

ATTACHMENT A

THE PROPOSED DECISION

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

**In the Matter of the Appeal Regarding Final Compensation
Calculation of:**

**MICHAEL WATKINS and
SUTTER UNION HIGH SCHOOL DISTRICT, Respondents.**

Case No. 2019-0761

OAH No. 2019090659

PROPOSED DECISION

Timothy J. Aspinwall, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on February 3, 2020, in Sacramento, California.

Elizabeth Yelland, Senior Attorney, represented Renee Ostrander (complainant) in her official capacity as Chief, Employer Account Management Division, California Public Employees' Retirement System (CalPERS).

Michael Watkins (respondent) appeared and represented himself.

PUBLIC EMPLOYEES RETIREMENT SYSTEM
FILED FEB. 24 20 20


There was no appearance by or on behalf of Sutter Union High School District (District). CalPERS established that it properly served the District with a Notice of Hearing. Consequently, this matter proceeded as a default hearing against the District pursuant to Government Code section 11520, subdivision (a).

Evidence was received, the record was closed, and the matter was submitted on February 3, 2020.

ISSUE

Should the reported compensation of \$500 per month received by respondent for performing supervisory duties of a higher classification for the period of July 2015 through August 2018, be included in the calculation of his final compensation for purposes of calculating his retirement benefits?

FACTUAL FINDINGS

Preliminary Matters

1. On September 16, 2019, complainant made and filed the Statement of Issues in her official capacity.
2. The District is a public school agency that contracts with CalPERS for retirement benefits for their eligible employees. The terms of the District's contract with CalPERS are governed by the statutes and regulations of the Public Employees Retirement Law (PERL). (Gov. Code, § 20000 et seq.)

3. Respondent became a member of CalPERS on September 1, 1992, through employment with the District. On May 7, 2018, CalPERS received respondent's application for service retirement with a position title of "Transportation Coordinator." Respondent retired for service effective September 1, 2018, with 26.967 years of service credit, and has been receiving his service retirement allowance since November 1, 2018.

4. CalPERS is a pre-funded, defined benefit retirement plan. The amount of a member's service retirement allowance is calculated by applying a percentage figure, based upon the member's age on the date of retirement, to the member's years of service and the member's "final compensation." In computing a member's retirement allowance, CalPERS may review the salary reported by the employer for the member to ensure that only those items allowed under the PERL will be included in the member's final compensation for purposes of calculating the retirement allowance.

Respondent's Compensation

5. CalPERS reviewed compensation reported by the District on behalf of respondent to ensure all reported compensation during his final compensation period complied with the PERL. Specifically, CalPERS sought clarification of the \$500 per month compensation reported by District as "Lead Worker," "Temporary Upgrade Pay," "Shift Differential," or "Unknown."

6. By email dated September 26, 2018, the District provided CalPERS with information and documents regarding respondent's job title, pay rate, special compensation, and other supporting information, including: the 2016-17 and 2018-19 District Classified Salary Schedules; respondent's Employee Contracts with the District dated June 1, 2015 and July 2, 2018, both of which state that respondent's

employment classification was "Bus Driver/Custodian/Groundsperson." The District's Classified Salary Schedules provided to CalPERS do not contain the classification "Transportation Coordinator."

7. The email from the District dated September 26, 2018, stated that respondent was paid \$500 per month as "upgrade pay/supervisory pay" for performing the duties of a "transportation supervisor." Responsibilities included but were not limited to maintaining bus operations and safety records. The job duties had been performed by a Director of Maintenance and Operations, who retired in 2004. Due to budgetary constraints, the District did not fill the vacant position. Instead, the District Superintendent/Principal took over the duties until the transportation responsibilities became too time consuming and technical. In 2015, all employees in respondent's classification of Bus Driver/Custodian/Groundsperson were considered as potential candidates to handle transportation supervisor responsibilities. Respondent was the most experienced, and on this basis was assigned the duties of transportation supervisor, which he performed in addition to his regular duties as Bus Driver/Custodian/Groundsperson until his retirement in 2018. CalPERS requested, but the District did not provide, any written labor policy or agreement regarding respondent's compensation of \$500 per month for his work as the transportation supervisor.

8. CalPERS reviewed the compensation reported by the District on behalf of respondent, and determined that the compensation received by respondent for his work as transportation supervisor did not meet the requirements of "special compensation" as found in the PERL and related regulations. On this basis, CalPERS concluded that respondent's compensation for work as the transportation supervisor

was not properly included in the calculation of his final compensation for purposes of calculating his retirement benefits.

9. Respondent testified that he fulfilled significant responsibilities as a transportation supervisor in addition to his regular duties as a Bus Driver/Custodian/Groundsperson. Respondent's additional duties as transportation supervisor included overseeing the school bus yard, inspecting school buses, and supervising personnel. Respondent's testimony was clear, concise, and detailed in his description of his extra duties as a transportation supervisor for which he was paid \$500 per month. Respondent did not provide any evidence that the \$500 per month for his service as a transportation supervisor was pursuant to a written labor policy or agreement.

