ATTACHMENT A

THE PROPOSED DECISION
BEFORE THE
BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
STATE OF CALIFORNIA

In the Matter of the Membership Reclassification of:

KANDACE PEASLEE,
Respondent,

and

CITY OF OXNARD,
Respondent.

Case No. 2016-0965
OAH No. 2018010402 (lead case)

In the Matter of the Membership Reclassification of:

STEPHANIE PORTER HUHN,
Respondent,

and

CITY OF OXNARD,
Respondent.

Case No. 2016-0966
OAH No. 2018010406

In the Matter of the Membership Reclassification of:

GREGORY A. ABILLE,
Respondent,

and

CITY OF OXNARD,
Respondent.

Case No. 2016-0962
OAH No. 2018010417
In the Matter of the Membership Reclassification of:
INES V. GONZALEZ,
Respondent,
and
CITY OF OXNARD,
Respondent.

In the Matter of the Membership Reclassification of:
BORIS MEDINA,
Respondent,
and
CITY OF OXNARD,
Respondent.

PROPOSED DECISION

These consolidated matters were heard by Administrative Law Judge (ALJ) Eric Sawyer, Office of Administrative Hearings, State of California, on June 25-26, 2018, in Ventura.¹

Rory J. Coffey, Senior Staff Attorney, represented complainant California Public Employees' Retirement System (PERS).

Brian P. Ross and Jacob A. Kalinski, Attorneys at Law, represented respondents Kandace Peaslee, Stephanie Porter Huhn, Gregory A. Abille, Ines V. Gonzalez, and Boris Medina (or collectively employee respondents), who were all present on both days of hearing.

¹ The parties agree one proposed decision should be prepared for these consolidated cases. (Cal. Code Regs., tit. 1, § 1016, subd. (d).)
Danny Y. Yoo, Attorney, represented respondent City of Oxnard (City).

After the hearing concluded, the record was held open for the parties to file closing briefs, which were timely received. However, the ALJ held the record open for further briefing on an issue raised in one of the closing briefs. The events which transpired while the record was held open, including how the various briefs were marked for identification, are described in the ALJ’s orders marked for identification as exhibits A-D.

The record was closed and the matter submitted for decision on October 11, 2018.

SUMMARY

The employee respondents were hired by the City into positions classified as “local safety,” which features retirement benefits superior to the alternate “local miscellaneous” classification. Several years later, after PERS audited the City, and not long before some of the employee respondents began retiring, PERS determined the positions in question were misclassified and demanded the City reclassify the employee respondents as local miscellaneous members. PERS’ Statements of Issues against the respondents seek to affirm its determination. However, the employee respondents met their burden of establishing by a preponderance of the evidence that they fall within the definition of a “local firefighter” within the meaning of Government Code sections 20434 and/or 20434.5, and therefore that they were properly classified by the City as local safety members entitled to the enhanced local safety retirement benefits. Due to that conclusion, analysis of the employee respondents’ estoppel argument is unwarranted.

FACTUAL FINDINGS

Parties and Jurisdiction

1. PERS provides a variety of programs serving members employed by thousands of local public agencies, as well as state agencies and state universities. The agencies contract with PERS for retirement benefits, with PERS providing actuarial services necessary for the agencies to fund their benefit structure. (Ex. 20, p. 24.) PERS is overseen by its Board of Administration (Board) and governed by the Public Employees’ Retirement Law (or PERL). (Gov. Code, § 20000 et seq.)

2. The City is a public agency contracting with PERS for retirement benefits for its eligible employees.

3. On June 25, 2001, respondent Gregory A. Abille (respondent Abille) was employed by the City as a Fire Environmental Specialist in the local safety classification.
4. On August 28, 2004, respondent Kandace Peaslee (respondent Peaslee) was employed by the City as a Fire Environmental Specialist in the local safety classification.

5. On August 28, 2004, respondent Ines V. Gonzalez (respondent Gonzales) was employed by the City as a Fire Environmental Specialist in the local safety classification.

6. On March 22, 2008, respondent Boris Medina (respondent Medina) was employed by the City as a Fire Environmental Specialist in the local safety classification.

7. PERS records indicate that on August 28, 2004, respondent Stephanie Porter Huhn (respondent Huhn) was employed by the City as an Emergency Medical Services (EMS) Coordinator in the local safety classification.²

8. As described in greater detail below, in 2012 PERS instructed the City to cease reporting the employee respondents in the local safety classification; reverse all contributions reported under the local safety classification for their positions; and re-report their service in the local miscellaneous classification retroactively to the start date of their employment.

9. On June 11, 2013, an attorney representing the employee respondents sent a letter to PERS requesting a written final determination and supporting grounds warranting reclassification of the employee respondents, as well as other affected City employees, from the local safety to the local miscellaneous classification. (Ex. 1.)

10. By letter dated April 11, 2014, PERS responded to the June 11, 2013 letter. PERS advised that it had determined that the employee respondents’ positions did not qualify them for local safety membership, because their principal duties did not include active firefighting. (Ex. 2.)

11. By a letter dated December 23, 2015, all respondents were informed of PERS’ determination and were advised of their appeal rights. (Exs. 3-7.)

12. By a letter dated January 14, 2016, the employee respondents, through their counsel, filed timely appeals and requested an administrative hearing. (Exs. 8-12.)

13. On December 18, 2017, Statements of Issues were filed against the employee respondents by Renee Ostrander, PERS’ Chief of Employer Account Management Division. (Exs. 13-18.) The City was joined as a respondent in each of the five Statements of Issues. PERS deemed all respondents to have controverted the Statements of Issues and requested a hearing to challenge them. The parties agree this case is limited to whether the employee respondents’ positions qualify them for local safety retirement coverage.

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² Respondent Huhn testified she began her employment with the City in this position in November 2003.
14. The City posted an Employment Opportunity bulletin in 2006, which provided the following duties for the position of a Fire Environmental Specialist I:

- Performs hazardous material (Business Plan) inspections.
- Performs inspections/investigations and responds to complaints related to the storage, treatment (tiered permitting) and disposal of hazardous waste, determines compliance with applicable laws and regulations.
- Performs annual maintenance inspections for underground storage tank facilities and conducts installation/removal inspections.
- Participates in emergency response incidents.
- Prepares a variety of reports, memos, and correspondence.
- Documents and maintains records of investigation and inspection activities.
- Performs other duties as assigned.

(Exs. R16 & R23.)

15. The City's website also provided the following information for the position of a Fire Environmental Specialist II:

**DEFINITION:**

Under general supervision, personnel assigned to the Certified Unified Program Agency (CUPA) perform technical inspection work involved in enforcing codes or ordinance related to hazardous materials storage, hazardous waste management, and underground storage tank inspections. Persons assigned to this position have considerable public work and are required to interact with all levels of the public; and performs related duties as required.

**DISTINGUISHING CHARACTERISTICS:**

The Fire Environmental Specialist I is the entry-level class. Initially under closer supervision, positions assigned to this class perform the more standardized inspection tasks associated with assigned Unified Program district elements.

