

MEETING
STATE OF CALIFORNIA
PUBLIC EMPLOYEES' RETIREMENT SYSTEM
BOARD OF ADMINISTRATION
OPEN SESSION

ROBERT F. CARLSON AUDITORIUM
LINCOLN PLAZA NORTH
400 P STREET
SACRAMENTO, CALIFORNIA

WEDNESDAY, FEBRUARY 20, 2019
9:02 A.M.

JAMES F. PETERS, CSR
CERTIFIED SHORTHAND REPORTER
LICENSE NUMBER 10063

A P P E A R A N C E S

BOARD MEMBERS:

Mr. Henry Jones, President

Ms. Theresa Taylor, Vice President

Ms. Margaret Brown

Mr. Rob Feckner

Ms. Dana Hollinger

Ms. Adria Jenkins-Jones

Ms. Fiona Ma, represented by Mr. Frank Ruffino

Mr. David Miller

Ms. Mona Pasquil Rogers

Mr. Ramon Rubalcava

Mr. Bill Slaton

Ms. Betty Yee, represented by Ms. Lynn Paquin

STAFF:

Ms. Marcie Frost, Chief Executive Officer

Mr. Matt Jacobs, General Counsel

Ms. Cara Buchanan, Board Secretary

Ms. Marguerite Seabourn, Assistant Chief Counsel

Mr. John Shipley, Senior Attorney

ALSO PRESENT:

Mr. Stephen Silver, Rains Lucia Stern St. Phalle & Silver

Mr. Vance Piggott, Rains Lucia Stern St. Phalle & Silver

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1 P R O C E E D I N G S

2 PRESIDENT JONES: I would like to call the Board
3 of Administration meeting to order.

4 The first order of business is roll call, please.

5 BOARD SECRETARY BUCHANAN: Good morning.

6 PRESIDENT JONES: Good morning.

7 BOARD SECRETARY BUCHANAN: Henry Jones?

8 PRESIDENT JONES: Here.

9 BOARD SECRETARY BUCHANAN: Theresa Taylor?

10 VICE PRESIDENT TAYLOR: Here.

11 BOARD SECRETARY BUCHANAN: Margaret Brown?

12 BOARD MEMBER BROWN: Good morning.

13 BOARD SECRETARY BUCHANAN: Rob Feckner?

14 BOARD MEMBER FECKNER: Good morning.

15 BOARD SECRETARY BUCHANAN: Dana Hollinger?

16 BOARD MEMBER HOLLINGER: Good morning.

17 BOARD SECRETARY BUCHANAN: Adria Jenkins-Jones?

18 Frank Ruffino for Fiona Ma?

19 ACTING BOARD MEMBER RUFFINO: Present.

20 BOARD SECRETARY BUCHANAN: David Miller?

21 BOARD MEMBER MILLER: Here.

22 BOARD SECRETARY BUCHANAN: Jason Perez?

23 PRESIDENT JONES: Excused.

24 BOARD SECRETARY BUCHANAN: Mona Pasquil Rogers?

25 BOARD MEMBER PASQUIL ROGERS: Here.

1 BOARD SECRETARY BUCHANAN: Ramon Rubalcava?

2 BOARD MEMBER RUBALCAVA: Here.

3 BOARD SECRETARY BUCHANAN: Bill Slaton?

4 BOARD MEMBER SLATON: Here.

5 BOARD SECRETARY BUCHANAN: And Lynn Paquin for
6 Betty Yee?

7 ACTING BOARD MEMBER PAQUIN: Here.

8 PRESIDENT JONES: Okay. Thank you.

9 Then we have -- need approval of the Board of
10 Administration timed agenda. So we have a motion on that.

11 VICE PRESIDENT TAYLOR: Move approval.

12 BOARD MEMBER HOLLINGER: Second.

13 PRESIDENT JONES: Moved by Ms. Taylor, second by
14 Ms. Hollinger.

15 All in favor say aye?

16 (Ayes.)

17 PRESIDENT JONES: Opposed?

18 Hearing none. The item passes.

19 The next item on the agenda is the full Board
20 Hearing.

21 So good morning. We now turn to Agenda Item 3
22 and open the record for the full Board hearing in the
23 consolidated appeals of members Mark L. Wheeler, Thomas R.
24 Valdez, John M. Lopez, Larry Blackwell, and Garry Cohoe,
25 CalPERS case numbers 2017-1073, 2017-0275, 2017-0686,

1 2017-0966, and 2017-1217.

2 Let us first take a roll call, please. Yeah, to
3 be sure that it's consistent with the hearing.

4 BOARD SECRETARY BUCHANAN: Okay.

5 Henry Jones?

6 PRESIDENT JONES: Here.

7 BOARD SECRETARY BUCHANAN: Theresa Taylor?

8 VICE PRESIDENT TAYLOR: Here.

9 BOARD SECRETARY BUCHANAN: Margaret Brown?

10 BOARD MEMBER BROWN: Here.

11 BOARD SECRETARY BUCHANAN: Rob Feckner?

12 BOARD MEMBER FECKNER: Here.

13 BOARD SECRETARY BUCHANAN: Dana Hollinger?

14 BOARD MEMBER HOLLINGER: Here.

15 BOARD SECRETARY BUCHANAN: Adria Jenkins-Jones?

16 BOARD MEMBER JENKINS-JONES: Here.

17 BOARD SECRETARY BUCHANAN: Frank Ruffino for
18 Fiona Ma?

19 ACTING BOARD MEMBER RUFFINO: Here.

20 BOARD SECRETARY BUCHANAN: David Miller?

21 BOARD MEMBER MILLER: Here.

22 BOARD SECRETARY BUCHANAN: Jason Perez?

23 PRESIDENT JONES: Excused.

24 BOARD SECRETARY BUCHANAN: Mona Pasquil Rogers?

25 BOARD MEMBER PASQUIL ROGERS: Here.

1 BOARD SECRETARY BUCHANAN: Ramon Rubalcava?

2 BOARD MEMBER RUBALCAVA: Here.

3 BOARD SECRETARY BUCHANAN: Bill Slaton?

4 BOARD MEMBER SLATON: Here.

5 BOARD SECRETARY BUCHANAN: And Lynn Paquin for
6 Betty Yee?

7 ACTING BOARD MEMBER PAQUIN: Here.

8 PRESIDENT JONES: Okay. Thank you.

9 The proposed decision in this case was originally
10 considered by the Board at the November 2018 Board
11 meeting. At that meeting, the Board rejected the proposed
12 decision and scheduled this matter for a full Board
13 hearing on the question of how the member's compensation
14 earnable should be calculated under the PERL, in light of
15 the reciprocity agreements in place between PERS and the
16 applicable county retirement system.

17 I note for the record that all parties have
18 received notice of this full Board hearing, along with
19 copies of the Statement of Policy and Procedures for Full
20 Board Hearing before the Board.

21 In addition, all parties have been informed in
22 writing that oral argument will be limited to 10 minutes
23 for each position, and rebuttal will be limited to 3
24 minutes for each position.

25 Would counsel please take a moment to introduce

1 themselves, starting with staff counsel and then the
2 members' counsel.

3 SENIOR ATTORNEY SHIPLEY: John Shipley on behalf
4 of CalPERS.

5 ASSISTANT CHIEF COUNSEL SEABOURN: Marguerite
6 Seabourn on behalf of CalPERS.

7 MR. SILVER: Stephen Silver and Vance Piggott on
8 behalf of the five respondents.

9 PRESIDENT JONES: Okay. Thank you.

10 Let the record also reflect that Chirag Shah, the
11 Board's independent counsel on full Board hearings and
12 proposed decisions from the Office of Administrative
13 Hearings will be advising the Board on procedural and
14 substantive issues, and answering questions that Board
15 members may have today. Mr. Shah will also provide a
16 brief summary of the case before we begin our oral
17 argument.

18 As stated previously, each position will be 10
19 minutes for oral arguments. Mr. Shipley will -- will
20 first have 10 minutes to present staff's argument. After
21 that, Mr. Silver will have 10 minutes to present arguments
22 on behalf of the five members. Neither side is compelled
23 to use the full 10 minutes. However, if a party concludes
24 argument is less than the time allotted, it will not be
25 permitted to carry that time to any other position on

1 this -- for this proceeding.

2 After both sides have presented oral arguments,
3 each side will be provided three minutes for rebuttal
4 arguments in the same order as the original presentation.
5 First, Mr. Shipley for staff, then Mr. Silver for members.
6 Here, too, you may, but do not have to, use the entire
7 time allocated for rebuttal. But if you decide to use
8 less time, you will not have another opportunity to use
9 any time remaining in your rebuttal.

10 There is a timer in front of you, which will be
11 set for 10 minutes for initial argument and three minutes
12 for rebuttals. The timer will begin when you start to
13 speak. Please pay close attention to the timer as you
14 may -- as you make your presentation in order to avoid
15 going over your allocated time. When the timer lights
16 turn red, your time will have expired.

17 After all sides' arguments and rebuttals are
18 concluded, the Board may ask questions of any of the
19 parties to this proceeding, as well as our independent
20 counsel.

21 The alternatives available to the Board are set
22 forth at Agenda Item 3 for the full -- for the Board
23 meeting material.

24 Any questions so far?

25 Staff?

1 SENIOR ATTORNEY SHIPLEY: No, Mr. President.

2 MR. SILVER: No questions.

3 PRESIDENT JONES: Okay. Now, then Mr. Chirag --
4 Mr. Shah, please provide a brief summary of the case.

5 MR. SHAH: Thank you. Good morning, Mr.
6 President and members of the Board. As you said, my name
7 is Chirag Shah. And I am the Board's independent counsel
8 on full Board hearings.

