ATTACHMENT E

THE PROPOSED DECISION
PROPOSED DECISION

Administrative Law Judge (ALJ) Erlinda G. Shrenger, State of California, Office of Administrative Hearings (OAH), heard this matter in Glendale, California on April 2, 2019.

Elizabeth Yelland, Senior Attorney, represented complainant Renee Ostrander, Chief, Employer Account Management Division, California Public Employees’ Retirement System (CalPERS).

Respondent Huasha L. Liu was present and represented herself.

No appearance was made by or on behalf of respondent Southern California Association of Governments.

Oral and documentary evidence was received on April 2, 2019. The ALJ granted respondent’s request to hold the record open so she could submit a “clean” copy of her notes as her closing brief. Counsel for CalPERS did not object and submitted CalPERS’s closing brief at the hearing. Based on discussions with the parties, the ALJ ordered respondent to submit her written closing brief to CalPERS’s counsel by April 5, 2019, and ordered CalPERS’s counsel to electronically file respondent’s brief with OAH by April 8, 2019. The ALJ further ordered that CalPERS would have until April 10, 2019, to submit its written response or objections to respondent’s brief. The parties timely submitted their briefs, which were marked as follows:
respondent Liu’s brief was marked as Exhibit F and CalPERS’s reply brief was marked as Exhibit 21.

The record was closed and the matter was submitted for decision on April 10, 2019.

FACTUAL FINDINGS

Parties and Jurisdiction

1. The Statement of Issues was made and filed by complainant in her official capacity.

2. CalPERS is governed by the Public Employees' Retirement Law (PERL). (Gov. Code, § 20000 et seq.) The implementing regulations for the PERL are set forth at California Code of Regulations, title 2 (C.C.R.), section 550 et seq.

3. The Board of Administration of CalPERS is the state agency vested with authority to manage and control CalPERS, to make rules and regulations as it deems proper, and to implement and enforce the PERL and its accompanying regulations. (Gov. Code, §§ 20120, et seq.) The Board is “the sole judge of the conditions under which persons may be admitted to or continue to receive benefits under this system.” (Gov. Code, § 20125.)

4. CalPERS is a defined benefit plan. Benefits for CalPERS members are funded by member and employer contributions and by interest and other earnings on those contributions. A public agency may participate in CalPERS only if it has entered into a contract with CalPERS. (Gov. Code, § 20460.)

5. Respondent Southern California Association of Governments (SCAG) is a public agency contracting with CalPERS for retirement benefits for its eligible employees. The provisions of SCAG’s contract with CalPERS are contained in the PERL.

6. Respondent Huasha L. Liu (respondent Liu) was employed by SCAG as a Planning Director starting on November 22, 1999. By virtue of that employment, respondent Liu is a local miscellaneous member of CalPERS.

7. On February 15, 2017, respondent Liu signed an application for service retirement. She retired for service effective March 22, 2017, with 18.337 years of service credit, and has been receiving her retirement allowance from that date.

8. By letter dated December 7, 2017, CalPERS notified respondent Liu that it had completed a review of compensation reported on her behalf by SCAG and identified compensation that did not comply with the PERL. CalPERS determined that the compensation in question, which was identified by SCAG as merit pay, did not meet the
definition of “special compensation” under C.C.R. section 571 and, thus, should not have been used in the calculation of her retirement benefits. The letter explained:

Special compensation that can be used in the calculation of retirement benefits is delineated specifically and exclusively in C.C.R. section 571(a). Only those items listed in C.C.R. section 571(a) and meeting all the criteria listed in C.C.R. section 571(b) are reportable. The Merit Pay that you received does not meet all of the criteria listed in C.C.R. section 571(a) due to the following reasons:

• It was not for superior performance as defined in C.C.R. section 571(a)(1).

• It was only available to employees who were at the top of their respective salary schedules: thus not available to all members in the group or class pursuant to C.C.R. section 571(b)(2).

(Exh. C.)

9. The December 7, 2017 letter, which was copied ("cc") to SCAG, stated that CalPERS asked SCAG “to reverse the identified compensation and all corresponding contributions that have been reported” and “to stop any future reporting to CalPERS of this type of compensation.” (Exh. C.) The December 7, 2017 letter advised respondent Liu of her right to appeal CalPERS’s determination.

10. On February 8, 2018, SCAG confirmed by email to CalPERS that it would reverse the merit pay transactions identified by CalPERS for respondent Liu. (Exh. 14.)

