

ATTACHMENT B

REQUEST FOR PUBLIC COMMENTS



California Public Employees' Retirement System
Legal Office

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Memorandum

June 25, 2019

To: All CalPERS Contracting Agencies

From: John Shipley *JLS*
Senior Attorney
Legal Office

Subject: Request for Public Comments Re Designation of Board Decision in the Mark L. Wheeler, Thomas R. Valdez, John M. Lopez, Larry D. Blackwell, Garry G. Cohoe Matter as Precedential

On February 20, 2019, the CalPERS Board (Board) conducted a full board hearing in an administrative appeal before the Board entitled "In the Matter of the Appeal Regarding the Final Compensation Calculation of MARK L. WHEELER, THOMAS R. VALDEZ, JOHN M. LOPEZ, LARRY D. BLACKWELL, GARRY G. COHOE, Respondents; LOS ANGELES COUNTY, Respondent; and SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY, Respondent."

On February 21, 2019, the Board adopted the Final Decision. A copy of the Final Decision is attached. The Final Decision determined that in order to be used in the calculation of compensation earnable, the pay rate or base pay of a member must be created by public notice and action of the governing board and with public consent. The pay schedule must be readily available in an open manner or place. That in addition to being noticed, a pay schedule must provide a pay rate or base pay that is stable and predictable among all members of a group or class.

The Board determined at its meeting on May 15, 2019, to consider the question of whether its decision in this matter should be designated as precedential and directed staff to take public comments about whether the decision should be made precedential.

This Request for Public Comments has been issued to solicit your written comments on the question of whether the Board's Final Decision in this matter should be made precedential. (Please note: The Board is not requesting comments or arguments on the merits or correctness of its Final Decision, which is not up for reconsideration; any such comments or arguments will not be considered.)

In deciding whether to designate a decision as precedential, the Board's policy is to consider the following questions:

- **Does the decision contain a significant legal or policy determination of general application that is likely to recur?**
- **Does it include a clear and complete analysis of the issues in sufficient detail so that interested parties can understand why the findings of fact were made, and how the law was applied?**

If you are interested in commenting on whether the Board's Final Decision should be precedential, please address the questions above, along with any other questions or considerations, and mail, fax or deliver your written comments to:

**CalPERS Legal Office
Attn: John Shipley, Senior Attorney
P. O. Box 942707
Sacramento, CA 94229-2707
Fax No. (916) 795-3659**

Comments must be received in the CalPERS Legal Office no later than 5:00 p.m. PDT, July 25, 2019. Comments should not exceed six pages in length (single spaced). Late comments will not be considered.

The Board will consider all comments received at a future Board public meeting, on a date to be announced, and determine whether to make its Final Decision in the Mark L. Wheeler, et al., matter precedential.

CalPERS staff will provide copies and a summary of the comments received to Board members. CalPERS staff will also provide its written recommendations to the Board. Other than public comment provided in accordance with California Code of Regulations, title 2, section 552.1, oral comment or argument will not be received at the Board meeting.

Questions concerning this notice may be directed to John Shipley in the CalPERS Legal Office at (916) 795-9511.

Attachment

Attachment to letter is Attachment A to this agenda item.