The Fire Environmental Specialist II is the journey level class responsible for independently performing the full scope of
assigned hazardous materials storage. This class is distinguished from the classification of Fire Environmental Specialist I by the specialized and complex work performed and higher degree of independent action.

ESSENTIAL FUNCTIONS: (include but are not limited to the following)

Demonstrates a full understanding of applicable policies, procedures, work methods and safety requirements associated with assigned duties.

Performs hazardous material (Business Plan) inspections.

Performs inspections/investigations and responds to complaints related to the storage, treatment (tiered permitting) and disposal of hazardous waste, determines compliance with applicable laws and regulations.

Performs annual maintenance inspections for underground storage tank facilities and conducting installation/removal inspections.

Participates in emergency response incidents.

Prepares a variety of reports, memos and correspondence.

Documents and maintains records of investigations and inspection activities.

Responds to questions and concerns from the general public, provides information as is appropriate and resolves complaints.

(Ex. R24.)

16. The Fire Environmental Specialist position is within the City’s Fire Department. Respondents Abille, Gonzalez, Peaslee, and Medina were hired by the City as Fire Environmental Specialists I and II. As discussed in more detail below, respondents Abille and Gonzalez have since retired; respondents Peaslee and Medina remain so employed. Respondent Peaslee holds the rank of Fire Environmental Specialist I; the others held or hold the rank of Fire Environmental Specialist II. The discussion below applies to the Fire Environmental Specialist I and II positions for all of these respondents while they were or are employed by the City in those positions.

17. A Fire Environmental Specialist (or FE Specialist) is required to participate in emergency response incidents. Pursuant to policy and practice, FE Specialists are on call 24
hours a day, seven days a week. They are part of the Oxnard Fire Department Hazardous Materials (HazMat) Team, and receive training similar to that of firefighters on the HazMat team. When a hazardous materials situation is identified, a full HazMat response is initiated. Fire Dispatch will call out the HazMat team, including a FE Specialist, to respond to the call anywhere in the City. In addition, FE Specialists are available to respond to hazardous materials incidents outside of the City. Finally, FE Specialists have their own response vehicle and respond to calls for service to hazardous materials incidents on their own.

18. When he or she responds to an incident, the FE Specialist reports to the Incident Commander and assists with the incident. The FE Specialist often dons protective clothing to secure samples in the identification of involved chemicals. After analyzing the samples, the FE Specialist develops a plan to clean up or mitigate the hazardous materials. If the scene is still an active fire, the FE Specialist is responsible for analyzing the run-off, which could itself contain hazardous substances. Even if a fire has been extinguished, the scene is still dangerous: the remains may still smolder, emitting hazardous smoke from the chemical that was burned, and the structure itself may be damaged from the fire. FE Specialists on average respond to two or three incidents a month, as reflected in the log of incidents to which these four respondents were deployed. (Exs. R46, R47 & R48.)

19. FE Specialists also respond to complaints. In those cases, the FE Specialist utilizes the response vehicle and reports to the scene to assess the complaint, identify any hazardous materials, and mitigate any potential hazards. If additional resources are needed, the FE Specialist can request assistance. Because of the potential dangers involved in responding, those complaints must be treated and assessed in the same manner as the critical incidents to which the FE Specialists respond.

20. The FE Specialists are also responsible for conducting inspections of certain businesses within the City to ensure that they are in full compliance with applicable state laws and regulations relating to the proper storage, handling, and usage of hazardous materials. The aim of these inspections is to ensure the health and safety of the public, the workers at the businesses, and of any first responders who may be required to respond to a call at the business. This may include exposure to hazardous materials, as sensors and emergency procedures might require testing by actively releasing a hazardous material on site. If a violation is identified, the business is notified and advised of the need to correct the deficiencies.

21. The respondents who are FE Specialists have all received a State Fire Marshal Certification for their positions, having successfully completed an eight or nine-week course, which covers identification of hazardous substances, detoxification procedures, incident command, and mitigation techniques. Finally, all FE Specialists go through annual and quarterly physical fitness evaluations, annual medical evaluations, and are issued personal Self-Contained Breathing Apparatus (SCBA) masks with which they are fit-tested annually.

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22. At the time of their respective hirings, the four FE Specialist respondents were informed that their positions would be classified as local safety, and this classification, with its attendant retirement formula, was specifically cited in pre-hiring promotional materials. This classification was an inducement to employment, and remained an important benefit to the FE Specialist respondents, as described in more detail below.

The City’s Emergency Medical Services Coordinator Position

23. The City’s website also provided the following information for the position of EMS Coordinator:

DEFINITION:

Under direction, coordinates the administration of Pre-Hospital and Emergency Medical Care programs; researches and educates in support of the City’s Emergency Medical Services including Basic Life Support Clinical coordination, Wellness/Fitness Initiative coordination, quality assurance and quality improvements programs, bio-terrorism/multi-casualty incident trainer; performs related duties as required.

DISTINGUISHING CHARACTERISTICS:

The Emergency Medical Services Coordinator is the management level class responsible for the coordination and the administration of Pre-Hospital and Emergency Medical Care programs, research and education in support of the City’s Emergency Medical Services. This classification is distinguished from the classification of Fire Battalion Chief by the area of responsibility and authority for full EMS program activities.

ESSENTIAL FUNCTIONS: (include but are not limited to the following)

- Assists in the development, improvement and implementation of operational policies and procedures for EMS and other emergency programs; assists department staff in interpreting and ensuring compliance with EMS policies, procedures and protocols; handles related administrative issues; and develops criteria on which to evaluate personnel needs and operational effectiveness.
- Monitors EMS program operations and personnel for compliance with legal requirements; determines training requirements for emergency programs; provides and coordinates training to all City employees on emergency planning activities; and reviews, monitors and revises training programs to ensure that personnel meet required standards.

- Conducts special studies, analysis, and investigations of emergency medical performance quality improvement and emergency medical dispatch issues; prepares administrative, budget and other reports; and gathers a variety of statistical data, prepares and submits required reports to appropriate agencies.

- Reviews and assists in the resolution of emergency medical performance issues.

- Participates as part of the management team in the development and implementation of short and long-term goals for the EMS and other programs; maintains other records for the Emergency Management Program.

- Maintains written policy and procedure manuals for EMS and other programs.

- Assists in the development and recommendation of a budget for EMS and other emergency management programs; reviews and recommends equipment purchases; and monitors program expenses.

- Represents the City regarding emergency medical services and emergency management issues with local, state and federal agencies.

(Exs. R18 & R22.)

24. The EMS Coordinator position is within the City’s Fire Department. Respondent Huhn was hired by the City as its EMS Coordinator. During her time with the Oxnard Fire Department, respondent Huhn’s duties expanded beyond those described above as she assumed new roles and positions relating to training and emergency medical services. Those duties are discussed in more detail below and pertain to respondent Huhn’s career with the City.

