

**ATTACHMENT A**

**THE PROPOSED DECISION**

**BEFORE THE  
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM  
STATE OF CALIFORNIA**

**In the Matter of the Statement of Issues Against:**

**JENNIFER L. BARRETT, Respondent;**

**COUNTY OF SONOMA, Respondent.**

**Agency Case No. 2019-0658**

**OAH No. 2019100467**

**PROPOSED DECISION**

Administrative Law Judge Juliet E. Cox, Office of Administrative Hearings, State of California, heard this matter on January 28, 2020, in Santa Rosa, California.

Senior Attorney John Shipley represented complainant Renee Ostrander, Chief of the Employer Account Management Division of the California Public Employees' Retirement System.

Respondent Jennifer L. Barrett appeared representing herself.

No one appeared representing respondent County of Sonoma.

The matter was submitted for decision on January 28, 2020.

PUBLIC EMPLOYEES RETIREMENT SYSTEM  
FILED Feb 10 20 20  
LPA

## **FACTUAL FINDINGS**

1. Respondent Jennifer L. Barrett worked for many years as a planner for local government agencies. Because of her employment (beginning with the City of Petaluma and continuing with the City of Novato) respondent became a member of the California Public Employees' Retirement System (CalPERS) in February 1991.

2. Between October 2002 and February 2019, respondent worked for the County of Sonoma and was a member of the Sonoma County Employees' Retirement Association (SCERA). SCERA and CalPERS have an agreement permitting retirement reciprocity between them, and respondent has reciprocal rights for concurrent retirement with both CalPERS and SCERA.

3. Respondent retired for service effective February 20, 2019.

4. In early March 2019, SCERA provided information to CalPERS regarding respondent's compensation, to enable CalPERS to calculate respondent's CalPERS retirement allowance. SCERA reported that between February 26, 2018, and February 19, 2019, respondent had received \$66.38 per hour in "Hourly/Monthly" pay from the County of Sonoma. In addition, SCERA reported that during this period respondent had received three types of "Special Compensation" from the County of Sonoma: (1) "Cash Allowance" totaling \$7,200.56; (2) "One Time Lump Sum Pensionable Payment" totaling \$3,154.00; and (3) "Status Quo Preservation Allowance" totaling \$4,788.00.

5. By letter dated March 22, 2019, a CalPERS representative notified respondent that staff members in the CalPERS Employer Account Management Division had determined that the three types of "Special Compensation" SCERA had

identified in the report described in Finding 4 did not qualify as compensation CalPERS should consider in calculating respondent's CalPERS retirement allowance. Respondent appealed.

6. Acting in her official capacity as Chief of the CalPERS Employer Account Management Division, complainant Renee Ostrander signed a statement of issues regarding respondent on September 26, 2019. The statement of issues alleges that the compensation SCERA described as "Cash Allowance," "One Time Lump Sum Pensionable Payment" and "Status Quo Preservation Allowance" fails to qualify as "compensation earnable" under the Public Employees' Retirement Law (PERL). On this basis, complainant urges the Board of Administration to deny respondent's appeal.

7. At the hearing, complainant withdrew her allegation that the "One Time Lump Sum Pensionable Payment" fails to qualify as "compensation earnable" under the PERL, and confirmed that CalPERS would factor this compensation into its calculation of respondent's CalPERS retirement allowance. The hearing proceeded as to the dispute regarding the compensation SCERA described as "Cash Allowance" and "Status Quo Preservation Allowance."

### **"Cash Allowance"**

8. For many years, including for the last several years of respondent's employment, Salary Resolution No. 95-0926 governed compensation the County of Sonoma paid to respondent. The Board of Supervisors updated Salary Resolution No. 95-0926 from time to time, by adopting further resolutions amending or restating Salary Resolution No. 95-0926. Salary Resolution No. 95-0926 is an extensive document in writing; its successive versions state their effective dates; and current and past versions of Salary Resolution No. 95-0926 are available for public review.