9 Given the nature of this case, my brief summary
10 this morning will be briefer than usual. I will let each
11 counsel educate the Board on the details and the merits of
12 there respective positions. This consolidated hearing
13 involves five separate but substantially similar disputes
14 over the definition of compensation and compensation
15 earnable, primarily under sections 20630, 20636, and 20638
16 of the Public Employees's Retirement Law or more -- or
17 what is more commonly known as the PERL, and their
18 counterparts in County Employees' Retirement Law of 1937.

19 The material facts of the case are not in
20 dispute, and have been stipulated to by all parties to
21 this proceeding, which can be found at Exhibit I of Agenda
22 Item 3. The disputes before the Board are largely legal
23 in nature, in as much as they require interpretation of
24 the relevant statutory provisions, as opposed to a
25 fact-specific dispute.

1 The members in this appeal all have earned
2 service credit with a reciprocal employer, who at all
3 relevant times to this matter participated in the Los
4 Angeles County Employees Retirement Association, or the
5 San Bernardino County Employees Retirement Association.
6 Both system, as most people here know, are county-based
7 pension systems governed by the County Employees
8 Retirement Law of 1937.

9 The specific question before the Board is whether
10 in Calculating members' pensions under the PERL, CalPERS
11 staff must apply the definition of compensation quote
12 unquote as found in the PERL or the County Employees
13 Retirement Law.

14 A related issue is whether even if the PERL were
15 to be applied, certain additional items of compensation
16 received by only three of the members involved in this
17 appeal satisfy the requirements of PERL and it's
18 implement -- implementing regulations. These items were
19 classified by the relevant employers as longevity/merit
20 bonus pay, and top of range merit pay.

21 In the proposed decision, the administrative law
22 judge finds that in calculating members' pension
23 calculations under the PERL, CalPERS staff must accept
24 final compensation as reported by the county-based systems
25 applying the definition of compensation and compensation

1 earnable and related definitions as found in the County
2 Employees Retirement Law.

3 Given this finding, the ALJ deems it unnecessary
4 to make a legal determination regarding the additional
5 items of compensation, namely the longevity merit bonus
6 pay and the top of range merit may. However, those items
7 are still in dispute and therefore require Board -- a
8 determination by the Board and will be argued by the
9 parties before you today.

10 The members argue that the Administrative Law
11 Judge has reached a correct legal determination, and
12 therefore the Board should adopt the proposed decision in
13 its entirety and thereby grant the appeals. Staff, on the
14 other hand, argues that the Board should deny the appeals
15 and issue its own decision, finding that CalPERS is
16 compelled to apply only PERL definition in the calculation
17 of PERL benefits.

18 The details of the case, the history of the
19 litigation, and the merits of each party's position are
20 presented in the written arguments and the administrative
21 record before the Board at Agenda Item 3.

22 With that, Mr. President and members of the
23 Board, I conclude my very brief summary of the case this
24 morning.

25 PRESIDENT JONES: Okay. Let us now turn to

1 preliminary evidentiary issues. As all parties are aware,
2 we are not here to relitigate factual issues or resubmit
3 evidence into the administrative record. However, in rare
4 circumstances, in the interests of achieving a just
5 result, may require consideration of newly discovered
6 relevant documentary evidence, which could not, with
7 reasonable diligence, have been discovered and produced at
8 the hearing before the administrative law judge, and which
9 therefore is not part of the administrative record.

10 Under no circumstance may the Board accept new
11 witness's testimony or any kind of examination or
12 cross-examination of anyone, including Board members in
13 today's proceedings.

14 Under the Board' procedures -- excuse me --
15 requests to introduce newly discovered documentary
16 evidence must have been submitted in writing to the
17 Board's secretary no later than the due date for the
18 written argument, which, in this case, was February 6th,
19 2019.

20 In order to avoid interruptions during each
21 party's respective time today, please let us know now if
22 either party has any revelant -- relevant newly discovered
23 evidence, which could not have been discovered and
24 produced at their hearing that it seeks to be admitted
25 into the administrative record today as to which a timely

1 written request was submitted to the Board.

2 SENIOR ATTORNEY SHIPLEY: No, Mr. President.

3 MR. SILVER: We don't have any either.

4 PRESIDENT JONES: Okay. Thank you.

5 Seeing there's no requests to submit newly
6 discovered evidence, let us begin oral arguments.

7 Mr. Shipley, please present staff's argument.
8 Please start the clock for 10 minutes when Mr. Shipley
9 begins argument.

10 SENIOR ATTORNEY SHIPLEY: Good morning, Mr.
11 President and Board members.

12 The issue before this Board is not new or unique.
13 The issue is whether this Board determines the benefits
14 CalPERS provides its members. This Board has repeatedly
15 rejected the view that other agencies or retirement
16 systems dictate what benefits CalPERS must pay. And for
17 good reason, the Legislature vested in this Board the sole
18 authority to determine what benefits CalPERS' members are
19 entitled to receive under the PERL.

20 The respondents in these cases retired as
21 reciprocal members, meaning they were members of two
22 public retirement systems and received two retirement
23 checks, one from CalPERS, and one from a county retirement
24 system. The size of the checks is determined by the
25 amount of pensionable income they -- the member received.

1 This Board, in appeals identical to the one
2 before it today, has repeatedly found that CalPERS must
3 utilize the definition of pensionable income contained in
4 the PERL. If CalPERS is required to use pensionable
5 income amount reported by the reciprocal system, CalPERS
6 would have no control over the amount of benefits it pays
7 reciprocal members. The county system would dictate to
8 this Board how it administers CalPERS -- how it
9 administers the system. That would defy common sense and
10 it would -- as well as the law.

11 This Board, based on the record before it, has
12 the authority to consider and rule on all issues addressed
13 in the administrative appeal. The record shows that
14 CalPERS properly rejected items of pay the respondents
15 received that did not comply with the PERL's definition of
16 pensionable income. For this reason, respondents' appeal
17 should be denied.

18 Respondents initially established membership with
19 CalPERS and subsequently went to work under a county
20 retirement system. How this moved from CalPERS to a
21 county system impacts the members' CalPERS retirement
22 benefits is best illustrated through an example.

23 Imagine you have two individuals who have
24 identical careers. For 30 years they have the same jobs,
25 salaries, and benefits. They both work for the State for

1 10 years, and then transfer to a new job at a local
2 agency. The only difference is person A transferred to a
3 local agency that contracts with CalPERS for retirement
4 benefits, and person B transferred to a county employer
5 that provides retirement benefits through a county
6 retirement system.

7 The PERL generally defines final compensation as
8 the highest average pensionable income by a member over a
9 12- or 36-month period. Let's assume person A's final
10 compensation calculated using the PERL's definition of
11 pensionable income was earned at the end of their career
12 and was \$120,000. The Legislature created a specific
13 definition of final compensation for reciprocal members.
14 Person B's final compensation period does not have to be
15 during a time they were a CalPERS member the first 10
16 years of their career. Reciprocity allows person B's
17 final compensation period to be during any 12- or 36-month
18 period of time they worked under the county system.

19 Remember, the individuals had identical careers,
20 so common sense would dictate their final compensation
21 amounts are the same. Even though person B never earned
22 \$120,000 as a CalPERS member - it was earned at the end of
23 the career - this would be their final compensation
24 amount.

25 Respondents in this case are receiving this

1 advantage. Their CalPERS benefits are based on the higher
2 amount they earned while a county system employee.
3 However, they want more.

4 Going back to my example, let's assume both
5 people accrue six months of vacation leave during their
6 careers. Person -- for person A, the PERL explicitly says
7 vacation leave is not pensionable. However, the county
8 system counts vacation leave as pensionable income. And
9 person B's pensionable income is now \$180,000, 120,000 in
10 income, plus 60,000 for the cash-out of six months leave.

11 This means person B's final compensation is not
12 \$10,000 per month, but \$15,000 per month. Person B wants
13 to have a final compensation amount that is 50 percent
14 greater than person A. This example illustrates precisely
15 the argument being made by respondents, that the county
16 retirement law and the county system dictate the
17 retirement allowance CalPERS must pay respondents, because
18 the county system counts vacation cash-outs as pensionable
19 income.

20 And for these respondents, it is not just
21 vacation leave cashouts they seek to include. They also
22 want to include sick leave cashouts, administrative
23 compensation cashouts, cell phone and automobile
24 allowances. The list goes on. The respondents admit that
25 these items do not qualify as pensionable income under the

1 PERL. But despite this fact, respondents argue CalPERS
2 must include these items when calculating their CalPERS
3 pensionable income, simply because they qualify under the
4 county system.

5 Respondents' argument has repeatedly been
6 rejected by this Board, as well as the court of appeal in
7 Stillman v. Fresno County Employees Retirement
8 Association. The court in Stillman analyzed a final
9 compensation statute nearly identical to the one found in
10 the PERL. The court found that reciprocity allows a
11 member to use their final compensation period the time
12 they worked under the reciprocal system, and that is all
13 reciprocity does. Reciprocity does not create a new
14 definition of pensionable income that applies only to
15 reciprocal members.

16 The respondents in this case are making the same
17 argument rejected in Stillman. They argued the PERL
18 statute defining final compensation for reciprocal members
19 creates a new definition of pensionable income. Not only
20 did the court in Stillman reject this argument, this Board
21 has repeatedly rejected this argument. Reciprocity allows
22 respondents to use, as their final compensation period,
23 the time they received while -- the pensionable income
24 they received while a CalPERS member.

25 The court -- the court in Stillman ruled that

1 non-pensionable compensation, the vacation cashouts, do
2 not become pensionable simply because the employer paid
3 it. And this same rule applies to every single CalPERS
4 member. An employer can agree to pay an employee an
5 amount it deems proper. However, this Board, based on the
6 PERL, decides whether the pay is pensionable. The same
7 rule that applies to over a million CalPERS members should
8 app -- also apply to these five respondents.

9 Because the PERL, and not the county retirement
10 law determines what compensation qualifies as pensionable,
11 we must now determine what items of pay should be included
12 in respondents' final compensation amount.