25. The EMS Coordinator monitors the emergency medical services (or EMS) program operations and personnel, which requires an on-scene evaluation of emergency
medical assessment and treatment practices. This on-scene evaluation takes place during actual responses and incidents. The EMS Coordinator is also required to evaluate probationary firefighters throughout their first year. The EMS Coordinator’s approval is required in order for a probationary firefighter to become permanent. The EMS Coordinator also provides Fire Academy training to probationary firefighters and updated training regarding health and safety to firefighters.

26. The EMS Coordinator also reviews and assists in the resolution of emergency medical performance issues, which often requires on-scene evaluation of EMS operations and emergency medical care.

27. The EMS Coordinator is available 24 hours a day for notification of exposures pursuant to the Exposure Control Plan. The EMS Coordinator also acts as liaison to the medical facilities for testing and treatment that might be required.

28. In addition, the EMS Coordinator is involved in responding to a multi-casualty incident (or MCI). The EMS Coordinator is prepared to be assigned to the role of Medical Group Supervisor or Treatment Unit Leader during an MCI. These are important positions in the Incident Command structure and integral to the Oxnard Fire Department’s response to handling disasters and large incidents. The EMS Coordinator is required to maintain MCI Basic and Advanced Training.

29. The EMS Coordinator is furthermore a part of the Oxnard Fire Department Command Staff, and receives the same notifications for large incidents as the Battalion Chiefs. For a Level II notification, the EMS Coordinator is required to call in to see if assistance is needed. For a Level III notification, the EMS Coordinator is expected to respond to assist with the incident. The EMS Coordinator therefore responds on many occasions for unusual incidents, active fires, and MCIs.

30. In addition to assessing and evaluating firefighters on-scene, the EMS Coordinator also provides EMS training and firefighting training for MCI response, hazards of smoke and other toxins and hazardous materials, and infectious exposure control for firefighters.

31. Finally, the EMS Coordinator is central to Firefighter Rehabilitation (Rehab), an essential part of firefighting. The EMS Coordinator may be paged to respond to many active fires and is assigned as Rehab Group Supervisor. Firefighter Rehab is a mandatory, and important, component of the firefighting response. In Firefighter Rehab, the EMS Coordinator is subject to off-gassing of smoke and toxins from the firefighter’s structure (turnout) gear and sometimes smoke from the fire. The EMS Coordinator also administers emergency medical care to any injured or ill firefighters and assists the ambulance personnel with care of victims of the fire when needed. If the EMS Coordinator is not available or present, a firefighter would perform this duty.

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32. The EMS Coordinator is issued gear similar to that given to firefighters, including: Nomex flame-resistant uniform, hand-held radio, fire helmet, SCUBA mask, body armor, EMS jacket, and a brush jacket with pants.

**PERS' Audit of the City and Reclassification of the Involved Positions**

33. The City first contracted with PERS for retirement benefits on February 1, 1952. (Ex. R33, p. 105.)

34. A. By no later than November 27, 2007, City staff discovered the classification of FE Specialist was not included in the original contract with PERS as a local safety member classification, although the City had intended that position to be included in that classification. (Ex. R9.)

   B. In a staff memo to City Council dated November 27, 2007, it was recommended that City Council adopt a resolution allowing the City to amend its contract with PERS to remedy that situation by including reference to Government Code sections 20434 and 20434.5 in its PERS contract. It was also noted in the memo that such an amendment would have no financial impact because the City had been reporting wages of the affected employees in the local safety classification upon hiring. (Ex. R9, p. 23.)

   C. The City shortly later passed an ordinance to amend its contract with PERS by adding reference to Government Code sections 20434 and 20434.5. (Ex. R9, pp. 24-26.)

35. Effective February 8, 2008, the City’s contract with PERS was amended by adding the following provisions:

8. Public Agency [the City] elected and elects to be subject to the following optional provisions:

   [§] . . . [¶]

   j. Section 20434 (“Local Fire Fighter” shall include any officer or employee of a fire department employed to perform firefighting, fire prevention, fire training, hazardous materials, emergency medical services, or fire or arson investigation services as described in Government Code Section 20434).

   k. Section 20434.5 (“Local Fire Fighter” shall include any officer or employee of a fire department employed to perform hazardous materials services as described in Government Code Section 20434.5).

(Ex. R10, p. 34.)

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36. By no later than August 25, 2010, PERS decided to audit the City’s payroll reporting and member enrollment processes relating to the City’s retirement and health contracts with PERS. (Ex. R33, p. 105.) The audit would be done by PERS’ Office of Audit Services (OAS).

37. In connection with the audit, on July 2011, PERS’ Membership Analysis and Design Unit (MADU) requested the City to provide job duty statements for the positions of FE Specialist I and II, EMS Coordinator, and CUPA Coordinator, due to MADU’s concern that these positions may have been misclassified as local safety and instead should have been classified as local miscellaneous. (Ex. 20.)

38. A. By a report dated August 26, 2011, OAS completed PERS’ audit. The review period was limited to the examination of sampled records and processes from July 1, 2007, through June 30, 2010. (Ex. 20.)

   B. Finding 7 of PERS’ audit concluded that “[t]he City misclassified and incorrectly reported miscellaneous employees under the safety coverage group code.” (Ex. 20, p. 18.)

   C. The Condition section of Finding 7 noted, “OAS reviewed a sample of 11 employees and found that the City misclassified four miscellaneous employees and incorrectly reported them as safety employees. Specifically, OAS found that a Fire Environmental Specialist II, a Fire Environmental Specialist I, an EMS Coordinator, and a Certified Unified Program Agency (CUPA) Coordinator were reported as safety employees instead of miscellaneous employees. These employees were in classifications that did not meet the definition of “Local Firefighter” per Government Code Section 20433 based on their work duties. In the City’s written response, the City provided additional information which helped to clarify this issue and the finding was removed. No longer a finding.” (Ex. 20, p. 18.)

39. The written response from the City referred to in the audit report argued that the preliminary audit finding of misclassification was “unfounded,” and detailed how the City’s contract with PERS had been amended to include the FE Specialist and EMS Coordinator positions within the local safety classification, and thereafter had been properly reported to PERS. (Ex. 20, p. 42.)

40. Christina Rollins, the manager of PERS’ Membership Management Services Section, testified that although Finding 7 was removed from the PERS audit report, OAS was still dubious about the situation and referred the matter to her section for further evaluation. Ms. Rollins’ section later concluded the positions in question had been erroneously classified as local safety positions for the reason originally described in Finding 7.

41. On or about January 4, 2012, PERS instructed the City to cease reporting the positions of FE Specialist I and II, EMS Coordinator, and CUPA Coordinator in the local safety classification, reverse all contributions reported under the local safety classification,
and re-report service for these positions in the local miscellaneous classification retroactively to the start date of the involved employees’ service. (Ex. R33, p. 105.) When this verbal advice was given to City staff during a multi-unit conference call, PERS staff hung up “when one of their [City] staff continued yelling at CalPERS staff.” (Ibid.)

