STAFF’S ARGUMENT TO ADOPT THE PROPOSED DECISION, AS MODIFIED

Lester E. Eaton (Respondent Eaton) volunteered to serve as a Reserve Correctional Officer (RCO) for Respondent County of Sutter (County) on July 11, 2003. He held the position of RCO until November 19, 2005.

Respondent Eaton was hired as a Correctional Officer for the County on November 20, 2005. He is still employed as a Correctional Sergeant for the County.

On October 5, 2012, Respondent Eaton signed a "Request for Service Credit Cost Information-Service Prior to Membership" (SPM) form requesting information for the cost of service credit for the period of July 11, 2003, through November 19, 2005.

At the request of Respondent Eaton, Cecilia Roma, Executive Secretary II with the County Sheriff’s Office, provided a letter, dated August 12, 2013, to CalPERS which certified that Respondent Eaton was a current employee of the County. The letter also stated that Respondent Eaton started at the County as an RCO on July 11, 2003, earning $6.25 per hour, and continued in that position until November 19, 2005.

Based on the information provided by the County, CalPERS determined that Respondent Eaton qualified for membership by December 2003. CalPERS notified the County of this determination, by letter dated August 13, 2013.

On October 1, 2013, the County provided CalPERS with additional information concerning Respondent Eaton’s employment as an RCO. In the letter, the County explained:

RESERVE Correctional Sergeant Lester Eaton was not an employee of the Sutter County Sheriff’s Office during the period of July 11, 2003 through November 19, 2005. During that timeframe Reserve Correctional Sergeant Eaton was a volunteer under Sutter County Ordinance Chapter 330, which was approved by action of the Board on June 22, 1970.

The stipend provided to Reserve Correctional Sergeant Eaton was not to compensate for hourly services. The stipend is to defray the ancillary expenses incurred by Reservists in the course of volunteering, such as the purchase and professional dry cleaning expenses for uniform maintenance, and for miscellaneous safety equipment. (emphasis in original)
The County also provided a copy of Ordinance 404, section 1, Chapter 330, which provides in relevant part:

330-010 - SHERIFF’S RESERVE UNIT CREATED A Sheriffs Reserve Unit hereby is created and established as an organization which shall be composed of person who shall have been appointed and sworn in as members thereof of the Sheriff or Undersheriff. The number of members in the Unit may be regulated by the Sheriff as to the needs of personnel by the County of Sutter and/or the Sheriff. The members shall serve gratuitously as such except, when paid as authorized by the County of Sutter or the Sheriff.

330-040 - SHIFTS; COMPENSATION Each member of the Unit shall serve as such for at least two assigned shifts each calendar month for which he shall be paid the sum of ten dollars ($10.00) per shift as reimbursement to him for expenses and not as salary, wages, or compensation for services rendered.

Based on the additional information provided by the County, CalPERS determined that Respondent Eaton’s position as an RCO was a volunteer position and the stipend he received did not constitute compensation earnable. Respondent Eaton was not eligible to purchase the SPM service credit for the period of July 11, 2003 through November 19, 2005, because the retirement law does not permit service credit for non-compensated employment.


On November 18, 2015, Respondent Eaton provided CalPERS with his W-2 tax statements from the County documenting money he earned as an RCO. Respondent Eaton requested that CalPERS reconsider its determination.

After reviewing all the information provided by Respondent Eaton and the County, CalPERS determined that Respondent Eaton’s service as an RCO from July 11, 2003 through November 19, 2005, was performed as a volunteer and therefore he was not eligible to purchase SPM.

CalPERS informed Respondent Eaton and the County of its determination by letter dated August 9, 2017.

Respondent Eaton appealed this determination and exercised his right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearing. A hearing was held on November 13, 2018. Respondent Eaton and the County were represented by counsel at the hearing.
At the hearing, Respondent Eaton presented the testimony of Roy Whiteaker in support of his appeal. Mr. Whiteaker testified that he was elected Sheriff of the County in 1970 and retired in January 1991. Mr. Whiteaker did not work for the County at the time Respondent Eaton served as an RCO. Mr. Whiteaker testified that he was not familiar with the implementation of the RCO program as of 2003.

Respondent Eaton testified on his own behalf. Respondent Eaton explained that he wanted to work as a Correctional Officer in 2003, but there were no openings. Respondent Eaton testified that he applied to work as an RCO to get his "foot in the door." As an RCO, Respondent Eaton was required to work a minimum of 16 hours per month. An average Correctional Officer worked 160 hours per month. As an RCO, Respondent Eaton did not receive medical benefits. He did not receive vacation hours, sick leave or holiday pay. He was not a part of a union or bargaining unit and he could be released as an RCO at any time without cause. He also did not receive performance evaluations.