13 Respondents stipulated to the fact that most of
14 the items excluded by CalPERS do not qualify as
15 pensionable income under the PERL. However, there are two
16 items still in dispute, respondents Wheeler, Valdez, and
17 Cohoe each received an item of pay based on their
18 longevity, being at the top step of their position salary
19 range, and merit.

20 They argue the pay qualifies as special
21 compensation under the PERL. To qualify as special
22 compensation, the item must be on the exclusive list
23 promulgated by this Board in Code of Regulations section
24 571(a). The pay received by these respondents is not on
25 the list. It combines two items that are, longevity and

1 merit, but also adds a third component not recognized by
2 the PERL, being on the top step of a position salary
3 range.

4 The court of appeal in DiCarlo v. county of
5 Monterey analyzed an item nearly identical to the one
6 these respondents received and found that it does not
7 qualify as special compensation under the PERL.

8 Respondent Cohoe argues in the alternative that
9 his pay, called top of range merit pay, qualifies as pay
10 rate. However, pay rate is base pay for services rendered
11 on a full-time basis. Top of range merit pay is not base
12 pay. It is pay in excess of base pay for employees who
13 are at the maximum pay rate for more than 36 months who
14 perform superior work.

15 The disputed items of pay received by respondents
16 Wheeler, Valdez, and Cohoe simply do not qualify as
17 pensionable income under the PERL, and should be excluded
18 when determining their final compensation.

19 The Legislature created reciprocity to ensure
20 that public employees can change employers and retirement
21 systems without suffering unnecessary hardships. However,
22 the Legislature recognized the impact that reciprocity has
23 on retirement systems, and may clear that the retirement
24 system should only be liable for its just financial
25 obligation. The Legislature, in creating reciprocity, did

1 not eliminate this Board's fiduciary duty to determine and
2 control the amount of benefits it pays all members,
3 including reciprocal members.

4 If respondents' appeals are granted, if the
5 proposed decision is adopted, this Board will accept the
6 following statement as true, the county system and the
7 county retirement law dictate the benefits CalPERS pays
8 reciprocal members. This Board would no longer have the
9 ability to manage and control the system, and CalPERS
10 would have no way of ensuring it is only liable for its
11 just financial obligation.

12 In fact, CalPERS will be required to make
13 retirement payments on compensation this Board and the
14 legislature has explicitly deemed not pensionable. This
15 is why this Board should deny respondents' appeals.

16 Thank you.

17 PRESIDENT JONES: Thank you, Mr. Shipley.

18 Please start the clock for 10 minutes for Mr.
19 Silver to present the members' argument.

20 MR. SILVER: Thank you. After listening to what
21 Mr. Shipley said, I think you need to be very mindful of a
22 couple of things that were left out of his presentation
23 that are very, very relevant to this case.

24 The first is that as the CalPERS witness
25 testified at the hearing, for over 60 years CalPERS

1 applied the retirement law exactly the way the
2 administrative law judge interpreted, okay? It was only
3 very recently that CalPERS shifted gears and changed its
4 position, okay?

5 Secondly, what Mr. Shipley overlooked, he gives
6 you this wonderful -- these wonderful examples about how
7 the world should be and how wonderful it is, but what he
8 doesn't tell you is what the statute that applies says.
9 And if you look at Government Code section 20638, which is
10 directly on point, and it's a very short and simple
11 statute. It says the highest annual average compensation
12 during any consecutive 12- or 36-month period of
13 employment as a member of a county retirement system. So
14 it says the highest compensation earned with the county
15 shall be considered compensation earnable by a member of
16 this system for purposes of computing final compensation
17 for the member.

18 So what this statute tells you, and what CalPERS
19 and the county did for 60 years, is that if you have a
20 reciprocal situation like these and the individual's
21 highest year is with the county, you look at the highest
22 average -- excuse me, highest annual average compensation
23 earned with the county. It does not say anything about
24 saying, well, it's the highest annual average compensation
25 earned by the county, but you subtract from that items of

1 pay that are pensionable under the county system, but not
2 pensionable under the PERS system. It doesn't say that,
3 okay? And for 60 years, CalPERS didn't take that
4 position. Now, all of a sudden, it is.

5 I think maybe one thing we all need to be mindful
6 of, as Mr. Chirag said. This is purely a legal issue.
7 There's no factual dispute in this particular case. And
8 it's a very complicated and complex legal issue. I don't
9 know how many of you, if any, are experienced in
10 adjudicating complicated and complex legal issues. I know
11 I'm not, and I've been a lawyer for 54 years. I've argued
12 some very complicated cases, but I haven't decided any. I
13 haven't adjudicated any.

14 And I think it's incumbent upon you to respect
15 the person that the law has determined should be making
16 these legal determinations, the administrative law judge.
17 I just can't see how you or I could just blindly overturn
18 the decision of an expert because we don't like it.

19 He's -- he was the one charged by law. He's an
20 experienced adjudicator, and you should give extreme
21 deference to his decision.

22 Now, one of the reasons for that is, is that this
23 is a very, very complicated case. CalPERS staff has
24 relied upon four or five different statutes at various
25 stages of this proceeding. It started out relying upon

1 Government Code section 20351. And all the letters that
2 were sent to these individuals, that's the code section it
3 relied upon.

4 After, I think we were able to convince them at
5 the hearing that that section really didn't have anything
6 to do with this reciprocal retirement, they kind of
7 shifted gears and started talking about Government Code
8 section 20636, 20630.

9 Now, after that doesn't seem to get them
10 anywhere, they're relying upon a decision that interprets
11 a Government Code section, section 31835 that has no
12 application to PERS. It is a reciprocity statute dealing
13 with the county and a private retirement system. The --
14 as I said before, the statute that clearly applies is
15 Government code section 20638.

16 But I have to tell you, as somebody who's been
17 doing this for a long time, this -- again, this is very
18 complicated, which statute does apply? Do you want to
19 read 20351 or do you want to read, you know, 20366, or
20 whatever.

21 The administrative law judge did that. He spent
22 a couple of months deliberating over this very complicated
23 case and he came up with a conclusion. And I, with all
24 due respect, and I hope you don't hold this against my
25 clients, I'm not sure any of you have the same time,

1 energy, or expertise as the administrative law judge, and
2 deference should be given to that person's decision.

3 As I pointed out, the key section is Government
4 Code section 206 -- 20638. CalPERS interpreted it the way
5 we are advocating for 60 years. There is a judicial
6 doctrine that says the contemporaneous administrative
7 interpretation by an agency charged with this inter -- or
8 its implementation must be given due deference. You
9 should be giving deference to the CalPERS 60-year
10 determination. That's what the -- this particular legal
11 principle says.

12 I guess the last thing I'd like to say, and I
13 think this is -- this is very important, and the
14 administrative law judge picked up on it, is that CalPERS
15 changed its position again after 60 years. It did it
16 after these individuals retired. If these individuals had
17 known that CalPERS was going to be changing its position
18 and using a lower final compensation base, they probably
19 would have delayed their retirement, so they could pick up
20 extra service credit or pay raises in order to get the
21 pension that they felt they needed to live on for the rest
22 of their lives.

23 These people again they relied in good faith upon
24 the way CalPERS has been determining -- interpreting this
25 section. And to now pull the rug out from under them is

1 completely wrong.

2 And what I would suggest and urge is that if you
3 really feel that the interpretation of the law is as Mr.
4 Shipley contends, and that's the way CalPERS should be
5 interpreting it, I would urge you strongly to do it only
6 prospectively, so that individuals who are still employed
7 will have an opportunity to make a decision as to when to
8 retire, based upon this brand new interpretation of the
9 law.

10 I think what I would urge you to do is -- is in
11 this particular case, maybe dismiss the statement of
12 issues, so you don't even have to render a decision
13 against these individuals. Let them get with everybody,
14 what they each anticipated they would get, based upon
15 CalPERS' 60 years of interpreting this, and just take a
16 position prospectively, so that individuals in the future
17 will make decisions as to when to retire with their eyes
18 open.

19 I think it's a terrible injustice to apply a new
20 position to people who have already retired, who didn't
21 have a chance to react to it. And to pull out the rug out
22 from under them I think is completely inappropriate. So I
23 would urge you to again only consider that if you are
24 convinced that -- that notwithstanding section 20638 and
25 notwithstanding the contemporaneous administrative

1 interpretation, and notwithstanding the administrative law
2 judge's clear -- clearly articulated decision that CalPERS
3 needs to do it the way Mr. Shipley says, do it only in the
4 future. Don't do it to people who've already retired, who
5 don't have a chance to take it into account in making
6 their decision to retire.

7 Thank you.

8 PRESIDENT JONES: Thank you, Mr. Silver.

9 Mr. Shipley, would you like to offer a rebuttal?

10 SENIOR ATTORNEY SHIPLEY: Yes, Mr. President.

11 PRESIDENT JONES: Okay. Would you please start
12 the clock for three minutes for staff's rebuttal.

13 SENIOR ATTORNEY SHIPLEY: Thank you.

14 Mr. Silver is correct in that this is purely a
15 legal issue. And the court of appeal has repeatedly
16 addressed the issue before this Board. The case in
17 Stillman that I discussed said that each retirement system
18 uses the definitions that are in their law. So CalPERS
19 applies the definitions in the PERL, and the county system
20 applies the definitions contained therein.

21 Stillman did not involve a private retirement
22 system. It involved two public retirement systems that
23 enjoyed reciprocity. Respondents have called this
24 decision disturbing - that's their words, not mine - but
25 it's the law. In the DiCarlo matter, the court said you

1 can't combine two items of special compensation.

2 Respondents called that case ridiculous, but it's the law,
3 and CalPERS has to follow the law.

4 Now, respondents main argument is that CalPERS
5 has somehow done an about-face, that we've changed things
6 that had been done repeatedly for 60 years. This is
7 simply not true. This court, as -- or this Board, as I've
8 discussed, has repeatedly issued determinations, has
9 issued decisions that CalPERS must apply law. And these
10 were based on letters that were sent in 2015, 2016, prior
11 to any decision, prior to any determination for
12 respondents. That was CalPERS decision then, and it was
13 CalPERS determination and decision prior to that.