42. Consistent with PERS’ instruction, on or about December 22, 2012, and on a prospective basis, the City started reporting these positions in the local miscellaneous classification, but did not correct retroactively for service that was reported for these positions under the local safety classification.

43. In 2013, certain employees were verbally advised by the City that, as a result of the audit, PERS determined several classifications, including FE Specialists, were misclassified as local safety.

44. As discussed above, on June 11, 2013, Richard Levine, an attorney representing the employee respondents, sent a letter to PERS requesting whether a final determination had been made, and if so, appealing the same. (Ex. 1.)

45. On April 11, 2014, after a long delay, PERS responded to Mr. Levine. The letter conceded that Finding 7 had been removed from the final audit report, but noted that, “After review of the job duty statements . . . CalPERS has determined that the principal duties of these classifications do not involve active firefighting, and therefore, do not meet the criteria for safety under G. C. Section 20434.” The letter concluded: “CalPERS staff will work with the City to identify time periods that were incorrectly reported, and affected members will be notified in writing once this review is complete. A determination letter will be mailed to each member, and will include appeal rights.” (Ex. 2.)

46. In response to an inquiry dated August 25, 2014 from respondent Abille regarding the classification issue, Ms. Rollins wrote that no final determination letter would be sent until PERS received a full and complete list of the affected employees by the City. (Ex. 3.)

47. On or about December 23, 2015, Ms. Rollins sent the final determination letter to the affected employees, including the employee respondents, in which she provided PERS’ justification for the reclassification/re-reporting and set forth the employee respondents’ right to appeal the administrative determination. (Exs. 4-8.) The following explanation was provided for each employee:

After reviewing the duties of the four positions listed above, CalPERS has determined that the principal duties do not involve active firefighting, and therefore, do not meet the criteria for safety under G.C. Sections 20433-20434. The principal duties are defined as administrative management, inspection and code enforcement. Emergency medical response and emergency/hazmat response appears to be occasional, if at all.
The PERL excludes from safety coverage employees whose safety duties are only subject to occasional call. These positions do not meet the criteria for Local Firefighter Safety in the PERL; therefore, these classifications are not eligible for Safety retirement coverage.

48. During the hearing, Ms. Rollins reiterated the position she took in her letter dated December 23, 2015.³

Other Relevant Facts Pertaining to the Employee Respondents

49. The primary attraction of working in a local safety position is the retirement benefit of “3% @ 50.” An employee in that classification is eligible to retire at age 50 and receive a pension equal to a percentage of their final compensation based on the formula of the number of years of service multiplied by three. Those in the local miscellaneous classification receive a retirement benefit of “2% @ 55,” meaning if they retire at age 55, their pension is based on their years of service multiplied by two.

50. The City continuously and unequivocally represented to the employee respondents that they would be entitled to a local safety retirement. The City consistently reported to PERS that the employee respondents were local safety members, and the City paid employer and member contributions with respect to them at the higher local safety member rate. As discussed in more detail below, PERS consistently represented to the employee respondents in annual member statements that they were in the local safety classification with the “3% @ 50” retirement formula.

RESPONDENT GONZALEZ

51. Before being employed by the City in August 2004, respondent Gonzalez worked for the County of Ventura (County), which does not contract with PERS. She left the County to join the City, in large part, to obtain a local safety retirement, which provided a higher retirement benefit than what she had with the County.

52. When respondent Gonzalez was initially hired by the City, the retirement benefit for the FE Specialist position was “3% @ 55.” (Ex. 41.) However, the City later changed the retirement formula for the local safety classification to “3% @ 50,” which was extended to respondent Gonzalez.

³ Ms. Rollins also testified that even if the employee respondents were entitled to the local safety classification, such would only be effective in and after 2008, when the City amended its contract with PERS. That issue was the subject of extensive post-hearing briefing (exs. A-C), and ultimately abandoned by PERS as an issue to be considered in these consolidated cases (ex. D).
53. Respondent Gonzalez planned her retirement with the expectation of receiving the “3% @ 50” benefit. Respondent Gonzalez believed she could retire at an earlier age working under the “3% @ 50” formula than she could if working for the County.

54. Respondent Gonzalez experienced two negative consequences in moving from the County to the City. First, she would have been eligible for full Social Security benefits if she had retired from the County. For reasons not fully explained, by working for the City until retirement, she only receives partial Social Security benefits. Second, she was not on call while working for the County; she was on call while working for the City.

55. In Annual Member Statements PERS issued to respondent Gonzalez from 2005 through 2012, she was advised that she was eligible for the local safety retirement benefit of “3% @ 50.” (Ex. R40.) However, in PERS’ Annual Member Statements issued in 2013 and 2014, respondent Gonzalez was given credit for 8.465 years of service in the local safety classification subject to the “3% @ 50” formula, and the remainder of her service in the local miscellaneous classification subject to the “2% @ 55” formula. (Ex. R40.)

56. After she was reclassified from local safety to local miscellaneous in December 2012, respondent Gonzalez continued to plan towards retirement based on a bifurcated retirement formula of “3% @ 50” for some of her years with the City and “2% @ 55” for her other years.

57. In June 2014, respondent Gonzalez met with PERS staff in its Glendale regional office. She was quoted a projected retirement benefit based on the above-described bifurcated retirement formula. She decided she could comfortably retire with the bifurcated retirement benefit. Respondent Gonzalez decided to retire. She gave more than two weeks’ notice to the City. Approximately two weeks before her retirement date, respondent Gonzalez was advised that all of her retirement benefits earned while working for the City would be under the “2% @ 55” formula for the local miscellaneous classification. Respondent Gonzalez knew she could retract her retirement application and go back to work for the City, but she decided to proceed with her retirement.

58. Respondent Gonzalez believes she would had to have worked another five years with the City in order to generate a similar retirement benefit under the local miscellaneous classification that she would have had if she remained in the local safety classification. She is now 63 years old.

RESPONDENT ABILLE

59. Respondent Abille previously worked for the City of Ventura, a PERS member, where he was classified as local miscellaneous. He was hired as an FE Specialist for the City in June 2001. He left his prior employment to join the City in large part to obtain the local safety retirement benefit.

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60. When respondent Abille was initially hired by the City, the retirement benefit for the FE Specialist position was “3% @ 55.” (Ex. R44.) His formula was later changed to “3% @ 50.”

61. While working for the City, respondent Abille passed up other job opportunities because the local safety retirement benefit was of greater value to him. If he knew his position with the City would be reclassified as local miscellaneous, he would have considered the other opportunities more seriously.

62. In PERS’ Annual Member Statements respondent Abille received in 2002 through 2004, he was given credit for service in the local safety classification while working for the City. (Ex. R44.)

63. Respondent Abille retired from the City in January 2017. He now works as a bicycle mechanic for a large retail chain. He is 56 years old.

RESPONDENT PEASLEE

64. Respondent Peaslee was hired by the City as a part-time employee in July 2001. She was promoted to the position of FE Specialist I in August 2004. Respondent Peaslee was aware at that time that the FE Specialist position was in the local safety classification, and that she would be eligible for the enhanced local safety retirement benefit. This has been important to her and a reason she continues working for the City in that position. She is now 38 years old.

