorganization, and expressed his intent in his negotiations to prevent a loss in pay upon a Police Sergeant’s promotion to Police Lieutenant. Respondent, though, received a 14% increase in base pay when he was promoted from Police Sergeant to Police Lieutenant. Respondent also stated that he never understood that the premium specialty pay was not “PERSable.”

CalPERS staff testified at the hearing, and explained why the premium specialty pay was not compensation earnable under Government Code section 20636. The premium specialty
pay was not considered a component of “payrate,” as it was not included on a publicly available pay schedule as required by Government Code section 20636(b)(1).

CalPERS’ witness also asserted that the premium specialty pay also failed to qualify as special compensation under Government Code section 20636(c) since: 1) it was not included in a labor policy or agreement; 2) it was not paid to other members of Respondent’s group or class; 3) it is not contained within the exclusive list of items that constitute special compensation found in section 571 of CalPERS’ regulations; and 4) it constitutes final settlement pay under Government Code section 20636(c)(7)(A) and section 570 of CalPERS’ regulations.

At the hearing, Respondent City agreed with CalPERS’ determination that the premium specialty pay was not reportable to CalPERS as a component of payrate, or as special compensation. Respondent City argued, though, that it intended to include premium specialty pay in the 2012 Side Letter and its publicly available pay schedule. Respondent City felt that the omission of the premium specialty pay from the 2012 Side Letter and its publicly available pay schedule was a correctable mistake under Government Code section 20160. Respondent City thus ultimately requested to retroactively amend the 2012 Side Letter and the publicly available pay schedule to reflect the premium specialty pay.

Although Respondent City was represented by counsel at the hearing, no one from Respondent City testified at the hearing as to the alleged mistake.

The ALJ disagreed with Respondent City’s arguments that both Respondent and Respondent City intended the premium specialty pay be included in the calculation of Respondent’s retirement benefit. The ALJ further found that their failure to do so is not a correctable mistake within the meaning of Government Code section 20160.

The PERL does not allow for correction of a mistake resulting from a failure to make an inquiry that would be made by “a reasonable person in like or similar circumstances.” (Gov. Code, § 20160(a)(3).) The ALJ found that the PERL and its regulations clearly specify what is required for a benefit to be considered payrate or special compensation in order for the benefit to be considered "compensation earnable." The ALJ concluded that Respondent City should have known of such requirements, and Respondent City’s alleged mistake here is thus not correctable.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent City’s appeal.

Pursuant to Government Code section 11517 (c)(2)(C), the Board is authorized to “make technical or other minor changes in the proposed decision.” In order to avoid ambiguity, staff recommends that the Order on page eight be changed to read: “The appeal of Respondent City of Redwood City from the determination by CalPERS that premium specialty pay must be excluded from the calculation of Sheffield’s retirement benefit is denied.” In addition, the third and fourth lines of paragraph seven on page three should
be changed from “Sheffield and City filed notices of defense. They contend” to “Respondent City timely appealed CalPERS’ determination. Both Respondents contend.”

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

September 26, 2018

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