11. By letter dated March 1, 2018, respondent Liu appealed CalPERS’s determination regarding her merit pay, as set forth in its December 7, 2017 letter. (Exh. 6.)

12. Subsequently, respondent requested that CalPERS provide her with an amended determination letter showing the specific dollar amount of compensation being excluded from her final retirement benefit calculation. On December 6, 2018, CalPERS sent respondent Liu an amended determination letter which stated, in part: “The compensation in question was identified as Merit Pay, in the amount of $10,378.58 that was reported from October 31, 2016 to November 13, 2016.” (Exh. 4.) A copy of CalPERS’s letter to respondent Liu was also sent to SCAG. (Exh. 5.)

13. By letter dated February 28, 2019, respondent Liu appealed CalPERS’s determination to exclude the merit pay of $10,378.58 from the calculation of her final retirement benefit allowance. (Exh. A.) Her appeal letter stated in part:

I am filing this appeal to the Office of Administrative Hearings (OAH) regarding CalPERS’ recent policy change affecting a
group of employees who receive their merit pay in lump sum payments. The law remains the same. The change is merely CalPERS' reinterpretation of the law. As the [sic] result, my Final Compensation Amount for calculating my retirement allowance is being reduced over $900 per month, and many other retirees/employees are similarly affected. I respectfully request that you review and grant my appeal, and reimburse me and the other retirees for the pension payments we have lost because of this, and correct the policy so that the affected retirees/employees receive this compensation in our pensions going forward. As a member of CalPERS, I am entitled to retirement benefits that are based on factual and accurate earnable compensation under the law.^[1]

(Exh. A.)

14. As stated in the Statement of Issues, the issue presented in this appeal is: "Whether 'Bonus Pay' can be included in the calculation of respondent Liu's final compensation, as established by the PERL." (Exh. 1, p. 13.)

SCAG's Merit Pay Policy

15. SCAG implemented a Merit Pay Policy effective July 1, 2004, to "provide a merit increase to recognize an employee for performance and achievement of objectives." (Exh. 8.) The Merit Pay Policy provides in pertinent part:

The employee's annual performance evaluation and or/the [sic] probationary evaluation serve as the basis for a merit increase. Performance appraisals are completed on an annual basis for all employees except temporary, intern and probationary. . . .

[¶] . . . [¶]

The following guidelines linking the overall summary rating from the performance evaluation to the percentage of merit increase are also used:

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1 The only parties in this appeal are respondent Liu and SCAG. As stated in CalPERS's reply brief: "No other individuals have been named as parties to this appeal, and no decision can be rendered as to them." (Exh. 21.) Respondent Liu's statements that she is appealing on behalf of other similarly affected retirees/employees are disregarded.

2 At the hearing, the second issue alleged in the Statement of Issues, i.e., "Whether CalPERS is correct in collecting the overpayment," was deleted by interlineation at the request of CalPERS's counsel.
<table>
<thead>
<tr>
<th>Overall Percentage Evaluation Rating</th>
<th>Percentage of Increase</th>
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<tr>
<td>Unsatisfactory</td>
<td>0%</td>
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<td>Needs Improvement</td>
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<td>Meets Standards</td>
<td>0-3%</td>
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<td>Above Expectations</td>
<td>4-6%</td>
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<td>Excels</td>
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... Employees who are approved for a merit pay increase will receive either a base salary increase or if at the top of the approved salary range, a lump sum equivalent of the percentage increase on an annualized basis.

(Exh. 8.)

16. In July and August 2005, SCAG requested written approval from CalPERS to allow the merit pay received by employees in lump sum payments to be covered compensation for CalPERS benefits purposes. (Exh. 10.) By letter dated March 30, 2006, SCAG provided additional information requested by CalPERS regarding the Merit Pay Policy. (Exh. 12.) The March 30, 2006 letter included the following explanation of the merit pay SCAG paid to its employees:

Each employee receives a mid-year performance evaluation as a progress report and an end of fiscal year evaluation. The end of fiscal year performance evaluation rating determines the amount of compensation due the employee for the Merit Pay program. Merit pay is the only form of compensation adjustment that SCAG employees receive. Employees do not receive cost of living adjustments or any other salary increases. Employees who are not yet at the top of the salary range established for their position receive their merit pay in the form of a base salary adjustment. Those that are at the top of the range receive a lump sum equivalent to the annualized amount of the adjustment. Since this is the only form of compensation that employees receive, SCAG is requesting to establish these lump sum payments as covered compensation for CalPERS purposes.