RESPONDENT MEDINA

65. Respondent Medina was hired by the City in March 2008. He had previously worked for the County. Respondent Medina was not in a PERS position while working for the County. He had been advised that the City’s FE Specialist position was classified as local safety. His primary reason for taking the job with the City was the enhanced retirement benefit that came with the position.

66. In May 2018, respondent Medina checked his PERS account on-line and saw that he was given credit for 4.817 years of service with the City in the local safety classification subject to the “3% @ 50” formula, and 5.475 years of service in the local miscellaneous classification subject to the “2% @ 55” formula. (Ex. R39.) He is now 41 years old.

RESPONDENT HUHN

67. Respondent Huhn has been a licensed registered nurse since 1975. After becoming so licensed, she worked in emergency rooms in the private sector for many years, and then for the City of Ventura, which contracts with PERS.
68. Respondent Huhn was hired by the City as its EMS Coordinator. She was informed that her position would be classified as local safety, which was an inducement for her to come to work for the City. Without the local safety retirement benefit promised by the City, respondent Huhn would not have left her prior position with the City of Ventura.

69. In PERS' Annual Member Statements issued to respondent Huhn in 2004, and in 2008 through 2012, she was given credit for her service with the City of Ventura under the “2% @ 55” formula, and her service with the City under the “3% @ 50” formula. In Annual Member Statements issued in 2013 and 2014, she was given credit for her service with the City under the bifurcated formula of 9.077 years of service in the local safety classification, and the remainder years of service in the miscellaneous classification subject to the formula of “2% @ 55.” (Ex. R43.)

70. Respondent Huhn retired in October 2015, after she had been advised that her position would be reclassified as local miscellaneous. She decided to go back to work after she realized her current retirement benefit was insufficient to support her. She first worked part-time in the private sector; in June 2018, she was hired by a local municipal police department.

LEGAL CONCLUSIONS

Standard of Proof

1. In McCoy v. Board of Retirement (1986) 183 Cal.App.3d 1044, 1051, and footnote 5, the court found “the party asserting the affirmative at an administrative hearing has the burden of proof, including . . . the burden of persuasion by a preponderance of the evidence.” Thus, in this matter, the standard of proof is the preponderance of the evidence. A preponderance of the evidence means “evidence that has more convincing force than that opposed to it.’ [Citation.]” (People ex rel. Brown v. Tri-Union Seafoods, LLC (2009) 171 Cal.App.4th 1549, 1567.)

Burden of Proof

2. A. “Except as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting.” (Evid. Code, § 500.) Thus, the party asserting a claim or making changes generally has the burden of proof in administrative proceedings. (McCoy v. Board of Retirement, supra, 183 Cal.App.3d at p. 1051.) Put another way, there is a built-in bias in favor of the status quo; the party seeking to change the status quo usually has the burden of proving it. (In re Conservatorship of Hume (2006) 140 Cal.App.4th 1385, 1388.)

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B. In the absence of a contrary statutory provision, an applicant for a benefit has the burden of proof as the moving party to establish a right to the claimed benefit, and that burden is unaffected by the general rule that pension statutes are to be liberally construed. (Glover v. Board of Retirement (1989) 214 Cal.App.3d 1327, 1332.)

C. As discussed in more detail below, PERS' interpretation of the PERL and its accompanying regulations is generally entitled to deference, barring other circumstances, since PERS is the agency charged with enforcing the law. (City of Pleasanton v. Board of Administration (2012) 211 Cal.App.4th 522, 539.)

D. The parties did not specifically brief the issue of who bears the burden of proof in this case, though the employee respondents argue at great length that PERS' determination in this matter is not worthy of deference. The ALJ is aware of no case precisely covering the issue here. In this vacuum, the general principles of administrative law articulated above seem appropriate. In a sense, that case law creates a rebuttable presumption that PERS' determination is correct. This is especially so here where PERS made its determination before placing some of the employee respondents on the retirement roll and making payments to them based on that determination. In addition, the employee respondents are currently categorized as local miscellaneous members and are seeking to be reclassified as local safety members. In that sense, they are seeking to change the status quo. Under these circumstances, the employee respondents should bear the burden of proving by a preponderance of the evidence that they are eligible for local safety retirement coverage.

The Local Safety Classification of the PERL

3. The PERL establishes a retirement system for state and local employees. (Gov. Code, § 20000 et seq.)⁴ Municipal employees become members of PERS when their employing city elects, via a contract with PERS, to have its employees covered by PERS. (§§ 20460, 20056.) The PERS Board determines which persons may be admitted to and continue to receive benefits under this system. (§ 20125.) The employees may be classified as either “local miscellaneous” (§ 20383) or “local safety” (§ 20420), depending on the nature of the principal tasks and duties of their positions.

4. Local safety members receive superior retirement benefits compared to those received by local miscellaneous members. (City of Oakland v. Public Employees' Retirement System (2002) 95 Cal.App.4th 29, 33.) A “local safety member” is defined as “includ[ing] all local police officers, local sheriffs, firefighters, safety officers, county peace officers, and school safety members, employed by a contracting agency who have by contract been included within this system.” (§ 20420.) The local safety member positions enumerated in section 20420 are defined more specifically in sections 20421 through 20445. Of those sections, the ones that relate to local fire department employees are sections 20433, 20434 and 20434.5.

⁴ Further undesignated statutory references are to the Government Code.
5. Section 20433 (formerly § 20021) provides:

"Local firefighter" means any officer or employee of a fire department of a contracting agency, except one whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise and whose functions do not clearly fall within the scope of active firefighting, or active firefighting and prevention service, active firefighting and fire training, active firefighting and hazardous materials, active firefighting and fire or arson investigation, or active firefighting and emergency medical services, even though that employee is subject to occasional call, or is occasionally called upon, to perform duties within the scope of active firefighting, or active firefighting and prevention service, active firefighting and fire training, active firefighting and hazardous materials, active firefighting and fire or arson investigation, or active firefighting and emergency medical services, but not excepting persons employed and qualifying as firefighters or equal or higher rank, irrespective of the duties to which they are assigned.

6. Section 20434 provides:

"Local firefighter" also means any officer or employee of a fire department of a contracting agency, except one whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise and whose functions do not clearly fall within the scope of active firefighting, fire prevention, fire training, hazardous materials, emergency medical services, or fire or arson investigation service, even though that employee is subject to occasional call, or is occasionally called upon, to perform duties within the scope of active firefighting, fire prevention, fire training, hazardous materials, emergency medical services, or fire or arson investigation service, but not excepting persons employed and qualifying as firefighters or equal or higher rank, irrespective of the duties to which they are assigned.

