

ATTACHMENT A

DECISION OF THE BOARD

BOARD OF ADMINISTRATION

CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

In the Matter of the Appeal of Membership) CASE NO. 2016-1277
Determination of:) OAH NO. 2017050780
)
TRACY C. FULLER,)
) **DECISION**
)
Respondent,)
)
and)
)
CAMBRIA COMMUNITY SERVICES)
DISTRICT,)
)
Respondent.)

RESOLVED, that the Board of Administration of the California Public Employees' Retirement System hereby adopts as its own Decision the Proposed Decision dated July 25, 2018, concerning the appeal of Tracy C. Fuller; RESOLVED FURTHER that this Board Decision shall be effective 30 days following mailing of the Decision.

* * * * *

I hereby certify that on September 26, 2018, the Board of Administration, California Public Employees' Retirement System, made and adopted the foregoing Resolution, and I certify further that the attached copy of the Administrative Law Judge's Proposed Decision is a true copy of the Decision adopted by said Board of Administration in said matter.

BOARD OF ADMINISTRATION, CALIFORNIA PUBLIC
EMPLOYEES' RETIREMENT SYSTEM
MARCIE FROST
CHIEF EXECUTIVE OFFICER

Dated: 10/1/18

BY


DONNA RAMENLUN
Deputy Executive Officer
Customer Services and Support

DECISION

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

**In the Matter of the Appeal of Membership
Determination of:**

Case No. 2016-1277

TRACY C. FULLER,

OAH No. 2017050780

Respondent,

and

**CAMBRIA COMMUNITY SERVICES
DISTRICT,**

Respondent.

PROPOSED DECISION

Administrative Law Judge Thomas Heller, State of California, Office of Administrative Hearings, heard this matter in San Luis Obispo, California on March 15 and 16, 2018.

Preet Kaur, Senior Attorney, represented the California Public Employees' Retirement System (CalPERS).

Scott N. Kivel, Esq., represented respondent Cambria Community Services District (CCSD).

Respondent Tracy C. Fuller represented herself.

At the end of the hearing, the record was held open for closing briefs. CalPERS and CCSD filed briefs on May 30, 2018 (exhibits C-19 and 57, respectively), and CCSD also a filed a request for official notice (exhibit 58). Following an objection from CalPERS and a reply from CCSD, the administrative law judge granted the request for official notice in part on June 25, 2018, and the matter was deemed submitted.

SUMMARY

CalPERS determined Fuller was an employee of CCSD who should have been enrolled into CalPERS membership when she worked as CCSD's Interim Finance Manager for eight months in 2014. CCSD appealed, arguing Fuller was not its employee and therefore did not have to be enrolled. A preponderance of the evidence established that Fuller was CCSD's employee for purposes of membership in CalPERS and should have been enrolled. Furthermore, CCSD can reasonably be expected to have known of the enrollment requirement since it was filling a longtime employee position, albeit on an interim basis. Therefore, CCSD's appeal will be denied, and it will be ordered to pay arrears costs for member contributions and administrative costs of \$500 due to the error.

FACTUAL FINDINGS

Background

1. CalPERS is the state agency responsible for the administration of the Public Employees' Retirement Law (PERL), Government Code section 20000 et seq.¹
2. CCSD provides water, wastewater, fire, parks, recreation, and open space services to an unincorporated community of over 6,400 people on California's central coast. CCSD is a "contracting agency" with CalPERS, that is, a public entity that has chosen to participate in CalPERS by contract with the CalPERS Board of Administration. (§§ 20022, 20460.)
3. In early 2014, CCSD's long-time Finance Manager gave a 30-day notice that he was retiring. The notice came at a time when CCSD was starting an emergency water project that required the immediate assistance of another skilled financial manager.
4. CCSD did not believe it could recruit adequately for a permanent replacement within 30 days and contacted Regional Government Services (RGS) for assistance in finding an interim replacement. RGS is a joint powers authority² created by the cities of Dublin, Larkspur, and Walnut Creek and the Town of Yountville that provides individuals, mostly professionals, to small and midsize public agencies to perform work. RGS itself is not a

¹ Undesignated statutory references are to the Government Code.

² "The Joint Exercise of Powers Act [Gov. Code, § 6500 et seq.] allows 'governmental agencies [to] join together to accomplish goals that they could not accomplish alone, or that they might more efficiently and more effectively accomplish together.' [Citation.] "[T]wo or more public agencies by agreement may jointly exercise any power common to the contracting parties," and they may join in the creation of a separate entity to exercise those powers on their behalf.' [Citations.]" (*San Diegans for Open Government v. City of San Diego* (2015) 242 Cal.App.4th 416, 444.)

