ATTACHMENT B

STAFF’S ARGUMENT
STAFF’S ARGUMENT TO ADOPT THE PROPOSED DECISION

Kimberly F. Garl (Respondent) became a miscellaneous member of CalPERS by virtue of her employment with California Department of Transportation, from October 16, 1990, through January 8, 2000. On January 11, 2000, Respondent began working with the County of Sonoma and established membership with Sonoma County Employees' Retirement Association (SCERA). SCERA has a reciprocity agreement with CalPERS. As a result, CalPERS was able to use Respondent’s compensation from SCERA in her final compensation calculation to the extent it complied with the Public Employees' Retirement Law (PERL).

Respondent retired for service from CalPERS effective March 13, 2018, and has been receiving her retirement allowance since that time. As a result of the reciprocity agreement between CalPERS and SCERA, CalPERS utilized the highest final compensation for purposes of calculating retirement benefits. In this case, Respondent’s final compensation was earned while she was a member of SCERA.

SCERA used certain special compensation 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 certain items of the compensation should be excluded. Thus, CalPERS used a lower final compensation for calculating Respondent’s retirement benefits than SCERA did.

CalPERS determined that the cash allowance, deferred compensation, vacation buyback, and standby pay were not items 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 her right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A hearing was held on May 14, 2019. Respondent was represented by counsel at the hearing. Respondent SCERA did not appear at the hearing and the case proceeded as a default under Government Code section 11520, as to Respondent SCERA only.

Respondent testified on her own behalf. Respondent testified that the four items of compensation should be included as part of her base payrate. Respondent did not call any witnesses to testify on her behalf.
CalPERS staff testified that CalPERS did not include the value of these compensation items because the items do not comply with the requirement of being specifically listed in California Code of Regulations, title 2, section 571(a).

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent’s appeal. The ALJ found that the cash allowance, deferred compensation, vacation buyback, and standby pay did not qualify as payrate under the PERL because the Memorandum of Understanding is not a “publicly available pay schedule” and did not contain a “list, catalog, or inventory of the rate of pay or base pay of one or more employees.” (Tanner v. CalPERS (2016) 248 Cal.App.4th 743, 755.)

The ALJ further found that standby pay, vacation buyback and deferred compensation were not compensation for services rendered during normal working hours and therefore could not be considered payrate. As for cash allowance, the ALJ also found that the cash allowance, deferred compensation, vacation buyback, and standby pay do not qualify as special compensation because they are not specifically listed in California Code of Regulations, title 2, section 571(a).

In the Proposed Decision, the ALJ concludes that the cash allowance, deferred compensation, vacation buyback, and standby pay cannot be included in the calculation of Respondent’s retirement benefits.

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

August 21, 2019

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PREET KAUR
Senior Attorney