

**ATTACHMENT B**

**STAFF'S ARGUMENT**

## **STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION**

Respondent Jonathan Michaelson (Respondent) was hired by Respondent San Ramon Valley Fire Protection District (Respondent District), as a Firefighter/Paramedic in 1999, and became a member of the Contra Costa County Employees' Retirement Association (CCCERA). In 2014, he promoted to EMS Captain.

CalPERS and CCCERA are reciprocal retirement systems. Both systems calculate the member's retirement benefit based in part on the member's final compensation. Individuals with reciprocity rights are entitled to have their monthly retirement benefit from each retirement system calculated based on the highest final compensation earned while working under either system. Reciprocal retirement systems may, however, have varying rules for determining a member's final compensation. CalPERS calculates final compensation using the provisions of the Public Employees Retirement Law (PERL).

On February 27, 2018, Respondent submitted an application for service retirement to CalPERS. CalPERS worked with CCCERA to obtain Respondent's final compensation amounts. CCCERA reported Payrate plus Special Compensation paid to Respondent, including Special Compensation for Retirement Allotment and Day Differential.

Following review of documents received from Respondent District and Respondent, CalPERS determined that Retirement Allotment and Day Differential pay did not meet the definition of compensation earnable, so those items would be excluded from calculation of his final compensation. (Other items of special compensation were allowed, and not at issue in the hearing.) On May 11, 2018, CalPERS wrote to Respondent informing him of CalPERS' determination.

On May 29, 2018, 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 June 19, 2019. Respondent was represented by counsel at all phases of the hearing. Respondent testified on his own behalf and called the Director of Human Resources for Respondent District to testify on his behalf regarding his final compensation. Neither Respondent District nor CCCERA appeared at the hearing.

Respondent believes he is entitled to have the disputed items included in his final compensation. He contended that Day Differential qualifies as special compensation as "Shift Differential." California Code of Regulations (CCR) section 571 (a)(4) defines Shift Differential as "compensation to employees who are routinely and consistently scheduled to work other than a standard 'daytime' shift, e.g. graveyard shift, swing shift, shift change, rotating shift, split shift or weekends." The ALJ found Day Differential does not qualify as Shift Differential because Respondent worked a regular 40-hour daytime schedule. Respondent next contended that the Day Differential qualified under

the category of "Fire Staff Premium". CCR section 571 (a)(4) defines Fire Staff Premium as, "compensation to rank and file local firefighters who are routinely and consistently assigned to administrative work during normal hours of employment that may differ from the work schedule of fire suppression personnel." The ALJ found Day Differential does not qualify as Fire Staff Premium because Respondent held the position of Captain; he was not a rank and file firefighter.

Respondent testified that the Retirement Allotment qualifies as either payrate or special compensation. The ALJ found both arguments unpersuasive. The Retirement Allotment was not part of payrate, because it was not included in the publicly available pay schedules for the relevant time period. Respondent received the maximum salary for the position of EMS Captain as reflected on the salary schedules. The ALJ found that the Retirement Allotment did not qualify as special compensation because it does not meet the requirements of the PERL. Pursuant to CCR section 571, employer-paid member contributions "paid to CalPERS" may be reportable as special compensation. However, in this case, the Retirement Allotment payments were made to CCCERA, not CalPERS. While they may constitute pensionable earnings for purposes of calculating Respondent's CCCERA pension, they do not qualify as final compensation for purposes of calculating his CalPERS pension.

CalPERS' witness testified that the compensation in question did not qualify as payrate or special compensation for all the reasons detailed above.

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 burden of proof is on the Respondent to prove entitlement to the retirement benefits.

In the Proposed Decision, the ALJ concludes that both Day Differential and Retirement Allotment pay were properly excluded from Respondent's final compensation. Respondent failed to establish that either Retirement Allotment or Day Differential should have been included in, the calculation of his compensation earnable.

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

November 20, 2019

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