CalPERS covered agency, but was formed in part to enable CalPERS members and retirees to perform work for CalPERS covered agencies without jeopardizing retirement benefits from prior employment. Under its service model, RGS classifies the individuals as employees of RGS and itself as an independent contractor of the CalPERS covered agencies, thereby seeking to avoid the application of CalPERS pension laws to the individuals' work assignments. RGS currently provides individuals to about 100 public agencies, and has served about 225 public agencies since it started operating in January 2002.

5. RGS identified Fuller as a candidate for the interim position. Fuller had not worked for RGS or CCSD before, but had prior CalPERS membership from past employment with the City of Rancho Palos Verdes and other CalPERS covered agencies. Monique Madrid, CCSD's Administrative Services Officer and District Clerk, interviewed Fuller for the position in late January 2014. After the interview, Jerome Gruber, CCSD's General Manager, selected Fuller for the interim position and obtained approval from CCSD's Board of Directors to contract with RGS for the placement.

6. In early March 2014, CCSD and RGS finalized an "Agreement for Management and Administrative Services" under which CCSD would pay \$90 per hour to RGS, plus housing costs of approximately \$1,500 per month, in return for RGS assigning "an RGS employee or employees" – identified specifically as Fuller – to "[p]erform the functions of Interim Finance Manager as assigned" and "related work as required" starting March 17, 2014.³ (Exhibit 19.) The agreement was expected to continue through July 21, 2014, after which it would continue month-to-month until one party terminated it. The agreement followed RGS's standard form, and included the following terms:

1.2 Assignment of Personnel. RGS shall assign only competent personnel to perform services pursuant to this Agreement. In the event that Agency [i.e., CCSD], in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, RGS shall reassign such person or persons. RGS may not reassign the RGS employee identified in Exhibit A [i.e., Fuller] or a subsequent RGS employee approved by the Agency, without the written consent of the Agency.

[¶] . . . [¶]

5.1 It is understood that the relationship of RGS to the Agency is that of an independent contractor and all persons working for or under the direction of RGS are its agents or employees and not agents or employees of

³ The agreement was effective as of February 12, 2014, but the last signature on it was dated March 11, 2014.

Agency. The Agency and RGS shall, at all times, treat all persons working for or under the direction of RGS as agents and employees of RGS, and not as agents or employees of the Agency. Agency shall have the right to control RGS only insofar as the results of RGS's services rendered pursuant to this agreement and assignment of personnel pursuant to Section 1.

- 5.2 RGS shall provide services under this Agreement through one or more employees of RGS qualified to perform services contracted for by Agency. Key RGS staff who will provide services to the Agency are indicated in the Exhibits. The Executive Director will consult with Agency on an as-needed basis to assure that the services to be performed are being provided in a professional manner and meet the objectives of Agency.
- 5.3 Agency shall not have the ability to direct how services are to be performed, specify the location where services are to be performed, or establish set hours or days for performance of services, except as set forth in the Exhibits.
- 5.4 Agency shall not have any right to discharge any employee of RGS from employment. However, Agency shall have the right to terminate this Agreement pursuant to Section 2 of this Agreement.
- 5.5 RGS shall, at its sole expense, supply for its employees providing services to Agency pursuant to this Agreement any and all benefits, such as workers' compensation, disability insurance, vacation pay, sick pay, or retirement benefits; obtain and maintain all licenses and permits usual or necessary for performing the services; pay any and all taxes incurred as a result of the employee(s) compensation, including estimated taxes, FICA and other employment taxes; and provide Agency with proof of payment of taxes on demand.

7. Effective February 18, 2014, RGS and Fuller also entered into an "Employment Agreement" under which Fuller agreed to "act as Regional Government

Services Advisor assigned to multiple clients.” (Exhibit 36.)⁴ Under the Employment Agreement, Fuller agreed to serve as an at-will employee of RGS for \$70 per hour commencing March 17, 2014, the same start date as the agreement between RGS and CCSD. In early March 2014, RGS sent Fuller its standard new employee forms for Fuller to complete and return. CCSD was not a signatory to the Employment Agreement or those employee forms. RGS also gave Fuller a phone extension, email address, and business cards, but not an office because RGS is a “virtual office environment” with no physical offices for employees.