This section shall not apply to the employees of any contracting agency nor to any contracting agency until the agency elects to be subject to this section by amendment to its contract with the
board, made pursuant to Section 20474 or by express provision in its contract with the board.\footnote{5} 

7. Finally, section 20434.5 provides:

“Local firefighter” also means any officer or employee of a fire department of a contracting agency, except one whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly fall within the scope of hazardous materials services, even though that employee is subject to occasional call, or is occasionally called upon, to perform duties within the scope of hazardous materials services, but not excepting persons employed and qualifying as firefighters or equal or higher rank, irrespective of the duties to which they are assigned.

This section shall not apply to the employees of any contracting agency nor to any contracting agency unless and until the contracting agency elects to be subject to this section by amendment to its contract with the board, made pursuant to Section 20474 or by express provision in its contract with the board.

8. In terms of constructing the meaning of the above statutes, and their interplay, the PERL is to be applied liberally in favor of a pensioner; any ambiguity or uncertain in the construction of a statute is resolved in a manner consistent with the clear language and purpose of the statute. (\textit{Ventura County Deputy Sheriffs' Assn. v. Board of Retirement} (1997) 16 Cal.4th 483, 490.) More generally, legislative interpretation begins by examining the language of the statute, giving words their ordinary meaning and considering them in the context of the statutory framework. (\textit{Barnes v. Department of Corrections} (1999) 74 Cal.App.4th 126, 131.) “The court will apply common sense to the language at hand and interpret the statute to make it workable and reasonable.” (\textit{Gattuso v. Harte-Hanks Shoppers, Inc.} (2007) 42 Cal.4th 554, 567.)

9. A. PERS based its determination in this case solely on the phrase “active firefighting” contained in sections 20433 and 20434. However, PERS has ignored the remainder of those two statutes, as well as the fact that section 20434.5 does not include the phrase “active firefighting,” but instead focuses on “hazardous materials services.” This is important because while section 20433 lists positions involving active firefighting, sections 20434 and 20434.5 clearly provide that a local firefighter is “also” defined in other ways, \footnote{5 As discussed in footnote 3 above, the timing of the City’s amendment of its contract with PERS as it relates to the local safety positions in question was abandoned by PERS as an issue to be considered in these consolidated cases.}

B. More specifically, section 20433 discusses functions including “active firefighting,” i.e., “active firefighting and prevention service, active firefighting and fire training, active firefighting and hazardous materials. . . .” Sections 20434 and 20434.5, on the other hand, do not combine the additional functions, such as fire training, hazardous materials, and arson investigation, with active firefighting. Stated another way, active firefighting is not required in sections 20434 or 20434.5. In fact, as noted above, section 20434.5 does not even contain the phrase “active firefighting.”

C. If “active firefighting” is required by all three statutes as PERS seemingly contends, it is hard to discern the legislative purpose in adding sections 20434 and 20434.5, when section 20433 already contains that language. To the contrary, it appears that the purpose of section 20434 is to permit local firefighters to include those whose functions involve numerous other functions, such as hazardous materials, fire training, and emergency medical response. Similarly, it appears the purpose of section 20434.5 is to permit local firefighters to include those involved in “hazardous material services,” which must be different from the functions associated with “hazardous materials” as used in section 20434.

D. Therefore, as a matter of statutory construction, an employee need not meet the definition of a local firefighter provided in all three of the involved statutes. The statutes must be construed to give effect to all three provisions, such that no part is left superfluous, inoperative or insignificant. A reasonable construction of the interplay between the statutes, giving effect to all provisions and reconciling them together, is that an employee may qualify as a local firefighter if he or she meets the definition of one of the three statutes. Thus, the fact that section 20433 contains the phrase “active firefighting” does not mean the employee respondents cannot qualify as local firefighters, so long as they meet the definition contained in either section 20434 or section 20434.5.

10. A. The employee respondents contend they fall within the definitions of a local firefighter contained in sections 20434 and 20434.5 and therefore are eligible for the local safety classification pursuant to section 20420. A reasonable construction of sections 20434 and 20434.5 begins with the general rule articulated in the beginning of each statute that a “local firefighter” is “any officer or employee of a fire department of a contracting agency.” The employee respondents clearly meet this definition.
B. Next, sections 20434 and 20434.5 provide an exception to the above general rule by detailing when an employee of a fire department would not be a “local firefighter.” In order to be so excepted, the employee must be one whose principal duties “are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise.” The excepted employee also must be one whose “functions do not clearly fall within the scope of active firefighting, fire prevention, fire training, hazardous materials, emergency medical services, or fire or arson investigation service” (§ 20434) or “whose functions do not clearly fall within the scope of hazardous materials services” (§ 20434.5). In order for the exception to the general rule to apply, both conditions must be met, not just one or the other. This is because when a statute contains an exception to a general rule, the exception is strictly construed. (*Marrujo v. Hunt* (1977) 71 Cal.App.3d 972, 977.)

C. To the extent that “active firefighting” is required by section 20433, it is only “required” in so far as the statute specifies that an employee is excepted from the definition of a local firefighter if his or her duties were like those listed in the exception (i.e., telephone operator, clerk, stenographer, machinist, mechanic, or otherwise) and if the functions do not clearly fall within “active firefighting.” It is therefore not even clear that active firefighting is required in order to qualify as a local firefighter under section 20433, because an employee could still be a local firefighter if his or her duties were not those of a telephone operator, clerk, stenographer, machinist, or mechanic, regardless of whether the employee’s duties involved active firefighting. However, resolution of this issue is not necessary if the employee respondents fall within the definition of a local firefighter provided by sections 20434 or 20434.5.

**The FE Specialists**

11. A. In this case, the principal duties of the FE Specialists cannot be considered those of a “telephone operator, clerk, stenographer, machinist, mechanic, or otherwise.” An FE Specialist responds to calls in the field, and deals with active and dangerous hazardous material incidents. The FE Specialists in this case have been certified by the State Fire Marshal, having been trained in identifying hazardous substances, detoxification, incident command, and mitigation techniques. Unlike the specifically listed duties in the exception to the general rule (i.e., telephone operators, clerks, stenographers, etc.), FE Specialists are required by the City to put their personal safety at risk in the field as part of their job duties. (Factual Findings 14-22.)

B. In addition, the functions of the FE Specialist do not clearly fall outside the scope of either “hazardous materials” described in section 20434 or “hazardous materials services” described in section 20434.5. Instead, it is clear that their functions fall squarely within hazardous materials and hazardous materials services. For example, whenever a hazardous materials incident is identified, FE Specialists are part of the responding team, regardless of where within the City the incident occurs. FE Specialists are not merely “subject to occasional call” for hazardous material incidents; it is an integral part of their job duties and functions within the Oxnard Fire Department. The obligation for FE Specialists to
respond to hazardous materials incidents is a vital duty and necessitates specialized training and issuance of specialized equipment. Moreover, their inspections of businesses that store, handle, and dispose of hazardous materials are also "hazardous materials services," as they ensure the safety of the public, workers, and first responders who might be called to the business by enforcing critical hazardous material regulations. (Factual Findings 14-22.)

C. Under these circumstances, the exception to the general rule of sections 20434 and 20434.5 does not apply to the FE Specialist position, meaning the position should be considered within the definition of a "local firefighter." (Factual Findings 14-22.)

