

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO NOT OPPOSE THE ADOPTION OF THE PROPOSED DECISION

Respondent Jennifer L. Barrett (Respondent) established membership with CalPERS through employment with the City of Petaluma on February 5, 1991. From this date until October 16, 1998, Respondent was employed with the City of Petaluma. From October 26, 1998, through October 1, 2002, Respondent was employed with the City of Novato. Each of these public agencies contract with CalPERS to provide benefits for their eligible employees. On October 1, 2002, Respondent separated from employment with the City of Novato; however, she retained her membership with CalPERS.

On or about October 15, 2002, Respondent established membership with the Sonoma County Employees' Retirement Association (SCERA) through employment as the Deputy Director of Planning with Respondent County of Sonoma (Sonoma). SCERA is a public entity that was established under the California County Employees' Retirement Law of 1937. Respondent established reciprocity between CalPERS and SCERA effective October 29, 2002.

Respondent was last employed by Respondent Sonoma as the Deputy Director of Planning. On December 5, 2018, Respondent submitted an application for service retirement with CalPERS, seeking a retirement date of February 20, 2019. Respondent retired from service effective February 20, 2019 with 11.735 years of CalPERS service credit and has been receiving her retirement allowance since April 2, 2019.

CalPERS sent a retirement salary request form to SCERA to determine Respondent's final compensation. CalPERS reviewed the final compensation reported by SCERA to determine the monthly retirement benefits Respondent would receive from CalPERS. Upon review of her final compensation, CalPERS determined that items of pay identified as "Cash Allowance," "One Time Lump Sum Pensionable Payment," and "Status Quo Preservation Allowance" should not be included in Respondent's final compensation for the purpose of calculating her retirement allowance. Based on the information available to CalPERS, these items of pay did not meet the definition of compensation earnable found in the California Public Employees' Retirement Law (PERL) and could not be utilized in determining Respondent's reciprocal retirement benefits with CalPERS.

Respondent appealed this determination and exercised her right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings. A hearing was held on January 28, 2020. Respondent represented herself at the hearing. Sonoma 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.

Prior to the hearing, CalPERS received additional information regarding the item of compensation identified as "One Time Lump Sum Pensionable Payment." Based on this information, CalPERS determined that it qualified as compensation earnable. Specifically, CalPERS determined that the item identified as One Time Lump Sum Pensionable Payment met the definition of Off-Salary Schedule Pay, an item of special compensation included in the exclusive list of special compensation items found in California Code of Regulations (CCR), Title 2, Division 1, Chapters 2, Subchapter 1, Article 4, Section 571(a).

Consequently, the sole issue for determination at the hearing was whether the items of compensation identified as "Cash Allowance" and "Status Quo Preservation Allowance" should be included in her final compensation for purposes of calculating Respondent's retirement allowance.

CalPERS presented evidence that compensation identified as "Cash Allowance" and "Status Quo Preservation Allowance" were not payrate and did not meet any of the definitions of "special compensation" found in CCR Section 571(a). CalPERS also presented evidence that neither item met all of the 9 criteria provided in CCR section 571(b). Specifically, CalPERS argued that neither of the at-issue items of compensation were included on the list provided in CCR section 571(a). CalPERS argued that the items did not qualify as Off-Salary Schedule Pay because the payments were not made to Respondent in lieu of a payrate increase. CalPERS argued that to qualify as special compensation, the item must be identified on this list and that neither item met any of the definitions. Furthermore, CalPERS presented evidence that neither of these at-issue items could satisfy the nine standards found in CCR section 571(b).

For these reasons, CalPERS argued the additional compensation was not "compensation earnable" and should not have been reported to CalPERS as final compensation for purposes of determining Respondent's CalPERS monthly retirement allowance.

Respondent testified on her own behalf. Respondent testified that both items at-issue met the definition of Off-Salary Schedule Pay. Respondent testified that "Cash Allowance" was provided to all County employees beginning in 2008. Respondent testified that this pay was provided in lieu of a payrate increase because the County was dealing with economic uncertainty at that time. Respondent further testified that the "Cash Allowance" has been provided to each employee since 2008, and that it has always been treated as pensionable by the County.

Respondent testified that "Status Quo Preservation Allowance" was paid to management level employees to ensure that they would be compensated more than the employees they managed.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ partially granted Respondent's appeal. The ALJ found that Respondent bears the burden of demonstrating that the compensation she seeks to have included in her final compensation qualifies under the PERL.

The ALJ found that the item of pay identified as "Cash Allowance" met the definition of Off-Salary Schedule Pay found in CCR Section 571(a). In addition, the ALJ found that "Cash Allowance" met the nine criteria found in CCR Section 571(b). The ALJ recognized that Off-Salary Schedule Pay cannot exceed six percent (6%) in any given fiscal year. Therefore, the ALJ found that CalPERS should limit the total amount of special compensation identified as "One Time Lump Sum Pensionable Payment" and "Cash Allowance" to six percent (6%) of the total of Respondent's payrate.

The ALJ denied Respondent's appeal with respect to the item of pay identified as "Status Quo Preservation Pay." The ALJ found that "Status Quo Preservation Allowance" met the definition of Off-Salary Schedule Pay. However, the ALJ found that the item did not meet all of the nine criteria found in CCE Section 571(b).

Based on all the facts and circumstances of the case, staff does not oppose adoption of the Proposed Decision.

April 22, 2020

John Shipley
Senior Attorney