14 The court of -- the administrative law judge
15 relied on a decision involving a CalPERS reciprocal member
16 Block. And it was a court of appeal case where he
17 reciprocally retired with the Orange County Retirement
18 System. And in that case, the court of appeal said and
19 found that CalPERS calculated his final compensation
20 amount to be \$6,793. The Orange County Retirement System
21 Calculated the final compensation amount to be \$7,021.

22 So there's a difference. The CalPERS final
23 compensation amount is different than the Orange County
24 compensation amount. This case -- in that case, Mr. Block
25 retired in 2002. The court of appeal decision was issued

1 in 2008. So it simply can't be true that CalPERS has
2 always used the final compensation amounts from county
3 retirement systems, when in 2002 we were making separate
4 different determinations than the county systems.

5 And I want to end by saying the respondents are
6 receiving the benefits that the Legislature provided them
7 through reciprocity. They each stopped being an active
8 CalPERS member 15, 20, 30 years ago, and they retired
9 recently. And when CalPERS calculated their final
10 compensation amount, they're using the compensation as
11 defined in the PERL that they received from these county
12 systems. So they're receiving a much higher final
13 compensation amount, as they're entitled to, but they're
14 not entitled to receive amounts that aren't in the law.

15 PRESIDENT JONES: Thank you.

16 Mr. Silver, would you like to offer rebuttal?

17 MR. SILVER: Yes, I have --

18 PRESIDENT JONES: Start the clock for three
19 minutes.

20 MR. SILVER: I have trouble understanding Mr.
21 Shipley can say that the -- CalPERS have not relied upon
22 this for 60 years, when the uncontradicted evidence in the
23 record -- and I urge you to read page 42, line 20 through
24 page 48, line 13 of the administrative record, where the
25 CalPERS witness herself admitted that for 60 years this is

1 the -- CalPERS interpreted it the way we advocate. I
2 mean, for Mr. Shipley to disregard that clear,
3 uncontradicted evidence of his own witness just befuddles
4 me. I cannot understand that.

5 The other things that -- he relies upon the Block
6 case. Well, actually, as we said in our argument, which I
7 hope you have read, we quoted a portion of the Block
8 decision, which the administrative law judge relied upon,
9 that basically said that if you have a reciprocal
10 situation, you're regarded as having worked your entire
11 career for the latter agency, in that case, the County of
12 Orange, okay?

13 So you have to assume that these individuals
14 worked their entire careers. And that all the income they
15 earned was the same as what they earned with the
16 respective counties, Los Angeles and San Bernardino.

17 The -- if you go to my argument on page six,
18 you'll see a quote, it -- from Block, which says, "A
19 purpose an effect of these reciprocity provisions are to
20 treat a member retiring concurrently...as having been
21 employed by a single employer and having been a member of
22 a single retirement system for the member's entire career,
23 for purposes of calculating retirement benefits". And
24 then it says, "As applied here, reciprocity means Block
25 would be entreated as having..." -- "...would be treated

1 as having served his entire career as an employee with the
2 Orange County Fire Authority...".

3 So I think that you have to do the same thing for
4 these individual, assume that their entire careers were
5 with either L.A. County or San Bernardino County.

6 Finally, I'd like to talk about Mr. Cohoe
7 situation. The top of the range merit pay, the CalPERS
8 witness acknowledged was the same as a step increase, a
9 pay step increase. You have many employees who have
10 situations where they go to step 1, step 2, step 3, step
11 4. You include step 5, even though it is a longevity
12 step, as part of the pay rate.

13 Finally, the last thing I want to say about Mr.
14 Cohoe is if you -- if you do reject the decision, you
15 shouldn't be deciding Mr. Cohoe and the other individual
16 situations independently. That should be sent back to the
17 administrative law judge, because he never decided those
18 issues.

19 PRESIDENT JONES: Your time is up, sir.

20 MR. SILVER: Thank you.

21 PRESIDENT JONES: Thank you.

22 Now, it's an opportunity for Board members to ask
23 questions.

24 Ms. Hollinger.

25 BOARD MEMBER HOLLINGER: Yeah. My question is to

1 you, Mr. Shah. When you have these reciprocal pension
2 systems and then you come into PERL's is -- does -- is
3 there something that says that PERL supersedes, like...

4 MR. SHAH: When you come into the PERL, well,
5 there's nothing specific in the law that says the PERL --

6 PRESIDENT JONES: Move your mic, Mr. Shah.

7 MR. SILVER: Yes, there is.

8 PRESIDENT JONES: No. Excuse me, sir. This is
9 not --

10 MR. SILVER: He's wrong.

11 PRESIDENT JONES: Mr. Silver, that is out of
12 order.

13 Chirag.

14 MR. SHAH: That's fine. You should give Mr.
15 Silver an opportunity to --

16 BOARD MEMBER HOLLINGER: Okay. I will.

17 MR. SHAH: -- to have his say as well. But
18 there's nothing specific in the PERL that says that. It's
19 just something that staff is arguing pursuant to a
20 standard statutory construction.

21 BOARD MEMBER HOLLINGER: Right. But it's not
22 like if you have a conflict of laws issues between state
23 and federal that federal law supersedes. There's
24 nothing -- I'm asking if there's anything actually
25 written?

1 MR. SHAH: There is nothing specific to that
2 fact, but --

3 BOARD MEMBER HOLLINGER: Okay.

4 MR. SHAH: Yes, go ahead.

5 BOARD MEMBER HOLLINGER: And my other question to
6 you is this, is when -- when they retired, what -- what
7 did they count on when they were computing their benefits
8 at the time of retirement?

9 MR. SHAH: What did the members count on?

10 BOARD MEMBER HOLLINGER: Was the -- I'm not clear
11 if PERL was in effect, the reciprocity agreement, did it
12 come after the fact?

13 MR. SHAH: The reciprocity agreements, to my
14 understanding, have been in place since 1957. So they
15 were always in place throughout.

16 BOARD MEMBER HOLLINGER: Got it.

17 MR. SILVER: Can I respond to that?

18 BOARD MEMBER HOLLINGER: Yes.

19 MR. SILVER: Because I think I -- I think your
20 question is what happened when these individuals retired?
21 When these individuals retired, their pensions were
22 calculated based upon the County Employees Retirement Law
23 definition of final compensation. It was only after they
24 retired that these proceedings were initiated to undue
25 that.

1 So originally, they were being treated the way we
2 claim they should be treated, and then CalPERS jumped in
3 and said, woops, we're changing -- we're changing things,
4 and we're going to undue that. And that's what this case
5 is all about. It's undoing what was done correctly.

6 BOARD MEMBER HOLLINGER: And, Mr. Shah, you would
7 say to that?

8 MR. SHAH: My job obviously is not to dispute
9 anything. Mr. Silver has to report to the Board.

10 BOARD MEMBER HOLLINGER: No, I'm not asking you
11 to dispute it.

12 MR. SHAH: My understanding is that the staff was
13 upholding its duty to correct errors under Section 20160
14 of the PERL.

15 BOARD MEMBER HOLLINGER: So is the disparity then
16 that the -- they weren't given the proper information at
17 the time or -- at the time they -- is this an audit
18 function?

19 SENIOR ATTORNEY SHIPLEY: May I briefly address
20 that?

21 BOARD MEMBER HOLLINGER: Yes.

22 SENIOR ATTORNEY SHIPLEY: CalPERS staff, as it
23 normally does when somebody retires, underwent an --
24 underwent an analysis to determine what amounts would be
25 included. And so then it sent determination letters to

1 the members saying that these amounts would be included or
2 would not be included. On some of the members, there was
3 repeated kind of amended determinations. Once additional
4 information was provided, CalPERS said okay, well, now
5 that you've explained exactly what that item of pay is, we
6 can increase your final compensation.

7 But this is -- this was not part of an audit. It
8 was part of the normal process that CalPERS undergoes
9 where members retire, the county system gives CalPERS --
10 there's forms and there's --

11 BOARD MEMBER HOLLINGER: Got it.

12 SENIOR ATTORNEY SHIPLEY: -- in the record, and
13 then CalPERS undergoes as analysis, requests information
14 from the county, employers of the county system, and
15 sometimes it was forthcoming really fast, sometimes it
16 took time to get the amounts. So then amended
17 determinations were -- but it was not part of an audit.
18 It was just part of the normal process that CalPERS
19 undergoes when it attempts to verify for all members
20 whether the reported amount of compensation actually
21 complies with the PERL.

22 MR. SILVER: Yes. But I think it's important to
23 emphasize this was done well after these individuals
24 retired. When they retired, it was done correctly. And
25 then CalPERS came in and said, woops, we think it was

1 wrong, and now we're going to reduce your retirement
2 allowance.

3 BOARD MEMBER HOLLINGER: Thank you.

4 PRESIDENT JONES: Okay. Ms. Taylor.

5 VICE PRESIDENT TAYLOR: Thank you.

6 Mr. Silver, you keep using the witness in here.
7 And I read through that. She didn't acknowledge that it's
8 been going on for 60 years in any way, that I'm reading.
9 She says, "I think once we became aware that other
10 reciprocal systems were routinely using items that
11 blatantly -- that we specifically exclude under our law,
12 and seeing that our own members, our contributing members
13 were subject to limitations that other systems were not
14 using, we wanted to be consistent and we determined that
15 we needed to start looking closer, so that we could
16 identify these instances".

17 And then you guys tried to get her to say that
18 it's at least since 1997 that you -- we're doing it. But
19 before '97 you weren't, and she couldn't acknowledge that,
20 so -- but what I will ask you -- so I'm not seeing that
21 for 60 years we've done this.

