ATTACHMENT C

RESPONDENT(S) ARGUMENT(S)
August 6, 2019

Via Facsimile & U.S. Mail

Cheree Swedensky, Assistant to the Board
CalPERS Executive Office
P.O. Box 942701
Sacramento, CA 94229-2701
Fax: (916) 795-3972

Re: In the Matter of the Appeal Re Final Compensation Calculation of RANDALL C. CHAMPION, Respondent, and CONTRA COSTA FIRE PROTECTION DISTRICT, Respondent

Dear Ms. Swedensky:

I represented Randall C. Champion in his appeal of CalPERS’ determination of his final compensation. Enclosed please find Mr. Champion’s Written Arguments against the Proposed Decision in this matter, for consideration by the Board of Administration. I can be reached directly at (916) 491-4242 or be email at steve@mastagni.com if you have any questions. Thank you for your assistance.

Sincerely,

MASTAGNI HOLSTEDT, APC

STEVEN W. WELTY
Attorney at Law

Enclosure
cc: See attached Proof of Service
STATEMENT OF FACTS

Champion testified under oath at the hearing and established the following facts.

Champion was hired by the District in November 2001 as a Fire Investigator. In 2009 Champion was promoted to the position of Fire Prevention Captain. Champion continued to work as a Fire Prevention Captain until his retirement in September 2017 (TT Page 38 Lines 13-23.) Prior to that Champion worked as a firefighter paramedic for the City of Benicia from 1987 to 1993. From 1993 to 2001 Champion worked for the City of Benicia as a police officer (TT Page 39 Lines 5-15.) The District employees are members of the CCCERA. While working for Benicia, Champion was a member of CalPERS. There is reciprocity between the two systems. Champion retired from both systems concurrently in September 2017 (TT Page 38 Lines 19-20; Page 39 14-24.)
As a Fire Prevention Captain, Champion was assigned to the "Fire Investigation Unit" (hereinafter "Unit"). Champion was responsible for supervising the investigators in the Unit, and for conducting investigations himself. The position was a sworn peace officer position. The primary function of the Unit was to criminally investigate the origin and cause of suspicious fires where arson or intentional ignition was possible, and to effect an arrest if necessary. These investigations were the exclusive responsibility of the Unit. Champion averaged about 200 investigations a year (TT Page 40 Lines 3-23; Page 45 Lines 21-24; Page 46 Lines 3-27; Respondent's Exhibit "F"). Champion was required to testify in numerous criminal prosecutions as an expert in fire and arson investigation (TT Page 58; Respondent's Exhibit "J"). As Fire Prevention Captain, Champion reported directly to the Fire Marshall, who reported to the Deputy Chief (TT Page 41 Lines 7-11.) Every employee in the Unit had to obtain special training and education to be in the Unit. Specifically 40 hours of Fire Investigation 1A, 40-80 hours of a Penal Code 832 Arrest and Firearms course, 40 hours of Fire Investigation 1B, 40 hours of Fire Investigation 2A, and 40 hours of Fire Investigation 2B, in addition to continued training related to arson investigation (TT Page 43.)

The Unit was responsible for responding out to the scenes of suspicious fires 24 hours a day, 7 days a week. An on call schedule was in place that covered a series of days that encompassed the duty hours as well as the off duty hours. During the on call the investigator and / or Fire Captain would respond to the scene and conduct an investigation. The response would occur whether on duty or off duty. The only difference was that overtime would be paid if the response was during off duty time. Champion averaged 10 days per month of being on call. Working the on call was a mandatory part of the position of being Fire Prevention Captain (TT Pages 44-45; 47-48; Respondent's Exhibits "A"; "B"; "C"; "D" and "K"). Champion was able to calculate that 38.5% of his on call responsibility occurred during his normal working hours (TT Pages 54-55 Lines 21-24; Respondent's Exhibit "I").

As a member of the Unit, Champion qualified for a 5% pay increase pursuant to MOU section 5.12 "Fire Investigation Unit" (Respondent's Exhibit "G" BS 397; Respondent's Exhibit "H" BS 471.) He received the pay continuously from 2009 to his retirement in 2017 (TT Page 54.)
Lewis Broschard is the Deputy Fire Chief for the District. He testified under oath and corroborated the testimony of Champion (TT Pages 16-27.) It was stipulated that retired District Fire Marshalls Robert Marshall and Richard Carpenter would have testified substantially similar to Broschard if called to testify (TT Page 11 Lines 2-15.) Lisa Martinez is a Fire Prevention Captain with the District. She testified under oath and corroborated the testimony of Champion (TT Pages 28-37.) It was stipulated that Fire Prevention Captain Laing would have testified substantially similar to Martinez if called to testify (TT Pages 11-12 Lines 22-1.)