12. The decision in the appellate case of City of Oakland v. Public Employees' Retirement System, supra, 95 Cal.App.4th 29, is instructive. There, the court rejected the contentions of the City of Oakland, which had appealed a determination by PERS that an "Airport Serviceman," who was "prepared to respond to serious aircraft and airport fire emergencies, as required by federal aviation laws," was a local firefighter. (Id. at p. 59.) The court analyzed the first condition to be excepted from the coverage of a local firefighter, noted above, and found:

The City does not explain how a Serviceman’s duties fall within the named class or like occupations. The canon ejusdem generis applies here. We explained as much in a case construing a similar statute, Labor Code 4850, which excluded coverage for "employees of a county sheriff’s office whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly come within the scope of active law enforcement service..." We said: “The County contends bailiffs fall under ‘or otherwise’ because their ‘functions do not clearly come within the scope of active law enforcement service.’ The term ‘or otherwise’ is a relative term. ‘When so used as a general phrase following the enumeration of particular things, such words are usually interpreted in a restricted sense as referring to things or matters of the same kind [e]jusdem generis as those specifically enumerated.’ [Citation omitted.] [¶] The question, then, is whether a bailiff... is in the same class as support personnel of the sheriff’s office performing more routine tasks, such as telephone operators, clerks, stenographers, machinists, and mechanics. We find it is not.” (Biggers v. Workers' Comp. Appeals Bd. (1999) 69 Cal.App.4th 431, 440.) The City does not explain how a Serviceman falls within the general category of “telephone operator, clerk, stenographer, machinist, mechanic, or otherwise" as provided by section 20433.

(Id. at pp. 58–59.)
13. A. The same logic applies here to the FE Specialist position. PERS has not explained how an FE Specialist falls within the listed categories of support staff subject to the exception. As is evident from both their actual duties and training, FE Specialists respond to incidents in the field and place their safety at risk; they do not perform the kind of routine clerical tasks done by the support positions listed in the exception.

B. Furthermore, the City of Oakland court noted that “principal” does not mean frequent duties, but rather important duties. After describing the duties of the Airport Serviceman position, the court held: “Whether fueling an aircraft, inspecting a runway for debris, or polishing his boots, the Serviceman, while on duty, had one overriding raison d’être: If a fire emergency arose, he was to drop other tasks and respond. The City had so assured the federal government as a condition of its airport license.” (City of Oakland v. Public Employees’ Retirement System, supra, 95 Cal.App.4th at p. 61.) The same is true here. Should a hazardous materials incident arise, FE Specialists are required to respond anywhere in the City the incident occurred. This is why they are always on call.

C. Finally, the City of Oakland court noted it was appropriate to classify the Airport Serviceman position as a “local firefighter” because he or she faced the same hazards as firefighters. “Here, the Servicemen were exposed to the same risks as firefighters, because their primary duty was to fight airplane fires and perform other dangerous work when airport emergencies arose.” (City of Oakland v. Public Employees’ Retirement System, supra, 95 Cal.App.4th at p. 62.) As noted above, the same is true for FE Specialists, who must respond to hazardous materials incidents when they arise, facing similar risks as the firefighters who respond to those calls.

14. Other extrinsic factors also support the above conclusion. For example, the City has consistently sought to ensure that FE Specialists are classified as local firefighters. PERS’ audit also determined the finding that FE Specialists were not local firefighters should be withdrawn. Finally, the amendment to the City’s contract with PERS was expressly made to permanently establish that the FE Specialist position is a local firefighter as defined in sections 20434 and 20434.5. (Factual Findings 33-48.)

EMS COORDINATOR

15. A. Although respondent Huhn was employed in the different position of EMS Coordinator, the same legal analysis above concerning the FE Specialist position equally applies to her. As discussed above, she can be considered a local firefighter under sections 20434 and 20434.5 if she is an employee or officer of a local fire department and is not subject to the exception provided in both statutes.

B. In this case, the principal duties of the EMS Coordinator cannot be considered those of a “telephone operator, clerk, stenographer, machinist, mechanic, or otherwise.” As explained above, an EMS Coordinator responds to calls in the field, and may deal with active and dangerous fires, multi-casualty incidents, biohazard exposure incidents, and is on call to respond to important and significant safety issues. Respondent Huhn has
received significant training related to multi-casualty incidents, and was required by the City to put her personal safety at risk in the field as part of her duties. (Factual Findings 23-32.)

C. Next, the functions of the EMS Coordinator do not clearly fall outside the scope of either “firefighting,” “fire training,” or “emergency medical services.” Instead, it is clear that the functions of the EMS Coordinator fall squarely within the above categories; in fact, the name of the position is one of the very duties noted in the statute—emergency medical services. The EMS Coordinator is required to accompany other firefighters in order to evaluate their performance and treatment practices, and has significant and important functions relating to the training and evaluation of probationary firefighters. Respondent Huhn also had an essential role regarding the exposure of firefighters to potential biohazards. She was always on call to respond to such situations. Finally, respondent Huhn was also the on-scene Rehab Group Supervisor, an essential role in firefighting that placed her in close and immediate proximity to active incidents. (Factual Findings 23-32.)

D. Furthermore, the EMS Coordinator is not merely “subject to occasional call” for emergency medical response and emergency/hazmat response. The EMS Coordinator is frequently on the scene of critical incidents, including fires, multi-casualty incidents, and biohazard situations. Respondent Huhn’s on-scene presence was an integral part of the EMS Coordinator’s job duties and functions within the City. The obligation for the EMS Coordinator to respond on-scene to many different dangerous incidents is a vital duty and necessitates the issuance of specialized equipment. (Factual Findings 23-32.)

E. The decision in City of Oakland also is instructive to the EMS Coordinator position. As before, ejusdem generis establishes that the EMS Coordinator position is not exempt from the definition of a “local firefighter,” because the position is clearly not similar to a telephone operator, clerk, stenographer, machinist, or mechanic. Also, the EMS Coordinator’s duties clearly fall within the scope of firefighting, fire training, and emergency medical services. Finally, respondent Huhn faced similar dangers as firefighters, as she responded to many dangerous incidents as part of her duties to evaluate and train, and as part of her duties as the Rehab Group Supervisor. (Factual Findings 23-32.)

16. Based on the above, it is clear that the position of EMS Coordinator is a “local firefighter” as defined by section 20434, because respondent Huhn was an employee of the City’s Fire Department and is not subject to the exception of section 20434. The conclusion that the EMS Coordinator qualifies as a local firefighter under section 20434 is supported by the City, which has consistently sought to ensure that the EMS Coordinator is classified as local safety; and by PERS’ audit, in which it determined the finding that the EMS Coordinator was not a local firefighter should be withdrawn.

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PERS’ CONTENTIONS

17. A. PERS’ subject matter expert, Ms. Rollins, testified that PERS’ interpretation of the involved statutes requires that employees’ principal duties include “active firefighting.” She concludes that because the employee respondents’ duties did not include active firefighting, they cannot be considered local firefighters.

