ATTACHMENT B

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

In the year before Respondent Fariborz Shahidi (Respondent) signed his application for service retirement and retired on August 2, 2014, Respondent City of Laguna Beach (the City) incorrectly reported Respondent’s bonus to CalPERS as a lump sum. This error caused Respondent’s retirement allowance to be higher than what he was entitled to receive. CalPERS used the erroneous information to calculate and pay Respondent’s retirement allowance from 2014 to 2018. CalPERS discovered the error during the May 2017 Audit and determined that Respondent was receiving a higher retirement allowance than he was entitled to receive. In September 2018, CalPERS started recouping the overpayment by reducing Respondent’s monthly retirement allowance. Respondent contends that CalPERS should not reduce his monthly retirement allowance, and filed an appeal on July 12, 2018.

In July 2013, the City entered into an agreement with its union, providing for a bonus plan which allowed employees to receive a lump sum bonus “for employees whose performance merits such an increase.” CalPERS was not a party to the agreement.

On August 2, 2014, Respondent retired from service, with 28.761 years of service. He has been receiving his retirement allowance since that date. His retirement allowance was based, in part, on a lump sum bonus payment of $2,965 reported and paid by the City on January 5, 2014 (corresponding to his work completed from December 2012 to December 2013).

On May 25, 2017, CalPERS completed a Public Agency Review Audit of compensation reported by the City. The Audit discovered that the City inaccurately reported special compensation of bonus pay for numerous employees including Respondent in lump sum amounts. The City agreed with the findings, and worked with CalPERS to make the necessary adjustments to its payroll reports. The City reversed the incorrect reporting of the bonus payments as a single lump sum, and then correctly reported the payments “as earned” over the year for which the bonus was paid.

Once the City correctly reported Respondent’s final compensation, CalPERS recalculated Respondent’s final compensation. His final compensation decreased by $61.98 per month, which in turn reduced his monthly retirement allowance by $46.14 per month. Because the incorrect retirement allowance was paid each month from 2014 to 2018, an overpayment of $2,105.38 was created. CalPERS determined Respondent must repay the overpayment.

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 May 21, 2019. Respondent represented himself at hearing. Respondent City did not appear at the hearing.
Prior to the hearing, CalPERS explained the hearing process to Respondent and the need to support his case with witnesses and documents. CalPERS provided Respondent with a copy of the administrative hearing process pamphlet. CalPERS answered Respondent’s questions and clarified how to obtain further information on the process.

Respondent testified on his own behalf. Respondent testified that he relied on representations made by CalPERS about the amount of retirement allowance he could expect, and based his decision to retire on those representations. Had he known the correct information, he would have delayed retirement and thereby increased his retirement allowance. Respondent relies on his retirement allowance for living expenses, and contends it would be unfair to penalize him for errors made by the City and relied upon by CalPERS.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent’s appeal. The ALJ found that CalPERS correctly determined that Respondent is entitled to no more in his retirement allowance than is allowed by law. Therefore, CalPERS is mandated to adjust Respondent’s retirement allowance and recoup the overpayment.

The ALJ found Respondent bears the burden of proof to show that he is entitled to an amount of final compensation that includes his bonus pay as a lump sum. The ALJ initially quoted from Government Code section 20630(b) which states in part: “When compensation is reported to the board, the employer shall identify the pay period in which the compensation was earned regardless of when reported or paid.” The ALJ concluded that the City did not comply with this requirement when it reported Respondent’s bonus as a lump sum, rather than monthly installments.

The ALJ then reviewed California Code of Regulations, section 571 (b)(5), which states that a bonus must be paid “periodically as earned.” Here, the ALJ found that Respondent’s bonus should have been paid in 12 equal monthly installments rather than an annual lump sum.

The ALJ held that Respondent is only entitled to the benefits and status the law allows. Although the City made errors on which CalPERS and Respondent relied, nevertheless he is only entitled to the benefits allowable under law and not any overpayment.

Respondent argued that CalPERS is required to pay his pension based on reporting errors made by his employer of which he had no knowledge. This theory is called equitable estoppel, and the ALJ held that estoppel cannot be applied here. The ALJ quoted from a California Supreme Court’s decision which states that equitable estoppel should be applied to a governmental agency like CalPERS only in rare circumstances, and only when “the injustice which would result from a failure to uphold estoppel is of sufficient dimension to justify any effect upon public interest or policy which would result from the raising of an estoppel.” (City of Long Beach v. Mansell (1970) 3 Cal. 3d 462, 499.) The ALJ went on to hold that “estoppel will not be applied against the government
if doing so effectively nullifies a strong rule of policy adopted for the benefit of the public.” (Lentz v. McMahon (1989) 49 Cal.3d 393.)

Here, the ALJ found that Respondent did not overcome the public policy arguments raised by CalPERS. To do as Respondent requests would enlarge the authority of CalPERS regarding granting a beneficiary’s allowance to an amount in excess of the amount allowed by statute. It would be detrimental to the public policy behind the creation of CalPERS. CalPERS may only pay Respondent what it is statutorily authorized to pay. It is not estopped from reducing his retirement allowance from an incorrect amount to a correct amount. Judging the facts against the statutory and decisional law, the ALJ found that Respondent did not establish estoppel against CalPERS because to do so would violate strong public policy.

The ALJ reasoned that, “the Board owes a fiduciary duty of trustee to the trust, its members, its beneficiaries and all contracting agencies. It cannot ignore a mistake that benefits one person any more than it can refuse to correct one that inures to its benefit. To find estoppel in this case would be sufficiently averse to public interest and policy.” Here, the ALJ found that the Board has a primary obligation to protect the retirement fund for the benefit of all its members and beneficiaries and to minimize the employers’ costs of providing benefits and explained,

To allow Respondent to have a lifetime retirement allowance higher than permitted by statute would result in an unfunded liability, would allow Respondent to receive a windfall, and would have an adverse fiscal impact on Respondent’s employer, the City, against whose reserves the lifetime allowance will be drawn. The unfunded liability would pass to the City in the form of increased contributions and higher future contribution rates to fund its employees’ accounts. This would be a windfall to Respondent, or in equivalent legal terms, unjust enrichment.

The ALJ stated that to find an estoppel here would grant to CalPERS powers that were not ceded to it by the Legislature. The grant of power was to administer a plan based upon a specific statutory retirement benefit formula. To find an estoppel would be to allow CalPERS to unilaterally alter the statutory retirement benefit formula without benefit of enabling statutory authorization. That is the task of the Legislature, not the Board.

The ALJ found that the key issue is whether Respondent’s benefit is higher or lower than that of other retirees whose statutory retirement formula is exactly the same. The statutory retirement allowance is determined by a formula. To allow Respondent to have a higher allowance, based on an error, would be to treat him unequally in violation of the mandate given to CalPERS by the Legislature. This is against public policy.

For all the foregoing reasons, the ALJ denied Respondent’s appeal.
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, the staff recommends that the “City of Long Beach” be changed to the “City of Laguna Beach” throughout the Decision. The staff also recommends that the second heading “Respondent’s Hiring, Firing, Compensation and Retirement Allowance” be changed to read “Respondent’s Compensation and Retirement Allowance.”

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

August 21, 2019

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