II.

ARGUMENT

In Champion’s case the MOU section 512 “Fire Investigation Unit” pay is special compensation. It is a payment received for special skills, knowledge, abilities, work assignment, workdays or hours, or other work conditions. The Unit has gone through special training, is the only personnel unit doing the criminal investigations, and consists entirely of peace officers. They are on a special schedule as they must be available 24 hours a day, 7 days a week, to conduct the investigations concerning the ignition of suspicious fires.

The pay is contained in an publically available MOU that was agreed to by the District and the employee union and applies to the identified group of employees assigned to the Unit. The pay is itemized in each payroll check and identified as “Fire Investigation Standby” (Respondent’s Exhibit “E”.)

CalPERS’ attorneys argued that the pay was not for services rendered during normal working hours and is not a specifically identified “special compensation” as identified by the PERL. Special compensation must be specifically listed to be eligible for inclusion in final compensation. In this case Champion’s MOU section 512 “Fire Investigation Unit” pay falls under the specifically identified pay of “Fire Investigator Premium.” The Unit consists solely of personnel who are routinely and consistently assigned to investigate causes of destructive burning. That is all they do. CalPERS’ attorneys argued that the pay is only for off duty standby differential, and is not listed in section 571.
CalPERS' attorneys argument is not persuasive. It is true that the MOU provision speaks of a 5% pay differential if assigned to participate in the Fire Investigation Off-Duty Standby Team. But that is not an accurate description of what the pay is for. We must look to what is actually being compensated, not just the description. Unit members are actually on call all the time during on and off duty time. Being on call is a mandatory part of taking the assignment. The reason for the requirement is because the Unit consists of the only personnel conducting the investigations into the causes of destructive burning. The premium pay is actually compensating members of the Unit for their routine responsibilities. Specifically, responding to the scenes of destructive burnings to conduct investigations into the cause of the fire, day or night, 7 days a week. Being on call is automatic. The on call is a fundamental piece of the overall specialty assignment. The compensation meets the requirements of “Fire Investigator Premium”.

CalPERS' attorneys argued it is compensation for off duty work and not pay during normal working hours. The argument is not persuasive. The 5% pay applies to all the normal work hours Champion worked for the pay period. It is no different than educational incentive or other pays that CalPERS recognizes as final compensation. If Champion actually gets called out he would receive overtime for the number of overtime hours worked. There is no dispute that such overtime pay is not pensionable.

In the alternative, if it is determined the section 512 pay attributed to off duty hours is not eligible for final compensation, we would argue that the 38.5% of the time Champion was on call while on duty be included in the calculation. As stated above, a substantial amount of the on call occurs during normal work hours and would not be considered compensation for off duty work.

Champion has also prepared a statement with his personal perspective on this matter for consideration. It is attached to the end of this argument.

Respectfully Submitted:

Dated: August 6, 2019

MASTAGNI HOLSTEDT, APC

STEVEN W. WELTY
Attorney for Randall Champion
To: Board of Administration, CalPERS

My name is Randall Champion. This letter concerns my personal perspective of the proposed decision you are going to review.

I began pursuing my career at the age of 15 ½ when I became an explorer scout at the Benicia Fire Department. My uncle was the fire chief and my two cousins were volunteer firefighters. My other uncle was a retired CHP officer. Public safety service was in my blood.

As I began my professional career, I attended EMT school, Paramedic school, the fire academy, reserve police academy, and a P.O.S.T. police academy. Early in my career, I also developed an interest in the fire/arson investigation field. During my 30 plus year professional career I acquired over 4900 hours of training in the fire service, law enforcement and the fire investigation field. I also acquired an associates degree in criminal justice. Over 1750 hours of my training is specifically related to the fire/arson investigation field. I have been involved in the investigation of over 3300 incidents between 2001-2017. I belong to 3 fire/arson investigation professional organizations. It should also be noted that as a full-time fire investigator with the CCCFPD, we are armed peace officers under Penal Code Section 830.37(a).

When I was hired by the Contra Costa County Fire Protection District (CCCFPD) in November 2001 by then Fire/Marshal Larry Thude, he made it very clear to me I would be “on-call” and subject to a written schedule for fire/arson investigation duties. He also made it very clear that as the District’s first full-time fire investigators we would be performing these specialized duties during our 40-hour work week. For the next 16 years, until the day I retired I did just that. I worked more than my fair share or regularly scheduled days, evenings, weekends and holidays on-call. Since I was the most qualified, most highly trained and experienced person employed by the District I was the “go to” person to cover vacancies in the schedule in addition to my own shifts.