(Exh. 12 (emphasis in original).)

17. By letter dated April 10, 2006, CalPERS notified SCAG that its “current bonus plan meets the definition of bonus/merit pay and is reportable to CalPERS for retirement purposes.” (Exh. 13.)
In 2017, CalPERS changed its policy regarding SCAG’s merit pay program to make lump sum merit payments no longer eligible for reporting to CalPERS for retirement purposes. (Exh. D, p. 42.)

CalPERS’s Determination

Pha Moua (Moua) has been employed by CalPERS as a Compensation Review Analyst in the Compensation Review Unit since 2017. Moua has a bachelor’s degree in business and received her master’s in business administration (MBA) in 2013. From 2013 to 2017, Moua worked for the Social Security Administration in customer service. Moua is familiar with the PERL and the implementing regulations. As a Compensation Review Analyst for CalPERS, her duties include reviewing compensation reported by employers to ensure that payrates and special compensation comply with the PERL.

Moua was the Compensation Review Analyst assigned to review respondent Liu’s case. CalPERS requested and received documentation from SCAG regarding respondent Liu’s compensation. Moua testified credibly regarding the review of respondent Liu’s compensation and CalPERS’s determination regarding the $10,378.58 merit pay at issue.

Under the PERL, the amount of a member’s service retirement allowance is calculated by applying a percentage figure, based upon the member’s age on the date of retirement, to the member’s years of service and the member’s “final compensation.” A member’s final compensation is determined, in part, by determining a member’s “compensation earnable,” which is defined in Government Code section 20636 and consists of “payrate” or “special compensation.” Compensation shall be reported by an employer “in accordance with Section 20636 and shall not exceed compensation earnable, as defined in Section 20636.” (Gov. Code, § 20630, subd. (b).) To determine a member’s compensation earnable, CalPERS reviews the payroll reported by the employer to determine whether the payroll or portion thereof constitutes “payrate” or “special compensation.”

Payrate Analysis

CalPERS determined that the $10,378.58 merit pay respondent Liu received in a lump sum payment was not “payrate.” “Payrate” is defined as “the normal monthly rate of pay or base pay of the member paid in cash . . . for services rendered on a full-time basis during normal working hours, pursuant to publicly available pay schedules.” (Gov. Code, § 20636, subd. (a).)

In accordance with SCAG’s Merit Pay Policy, respondent Liu received the $10,378.58 merit pay in a lump sum payment because, at the time of payment, she was already at the top of the salary schedule for her position. The merit pay was documented in a SCAG Personnel Action Form effective October 31, 2016, which confirmed that respondent Liu qualified for a five percent merit pay increase based on her 2015-2016 Performance Evaluation and, since she was already at the top of her salary range, she would receive the...
merit pay in a $10,378.58 lump sum payment as an “amount over top of range.” (Exh. 18.) Because the merit pay was paid over and above respondent Liu’s topped out salary, it did not meet the definition of “payrate.”

24. Moua testified that SCAG provided salary schedules, which she reviewed. According to the salary schedules, the top of the salary range for respondent Liu’s position was when her hourly rate was $99.85 (which corresponds to an annual salary of $207,693.82). (See Exh. 18). Moua explained that, once respondent Liu reached the top of her salary range, any additional compensation she received could not be “payrate” because it was beyond what was provided in the pay schedule. The $207,693.82 was respondent Liu’s maximum “payrate” and the $10,378.58 merit pay would need to be analyzed as “special compensation.”

SPECIAL COMPENSATION ANALYSIS

25. Under the PERL, “special compensation” is defined to include “a payment received for special skills, knowledge, abilities, work assignment, workdays or hours, or other work conditions.” (Gov. Code, § 20636, subd. (c)(1).) The CalPERS Board shall promulgate regulations that delineate more specifically and exclusively what constitutes “special compensation” under the PERL. (Gov. Code, § 20636, subd. (d).) C.C.R. section 571 is a regulation that further defines “special compensation.”

26. CalPERS determined that the $10,378.58 merit pay was not “special compensation” that could be used in the calculation of respondent Liu’s retirement benefit because it was not paid for “superior performance” as required by C.C.R. section 571 subdivision (a), and it was not available to “all members in the group or class” as required under C.C.R. section 571, subdivision (b)(2).

