ATTACHMENT C

RESPONDENT(S) ARGUMENT(S)
September 5, 2018

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To the Board of CalPERS:

We respectfully request the Board set aside the decision of Administrative Law Judge Crowell and award retiree Paul Sheffield the 2.76% of Final Compensation he has thus far been denied. We cite the following reasons:

The restructuring of the Redwood City Police Department to include the rank of Lieutenant and Deputy Chief that occurred in 2012 was at the request of the City. The Police Supervisors Association (PSA) was opposed to the creation of the rank of lieutenant, but we agreed to work with the then new police administration and the City to facilitate the restructuring because it was a priority for the newly appointed Chief and we felt it was important to begin our relationship without contention. Accordingly, we instructed our then President, Paul Sheffield, to do his best to negotiate a fair agreement.

The insertion of the ranks of Deputy Chief and Lieutenant created a salary compaction issue with pay percentages between all ranks significantly reduced. This occurred because the City did not authorize any increase in the budget for salaries, instead requiring the new ranks to be accommodated within the constraints of the budget already in place. In order to ensure the current sergeants and lieutenants did not lose money due to the City’s choice to restructure, we negotiated an agreement that allowed for then current sergeants and those promoted to the rank of lieutenant to not lose any pay as a result of the new lower salary plan.

As noted in Judge Crowell’s decision, when Sheffield was promoted from the rank of Sergeant to the rank of Lieutenant, his offer letter set his salary at $15,839, or $792 greater than the noted monthly salary for the newly created rank of lieutenant. That $792 represents the 2.77% in “Custom Premium Pay” and 2.5% in Bilingual Pay. Sheffield’s pay was established at that greater amount because, as a Sergeant, he was already receiving a monthly salary greater than that specified for the newly created rank of Lieutenant, and the City agreed no member would lose pay as a result of the restructuring.
As the City apparently alluded to in the appeals hearing on this matter, but failed to provide evidence of, there were similarly situated employees who received the Custom Premium Pay. Two of those employees, who are still working today, are Lieutenants Ashley Osborne and Sean Hart. Like Sheffield, they were also under the impression their Custom Premium Pay was “PERSable”, and they made contributions to CalPERS on those amounts. We also believe there were other “Tier 1” Sergeants and Lieutenants who received Custom Premium Pay when the restructuring first occurred, however, they have now since retired and were not available to confirm that information in time for this letter to be drafted.

We challenge the CalPERS determination that Sheffield’s Custom Premium Pay cannot be considered his payrate as defined in section 20636, subdivision (b)(1):

Payrate means the normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours, pursuant to publicly available pay schedules...

because the Custom Premium Pay was a normal part of Sheffield’s monthly rate of pay and ALL of the other lieutenants promoted with Sheffield received a similar Custom Premium Pay as well.

We now recognize the City failed to appropriately categorize this pay and, as a result, it does not meet the statutory definitions required by PERL. However, it seems clear from the evidence that the intent by all parties was the pay would be “PERSable.” If it were otherwise, Sheffield and the other Sergeants who promoted to the rank of Lieutenant would have been better off financially remaining as Sergeants receiving the same pay that was clearly “PERSable” prior to the restructuring.

While we respect the letter of the law, we respectfully request the Board follow the spirit of the law in this particular matter and authorize the City and the Police Supervisor’s Association to retroactively enter into a side-letter to rectify this issue and compensate a longtime and loyal PERS member in the manner that was always intended.

Respectfully,

Gilberto Gomez, President

Authorized by Paul B. Sheffield