ATTACHMENT B

STAFF’S ARGUMENT
Randall Champion (Respondent) became a member of CalPERS by virtue of his employment with the City of Benicia from July 15, 1987, until November 2001. On December 10, 2001, Respondent began working with the Contra Costa Fire Protection District (Respondent District) and established membership with Contra Costa County Employees’ Retirement Association (CCCERA). CCCERA has a reciprocity agreement with CalPERS. As a result, CalPERS was able to use Respondent’s compensation from Respondent District in his compensation calculation. To the extent it complied with the Public Employees’ Retirement Law.

Respondent retired for service from CalPERS effective September 30, 2017 and has been receiving his retirement allowance since that time. As a result of the reciprocity agreement between CalPERS and CCCERA, CalPERS utilized the highest final compensation for purposes of calculating retirement benefits. In this case, Respondent’s final compensation was earned while he was a member of CCCERA.

CCCERA used the “Fire Investigation Standby” in the calculation of final compensation for purposes of Respondent’s retirement benefits from that system. When the same information was provided to CalPERS for purposes of calculating Respondent’s retirement benefit, CalPERS staff determined that the “Fire Investigation Standby” should be excluded. Thus, CalPERS used a lower final compensation for calculating Respondent’s retirement benefits than CCCERA did.

CalPERS determined that the “Fire Investigation Standby” pay was an item of special compensation and could not be included in final compensation because the payments did not meet the definition of compensation earnable and special compensation under Government Code section 20636.

Respondent appealed this determination and exercised his right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A hearing was held on March 12, 2019. Respondent was represented by counsel at the hearing. Respondent District did not appear at the hearing and the case proceeded as a default under Government Code section 11520, as to Respondent District only.

Respondent testified on his own behalf. Respondent testified regarding his duties as a Fire Prevention Captain when he was employed by Respondent District. Respondent testified that he was “on-call” ten days out of the month and his “on-call” schedule overlapped with his regular work schedule approximately 38 percent of the time. Respondent also called former co-workers to testify regarding the job duties of a Fire Prevention Captain.
After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent’s appeal. The ALJ upheld that the “Fire Investigation Standby” pay is not compensation earnable under Government Code section 20636. The ALJ noted that “[w]hile respondent’s on-call hours overlapped with his normal working hours 38 percent of the time, the majority of time he was assigned to be on-call was while he was off-duty. Moreover, the Memorandum of Understanding explicitly states that the standby pay is for “off-duty” hours.”

In the Proposed Decision, the ALJ concludes that the “Fire Investigation Standby” pay cannot be included in the calculation of Respondent’s retirement benefits.

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 third sentence, in paragraph 10, on page 8, should state (Gov. Code, §2036, subd. (c)(7).) instead of (Gov. Code, §2036, subd. (g)(4)(I).)

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

August 21, 2019

PREET KAUR
Senior Attorney