LEGAL CONCLUSIONS

1. An applicant for retirement benefits has the burden of proof to establish a right to the entitlement, absent a statutory provision to the contrary. (*Greator v. Board of Administration* (1979) 91 Cal.App.3d 54, 57.)

Applicable Statutes and Regulations

2. CalPERS is a "prefunded, defined benefit" retirement plan. (*Oden v. Board of Administration* (1994) 23 Cal.App.4th 194, 198). The formula for determining a member's retirement benefit takes into account: (1) years of service; (2) a percentage figure based on the age on the date of retirement; and (3) "final compensation." (Gov. Code, §§ 20037, 21350, 21352, 21354; *City of Sacramento v. Public Employees Retirement System* (1991) 229 Cal.App.3d 1470, 1479.)

3. Government Code section 20630 defines "compensation" as the "remuneration paid out of funds controlled by the employer in payment for the member's services performed during normal working hours" (Gov. Code, § 20630, subd. (a).) "Compensation shall be reported in accordance with . . . section 20636.1 for school members, and shall not exceed compensation earnable, as defined in . . . 20636.1" (Gov. Code, § 20630, subd. (b).)

4. "Compensation earnable" is composed of: (1) pay rate; and (2) special compensation. (Gov. Code, § 20636.1, subd. (a).)

5. "Pay rate" 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 publically available pay schedules." (Gov. Code, § 20636.1, subd. (b)(1).)

6. "Special compensation of a school member includes any payment received for special skills, knowledge, abilities, work assignment, workdays or hours, or other work conditions." (Gov. Code, § 20636.1, subd. (c)(1).)

"Special compensation shall be limited to that which is received by a member pursuant to a labor policy or agreement or as otherwise required by state or federal law, to similarly situated members of a group or class of employment that is in addition to payrate." (Gov. Code, § 20636.1, subd. (c)(2).)

7. "The board shall promulgate regulations that delineate more specifically and exclusively what constitutes 'special compensation' as used in this section." (Gov. Code, § 20636.1, subd. (c)(6).)

8. Special compensation does not include “[o]ther payments the board has not affirmatively determined to be special compensation.” (Gov. Code, § 20636.1, subd. (c)(7)(C).)

9. A “group or class of employment” means a number of employees considered together because they share similarities in job duties, work location, collective bargaining unit, or other logical work-related grouping. A single employee is not a group or class.” (Gov. Code, § 20636.1, subd. (e)(1).)

10. California Code of Regulations, title 2, section 571 exclusively identifies and defines special compensation items for members employed by a contracting agency that must be reported to CalPERS if they are contained in a written labor policy or agreement. (Cal. Code Regs., tit. 2, § 571, subd. (a).)

The CalPERS Board has determined that all items of special compensation listed in subsection (a) must be: (1) contained in a written labor policy or agreement; (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 CalPERS’ actuarial assumptions. (Cal. Code Regs., tit. 2, § 571, subd. (b)(1)(F).)

“Only items listed in subsection (a) have been affirmatively determined to be special compensation. All items of special compensation reported to PERS will be subject to review for continued conformity with all of the standards listed in subsection (b).” (Cal. Code Regs., tit. 2, § 571, subd. (c).)

"If an item of special compensation is not listed in subsection (a), or is out of compliance with any of the standards in subsection (b) as reported for an individual, then it shall not be used to calculate final compensation for that individual." (Cal. Code Regs., tit. 2, § 571, subd. (d).)

Discussion

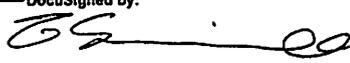
11. "Compensation earnable" for purposes of calculating a retirement allowance is composed of: (1) pay rate; and (2) special compensation. (Gov. Code, § 20636.1, subd. (a).) The \$500 per month paid to respondent was not "payrate," defined as the "normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment." (Gov. Code, § 20636.1, subd. (b)(1).) The \$500 per month was in addition to respondent's base pay in the classification of a Bus Driver/Custodian/Groundsperson, and cannot be treated as "special compensation" because it was not (1) paid pursuant to a written labor policy or agreement; (2) available to all members of respondent's employment classification; (3) part of the normally required duties in respondent's employment classification; or (4) historically consistent with prior payments for respondent's employment classification. (Gov. Code, § 20636.1, subds. (c)(2) and (6); Cal. Code Regs., tit. 2, § 571, subd. (b)(1)(F).)

12. Respondent did not meet his burden to establish that the reported compensation of \$500 per month he received for performing supervisory duties of a higher classification should have been properly included as compensation earnable for purposes of calculating his retirement benefits. Based on the law and evidence as a whole, CalPERS correctly determined that the \$500 per month at issue cannot be included as either payrate or special compensation.

ORDER

The appeal of respondent Michael Watkins is DENIED. CalPERS correctly determined that the compensation of \$500 per month for performing supervisory duties of a higher classification cannot be included in the calculation of respondent's final compensation for purposes of calculating his retirement benefits.

DATE: February 21, 2020

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TIMOTHY J. ASPINWALL

Administrative Law Judge

Office of Administrative Hearings