B. Ms. Rollins’ conclusion is unsupported. It was not established that Ms. Rollins (or any other senior PERS employee) conducted a thorough examination of the facts and statutes discussed above. She seemed to ignore the bulk of sections 20434 and 20434.5 and did not explain how or why the positions in question would fall within the exception to the general rule of coverage expressed in all three statutes. Nor did she explain why “active firefighting” was the sole scope of her opinion when sections 20434 and 20434.5 enumerate several functions other than active firefighting which are considered to be within the meaning of a local firefighter, and when section 20434.5 does not even refer to “active firefighting.”

18. A. PERS next argues its determination must be accepted because its interpretation of the laws it is empowered to enforce is entitled to great weight and therefore must be followed in this case.

B. PERS cites to City of Los Altos v. Board of Administration (1978) 80 Cal.App.3d 1049, in which a city claimed its employees at issue were seasonal, but PERS believed they qualified as full-time for retirement purposes. As stated by the court:

We believe that the PERS Board of Administration, and not the contracting public agency, is to establish the standards for defining full-time and part-time employment. There is a strong policy favoring statewide uniformity of interpretation as between PERS and all of its contracting agencies. . . . For more than 30 years the PERS has consistently maintained that employment is not part-time merely because it is seasonal or temporary. The interpretation of a statute by an administrative agency charged with its enforcement and construction is entitled to great weight unless clearly erroneous or unauthorized. [Citations omitted.]

(Id. at p. 1051.)

C. PERS also notes that, “[i]n determining the proper interpretation of a statute and the validity of an administrative regulation, the administrative agency’s construction is entitled to great weight, and if there appears to be a reasonable basis for it, a court will not substitute its judgement for that of the administrative body.” (O’Connor v. State Teachers’ Retirement System (1996) 43 Cal.App.4th 1610, 1620, quoting Campbell Industries v. State Bd. of Equalization (1985) 167 Cal.App.3d 863, 868.)
D. PERS also argues deference is warranted when the “agency has expertise and technical knowledge, especially where the legal text to be interpreted is technical, obscure, complex, open-ended, or entwined with issues of fact, policy, and discretion.” (Yamaha Corp. of America v. State Bd. of Equalization (1998) 19 Cal.4th 1, 12.) Further, deference is warranted when there are indications of careful consideration by senior agency officials. (Id. at p. 14.) However, it must also be noted that the Yamaha court concluded that, “[t]he deference due an agency interpretation . . . turns on a legally informed, commonsense assessment of their contextual merit. The weight of such a judgment in a particular case . . . will depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control.” (Yamaha Corp. of America v. State Bd. of Equalization, supra, 19 Cal.4th 1, 14–15.)

E. Here, PERS’ interpretation of the statutes in question is not entitled to deference. As discussed above, PERS has not provided a sufficient interpretation of sections 20434 and 20434.5, or a cohesive explanation why the positions at issue in this case fall within the exception to the general rule that employees and officers of a local fire department fall within the definition of a local firefighter. Without such support, PERS’ interpretation appears to be clearly erroneous. Nor can it be said that there is a reasonable basis for PERS’ interpretation under these circumstances. Nor can it be concluded that PERS senior agency officials engaged in careful consideration of the meaning and application of the three statutes. Thus, as noted in the Yamaha case, PERS’ interpretation is not entitled to deference where it lacks thoroughness in its consideration, validity of its reasoning, or the overall power to persuade.

Estoppel

19. In their closing brief, the employee respondents argue that, if it is determined the FE Specialist and/or EMS Coordinator positions are not properly designated to fall within the definition of a “local firefighter” pursuant to sections 20434 and/or 20434.5, PERS should be estopped from denying them a local safety classification. The employee respondents point out it is undisputed that at all times the City intended them to be so classified. It is also clear that they all relied to their detriment, to various degrees, on the City’s representations about their eligibility for the local safety classification. The employee respondents also spotlight PERS’ representations in annual member statements that they had been placed in the local safety classification with the “3% @ 50” retirement formula. (Factual Findings 49-70.)

20. In its closing brief, PERS argues it is not subject to estoppel. PERS contends it was not made aware of the City’s classification of the employee respondents’ as local safety employees until the OAS audit was completed. PERS also contends the City did not advise PERS staff, nor seek PERS’ opinion concerning the validity of the local safety classification in advance. PERS concludes that if there was reliance by the employee respondents upon representations that their positions were in the local safety classification,
such representations were made by the City, not PERS. As for the annual member statements sent by PERS to the employee respondents, PERS contends they are not binding upon it because the statements were prepared upon information electronically reported by the City to PERS, which was not tested or verified by PERS in advance. Finally, PERS argues estoppel is barred in this case because applying it would violate strong public policy. *(City of Long Beach v. Mansell (1970) 3 Cal.3d 462, 489.)*

21. As a counter, the employee respondents argue PERS is bound by the representations made by the City, because PERS and the City are in privity with each other. The employee respondents cite to the case of *Crumpler v. Board of Administration (1973) 32 Cal.App.3d 567.* In that case, it was held that, "[i]n the administration of the Public Employees' Retirement System as it pertained to city contract members, the city and the PERS Board were agents of the state. Their interests were mutual and not independent. 'Justice and right' require that the state be estopped from asserting the past misclassification of petitioners as local safety members of the retirement system. The city and the [PERS] Board being in privity with each other as agents of the state, estoppel of the city to assert that petitioners had been erroneously classified must necessarily extend to the [B]oard.” *(Id. at pp. 583–584.)*

22. While the employee respondents present a sympathetic case, both factually and legally, it is unnecessary to decide the issue in this decision. As the employee respondents point out in their closing briefs, such an analysis is only warranted should their request for classification as local safety members be denied. As discussed above, all of the employee respondents established they are properly classified as local safety members. *(Legal Conclusions 3-18.)*

*Overall Conclusion*

23. As determined from the pleadings in these consolidated cases, the sole issue presented in this matter is whether the employee respondents' positions qualify them for local safety retirement coverage. As discussed in great detail above, the employee respondents established by a preponderance of the evidence that they meet the definition of a “local firefighter” within the meaning of sections 20434 and/or 20434.5. As such, the employee respondents meet the definition of a “local safety member” within the meaning of section 20420, and in turn established their eligibility for local safety retirement coverage. *(Factual Findings 1-70; Legal Conclusions 1-22.)*

*ORDER*

The appeals of respondents Kandace Peaslee, Stephanie Porter Huhn, Gregory A. Abille, Ines V. Gonzalez, and Boris Medina, are granted.
The position of Fire Environmental Specialist for the City of Oxnard, held by respondents Peaslee, Abille, Gonzalez, and Medina, qualifies them for local safety retirement coverage.

The position of Emergency Medical Services Coordinator for the City of Oxnard, held by respondent Huhn, qualifies her for local safety retirement coverage.

DATED: November 13, 2018

ERIC SAWYER
Administrative Law Judge
Office of Administrative Hearings