22 MR. SILVER: Well, if I can respond. The 60
23 years is the date from the inception of --

24 VICE PRESIDENT TAYLOR: Right.

25 MR. SILVER: -- what is now 20638. It was

1 20023.1 before they renumbered everything. From that date
2 forward, they interpreted it a certain way. And she said
3 that they changed their interpretation.

4 PRESIDENT JONES: She didn't say that.

5 MR. SILVER: She said it was recently when they
6 changed their interpretation.

7 VICE PRESIDENT TAYLOR: Right. You're saying
8 that she said that she -- they changed it, but she
9 didn't --

10 MR. SILVER: I think she said recently.

11 VICE PRESIDENT TAYLOR: -- say specifically when
12 and you tried to nail her on, oh, was it before '97. It
13 doesn't really matter. What --

14 MR. SILVER: Well, our stipulation also indicates
15 that this was done recently. If you look at the
16 stipulated facts it says that this was done recently.
17 There's some excuse in there about how your program system
18 or whatever couldn't figure it out for 60 years. But
19 basically --

20 VICE PRESIDENT TAYLOR: Well, understand that we
21 didn't have reciprocal for 60 years either right?

22 MR. SILVER: Yes, you did. The statute has been
23 in place for 60 years.

24 VICE PRESIDENT TAYLOR: The CERL didn't -- the
25 CERL didn't come into effect until 1950 something.

1 MR. SILVER: Well, that's 60 years.

2 VICE PRESIDENT TAYLOR: '57.

3 MR. SILVER: That's sixty years.

4 VICE PRESIDENT TAYLOR: Okay. Mr. Shipley, are
5 you -- all right. You were shaking your head there, so...

6 SENIOR ATTORNEY SHIPLEY: Well, I just -- you
7 know, when you look at the stipulation -- and this is a
8 stipulated fact, it says that when CalPERS would did --
9 would become aware that items were being reported, CalPERS
10 has and will conduct independent reviews. And so
11 that's -- you know, maybe -- that's what the stipulated
12 facts say, that when CalPERS became aware of something,
13 they would conduct reviews. And --

14 VICE PRESIDENT TAYLOR: So it doesn't go back any
15 specific time. Oh, we didn't start doing this until.

16 SENIOR ATTORNEY SHIPLEY: No. And as I
17 indicated, the Block decision shows that, you know,
18 that -- that member retired in 2002. CalPERS used a
19 different final compensation amount than Orange County.
20 If we used the exact same number that Orange County
21 provided us, the amounts couldn't be different. They
22 would have to be the same. But we used a different final
23 compensation amount to calculate that member's benefits.

24 So there's simply no evidence that CalPERS for 60
25 years just went with whatever this -- the reciprocal

1 system provided us. If we knew that there was something
2 that was not reportable under the PERL, CalPERS has and
3 will conduct independent reviews.

4 VICE PRESIDENT TAYLOR: Okay. So -- and I
5 remember reading that.

6 Also, Mr. Silver, the employee does get all the
7 compensation from the county that is their view of
8 pensionable compensation, right? They get that from the
9 County. They get a separate check from the county with
10 all of this stuff that you're saying that CalPERS should
11 also include, but they do get a check from the county with
12 their pensionable compensation, right?

13 MR. SILVER: Of course, yeah.

14 VICE PRESIDENT TAYLOR: Okay. So CalPERS doesn't
15 allow any of its other employees to get any of that
16 pensionable compensation. So it doesn't make sense that
17 we would, if we find out that a county is including that,
18 that we would include that in any way. It's not -- it's
19 not a fair interpretation of the law for the rest of the
20 employees. And I believe it would -- I can't speak to
21 this. I'm not an actuary. But it would throw our
22 actuarial rates off as well. So I can see what you're
23 saying, but it doesn't make sense that we would just
24 ignore the PERL and move into accepting whatever the CERL
25 says.

1 MR. SILVER: Well, two things. One, you may be
2 right in terms of what's fair, but that's not what the law
3 says. Government Code section 20638 doesn't say that
4 you --

5 VICE PRESIDENT TAYLOR: It doesn't say we have to
6 take that though. It's not --

7 MR. SILVER: It says -- it says the highest
8 average --

9 VICE PRESIDENT TAYLOR: For CERL not for PERL.
10 It didn't say it for CERL.

11 MR. SILVER: But that's what you use. That's
12 what you use. 20638 is a reciprocity provision. It says
13 the highest annual average compensation, blah, blah, blah,
14 as a member of a county system shall be considered
15 compensation earnable by a member of this system. And
16 this is in the Public Employees' Retirement Law. This
17 is --

18 VICE PRESIDENT TAYLOR: The system meaning our
19 system?

20 MR. SILVER: Yes. It's because part of -

21 VICE PRESIDENT TAYLOR: Our system, not the CERL.

22 MR. SILVER: Yeah, it says -- no, it says you use
23 the highest average -- annual average compensation earned
24 as a member of a county retirement system. That shall be
25 considered compensation earnable by a member of this

1 system, CalPERS. That's exactly what it says.

2 VICE PRESIDENT TAYLOR: So you're interpreting
3 that differently than I would.

4 Go ahead, Mr. Shipley.

5 MR. SILVER: Well, that's the way the -- as I
6 say, that's the way it was interpreted for a long time.
7 It was interpreted that way when these individuals
8 retired. That's the most important thing of all. When
9 they retired, that's the way it was interpreted. It was
10 only after they retired that a different interpretation
11 was employed.

12 And again, what I -- what I would urge you, and
13 maybe this is -- you're the best person to have this
14 conversation with, is that if you really feel strongly --

15 VICE PRESIDENT TAYLOR: She's the attorney.

16 MR. SILVER: Pardon?

17 Well, if you really feel strongly that this is
18 the way the law should be interpreted, you should do it
19 prospectively, not retroactively for people who made
20 decisions to retire and relied upon those decisions. If
21 you want to do it prospectively, you know, hey, take your
22 best shot. But it's not fair to do it to these people who
23 rely to their detriment upon what CalPERS has been doing
24 for a long time.

25 PRESIDENT JONES: Mr. Shipley, you want --

1 SENIOR ATTORNEY SHIPLEY: I would simply go back
2 to the court in Stillman was interpreting a nearly
3 identical statute. That statute said average compensation
4 during any period of service as a member of a reciprocal
5 system shall be considered compensation earnable or
6 pensionable compensation. And the court of appeal in
7 Stillman said that that does not mean the county system
8 simply ignores its own definitions. It still has to apply
9 its own definition.

10 And in the case, 20638 contains the exact same
11 language. And there's definition for compensation in the
12 PERL, it's 20630, and there's definition for compensation
13 earnable, 20636. And in every determination letter that
14 was sent to the respondents, it said those are the laws,
15 those are the statutes that apply, and that's the law.

16 MR. SILVER: That's not true.

17 VICE PRESIDENT TAYLOR: And I --

18 PRESIDENT JONES: Excuse me.

19 MR. SILVER: That's not true. In every
20 determination --

21 PRESIDENT JONES: Mr. Silver.

22 MR. SILVER: -- letter they relied upon --

23 PRESIDENT JONES: Mr. Silver, I'm going to turn
24 your --

25 MR. SILVER: -- section 20351.

1 PRESIDENT JONES: Mr. Silver, I'm going to turn
2 your mic off if you keep interrupting until you're called
3 upon.

4 MR. SILVER: Well, if Mr. Shipley would be
5 accurate, I wouldn't have to do that.

6 PRESIDENT JONES: But no, you should do it any
7 way.

8 MR. SILVER: Well, excuse me

9 PRESIDENT JONES: So -- all right.

10 VICE PRESIDENT TAYLOR: And I just --

11 PRESIDENT JONES: Finish your comment, Mr.
12 Shipley.

13 SENIOR ATTORNEY SHIPLEY: I'd be happy to direct
14 the Board's attention to State's Exhibit 21, which was
15 Attachment G in the record. And that is the determination
16 letter sent to Mr. Valdez dated July 5th, 2016. And in
17 that letter, the CalPERS staff quotes, "The compensation
18 does not meet the definition of compensation and
19 compensation earnable as provided in Government Code
20 sections 20630 and 20636". Then the letters continue to
21 basically cite -- to recite those definitions.

22 And so to say that CalPERS didn't rely at all on
23 20630 or 20636 is simply not true. 20351, all that
24 statute does is it says there can be reciprocity. And we
25 acknowledge there can be reciprocity. The simple fact is

1 we still rely on those definitions. And those are the
2 definitions included in all of the determination letters
3 that were sent to these respondents.

4 PRESIDENT JONES: Okay. I'm going to move to
5 another question from Board member --

6 MR. SILVER: Okay. Can I just respond for one
7 second?

8 PRESIDENT JONES: Just one second.
9 Go ahead.

10 MR. SILVER: Oh, I'm sorry.

11 Yeah, but what those letters do not mention is
12 Government Code section 20638, the one that's directly on
13 point. I just wanted to say that.

14 PRESIDENT JONES: Okay. Ms. Brown.

15 BOARD MEMBER BROWN: Thank you, Mr. Chair.

16 Mr. Shipley, did the ALJ consider the Stillman
17 decision in making they're finding?

18 SENIOR ATTORNEY SHIPLEY: It's difficult to say
19 exactly to what extent the administrative law judge
20 considered the Stillman decision. He does reference the
21 decision in the -- in the corrected proposed decision.
22 However, he seems to indicate that -- that CalPERS has not
23 consistently applied Stillman, and so it doesn't apply.
24 But that's simply, as I've said and argued, it's simply
25 not true. So there's really -- the ALJ seems to kind of

1 just skip over the holdings of Stillman, which say CalPERS
2 applies the PERL and the county system applies the CERL.

3 BOARD MEMBER BROWN: As I read it, it appeared
4 that the judge looked at it and rejected it, but let me
5 ask Mr. Silver.