27. C.C.R. section 571, subdivision (a), sets forth an exclusive list of items that constitute “special compensation” that must be reported to CalPERS: “The following list exclusively identifies and defines special compensation items for members employed by contract agency . . . employers that must be reported CalPERS if they are contained in a written labor policy or agreement.” (Italics added.) Subdivision (c) further emphasizes the exclusivity of the subdivision (a) list: “Only items listed in subsection (a) have been affirmatively determined to be special compensation. All items of special compensation reported to PERS will be subject to review for continued conformity with all of the standards listed in subsection (b). Subdivision (b), provides, in pertinent part: “The Board has determined that all items of special compensation listed in subsection (a) are: [¶] . . . [¶] (2) Available to all members in the group.”

28. One of the special compensation items listed in C.C.R. section 571 is “Incentive Pay,” which is defined in subdivision (a)(1) as follows:“(1) INCENTIVE PAY [¶] Bonus – Compensation to employees for superior performance such as ‘annual performance bonus’ and ‘merit pay.’ If provided only during a member’s final compensation
period, it shall be excluded from final compensation as ‘final settlement’ pay. A program or system must be in place to plan and identify performance goals and objectives.”

29. (A) CalPERS determined that respondent Liu’s merit pay did not comply with C.C.R. section 571, subdivision (a)(1), because it was not compensation for “superior performance.” CalPERS requested and received from SCAG respondent Liu’s Employee Annual Evaluation Forms for the fiscal years 2014-2015 and 2015-2016. (Exhs. 15, 17.) Respondent Liu’s performance in specified areas was evaluated using a rating scale from 1 (lowest score) to 5 (highest score).

(B) The $10,378.58 merit pay at issue was based on respondent Liu’s performance evaluation for the 2015-2016 fiscal year. (Exh. 18.) In the area of Competency, respondent Liu’s performance was rated “3” out of “5.” CalPERS found that the narrative comments in the Competency section were not indicative of “superior performance.” Some of the comments noted, for example, that respondent Liu “has a difficult time providing clear direction to her staff; she has not consistently demonstrated the ability to create an environment of clear communication and clear goal setting, and her “attitude towards her staff is often characterized by critical remarks to the obvious dismay of her staff”; she “provides often confusing direction and communication to her employees and has not demonstrated on a consistent basis the ability to be an effective manager or leader”; and she “has not demonstrated significant progress” in “develop[ing] her project management abilities.” (Exh. 17, pp. 2, 3.) The comments also noted an expectation that the identified areas of improvement would be significantly improved in fiscal year 2016-2017 “as they have been mentioned repeatedly in previous evaluations.” (Id., p. 3.)

(C) For the 2015-2016 performance evaluation, respondent Liu received an overall score of 3.60 out of 5.00. This score was lower than the overall score from her 2014-2015 performance evaluation, which was 3.75 out of 5.00. (Exh. 15.) The lower overall score in 2015-2016, as compared to the 2014-2015 score, further shows that that $10,378.58 merit pay based on her 2015-2016 performance evaluation was not for “superior performance.” CalPERS contends that respondent Liu’s “middling scores” do not equate to “superior performance” required under C.C.R. section 571, subdivision (a).

(D) Under SCAG’s Merit Pay Policy, the highest merit pay increase possible is “7-9%” corresponding to an overall evaluation rating of “Excels.” (Exh. 8.) Here, respondent Liu received a five percent merit increase, which fell within the percentage range for an overall evaluation rating of “Above Expectations.” (Id.) CalPERS contends that respondent Liu’s not receiving the highest possible merit pay increase further confirms that her merit pay was not for “superior performance.

30. CalPERS determined that respondent Liu’s merit pay did not comply with C.C.R. section 571, subdivision (b)(2), which requires, among other things, that special compensation must be “[a]vailable to all members in the group or class.”
31. CalPERS contends the lump sum merit pay is only available to employees who are at the top of their salary range, while those who are not at the top of the salary range receive the merit pay as an increase in their base salary (which would be “payrate”). Moua explained that “payrate” is what is on a salary schedule, and a “bonus” is what is on the salary schedule plus something else. Moua testified that a bonus that is not paid for superior performance is not reportable to CalPERS. Moua testified that CalPERS no longer agrees with the April 10, 2006 letter (see Finding 17, above) that the SCAG merit pay is reportable. CalPERS now takes the position the merit pay is not reportable because it is not available to the entire class.

32. The consequences for “special compensation” that is not in compliance with C.C.R. section 571, subdivisions (a) and (b), is that the compensation “shall not be used to calculate final compensation for that individual.” (C.C.R. § 571, subd. (d).) Moua testified that the $10,378.58 merit pay was never added to respondent Liu’s “final compensation.” which is why there was no overpayment. CalPERS’s position is that the bonus (merit pay) is not a reportable item of “special compensation.”