9. On September 16, 2008, the Board of Supervisors of the County of Sonoma adopted County of Sonoma Resolution No. 08-0790. This resolution amended Salary Resolution No. 95-0926 to add Section 20.2, describing a new compensation component, the "Hourly Cash Allowance." The new Section 20.2 of Salary Resolution No. 95-0926 states that beginning with "the first full pay period closest to May 19, 2009," the County of Sonoma will add \$3.45 to each permanent employee's "hourly regular earning rate from the salary schedule," for each hour "excluding overtime, up to a maximum of 80 hours in a pay period." The new Section 20.2 of Salary Resolution No. 95-0926 states further that

Such hourly cash allowance is compensation for services rendered in that pay period and shall be taken into account for purposes of computing employees' final compensation for pension purposes, as well as all usual taxation as their regular earning rate from the salary schedule. It shall not be included on the salary schedule and shall not be impacted by future increases in the salary schedule. It is not intended as a supplement toward medical, dental, or any other insurance or benefit.

10. Respondent began receiving this "Hourly Cash Allowance" during the first full pay period closest to May 19, 2009, and continued through her last date of employment at the County of Sonoma. The "Cash Allowance" totaling \$7,200.56 that SCERA reported to CalPERS, as described above in Finding 4, is this component of respondent's compensation during the period between February 28, 2018, and February 19, 2019.

## **"Status Quo Preservation Allowance"**

11. On July 10, 2018, the Board of Supervisors of the County of Sonoma adopted County of Sonoma Resolution No. 18-0260. This resolution amended Section 18.2 of Salary Resolution No. 95-0926 to describe a new compensation component, the "Status Quo Preservation Allowance." This compensation was for each "regular, full-time, Administrative Management, Appointed and Elected Department Head employee," and consisted of \$342 for each two-week pay period beginning July 25, 2018.

12. County of Sonoma Resolution No. 18-0260 stated further that the reason for adding the "Status Quo Preservation Allowance" was to "provide compensation and benefits to employees covered by the provisions of Salary Resolution 95-0926 that achieve parity with salary and benefits that are being/have been negotiated with the County's represented bargaining units."

13. The Board of Supervisors of the County of Sonoma later adopted a further resolution amending Salary Resolution No. 95-0926 to eliminate the "Status Quo Preservation Allowance" after January 23, 2019.

14. Respondent received this "Status Quo Preservation Allowance" for 14 pay periods, beginning July 25, 2018, and ending January 23, 2019. The "Status Quo Preservation Allowance" totaling \$4,788 that SCERA reported to CalPERS, as described above in Finding 4, is this component of respondent's compensation during the period between February 28, 2018, and February 19, 2019.

## **LEGAL CONCLUSIONS**

1. On her appeal, respondent bears the burden of demonstrating that the compensation she asks CalPERS to include in its calculation of her CalPERS retirement allowance qualifies under the PERL for inclusion. For respondent's appeal to succeed, a preponderance of evidence must support her position.

2. CalPERS must base its calculation of respondent's retirement allowance on her "compensation earnable." (Gov. Code, § 20638.) Her "compensation earnable" includes both her "payrate" and any qualifying "special compensation." (Gov. Code, § 20636, subd. (a).)

3. "Special compensation" is not overtime. (Gov. Code, § 20636, subd. (c)(3).) In addition, rather than being an individualized award to the employee, "special compensation" that qualifies as "compensation earnable" must be compensation that the employer makes available to "similarly situated members of a group or class of employment in addition to payrate." (*Id.*, subd. (c)(2).)

4. By regulation, CalPERS has stated more specifically the characteristics that qualify "special compensation" as "compensation earnable." (Gov. Code, § 20636, subd. (c)(6); Cal. Code Regs., tit. 2, § 571.) In particular, "Off-Salary-Schedule Pay" may qualify as "special compensation" and "compensation earnable" if it is "in addition to base salary paid in similar lump-sum amounts to a group or class of employees. These payments are routinely negotiated through collective bargaining in lieu of increases to the salary schedule," but also may apply to "non-represented groups or classes." (Cal. Code Regs., tit. 2, § 571, subd. (a)(1).)