6 MR. SILVER: Well, I think he -- you're right, he
7 looked at it and actually applied it favorably towards --
8 towards the position we're advocating. But I think --
9 again, I have to emphasize, Stillman interpreted a statute
10 that has nothing to do with PERS. It's a statute between
11 a system covered by the County Employees Retirement Law,
12 and then an independent system, the San Luis Obispo County
13 Employees Retirement System.

14 Second of all, if you read the Stillman opinion,
15 it does not explain at all how it comes to its conclusion.
16 It simply says, and that's all it does. If you read the
17 Stillman position -- decision carefully, it says -- it
18 talks about this and so and so, or it says that they're
19 the same, but that's all it does. It doesn't explain why
20 it wouldn't include the same items of pay that are
21 pensionable under the other system.

22 BOARD MEMBER BROWN: And, Mr. Silver, how -- how
23 long did members receive their pensions before this
24 recalculation or this error was noted?

25 MR. SILVER: I'm not 100 percent sure.

1 BOARD MEMBER BROWN: Let me see if our staff
2 knows.

3 SENIOR ATTORNEY SHIPLEY: Well, I can tell you
4 that --

5 BOARD MEMBER BROWN: I know it varies, because
6 there's different people.

7 SENIOR ATTORNEY SHIPLEY: Right. I'll say for
8 Mr. Blackwell, his retirement date was January 31st, 2017.
9 And the initial determination letter went out in May, May
10 8th 2017, so four months.

11 BOARD MEMBER BROWN: Okay.

12 SENIOR ATTORNEY SHIPLEY: Mr. Cohoe there was a
13 January retirement and an April letter that went out. So
14 it varies, but it was typically with -- you know,
15 approximately three -- three months or so. And part of
16 that delay is because CalPERS has to initially receive the
17 information from the county system. So it can't really
18 make a calculation until it actually receives, and there's
19 forms and they're in the record from the county system
20 telling CalPERS, okay, well, here's the amount and here's
21 how it's broke down.

22 BOARD MEMBER BROWN: Thank you.

23 Mr. Silver

24 MR. SILVER: Yeah. I think that misses the
25 point. The point is is that they didn't know about it

1 before they retired. And when they went -- most of
2 these -- this isn't in the record, but I can tell you
3 based upon my experience with an awful lot of retirees
4 that I get contacted by, they all go to -- most of them go
5 to the CalPERS office, and they, you know, work out
6 exactly what their retirement allowance is going to be.
7 They get an estimate. They get something and they figure
8 this is what my pension is going to be. And that's, I'm
9 sure, what these individuals did is that they -- and so
10 they decided to retire on that date.

11 Had they known that their pensions would be
12 lower, as the administrative law judge recognized, they
13 probably would have delayed their retirement, so they
14 could get that amount using the CalPERS approach by
15 getting additional service credit or maybe some pay
16 raises.

17 BOARD MEMBER BROWN: Thank you. Mr. Shipley, I
18 have another question for you. Has staff recently started
19 looking at the reciprocal agreements? Is this
20 something -- we keep hearing that this is something new
21 we're doing. And I'm just wondering did it come to our
22 attention may be in '97, or whatever that date is that
23 we're hearing, that we had these issues, and so staff
24 started focusing more on that, or how did this -- I'm just
25 trying to figure out how this error came to staff's

1 attention --

2 SENIOR ATTORNEY SHIPLEY: I don't know if --

3 BOARD MEMBER BROWN: -- and is it more recent?

4 SENIOR ATTORNEY SHIPLEY: I don't know if it --

5 if I would consider it an error, as much as it was -- in

6 the way this -- the kind of evidence plays -- lays out

7 what happened is there was -- staff became aware that

8 there was more and more of a discrepancy between what was

9 being reported by the county system and what's allowed by

10 CalPERS. And I think if you look at the prior appeals

11 that have been heard by this Board, a lot of those

12 determinations were 2015, 2016.

13 And so I would think that there -- I would say,

14 based on that, that there's probably more of an awareness

15 going back to around that time. And that's when, as the

16 stipulated facts kind of indicate, CalPERS did put more

17 resources into making sure that the reported amounts

18 qualify. But that's -- I don't know if there's an exact

19 date of Cal -- there wasn't an audit where CalPERS said,

20 oh, wait, there's -- but it was just simply a matter of

21 through, you know, reviewing more and more of the reported

22 amounts, that the items that were being reported don't

23 qualify under the PERL. And so that's when CalPERS

24 started making determinations and informing the county

25 systems as well that this is not something --

1 BOARD MEMBER BROWN: I'll get to you in one
2 minute, Mr. Silver. So -- and I understand how our staff
3 does that retirement. They give you an estimate. You
4 actually might even get a couple of paychecks. And then
5 as they go back and look into it, they make an adjustment.
6 My -- in my case I got more money.

7 But again, I understand that's our standard
8 process. I'm just wondering if we're looking harder at
9 reciprocal agreements, because we have these issues --
10 more issues with county or whatever is going on.

11 SENIOR ATTORNEY SHIPLEY: I would -- I would say
12 it's not necessarily with the agreement, because the
13 statutes basically say there is reciprocity.

14 BOARD MEMBER BROWN: Um-hmm.

15 SENIOR ATTORNEY SHIPLEY: It's more with how the
16 county system reports income to CalPERS, and so CalPERS is
17 requiring and requesting more detailed information, so we
18 can exactly see what -- what that final compensation
19 amount is based upon.

20 BOARD MEMBER BROWN: Great.

21 Mr. Silver

22 MR. SILVER: Well, again, I just direct your
23 attention to the stipulation. The stipulation in
24 paragraph 2 says in the past CalPERS didn't have an
25 automated system and couldn't do this. And then in

1 paragraph 3, the first word, and I think it's the keyword
2 is "recently". So this is something that has been changed
3 very recently.

4 BOARD MEMBER BROWN: Thank you.

5 PRESIDENT JONES: Mr. Silver, in your scenario
6 that we should rely on what the county determines to be
7 compensation. And as you know, I don't know, we have what
8 58 counties in the state. And so does that -- in your
9 scenario, does that mean that CalPERS would have to rely
10 on not only CalPERS' rules and regulations, but also rules
11 and regulations from 58 different counties, which could be
12 very different for each county.

13 MR. SILVER: Yeah, well, first of all, there's
14 only 20 counties covered by the County Employees
15 Retirement Law.

16 PRESIDENT JONES: Okay. Twenty.

17 MR. SILVER: And second of all, they don't
18 determine what is pensionable income independent. The
19 County Employees Retirement Law defines what is
20 pensionable income, and they all are supposed to comply
21 with the County Employees Retirement Law. They don't get
22 to make independent determinations

23 PRESIDENT JONES: So who determines what
24 compensation is?

25 MR. SILVER: The County Employees Retirement Law

1 does.

2 PRESIDENT JONES: And CalPERS -- for CalPERS,
3 it's a different interpretation of compensation.

4 MR. SILVER: It would be, if there wasn't
5 reciprocity. But with reciprocity, section 20638 says you
6 use the county's. As I've read before, it says you use
7 the county's definition of compensation, not CalPERS'.

8 PRESIDENT JONES: Mr. -- Go ahead, you want to
9 respond to that?

10 SENIOR ATTORNEY SHIPLEY: I think I've responded.

11 PRESIDENT JONES: Okay.

12 SENIOR ATTORNEY SHIPLEY: I think the law is
13 clear that CalPERS uses the PERL and the county system
14 uses the CERL.

15 PRESIDENT JONES: Okay. Okay. Mr. Slaton.

16 BOARD MEMBER SLATON: Thank you, Mr. President.

17 I want to come back to this just so I can
18 understand the timing of things. So when these people
19 decided to retire, we started issuing a check, CalPERS
20 did, along with the county issuing a check, is that true?
21 Is that correct?

22 SENIOR ATTORNEY SHIPLEY: Yes, that's essentially
23 true, once they retired.

24 BOARD MEMBER SLATON: Okay. All right. So --
25 and how did we determine the amount of that check, CalPERS

1 check?

2 SENIOR ATTORNEY SHIPLEY: CalPERS would
3 request -- there's a form that CalPERS uses that the
4 county system or the reciprocal system would submit to
5 CalPERS that would provide kind of the final compensation
6 period, as well as the final compensation amount, and then
7 provide a breakdown of what's included in that final
8 compensation amount.

9 BOARD MEMBER SLATON: Okay. So before we can
10 issue a check, we have to get a document from the county
11 that specifies three things, the amount of time worked,
12 the final compensation, and the breakdown of the final
13 compensation, is that accurate?

14 SENIOR ATTORNEY SHIPLEY: The only thing I
15 would -- I think the form does indicate the amount of time
16 worked in the county system. However, CalPERS would only
17 use the service credit, the amount of time worked in
18 the --

19 BOARD MEMBER SLATON: No, I -- okay. You're
20 right.

21 SENIOR ATTORNEY SHIPLEY: But, yeah.

22 BOARD MEMBER SLATON: But let's focus on the
23 amount. So the highest compensation, that's a single
24 dollar amount that's reported by the county. Plus, we
25 require a breakdown of that number, is that correct?

1 SENIOR ATTORNEY SHIPLEY: That's correct.

2 BOARD MEMBER SLATON: Okay. So in this
3 particular -- this particular case, did we receive a
4 breakdown?

5 SENIOR ATTORNEY SHIPLEY: Yes, we received
6 breakdowns for these individuals.

7 BOARD MEMBER SLATON: Okay. And what did we do
8 with that breakdown, in terms of calculating what was
9 pensionable according to the PERL?

10 SENIOR ATTORNEY SHIPLEY: We would take the
11 breakdown, and it's itemized. And so we would then
12 look -- and usually it's itemized as kind of base pay or
13 pay rate.

14 BOARD MEMBER SLATON: Right.

15 SENIOR ATTORNEY SHIPLEY: And we could conform
16 that that was pay rate that was on a publicly available
17 pay schedule.