Respondent Liu’s Contentions

33. In her closing brief, respondent Liu summarized the arguments in support of her appeal as follows:

1. CalPERS’ recent policy change to reverse its previous approval of including lump sum merit pay as earnable compensation is baseless, inconsistent with the law, inequitable and lack of public process.

2. SCAG’s Merit Pay Program is available to all employees, and covered by [Government Code] Section 20636 and [C.C.R.] Section 571. SCAG’s Merit Pay Program including the lump sum payments meets all the requirements under the California Code of Regulations.

3. CalPERS’ recent policy change is inconsistent and noncompliant with the law. CalPERS’s noncompliant Determination has adversely affected me.[]

(Exh. F, p. 12.)

34. Respondent Liu contends that CalPERS’s determination that her $10,378.58 merit pay was not for “superior performance” is baseless. She contends the law does not dictate how “superior performance” may be specified. She contends that CalPERS “arbitrarily interprets superior performance to be only for the top bracket in SCAG’s Overall Evaluation Rating (and only applies it to lump sum payments).” This contention is not persuasive. Since CalPERS is the agency responsible for enforcing the PERL, its interpretations of the PERL and regulations is generally afforded great weight and deference.
(See Legal Conclusion 3.) CalPERS's determination that respondent Liu's merit pay was not for "superior performance" was not arbitrary but, rather, based on a review of the ratings and narrative comments set forth in her 2015-2016 performance evaluation and correlating them to the overall evaluation ratings and percentage of merit increase set forth in SCAG’s Merit Pay Policy (Exhibit 8). CalPERS’s analysis was reasonable. The arguments in CalPERS’s closing brief are persuasive. (See Exh. 20, pp. 10-14.)

35. Respondent Liu asserts various arguments based on CalPERS changing its interpretation of SCAG’s merit pay program from 2006 (the lump sum merit payments are reportable compensation) to 2017 (the lump sum merit payments are no longer eligible for reporting to CalPERS). CalPERS is allowed to change its interpretation of the law. “Even assuming that CalPERS has changed its position over time, ‘an administrative agency may change its interpretation of a statute, rejecting an old construction and adopting a new.’” (DiCarlo v. County of Monterey (2017) 12 Cal.App.5th 468, 487 [citing Hudson v. Board of Administration (1997) 59 Cal.App.4th 1310, 1326].) Further, C.C.R. section 571, subdivision (c), allows CalPERS to review all reported items of special compensation “for continued conformity with all of the standards listed in subsection (b).”

36. Respondent Liu contends that CalPERS mischaracterizes SCAG’s merit pay program as only available to employees who were at the top of their respective salary schedules. Respondent Liu contends that SCAG’s merit pay program was an agency-wide program available to all employees. She further contends the program, "including lump sum pay, is consistent with the law.” Respondent Liu’s contention misses the point. SCAG confirmed that employees who were not yet at the top of their salary range received their merit pay in the form of a base salary adjustment. (Exh. 12.) An adjustment in base salary is a raise, not a bonus. A raise must comport to different rules than does a bonus because a raise is part of "payrate," not "special compensation." Some SCAG employees (including respondent Liu) were already at the top of their salary range. Those employees could not receive any more "payrate" because they were topped out. Once an employee reaches the top of a salary schedule, any additional salary received must by definition be a bonus and satisfy the requirements for "special compensation." The PERL provides that all members in a group or class must be treated the same in order for a bonus to be accepted. Here, CalPERS correctly determined that a bonus was not available to all members in the group or class, in violation of C.C.R. section 571, subdivision (b)(2).

LI:GAL CONCLUSIONS

Burden of Proof

1. The person against whom a statement of issues is filed generally bears the burden of proof at the hearing regarding the issues raised. (Coffin v. Department of Alcoholic Beverage Control (2006) 139 Cal.App.4th 471, 476.) In McCoy v. Board of Retirement (1986) 183 Cal.App.3d 1044, 1051, fn. 5, the court generally considered the issue
of burden of proof in an administrative hearing concerning retirement benefits and found "the party asserting the affirmative at an administrative hearing has the burden of proof, including . . . the burden of persuasion by a preponderance of the evidence."