8. Fuller reported to work at CCSD on March 17, 2014. CCSD treated her as an employee of RGS and did not offer her membership in CalPERS or any other retirement or health benefits. CCSD also did not require Fuller to complete its standard new employee documentation or give her a typical new employee orientation. She was given an office, phone, access to some CCSD computer systems, and a CCSD email address, but no laptop computer unlike other CCSD management personnel.

9. Fuller used the title of Interim Finance Manager and performed the day-to-day operations of Finance Manager for CCSD, making decisions on what work should be done by CCSD’s Finance Department. CCSD employees assisted Fuller with projects, but Fuller was not involved in reviewing or disciplining those employees. Among other duties, Fuller attended CCSD board meetings and made presentations to the board on financial issues. The meeting minutes listed Fuller as a CCSD staff member. Fuller also prepared an annual budget and a salary chart for CCSD, worked on a rate study and Proposition 218 study for the emergency water project, and assisted CCSD in securing a loan for that project. Madrigal or Gruber assigned the work to her and reviewed it to determine if it was satisfactory. Fuller did not sign documents for CCSD and did not have access rights to all CCSD computer systems, unlike the Finance Manager who preceded her.

10. CCSD kept a contract file for the agreement with RGS, but did not create a personnel file for Fuller. CCSD also did not pay Fuller directly; instead, RGS did and invoiced CCSD for her hours. Fuller set her own work schedule and was not subject to the hours of other employees, although she was expected to work full time. She often worked at CCSD offices but also worked from other locations. The \$1,500 monthly housing allowance paid for Fuller’s housing in the area.

11. While Fuller was working as Interim Finance Manager, CCSD started the search for a permanent Finance Manager. Fuller did not apply for the permanent position. The recruitment materials and accompanying job description stated that the Finance Manager reported to the General Manager and worked under his or her direction.

⁴ Although the Employment Agreement was effective February 18, 2014, Richard Averett, the Executive Director for RGS, did not sign it until May 14, 2014. Fuller signed it on February 26, 2014.

12. In the fall of 2014, CCSD selected Patrick O'Reilly as its new Finance Manager. On October 21, 2014, CCSD gave RGS a 30-day notice to terminate the Agreement for Management and Administrative Services. Fuller's last day of work at CCSD was November 21, 2014.

13. In late 2014, CalPERS selected CCSD for a membership and payroll audit and assigned Antonio Madrigal as the CalPERS staff auditor. Madrigal requested documents from CCSD, interviewed CCSD employees, and had O'Reilly fill out an "Employment Relationship Questionnaire" about Fuller's work. Madrigal did not contact RGS or Fuller. Among other documents, Madrigal received the Agreement for Management and Administrative Services between CCSD and RGS, and a job description for a CCSD Finance Manager from 2006 that was almost identical to the version CCSD used to recruit O'Reilly. CCSD did not have a copy of the Employment Agreement between RGS and Fuller. In the questionnaire, O'Reilly stated Fuller was tasked with providing finance manager services, "but she alone determined what those services were, produced work based on her own knowledge or abilities and was not supervised or evaluated." (Exhibit 41.) O'Reilly also stated Fuller was issued CCSD business cards and stationery.

14. In July 2015, CalPERS sent CCSD a draft audit report stating that Fuller should have been enrolled in CalPERS as an eligible employee under the "common law test of employment." (See *Metropolitan Water Dist. v. Superior Court* (2004) 32 Cal.4th 491 (*Metropolitan*)). CCSD responded that Fuller was not an employee of CCSD, but CalPERS's final audit in November 2015 contained the same determination as the draft. CalPERS also determined CCSD was liable for arrears costs for member contributions and administrative costs under section 20283.

15. On August 26, 2016, CalPERS notified CCSD of its right to appeal the decision within 30 days. CCSD timely appealed, and CalPERS filed the Statement of Issues on May 15, 2017. On July 10, 2017, CCSD submitted a Notice of Defense and Objection to the Statement of Issues.

Testimony

16. Madrid testified CCSD was looking for a short-term individual and was trying not to hire an employee. She also testified Fuller did not have CCSD business cards or stationery, despite O'Reilly's statements otherwise in response to the questionnaire from Madrigal.

17. Gruber testified the title of Interim Finance Manager for Fuller was a term of convenience, and should have simply been RGS consultant. Gruber also testified he did not supervise Fuller's day-to-day work because she had a level of expertise and did not need to be told what to do.