18 BOARD MEMBER SLATON: Right.

19 SENIOR ATTORNEY SHIPLEY: And then there would be
20 typically items of kind of additional compensation or
21 special compensation. Sometimes, there would be details
22 to allows the staff to determine what exactly it is. And
23 then staff, as it does with every other CalPERS member,
24 would then determine does that comply with the definition
25 of pensionable income under the PERL.

1 BOARD MEMBER SLATON: Okay. So in this case, the
2 initial determination you were not able to tell items that
3 should have been excluded apparently?

4 SENIOR ATTORNEY SHIPLEY: I don't know if I would
5 say that that's 100 percent accurate. I think that for
6 some of the members, it was easier than others. And so
7 for some, it was clear from the beginning that certain
8 items were excluded and certain items were allowed. And
9 that's why, if you look at some of the members, there's
10 two or three determination letters. We would ask for more
11 information to try to clarify does it count or not?

12 BOARD MEMBER SLATON: But every single person
13 who's subject to this procedure or process has something
14 that was subsequently excluded after the initial
15 calculation --

16 SENIOR ATTORNEY SHIPLEY: I don't know --

17 BOARD MEMBER SLATON: -- of the CalPERS portion.

18 SENIOR ATTORNEY SHIPLEY: I'm sorry. I don't
19 know if I would say it was subsequently excluded. I think
20 if it was readily apparent to CalPERS at the time it was
21 making its initial kind of determination on what the
22 retirement allowance should be, it was excluded. There
23 wasn't -- it wasn't a situation where they included it,
24 and then later excluded it always. There might have been
25 situations like that, but CalPERS would take the

1 information it has and try to make that determination from
2 the onset. But then, as we do with all members, sometimes
3 we have to do further investigation to see if something
4 additionally should be included, as I think Ms. Brown
5 indicated, or excluded.

6 BOARD MEMBER SLATON: So this is that three or
7 four month period after retirement, where we did further
8 clarification with the employer regarding those items.

9 SENIOR ATTORNEY SHIPLEY: Correct.

10 BOARD MEMBER SLATON: Okay. It seems to me one
11 solution is you start the check with the base
12 compensation, and then you resolve those issues, and you
13 add that or you don't add that afterwards, but, you notify
14 the employee prior to their retirement what the minimum
15 amount is they're going to have. Has that -- has that
16 ever been considered or done?

17 SENIOR ATTORNEY SHIPLEY: That might be outside
18 my scope of expertise. I think the general practice is to
19 try to -- to basically try to provide the member with the
20 retirement allowance they're entitled to as quickly as
21 possible. And so we want to try to provide them with what
22 we think is correct as quickly as possible, and then later
23 in that two or three month period --

24 BOARD MEMBER SLATON: I see. Okay.

25 SENIOR ATTORNEY SHIPLEY: But I think it's

1 something that can be considered, but I think the members,
2 you know, when they retire if the check is only based on a
3 base amount and yet they're really entitled to more, the
4 members would probably want that.

5 BOARD MEMBER SLATON: Well, I'm just getting to
6 the point of at least not being -- having a surprise -- a
7 negative surprise later --

8 SENIOR ATTORNEY SHIPLEY: Right.

9 BOARD MEMBER SLATON: -- after you've already
10 made the retirement decision.

11 Mr. Silver, did you have --

12 MR. SILVER: Well, that's exactly what happened
13 here was they got the negative surprise after the fact,
14 after they'd already retired, and they had their allowance
15 reduced. And I think --

16 BOARD MEMBER SLATON: Did -- and one other
17 question. Did these respondents approach CalPERS directly
18 to determine the level of assurance that the number was
19 accurate?

20 SENIOR ATTORNEY SHIPLEY: Actually, I was just
21 wanting to address that, because the record contains no
22 evidence whatsoever that any of these respondents went to
23 CalPERS to ask for retirement estimate, that they, you
24 know, somehow said, okay, this is what my estimate is
25 going to be and that's what they did. There's absolutely

1 no evidence to that in the record whatsoever.

2 Mr. Silver kind of hypothesized of what his
3 experience is. But as far as these respondents -- and
4 we've seen cases where respondents will repeatedly come to
5 CalPERS and ask for a retirement estimate. These
6 respondents there's just simply no evidence that they did
7 that or, in any way, relied on a higher estimate that
8 CalPERS provided when they decided to retire.

9 BOARD MEMBER SLATON: So that raises one last
10 question. What if they had, what would they have been
11 told by CalPERS?

12 SENIOR ATTORNEY SHIPLEY: I think they would have
13 been told what all members are told is that we provide an
14 estimate based on the best information we're provided. If
15 the county had provided CalPERS with a breakdown that
16 included these items that are allowable, as well as these
17 items that aren't allowed, CalPERS would have provided an
18 estimate only based on the items that are allowed. That's
19 what CalPERS strives to do. There's times where we later
20 have to correct a mistake. And that happens, and I know
21 the Board is aware of that.

22 But that's what CalPERS would have done. They
23 would have asked for information, and they would have
24 tried to get as much information as possible to allow it
25 to provide an accurate estimate. That was -- there's

1 evidence -- there's no evidence at least that any of that
2 happened in this case.

3 BOARD MEMBER SLATON: Mr. Silver.

4 MR. SILVER: Well, if you really think that is
5 the determinative factor, I would suggest that the
6 appropriate remedy might be to send the case back to the
7 administrative law judge to take evidence on that
8 particular issue, because I can't testify on their behalf.
9 But I can tell you that at least a couple of them, and
10 particularly Mr. Cohoe, have -- who was in constant
11 communication with CalPERS and. Mr. Cohoe is a very
12 intelligent and a very precise human being. And I am
13 pretty confident he would tell you that before he retired,
14 he assumed he was going to be getting what he originally
15 got and then was later taken away from him.

16 BOARD MEMBER SLATON: Okay. All right. Thank
17 you very much.

18 PRESIDENT JONES: Mr. Rubalcava.

19 BOARD MEMBER RUBALCAVA: Thank you, Mr. Henry
20 Jones.

21 This is a question for Mr. Shah. In your memo,
22 which is very good by the way, you mentioned a lot of
23 the -- of the court cases, Stillman. But one thing that I
24 noticed was not in there -- and I recognize that these
25 retirees are probably classic employees under PEPRA. But

1 the whole issue about pay items, whether compensation, or
2 compensation earnable, that was really impacted by PEPRRA.
3 And I was wondering if you believe that perhaps some of
4 the reason these issues are not coming to the front is
5 because CalPERS now has to be more vigilant about whether
6 it meets that definition?

7 And the other question I had was there was some
8 dispute as to who makes -- determines what's compensation?
9 Oh, and the answer was, you know, it's either State law or
10 the '37 Act. But I think under PEPRRA, each retirement
11 system give -- using the guidance from CalPERS will
12 determine for their system what is pensionable and what
13 isn't.

14 Because I know some retirement systems, for
15 example Ventura, took longer than others to come up with
16 their determination as to which pay items made the cut or
17 not.

18 So, Mr. Shah, do you think -- maybe I'm
19 speculating too much, but would that have been an impact
20 as to how CalPERS started looking at these, be more
21 vigilant? Perhaps there will be more issues coming
22 forward?

23 MR. SHAH: Well, Mr. Rubalcava, I reviewed the
24 record exhaustively. There's no evidence in the record
25 that any particular, you know, statutory action triggered

1 these reviews. I think it was -- my understanding is that
2 it was just a part of the ordinary review process that
3 CalPERS engages in. That's the first question.

4 The second question who determines? That's
5 really at issue here. CalPERS makes the determination.
6 And the question is which -- which law would apply? And
7 so CalPERS -- there's no question that CalPERS makes the
8 determination though. The only issue is which law
9 applies.

10 BOARD MEMBER RUBALCAVA: Thank you.

11 PRESIDENT JONES: Mr. Ruffino.

12 ACTING BOARD MEMBER RUFFINO: Thank you, Mr.
13 President.

14 This question is for Mr. Shipley or CalPERS
15 staff. So we heard Mr. Silver in his -- in his opening
16 remarks suggesting that perhaps we should implement this
17 prospectively for the future -- future retirees. The
18 question is what kind of effect would that have if
19 assuming that we would want to adopt on the current?

20 And secondly, it was argued whether 60 years, 50
21 years, or 40 years that we've been using some sort of
22 ruling, or some sort of precedent. Do we need to review
23 to make that change or to make it known, or it has no
24 bearing or no changes are necessary in order to make it
25 clear that it's not necessarily a change of practice, as

1 has been presented?

2 SENIOR ATTORNEY SHIPLEY: I think as to your
3 first question on prospective or not, I think the law has
4 been clear, and it hasn't changed. And so -- and I'll
5 just kind of refer the Board to section 20004 of the PERL,
6 which related to the Pension Reform Act of 2013. And
7 through that, the Legislature said that the Board should
8 continue to administer the fund in conformity with its
9 duties an responsibilities, and to ensure that members are
10 provided with retirement benefits to which they're
11 entitled pursuant to the law.

12 And since the law hasn't changed, and since
13 especially since Stillman has been decided, but that's the
14 law. It hasn't changed. And so I don't see how we could
15 in a prospective manner start enforcing, I guess, the law,
16 when it's previously existed, and the Board has previously
17 issued decisions on this exact issue, saying that the PERL
18 and not the county law is what applies. So I -- I don't
19 see how -- I mean, I can't tell you how -- how you rule.
20 But I don't see how it can be done in a prospective manner
21 when there isn't a change in the law.

22 PRESIDENT JONES: Okay.

23 MR. SILVER: Can I just respond to that?

24 PRESIDENT JONES: Yes.

25 MR. SILVER: It certainly could be done in a --

1 what I'm saying should be done in a prospective manner is
2 let everybody know before they retire, that -- whether
3 you've been interpreting it this way in the past or not,
4 let people, like my clients, who are still working, know
5 that, hey, this is what's going to happen, so that when
6 they select a retirement date, they'll know what their
7 pension is going to be, and they won't have -- as I used
8 the expression before, they won't have the rug pulled out
9 from under them after the fact when it's too late to do
10 anything about it.

