ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Katherine Caramella (Respondent) was employed by Respondent City of Santa Rosa (Respondent City) as a Police Officer. Respondent retired for industrial disability retirement on December 31, 2015 and has been receiving her retirement allowance from that date.

In May 2017, CalPERS' Office of Audit Services conducted a public agency review of Respondent City to determine whether special compensation reported to CalPERS complied with the Public Employees' Retirement Law (PERL). The review was limited to the examination of a sample of active and retired employee records for service periods from July 1, 2013 through June 30, 2016.

On May 25, 2017, CalPERS' Audit Compliance & Resolution Unit (ACRU) issued its final audit report, finding that Respondent City inaccurately reported Holiday Pay in lump sum amounts which should have been reported in the period as earned.

By letters dated April 12, 2018, CalPERS informed Respondent and Respondent City that the compensation reported as Holiday Pay "was incorrectly reported as a lump sum amount and should have been reported as earned per pay period" pursuant to Government Code section 20636 and Title 2, California Code of Regulations section 571, subdivisions (a)(5) and (b).

CalPERS determined that while the Holiday Pay received by Respondent met all the requirements set out in the relevant statutes and regulations, it was reported incorrectly. It was reported in lump sum but should have been reported in the pay period it was earned. The erroneous reporting inflated Respondent's retirement allowance. Therefore, as part of its determination, CalPERS disallowed the Holiday Pay in lump sum but included the Holiday Pay as earned.

Based on CalPERS' determination, Respondent's gross monthly retirement allowance was adjusted. This also resulted in an overpayment of retirement benefits in the amount of $4,945.16.

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 August 12, 2019. Respondent did not appear at the 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 her 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.

The sole issue for determination in this matter was whether the Holiday Pay can be reported in a lump sum amount *or* whether it must be reported in the pay period earned for it to constitute “special compensation” and be included in Respondent's final compensation for purposes of calculating her retirement allowance.

The Public Employees Retirement Law (PERL) defines “compensation earnable” as the compensation paid by the employer as “payrate” and “special compensation.” (Government Code section 20636, subd. (b).) “Payrate” is defined as 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. (Government Code section 20636, subd. (b).) A similar definition applies to members who are not considered to be in a group or class.

“Special compensation” is generally defined as payments received by a member for special skills, knowledge, abilities, work assignment, workdays, or other work conditions. Special compensation must be paid pursuant to a written labor policy or agreement or as otherwise required by state or federal law, to similarly situated members of a group or class of employment, in addition to payrate. (Government Code section 20636, subd. (c).) The CalPERS Board of Administration (Board), pursuant to statutory mandate, has specifically and exclusively identified what constitutes “special compensation” and under what conditions payments to a member may qualify as “special compensation.” (See, Government Code section 20636, subd. (c)(6); California Code of Regulations, Title 2, section 571.) [1]

In addition to being an item that is listed under section 571, subd. (a), the compensation must also meet the requirements set forth under section 571, subd. (b) to be “special compensation."

Section 571, subd. (a) defines Holiday Pay as:

> Additional compensation for employees who are normally required to work on an approved holiday because they work in positions that require scheduled staffing without regard to holidays. If these employees are paid over and above their normal monthly rate of pay for approved holidays, the additional compensation is holiday pay and reportable to PERS.

Section 571, subd. (b)(5) requires that all items of special compensation be “[p]aid periodically as earned.”

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 properly excluded Respondent’s Holiday Pay in lump sum amounts, recalculated her retirement allowance

[1] Hereinafter referred to as "section 571".

based on her Holiday Pay in periodic amounts as it was earned, and determined that Respondent owed CalPERS $4,945.16 in overpayment."

In the Proposed Decision, the ALJ concludes that the Holiday Pay in lump sum amounts cannot be included in the calculation of Respondent's final compensation.

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

November 20, 2019

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PREET KAUR
Senior Attorney