18. Averett described RGS as a platform to serve public agencies at more favorable rates than the public sector. He testified CCSD was Fuller's first assignment from

RGS, and that she had one other assignment at the City of Artesia, after which RGS and Fuller ended their agreement. He also testified Fuller submitted time cards to RGS while working for CCSD, and participated in RGS internal conference calls with other financial advisors on assignment from RGS.

19. Madrigal testified he relied on O'Reilly's responses on the Employment Relationship Questionnaire, CCSD's job description for Finance Manager, the Agreement for Management and Administrative Services between CCSD and RGS, and his interview of O'Reilly in reaching his audit determination. He also testified that his audit findings were reviewed internally. He did not talk to Fuller during the audit because that was not part CalPERS's audit procedure.

20. Christina Rollins, Section Manager in CalPERS's Employer Account Management Division, testified that employment audits commonly involve claims of a third party employer like the audit in this case. Rollins also opined that obtaining personnel documents about Fuller or interviewing her was unnecessary to complete the audit.

21. Fuller testified she did not consider herself to be an employee of CCSD, and that no one at CCSD directed or supervised her work or reviewed her performance. She set her own hours, and was not required to follow the personnel policies and procedures required of CCSD employees. She characterized her financial work for CCSD as different in kind from the Finance Manager before her due to the emergency water project. She considered Averett to be her boss and herself to be an employee of RGS who was assigned to be a financial advisor for CCSD.

Discussion of evidence

22. Overall, the evidence revealed that RGS, CCSD, and Fuller went to great lengths to try to avoid an employer-employee relationship between CCSD and Fuller. At the same time, the evidence also revealed that Fuller was an interim occupant of the same position occupied by CCSD employees both before and after her. Fuller's characterization of her work for CCSD as different in kind from that of her predecessor simply reflected the different financial work CCSD needed at the time due to the emergency water project. Fuller was still operating in the role of a finance manager in performing that work. Thus, the work she was doing was an integral part of the regular business of CCSD.

LEGAL CONCLUSIONS

Legal standards

1. Enrollment in CalPERS is compulsory for eligible employees of a contracting agency, apart from those excluded by the agency's contract with CalPERS and certain part-time or temporary employees. (§§ 20280 et seq., 20305, 20502.) Here, there is no assertion

of a contractual exclusion, and the exclusion for part-time or temporary employees is unavailable because Fuller was already a member of CalPERS from prior employment. (§ 20305, subd. (a).) At the same time, “only an agency’s *employees* – not those performing services for the agency on other terms – may be enrolled in CalPERS. The PERL makes this rule explicit in section 20300, subdivision (b), which excludes from CalPERS membership “[i]ndependent contractors who are not employees.” (*Metropolitan, supra*, 32 Cal.4th at p. 499.)

2. As to contracting agencies, the PERL gives the term “employee” no special meaning, stating simply that it means “[a]ny person in the employ of any contracting agency.” (§ 20028, subd. (b).) In *Metropolitan, supra*, 32 Cal.4th at p. 509, the California Supreme Court held that this provision incorporates a “common law test for employment,” citing *Tieberg v. Unemployment Insurance Appeals Board* (1970) 2 Cal.3d 943 (*Tieberg*), and the Restatement Second of Agency in reference to that test. In *Tieberg*, in determining whether television writers for a production company were employees or independent contractors for purposes of California’s unemployment insurance laws, the court stated that “[t]he principal test of an employment relationship is whether the person to whom service is rendered has the right to control the manner and means of accomplishing the result desired. [Citation.]” (*Tieberg, supra*, 2 Cal.3d at p. 946.)

3. In addition to that principal test, *Tieberg* listed “secondary” factors to consider. (*Tieberg, supra*, 2 Cal.3d at p. 953.) The court declared that “[s]trong evidence in support of an employment relationship is the right to discharge at will, without cause.” (*Id.* at p. 949, quoting *Empire Star Mines Co. v. California Employment Commission* (1946) 28 Cal.2d 33, 43 (*Empire Star Mines*).) The court also listed the following additional factors, derived principally from section 220 of the Restatement Second of Agency: “(a) whether or not the one performing services is engaged in a distinct occupation or business; (b) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the principal or by a specialist without supervision; (c) the skill required in the particular occupation; (d) whether the principal or the workman supplies the instrumentalities, tools, and the place of work for the person doing the work; (e) the length of time for which the services are to be performed; (f) the method of payment, whether by the time or by the job; (g) whether or not the work is a part of the regular business of the principal; and (h) whether or not the parties believe they are creating the relationship of employer-employee.” (*Tieberg, supra*, 2 Cal.3d at p. 949, quoting *Empire Star Mines, supra*, 28 Cal.2d at pp. 43-44; see also *Isenberg v. California Employment Stabilization Commission* (1947) 30 Cal.2d 34, 39 (*Isenberg*); *In re Galt Services Authority* (2008) Prec. Dec. No. 08-01; *In re Niedengard* (2005) Prec. Dec. No. 05-01.)⁵

⁵ These factors remains applicable after *Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 903, in which the California Supreme Court adopted a different test with respect to the employee or independent contractor question under state wage orders. No wage orders are at issue here.

