ATTACHMENT B

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

Respondents, Kandace Peaslee, Stephanie Porter Huhn, Gregory Abille, Ines V. Gonzalez, and Boris Medina (Respondents) were employed by Respondent City of Oxnard (City) as Fire Environmental Specialists or, in the case of Respondent Stephanie Porter Huhn, as the Emergency Medical Services (EMS) Coordinator. The City is a local public agency that contracts with CalPERS to provide retirement benefits to its employees. All of these positions were classified by the City as local safety and the City reported these individuals as such to CalPERS and made the appropriate contributions. Following an audit of the City in 2012, CalPERS made a determination that Respondents were not properly classified as Local Safety members. By letter dated December 23, 2015, all Respondents were informed of CalPERS’ determination and given appeal rights. Respondents exercised their rights to an administrative appeal of CalPERS’ determination by a letter dated January 14, 2016. The matter was the subject of a hearing before an Administrative Law Judge (ALJ) from the Office of Administrative Hearings (OAH) on June 25 and 26, 2018.

Evidence disclosed that the Fire Environmental Specialist positions and the EMS Coordinator position were within the City’s Fire Department. As Fire Environmental Specialists, Respondents Peaslee, Abile, Gonzalez and Medina received a State Fire Marshall certification for their positions, having successfully completed an eight-week course that covered identification of hazardous substances, detoxification procedures, incident command procedures and mitigation techniques. Respondents were required to participate in emergency response incidents. Respondents were part of the City’s Hazardous Materials (HazMat) Team and received training identical or similar to training provided to City firefighters who were part of the HazMat Team. The Fire Environmental Specialists will wear protective gear, including full face respirators, when responding to a fire or hazardous materials incident. After analyzing samples, a Fire Environmental Specialist is responsible for creating and implementing a cleanup plan.

The EMS Coordinator has the rank of Battalion Chief within the City’s Fire Department. The EMS Coordinator monitors the emergency medical services program operations and personnel, which requires the response to fires and other incidents. The EMS Coordinator also provides training to probationary firefighters at the City’s Fire Academy and provides updated training regarding health and safety to the City’s firefighters. The EMS Coordinator is an integral part of Firefighter Rehabilitation, which is regarded as an essential part of firefighting.

The City amended their contract with CalPERS, stating, in relevant part:

k. Section 20434.5 (“Local 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).
In making their determination, CalPERS' staff concluded that the principle duties of Respondents as Fire Environmental Specialists and as the EMS Coordinator, did not involve active firefighting. The belief was that emergency medical response and emergency, or hazardous materials response requirements were occasional.

After considering all of the evidence and the arguments of the parties, the ALJ found that Respondents had demonstrated that they were entitled to be classified as local safety members by the City. The ALJ concluded as follows:

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.

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

December 19, 2018

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