5. Because of the matters stated in Findings 8 and 9, the compensation SCERA identified for respondent as "Cash Allowance" meets all the criteria stated in the CalPERS regulation identified in Legal Conclusions 3 and 4 for "Off-Salary-Schedule Pay."

6. Because of the matters stated in Findings 8, 11, and 12, the compensation SCERA identified for respondent as "Status Quo Preservation Allowance" meets all the criteria stated in the CalPERS regulation identified in Legal Conclusions 3 and 4 for "Off-Salary-Schedule Pay."

7. To qualify as "special compensation" and "compensation earnable," "Off-Salary-Schedule Pay" also must meet further regulatory criteria. (Cal. Code Regs., tit. 2, § 571, subds. (b), (c).) The "Off-Salary-Schedule Pay" must be:

- (1) Contained in a written labor policy or agreement as defined at Government Code section 20049, provided that the document:
  - (A) Has been duly approved and adopted by the employer's governing body in accordance with requirements of applicable public meetings laws;
  - (B) Indicates the conditions for payment of the item of special compensation, including, but not limited to, eligibility for, and amount of, the special compensation;

- (C) Is posted at the office of the employer or immediately accessible and available for public review from the employer during normal business hours or posted on the employer's internet website;
  - (D) Indicates an effective date and date of any revisions;
  - (E) Is retained by the employer and available for public inspection for not less than five years; and
  - (F) Does not reference another document in lieu of disclosing the item of special compensation;
- (2) Available to all members in the group or class;
  - (3) Part of normally required duties;
  - (4) Performed during normal hours of employment;
  - (5) Paid periodically as earned;
  - (6) Historically consistent with prior payments for the job classification;
  - (7) Not paid exclusively in the final compensation period;

- (8) Not final settlement pay; and
- (9) Not creating an unfunded liability over and above PERS' actuarial assumptions.

(Cal. Code Regs., tit. 2, § 571, subd. (b).)

8. Because of the matters stated in Findings 8 through 10, the compensation SCERA identified for respondent as "Cash Allowance" meets all the criteria stated in the CalPERS regulation identified in Legal Conclusion 7 for "Off-Salary-Schedule Pay" that is "compensation earnable."

9. Because of the matters stated in Finding 14, the compensation SCERA identified for respondent as "Status Quo Preservation Allowance" fails to meet at least one of the criteria stated in the CalPERS regulation identified in Legal Conclusion 7 for "Off-Salary-Schedule Pay" that is "compensation earnable." (See Cal. Code Regs., tit. 2, § 571, subd. (b)(7)).)

10. "Off-Salary-Schedule Pay" qualifies as "special compensation" and "compensation earnable" only to the extent that it does not exceed six percent of scheduled salary for a fiscal year. (Cal. Code Regs., tit. 2, § 571, subd. (a)(1).)

## **ORDER**

1. The appeal by respondent Jennifer L. Barrett is granted with respect to the special compensation SCERA described to CalPERS as "Cash Allowance" and "One Time Lump Sum Pensionable Payment." In addition to the compensation SCERA described to CalPERS as respondent's "Hourly/Monthly" pay, CalPERS shall include the special compensation SCERA described as "Cash Allowance" and "One Time Lump Sum

Pensionable Payment" in CalPERS's calculation of respondent's CalPERS retirement allowance; provided, however, that CalPERS may limit the total amount it considers from these two special compensation components in a fiscal year to six percent of the total amount of respondent's "Hourly/Monthly" pay in that same fiscal year.

2. With respect to the special compensation SCERA described to CalPERS as "Status Quo Preservation Allowance," the appeal by respondent Jennifer L. Barrett is denied.

DATE: February 10, 2020

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*Juliet E. Cox*  
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JULIET E. COX

Administrative Law Judge

Office of Administrative Hearings