4. “‘Generally, . . . the individual factors cannot be applied mechanically as separate tests; they are intertwined and their weight depends often on particular combinations.’ [Citation.]” (*S. G. Borello & Sons, Inc. v. Dept. of Industrial Relations* (1989) 48 Cal.3d 341, 351.) “The label placed by the parties on their relationship is not dispositive, and subterfuges are not countenanced. [Citations.]” (*Id.* at p. 349.) “The modern tendency is to find employment when the work being done is an integral part of the regular business of the employer and the worker does not furnish an independent business or professional service relative to the employer. [Citation.]” (*Santa Cruz Transportation, Inc. v. Unemployment Insurance Appeals Board* (1991) 235 Cal.App.3d 1363, 1376 (*Santa Cruz Transportation*)).

5. “Any employer that fails to enroll an employee into membership when he or she becomes eligible, or within 90 days thereof, when the employer knows or can reasonably be expected to have known of that eligibility shall be required to pay all arrears costs for member contributions and administrative costs of five hundred dollars (\$500) per member as a reimbursement to this system’s current year budget.” (§ 20283, subd. (a).) “The board shall determine who are employees and is the sole judge of the conditions under which persons may be admitted to and continue to receive benefits under this system.” (§ 20125.)

Burden of proof

6. “As in ordinary civil actions, 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. [Citation.]” (*McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051, fn. 5; *Coffin v. Alcoholic Beverage Control Appeals Board* (2006) 139 Cal.App.4th 471, 476; Gov. Code, § 11504.) “The burden of establishing an independent contractor relationship is upon the party attacking the determination of employment. [Citations.]” (*Santa Cruz Transportation, supra*, 235 Cal.App.3d at p. 1367; see also *Isenberg, supra*, 30 Cal.2d at p. 38; *Southwest Research Institute v. Unemployment Insurance Appeals Board* (2000) 81 Cal.App.4th 705, 708.)

7. In this case, CCSD is attacking the determination of employment, and therefore bears the burden of proof by a 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.)

Discussion

8. The evidence established that CCSD had the right to control the manner and means by which Fuller accomplished the result desired, which is the principal test of an employment relationship. (*Tieberg, supra*, 2 Cal.3d at p. 946.) Gruber chose Fuller specifically for the assignment, and RGS lacked the authority to reassign Fuller without CCSD’s consent. (Factual Finding 6.) At the same time, CCSD could end Fuller’s services at any time by requesting a reassignment or terminating its agreement with RGS. (*Ibid.*)

9. The position Fuller filled was that of Interim Finance Manager, and the permanent Finance Manager position reported to CCSD's General Manager and worked under his or her direction. (Factual Findings 11, 13.) Fuller's interim status did not negate this reporting obligation. Gruber or Madrid determined what work Fuller would perform for CCSD and assigned it to her directly, not through Averett or someone else at RGS. (Factual Finding 9.) They also reviewed Fuller's work to determine if it was satisfactory. (*Ibid.*) The Agreement for Management and Administrative Services between RGS and CCSD did not specify what that particular work would be. (Factual Finding 6.)

10. The CCSD Finance Manager before Fuller was a long-time employee of CCSD. (Factual Findings 3, 22.) Fuller's characterization of her work as different in kind from that of her predecessor simply reflected the particular financial work CCSD needed at the time due to the emergency water project. (Factual Finding 22.) The CCSD Finance Manager after Fuller was also hired as an employee. (Factual Findings 11, 22.) Fuller's interim placement in the same position suggests CCSD also had the right to control the manner and means by which Fuller performed her work.

11. CCSD also provided Fuller with an office, phone, access to some CCSD computer systems, and an email address. (Factual Finding 8.) In addition, CCSD paid for her local housing, thereby ensuring she stayed near CCSD's office and was accessible to CCSD. (Factual Finding 10.) CCSD described her in board minutes as a staff member, and the functions she performed were integral to the regular business of CCSD. (Factual Findings 9, 22.) CCSD did not cede control of those integral functions to RGS by virtue of the Agreement for Management and Administrative Services, and Averett and RGS did not control the particular work Fuller performed.