11 PRESIDENT JONES: Mr. -- do you have a --

12 ACTING BOARD MEMBER RUFFINO: Just a quick.

13 PRESIDENT JONES: Go ahead.

14 ACTING BOARD MEMBER RUFFINO: Just a quick follow
15 up, Mr. President.

16 So, Mr. Silver, are you suggesting right now that
17 it's not clear -- when folks do submit an application
18 retirement, it's not clear that all the -- everything
19 that's been -- you know, that's considered in order to
20 arrive at the final amount? I'm --

21 MR. SILVER: I would bet a lot of money that most
22 people who have reciprocal situations, unless they're
23 friends with people who've been affected by it, have no
24 idea what you are now doing. But they do know that a lot
25 of their friends retired in the past and were able to use

1 the county's calculations as their base. A lot of them
2 know that.

3 You know you're -- what really disturbs me about
4 this is there are probably hundreds of thousands of
5 individuals who have already retired who CalPERS staff
6 could now go after today and say not only are we going to
7 reduce your pension, but we want 30 years of, or 20 years
8 of overpayments. And I've seen it happen. I've seen it
9 happen in other situations.

10 And, you know, I assume that if they can do it to
11 these five individuals, they can do it to those hundreds
12 of thousands of people. I know -- for example, there's an
13 awful lot of employees who work for a local agency -- I
14 represent mostly firefighters and police officers, but
15 many fire departments have been subsumed by counties,
16 particularly Los Angeles County.

17 And with that happening, you've got a awful lot
18 of employees who started their work with a local agency
19 governed by PERS that went over to the county. And again,
20 I know many of those individuals who retired 25, 30 years
21 ago, who had it calculated the way we say it should be
22 calculated. And if CalPERS staff has the time and energy
23 they could literally go back and pull the rug out from
24 under all these people.

25 That's why I think it should be done only to

1 people who understand it with their eyes open and make an
2 intelligent decision as to when to retire.

3 PRESIDENT JONES: Mr. Miller.

4 BOARD MEMBER MILLER: Thank you.

5 I think you really just answered the question I
6 had, which is, you know, we've got these specific
7 respondents in this case. But prior to this case, I'm
8 sure there potentially sounds like there were a lot of
9 other people who potentially could have been respondents,
10 just depending on when CalPERS became aware or decided to
11 pursue this issue. And So I'm just wondering if you have
12 any other thoughts on that to share with us, Mr. Shah or
13 either of the counsels?

14 MR. SHAH: I defer to staff counsel and members
15 counsel on that.

16 SENIOR ATTORNEY SHIPLEY: I would just simply say
17 that, you know, CalPERS is required to apply the PERL.
18 The members are entitled to the benefits they're entitled
19 to under the law. I'm not aware, and Mr. Silver is maybe
20 trying to scare everybody into thinking that we're getting
21 ready to yank everybody's retirement allowance and reduce
22 it. There's simply no evidence to support that. And
23 so -- well, there's no evidence to support it. And so to
24 try to say that everybody is going to lose their
25 retirement because of some new, you know, ruling, it's

1 simply -- there's just no evidence to support it, and
2 it's -- I don't believe it's true.

3 MR. SILVER: Well, I apologize, but every --
4 almost every month I get contacted by retirees, many of
5 whom retired 15, 20 years ago who are innocent people --
6 and we're not talking about the Robert Rizzos of the
7 world. I mean, these are just normal working people who
8 have gotten letters from CalPERS saying, by the way, you
9 reported an item of pay that we used to think was
10 pensionable, but we don't think is pensionable anymore,
11 and we're going to reduce your allowance. And by the way,
12 you owe us 15 years of overpayments. I get people
13 contacting me like that on a regular basis. And I have no
14 reason to believe why that won't happen here.

15 SENIOR ATTORNEY SHIPLEY: And that simply just
16 not true.

17 MR. SILVER: Well --

18 SENIOR ATTORNEY SHIPLEY: And if it was true, he
19 should have testified at the hearing and he could have
20 presented evidence to the administrative law judge and he
21 didn't.

22 PRESIDENT JONES: Okay. Mrs. Pasquil Rogers.

23 BOARD MEMBER PASQUIL ROGERS: Thank you, Mr.
24 Chair.

25 To the staff, is there a time limit on when you

1 can go back and -- of, you know, and reach out to retirees
2 to say that we're going to -- we've noticed there's an
3 error, could you possibly be going back 15 years?

4 SENIOR ATTORNEY SHIPLEY: No. There's -- in the
5 mistake statute, there's a statute of limitations --

6 BOARD MEMBER PASQUIL ROGERS: Thank you.

7 SENIOR ATTORNEY SHIPLEY: -- which apply how long
8 CalPERS can go back to collect overpayments from benefits
9 that were paid to a member. And I think typically it
10 would be three years, if there was an error, but it
11 depends on the situation, but it wouldn't 15 years.

12 MR. SILVER: Well, excuse me, you should see some
13 of the people who've come into my office and some of the
14 letters they've received, Mr. Shipley. And I -- there
15 must be somebody from CalPERS staff in the audience. I've
16 seen -- I guarantee you those letters exist.

17 PRESIDENT JONES: Okay. This is --

18 MR. SILVER: It's not a three-year statute.

19 PRESIDENT JONES: Okay. Seeing no additional
20 questions from Board members, we're going to convene in
21 our chambers and discuss this matter, and we'll return in
22 open session to share what that decision is.

23 SENIOR ATTORNEY SHIPLEY: Thank you.

24 (Off record: 10:19 a.m.)

25 (Thereupon the meeting recessed

1 into closed session.)

2 (Thereupon the meeting reconvened open session.)

3 (On record: 10:43 a.m.)

4 PRESIDENT JONES: Okay. We are still on Board
5 Agenda Item number 3, the Wheeler, Valdez, et al. full
6 Board hearing.

7 Then we need to take another roll call to be sure
8 everybody is here that was here before.

9 Wait a minute. Just a minute.

10 BOARD SECRETARY BUCHANAN: Okay.

11 PRESIDENT JONES: See that's why we need roll
12 calls.

13 Okay.

14 BOARD SECRETARY BUCHANAN: Okay. Henry Jones?

15 PRESIDENT JONES: Here.

16 BOARD SECRETARY BUCHANAN: Theresa Taylor?

17 VICE PRESIDENT TAYLOR: Here.

18 BOARD SECRETARY BUCHANAN: Margaret Brown?

19 BOARD MEMBER BROWN: Here.

20 BOARD SECRETARY BUCHANAN: Rob Feckner?

21 BOARD MEMBER FECKNER: Here.

22 BOARD SECRETARY BUCHANAN: Dana Hollinger?

23 BOARD MEMBER HOLLINGER: Here.

24 BOARD SECRETARY BUCHANAN: Adria Jenkins-Jones?

25 BOARD MEMBER JENKINS-JONES: Here.

1 BOARD SECRETARY BUCHANAN: Frank Ruffino for
2 Fiona Ma?

3 ACTING BOARD MEMBER RUFFINO: Present.

4 BOARD SECRETARY BUCHANAN: David Miller?

5 BOARD MEMBER MILLER: Here.

6 BOARD SECRETARY BUCHANAN: Jason Perez?

7 PRESIDENT JONES: Excused.

8 BOARD SECRETARY BUCHANAN: Mona Pasquil Rogers?

9 BOARD MEMBER PASQUIL ROGERS: Here.

10 BOARD SECRETARY BUCHANAN: Ramon Rubalcava?

11 BOARD MEMBER RUBALCAVA: Here.

12 BOARD SECRETARY BUCHANAN: Bill Slaton?

13 BOARD MEMBER SLATON: Here.

14 BOARD SECRETARY BUCHANAN: And Lynn Paquin for
15 Betty Yee.

16 ACTING BOARD MEMBER PAQUIN: Here.

17 PRESIDENT JONES: Okay. Thank you.

18 At this time, I call on the Vice President, Ms.
19 Taylor.

20 VICE PRESIDENT TAYLOR: Thank you. I move to
21 reject -- am I on.

22 PRESIDENT JONES: Wait, wait. Now, you're on.

23 VICE PRESIDENT TAYLOR: Oh, now I'm am.

24 PRESIDENT JONES: Okay.

25 VICE PRESIDENT TAYLOR: I don't know that

1 happened.

2 PRESIDENT JONES: I don't either.

3 VICE PRESIDENT TAYLOR: Oh, your magic.

4 I move to reject the proposed decision of the
5 administrative law judge, deny the appeals, and issue a
6 revised final decision of the Board as argued by staff.

7 PRESIDENT JONES: Is there a second?

8 BOARD MEMBER HOLLINGER: Second.

9 PRESIDENT JONES: Second. Moved by Taylor,
10 second by Ms. Hollinger.

11 All those in favor say aye?

12 (Ayes.)

13 PRESIDENT JONES: Opposed?

14 Hearing none. The item is approved.

15 This meeting is adjourned.

16 (Thereupon the California Public Employees'
17 Retirement System, Board of Administration
18 open session meeting adjourned at 10:45 a.m.)
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C E R T I F I C A T E O F R E P O R T E R

I, JAMES F. PETERS, a Certified Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing California Public Employees' Retirement System, Board of Administration open session meeting was reported in shorthand by me, James F. Peters, a Certified Shorthand Reporter of the State of California.

That the said proceedings was taken before me, in shorthand writing, and was thereafter transcribed, under my direction, by computer-assisted transcription.

I further certify that I am not of counsel or attorney for any of the parties to said meeting nor in any way interested in the outcome of said meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 25th day of February, 2019.



JAMES F. PETERS, CSR
Certified Shorthand Reporter
License No. 10063