

ATTACHMENT A

RESPONDENT'S PETITION FOR RECONSIDERATION

PETITION FOR RECONSIDERATION

October 11, 2019

**Cheree Swedensky, Assistant to the Board
Executive Office
California Public Employees Retirement System
P. O. Box 942701
Sacramento, CA 94229-2701
Fax: (916) 795-3972**

OCT 10 2019

Attn: Chief Executive Officer

RE: 2018-1112

By letter dated September 26, 2017, CalPERS notified me that I had violated the Public Employees Retirement Law (hereinafter the "PERL") by working post-retirement for almost two years, by working more than the allowable limit of 960 hours per Fiscal Year and that my compensation exceeded comparable rates.

I have a history with CalPERS! FYI, I retired from the City of Industry in October of 2010. I worked for the City for about two and a half years, and, when I was hired, because of the size of my compensation (\$240,000/year) the City, as it had done with other employees, budgeted my compensation equally between itself and its redevelopment agency (hereinafter "Agency"). During that time period, CalPERS "taxed" my compensation equally for both entities. After I retired, Calpers notified me by letter that my monthly benefit would be about \$9,500/month. Soon after, I learned that my benefit had been slashed in half because my Agency compensation was considered to be "overtime". That was not the actual fact as I worked on a monthly basis for the City and the Agency for as many hours as were required to do their business, regardless of any hourly limitation. Eventually, the City's attorney advised me in writing that CalPERS was "correct" and I gave up my effort to appeal. CalPERS, despite collecting "taxes" on my Agency compensation, never warned me during my two and a half year employment that half of my compensation could not be used to calculate retirement benefits, has not refunded any of the "taxes" they collected on my "overtime" compensation, nor has it responded to my correspondence on this issue (see my letter of March 28, 2018 attached hereto). I still feel that the CalPERS decision was arbitrary and that its "overtime" criteria had not been applied to prior or subsequent City retirees. This situation has caused me extreme financial and mental hardship!

With that as background, now consider that, 5 years AFTER I left my post-retirement post, CalPERS accused me of working as a retired annuitant for more than a year, working more than 960 hours (I accidentally exceeded that limitation by 30.5 hours (3.2% of 960 hours), due to my inattention and miscalculation, I admit) and being overly-compensated. While I tried to resolve the issues

administratively (see Exhibit "B", page 15 excerpt of Proposed Decision attached hereto), CalPERS steadfastly declined. So, CalPERS scheduled an Administrative Law Judge ("ALJ") hearing ("OAH"). CalPERS provided me a Statement of Issues ("SOI") and we prepared for the OAH.

The hearing began with the ALJ, without prompting from the CalPERS attorney, asking the CalPERS attorney if he wanted to have the compensation issue heard and received an affirmative response. This despite the SOI NOT including such for the OAH (see Exhibit "A", page 11 excerpt of the SOI attached hereto). We were blindsided and not prepared to refute CalPERS' accusation. Meanwhile, we did contest the two year accusation and eventually prevailed, tried to refute the over-compensation issue (principally by stating that the City had paid me compensation identical to my pre-retirement amount) and admitted the hourly violation (as I had all along).

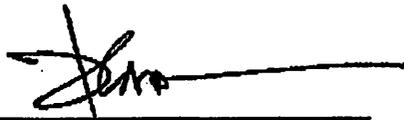
So, the ALJ ruled that I did NOT violate the one year employment rule, that I indeed violated the 960 hour rule and that I was over-compensated.

I submit to you that the ALJ erred in allowing the compensation issue to be discussed. If you agree with that sentiment, that leaves us with one issue, that of the hourly violation. This violation, in statistical terms, amounted to about 3.2% of the 960 hour limit and, applied to the retirement benefits I received in 2011-2012, about \$2,000. For this violation, CalPERS has already reinstated me and is deducting about \$1,000 each month from my benefits to pay back over \$65,000 dollars.

It seems to me that the punishment does not fit the situation.

So, I ask that you recommend to the Board of Administration that the Board's previous decision be put aside, that you refer my original salary slashing to the benefits division for: 1) recalculation and back-pay provision (or, at least, an opportunity to appeal that 2010 CalPERS calculation), 2) complete reversal of my CalPERS staff-forced 2018 reinstatement and 3) refunding of all repayments to date. I also ask that you refer the hours-worked issue back to Susan Tasa for an administrative resolution at the earliest date, as she had suggested to me was possible if the one year violation could be "resolved" (again, see Exhibit "B"), as it was, in my favor.

Thank you for your considered assistance in this long-running saga. I do appreciate the gravity of the situation, but feel that CalPERS played a large part in the negative aspects thereof, to my substantial loss.