Being on-call as both a fire investigator and fire prevention captain assigned as the Fire Investigation Unit (FIU) Supervisor was expected by my agency and it was confirmed by now Fire Chief Lewis Broschard in testimony provided by him in person at the CalPERS hearing on 3/12/19. It was also confirmed by a CCCFPD policy (13.001) Standby Programs that I be on-call.

During my 16-year career at the CCCFPD, I never knew or was I ever told by my agency, CalPERS, Contra Costa County Employees Retirement Association (CCCERA) or my firefighters Local 1230 how the rules of the California Public Employees Retirement Law (PERL) would or could affect my retirement pay calculations. As a matter of fact, as I prepared to choose my retirement date, I attended 3 “retirement counseling” appointments between 2013 and 2017. Not one of the CCCERA counselors told me my “on-call” pay would NOT be included in my retirement calculation. I was told it should be included but would still have to be approved by the CCCERA board. I was aware of the current pending lawsuit regarding the terminal pay issue, but it has not been decided and is still under appeal. My “on-call” pay was not spiked.
nor was it ever voluntary. I was paid to be on-call for my entire 16-year employment as a fire/arson investigator.

I believe that the work I performed during my 16-year career should fall under “special compensation” regarding the PERL rules. At my hearing, I provided evidence that I performed arson investigation duties 38% of the time during normal working hours. In fact, based upon my position, my training education and experience I was the person relied upon by District and other county agency personnel for all fire/arson related issues. My question is, how does CalPERS expect me to be paid “standby pay, during normal working hours” when I am already being paid a base salary during those same hours?

As a matter of fact, CCCERA based my monthly retirement contribution during my 16-year career on my "Regular Pay, Fire Training/Prevnt Captains and Fire Investigation Standby" pay. A percentage of these monthly earnings were deducted from my check every month to assist in the funding of my retirement. Once I retired, I am now being told by CalPERS and CCCERA that my Standby pay will not be included in my retirement calculation. I am extremely frustrated by this. How is it reasonable that I pay into a retirement system for 16 years only to be told upon my retirement that I am not going to get paid what I paid for? It is my understanding that if CCCFPD had combined the three pay categories into a single “Regular Pay” line, none of this would have been an issue.

As an employee, I have no control over how my agency structured our pay scales, how M.O.U.’s or job descriptions were worded or what policies were or were not written to address this issue I am being affected by. I have paid thousands of dollars out of my own pocket to fight for what I thought was part of my retirement benefit.

The CalPERS definition of “Fire Investigator Premium”, is an item recognized as special compensation for those personnel who are routinely and consistently assigned to investigate causes of destructive burning”. This is the exact job I performed for 16 years. I performed this job during my normal 40-hour schedule, on holidays, weekends and days off. How reasonable is it for me to be penalized because of how the M.O.U. I worked under was worded or how my paycheck was broken down. The fact remains that I performed the job and I paid a percentage of my monthly pay into the retirement system so that it would all be included in my retirement calculation.

I ask that the CalPERS board reject the Proposed Decision.

Respectfully submitted,

Randall C. Champion

Case No. 2018-0527
OAH No. 2018110132
PROOF OF SERVICE (C.C.P. §1013a)

Case Name: In the Matter of the Appeal Regarding the Final Compensation of RANDALL C. CHAMPION, Respondent, and CONTRA COSTA FIRE PROTECTION DISTRICT, Respondent

Case Number: OAH Case No. 2018110132

I am a citizen of the United States and a resident of the County of Sacramento. I am over the age of 18 years and am not a party to the within action. My business address is 1912 I Street, Sacramento, CA 95811.

On August 6, 2019, I served the below-described document(s) by the following means of service:

✓ BY U.S. FIRST-CLASS MAIL: I placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this firm’s business practice of collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully paid.

NAME/DESCRIPTION OF DOCUMENT(S) SERVED:

RESPONDENT CHAMPION’S WRITTEN ARGUMENTS

ADDRESSES OF SERVICE:

Preet Kaur, Senior Attorney
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Cheree Swedensky, Assistant to the Board
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Sacramento, CA 94229-2701

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct and was executed on August 6, 2019, at Sacramento, California.

PATRICK R. BARBIERI