2. When a person seeks to establish eligibility for a government benefit or service, the burden of proof is on him or her to establish such eligibility. (Lindsay v. San Diego Retirement Bd. (1964) 231 Cal.App.2d 156, 161; Greatorex v. Board of Admin. (1979) 91 Cal.App.3d 54, 57.) Where a change in the status quo is sought, the party seeking the change has the burden of proving that the change is necessary. (Evid. Code. §§ 115 and 500.)

3. In addition, where CalPERS has made a determination under the PERL or accompanying regulations, or has interpreted the PERL or regulations, courts have generally accorded great weight and deference to such determinations and interpretations, since CalPERS is the agency charged with enforcing the law. (City of Pleasanton v. Board of Administration of the California Public Employees' Retirement System (2012) 211 Cal.App.4th 522, 539.)

4. Based on the foregoing, the burden of proof in this case is as follows: Respondent Liu bears the burden to prove by a preponderance of the evidence that she is entitled to a retirement benefit based on a "final compensation" amount that includes the $10,378.58 merit pay she received in a lump sum payment. CalPERS determined that the merit pay should be excluded from her final retirement benefit calculation. Respondent Liu appealed. She is the moving party and has the burden of proof.

Final Compensation Generally

5. Under the PERL, an employee's compensation for use in the calculation of a pension benefit "is not simply the cash remuneration received, but is exactingly defined to include or exclude various employment benefits and items of pay." (Oden v. Board of Administration (1994) 23 Cal.App.4th 194, 198.) What benefits and items of pay constitute "compensation" and "compensation earnable" is crucial to the computation of an employee's ultimate pension benefits. The pension is calculated to equal a certain fraction of the employee's "final compensation" which is multiplied by a fraction based on the age and length of service. (City of Sacramento v. Public Employees' Retirement System (1991) 229 Cal.App.3d 1470, 1478 (fns. omitted).)

6. Final compensation is determined, in part, by determining a member's compensation earnable. "Compensation" is generally defined as "the remuneration paid out of funds controlled by the employer in payment for the member's services performed during normal working hours." (Gov. Code. § 20630, subd. (a).) "Compensation earnable" consists of "payrate" or "special compensation" of the member. (Gov. Code, § 20636, subd. (a).)

7. "Payrate" means "the normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment for
services rendered on a full-time basis during normal working hours, pursuant to publicly available pay schedules.” (Gov. Code. § 20636, subd. (b)(1).)

8. Special compensation includes a payment received for special skills, knowledge, abilities, work assignment, workdays or hours, or other work conditions. (Gov. Code. § 20636, subd. (c)(1).) Special compensation shall be limited to that which is received by a member pursuant to a labor policy or agreement or as otherwise required by state or federal law, to similarly situated members of a group or class of employment that is in addition to payrate. (Gov. Code. § 20636, subd. (c)(2).) Special compensation shall be for services rendered during normal working hours and the employer shall identify and report the pay period in which the special compensation was earned. (Gov. Code. § 20636, subd. (c)(3).)

9. The CalPERS system, by its definitions of “compensation earnable” and “final compensation,” contemplates equality in benefits between members of the “same group or class of employment and at the same rate of pay.” There is clearly an intent not to treat members within the same class and at the same pay dissimilarly, although there is no intent to grant parity between employees of different classes and rates of pay. (City of Sacramento v. Public Employees Retirement System (1991) 229 Cal.App.3d 1470, 1492.)

Disposition

10. The preponderance of the evidence established that CalPERS correctly determined the $10,378.58 merit pay (bonus) should be excluded from the “final compensation” used to calculate respondent Liu’s retirement allowance. CalPERS’s determination was amply supported by the applicable law and evidence. The $10,378.58 merit pay was “special compensation” that was properly excluded from the calculation of respondent’s Liu’s retirement benefits because it did not comply with the applicable requirements of C.C.R. section 571, subdivisions (a) and (b). Respondent Liu’s contentions asserted in her closing brief were not persuasive and/or not supported by the applicable laws and regulations and evidence. The arguments set forth in CalPERS’s closing brief and reply brief were more persuasive and sufficient to refute respondent Liu’s arguments and contentions.

11. Based on the foregoing, respondent Liu’s appeal shall be denied. (Factual Findings 1-36; Legal Conclusions 19.)
ORDER

Respondent Liu's appeal is denied. CalPERS correctly determined that the bonus pay of $10,378.58 cannot be included in the calculation of respondent Liu's final compensation, as established by the PERL.

DATED: May 9, 2019

ERLINDA G. SHRENGER
Administrative Law Judge
Office of Administrative Hearings