Initially, Respondent Eaton was paid $6.25 per hour and in late 2004 his pay was raised to $6.50 per hour. Respondent Eaton testified that he was required to purchase his uniform and equipment. He estimated the total cost of his uniform in 2003 was approximately $700. Between 2003 and 2005, he had approximately five uniform sets, the total cost of which did not exceed $2,000.

Respondent Eaton testified that once he was hired as a Correctional Officer, his pay was raised to $18 per hour and he accrued vacation hours, sick leave, and holiday pay. He also received a separate uniform allowance. Respondent Eaton made contributions towards his CalPERS retirement and received medical benefits. He became a member of the Sutter Deputy Sheriffs Association. He received performance evaluations as a Correctional Officer. His employment as a Correctional Officer cannot be terminated without Respondent Eaton being afforded due process rights.

At the hearing, the County presented the testimony of Captain David Samson and Christine Luigard. During his tenure with the County Sheriff's office, Captain Samson oversaw the County's volunteer RCO units and divisions. Captain Samson testified that there is a separate application process for the RCO positions, which does not follow the same procedure as a Correctional Officer. Additionally, the pay given to RCOs is intended to be a uniform allowance. Captain Samson also explained that the pay for RCOs is taken from the Sheriff's Office budget, which is approved by the County Board of Supervisors, and which includes a specific allocation for the money paid to RCOs.

Ms. Luigard is a Human Resources Assistant for the County. Ms. Luigard testified that she is familiar with the County's "Step Table," which lists all the County's classifications and payrates. She reviewed the County's Step Table for 2003, 2004, and 2005 and the RCO position was not listed on these tables because RCO is not a county classification. Additionally, Ms. Luigard explained the County's Human Resources office does not maintain personnel files for RCOs because they are not County employees.
CalPERS presented the testimony of a CalPERS program staff member. He explained that for Respondent Eaton to be eligible to purchase SPM, he would have had to perform work for the County which was considered “compensation earnable” under the CalPERS standards. Mr. Camacho testified that, based on the information provided by the County and Respondent Eaton, the money Respondent Eaton received from the County was not compensation earnable under Government Code section 20636. Specifically, Respondent Eaton's position as an RCO was not part of the group or class of Correctional Officers who are considered employees of the County. The money RCOs received from the County was a stipend to defray necessary costs, such as uniforms and equipment, and not to compensate RCOs for services rendered. The RCO position and stipend amount was not listed on any available pay schedule. Additionally, an RCO was only required to work 16 hours per month to maintain the RCO status and had the option to decline shifts. Conversely, Correctional Officers were required to work a fulltime schedule and could not decline a shift. Based on this information, CalPERS determined that Respondent Eaton was not eligible to purchase SPM service credit for the period he worked as an RCO.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent Eaton’s appeal and upheld CalPERS’ determination. The ALJ found that the evidence established that the monies paid to Respondent Eaton while he volunteered as an RCO did not meet the definition of "compensation earnable" under Government Code section 20636. The RCO position was not included as a County position classification. Pursuant to County Ordinance 404, section 1, Chapter 330, the money provided to RCOs by the County for volunteering was "reimbursement ... for expenses and not as salary, wages, or compensation for services rendered."

While Respondent Eaton worked more hours than the 16 hours per month minimum for a RCO to maintain reserve status, he did so to "get his foot in the door" and improve his chances of obtaining a Correctional Officer position. As a volunteer RCO, he was not required to undergo the same hiring process as individuals hired as a Correctional Officer, he was not employed on a full-time basis, he did not have normal work hours, and he was free to decline shifts. The ALJ held that Respondent Eaton's ability to take on more shifts, thereby increasing the total stipend amount he received from the County, does not transform the money received to compensation earnable under the PERL.

In the Proposed Decision, the ALJ concluded that Respondent Eaton did not meet his burden to establish that he is entitled to purchase SPM service credit for the period he served as an RCO for the County.

Pursuant to Government Code section 11517 (c)(2)(C), the Board is authorized to "make technical or other minor changes in the Proposed Decision." In order to avoid ambiguity, staff recommends that the date on page two, paragraph three, at line four be changed from “July 11, 2013,” to “July 11, 2003” so that the comma following the date is removed.
For all the above reasons, staff argues that the Proposed Decision be adopted by the Board, as modified.

April 17, 2019

AUSTA WAKILY
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