12. Accordingly, analysis of the principal test of an employment relationship leads to the conclusion that Fuller was an employee of CCSD.

13. Reviewing the secondary factors in *Tieberg, supra*, 2 Cal.3d at p. 949, factors (a) and (b) tend to support employee status, since operating as an Interim Finance Manager for a public agency is not a distinct occupation or business, and is work usually done under the principal's direction. Factor (c) (skill) tends to support independent contractor status, while factor (d) (instrumentalities, tools, and place of work) tends to support employee status since CCSD provided those items to Fuller, although it also allowed her to perform work from outside the office. Factor (e) (length of time) would tend to support independent contractor status were it not for the month-to-month option to extend the agreement between RGS and CCSD. (Factual Finding 6.) With that option, this factor is neutral. Factors (f) (method of payment) and (g) (regular business of principal) tend to support employee status since Fuller was paid by the hour, not the job, and the work she did was part of the regular business of CCSD. (Factual Findings 6, 22.) Factor (h) (belief of the parties) tends to support independent contractor status, since CCSD and Fuller apparently believed Fuller was an employee of only RGS. (Factual Finding 22.)

14. Notwithstanding that belief, the weight of these secondary factors and CCSD's right to control the manner and means of Fuller's work support an employer-employee relationship between CCSD and Fuller. The characterizations in the Agreement for Management and Administrative Services of Fuller as an agent of RGS, and of RGS as an independent contractor of CCSD, were not reflective of the realities of the position she filled and the work she performed.

15. Furthermore, CCSD can reasonably be expected to have known that Fuller was an employee of CCSD who should have been enrolled in CalPERS. CCSD was filling the position of a CCSD employee, albeit on an interim basis. The Finance Managers before and after Fuller were employees, and Fuller was performing the same work as assigned by CCSD under the same job description. The position was an integral part of the regular business of CCSD, and Fuller did not furnish an independent business or professional service relative to CCSD. (See *Santa Cruz Transportation*, supra, 235 Cal.App.3d at p. 1376.) Therefore, CCSD is liable for all arrears costs for member contributions of Fuller, plus administrative costs of \$500 under section 20283.

16. RGS's role in supplying Fuller to CCSD does not compel a different result. No provision of the PERL "suggests that workers hired through labor suppliers are . . . deemed employees of only the labor supplier. Nor, of course, has the Legislature provided in the PERL for any coemployment exception to a contracting agency's duty to enroll employees in CalPERS. The only relevant legislative choice to date has been to require enrollment of all persons in the 'employ' of the contracting agency. [Citation.]" (*Metropolitan*, supra, 32 Cal.4th at p. 506.)

17. In its closing brief, CCSD asserts that CalPERS's board has failed to exercise its authority under section 20125 to define "employee." But CCSD has not shown that the CalPERS board had a duty to adopt a regulation defining "employee." CCSD also asserts that the CalPERS audit was "fatally defective" because it was too cursory and was based on only a few documents. (CCSD Closing Brief at p. 8.) But CCSD has now presented more documents and testimony, none of which proves the audit determination was wrong.

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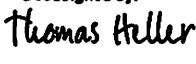
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18. CCSD also argues CalPERS's decision was based on an underground regulation, but does not identify any "unlawful standard of general application" that CalPERS used to reach the decision. (CCSD Closing Brief at p. 14.) Rather, CCSD asserts the decision itself is an unlawful standard of general application (see *id.*), which lacks evidentiary support. In addition, CCSD argues the RGS service model represents important public policy, because decisions to deliver cost-effective and efficient services should rest with local agencies. (*Ibid.*) But the purpose of the PERL itself "is to effect economy and efficiency in the public service by providing a means whereby employees who become superannuated or otherwise incapacitated may, without hardship or prejudice, be replaced by more capable employees, and to that end provide a retirement system consisting of retirement compensation and death benefits." (§ 20001.) The RGS service model as applied in this case subjected CCSD and Fuller to the provisions of PERL.

ORDER

CCSD's appeal is denied. In addition, CCSD shall pay all arrears costs for member contributions of Fuller, plus administrative costs of \$500, within 30 days of the effective date of this order.

DATED: July 25, 2018

DocuSigned by:

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THOMAS HELLER
Administrative Law Judge
Office of Administrative Hearings