Dudley Lang

Attachments (3)

Dudley and Charlotte Lang

March 28, 2018

CalPers
Employer Account Management Division
P.O. Box 942709
Sacramento, CA 94229-2709
Attn: Jennifer Rocco

RE: [REDACTED]

Dear Jennifer:

In my correspondence to you dated November 18, 2017, I described the situation, in 2010, of my retirement benefits being cut in half because, according to the findings of a CalPERS audit in late 2010, I worked simultaneously for the City of Industry (hereinafter "COI") and the Industry Urban Development Agency (hereinafter "IUDA") and all work compensation paid to me by the IUDA was considered to be overtime pay and not usable to determine retirement benefits. This determination made me unique at the time as no other previous retiree from the COI (and who had simultaneously worked for The IUDA) had suffered a similar fate, as their joint COI/IUDA earnings had been used to calculate retirement benefits. It is also a fact, according to the past City Manager of the COI, that joint COI/IUDA employees who have retired after I did are now receiving retirement benefits that were determined using both entities' compensation total.

You have not as yet responded to the requests I made in the referenced correspondence to have the above-described situation corrected. This letter is a further request that you do so within 30 days of the date of this letter. In your response, as I stated in my 2017 letter, you are not the appropriate contact at CalPERS for this subject, please inform me as to the contact information for whatever CalPERS Division is.

Dudley Lang

C: Susan Tasa, WAR
James Niehaus, CPPA

EXHIBIT "A"

1 appointments, including any made concurrently pursuant to
 2 Section 21224 or 21229, shall not exceed a combined total
 3 of 960 hours for all employers each fiscal year. The
 4 compensation for the interim appointment shall not exceed
 5 the maximum monthly base salary paid to other employees
 6 performing comparable duties as listed on a publicly
 7 available pay schedule for the vacant position divided by
 8 173.333 to equal an hourly rate. A retired person appointed
 9 to a vacant position pursuant to this section shall not
 receive any benefits, incentives, compensation in lieu of
 benefits, or any other forms of compensation in addition to
 the hourly rate. A retired annuitant appointed pursuant to
 this section shall not work more than 960 hours each fiscal
 year regardless of whether he or she works for one or more
 employers. (Emphasis added.)

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10 CalPERS conducted a review of the documents and information provided by the
 11 City, the OFAS audit findings, and the PERL, and determined that respondent Lang's
 12 post retirement employment from January 4, 2011, through December 14, 2012, is in
 13 violation of the PERL. Specifically, respondent Lang's post retirement employment
 14 from January 4, 2011, through December 14, 2012, as a retired annuitant for the City
 15 exceeded the 12-month limit. Consequently, respondent is subject to mandatory
 16 reinstatement for the period that exceeded the 12-month limit, January 4, 2012 through
 17 December 14, 2012. Pursuant to the PERL, respondent Lang must repay all of the
 18 retirement benefits he received from CalPERS during this period.

19 In addition, CalPERS determined that respondent Lang exceeded the 960-hour
 20 limit a retired annuitant may lawfully work by working a total of 990.6 hours during the
 21 2011/2012 fiscal year.

NO OVER-COMPENSATION ISSUE !!

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23 On January 25, 2018, CalPERS sent a letter to respondent Lang and the City
 24 notifying them of CalPERS' determination and their appeal rights.

EXHIBIT "B"

into believing he could work more than 12 months because Publication 33 contained nothing about a 12-month limit. If he exceeded the 960-hour limit, respondent described such as an "inadvertent mistake." (Ex. 16, p. 2.)

36. By a letter dated January 25, 2018, PERS notified respondent that it had considered the information and arguments he previously submitted, but that it had finalized its determination that respondent's post-retirement employment with the City was unlawful for the period of January 4, 2012, through December 14, 2012, for the reasons previously described to him. (Ex. 3.)

37. Respondent spoke on the telephone with Ms. Tasa about a resolution of the matter. Ms. Tasa told him PERS would be willing to "look into" an administrative resolution of this situation if the purported 12-month violation could be resolved.

38. On February 8, 2018, PERS received respondent's application for service retirement following reinstatement dated February 6, 2018. (Ex. 17.)

39. On April 11, 2018, PERS sent a letter to respondent notifying him that PERS was seeking to collect \$65,952.49 in retirement benefits he received during the period of January 4, 2012, through December 14, 2012. (Ex. 18.)

40. By a letter dated June 4, 2018, respondent was advised that, because he was deemed to have been reinstated from retirement during the period of January 4, 2012, through December 14, 2012, his service credit increased from 18.303 years to 18.836 years, increasing his monthly retirement allowance by \$154.66. (Ex. 19.) As a result, respondent was given a one-time retroactive payment of \$9,728.09 to cover the

RECEIVED
OCT 10 2019
CALPERS Legal Office

GCA

from: DUDLEY LANG



OCT 10 2019

TO: CHEREE SWEDENSY
CALPERS ASST. to the BOARD

@ (916) 795-3972

RE: CAH NO. 2019020798
(AND 2018-1112)

PAGES (INCL. COVER): 6

CHERE: PLEASE SEND A RECEIPT CONFIRMATION

to: D. LANG