ATTACHMENT B

STAFF’S ARGUMENT
STAFF’S ARGUMENT TO ADOPT THE PROPOSED DECISION

The issue in this case is whether the reported compensation of $500 a month received by Respondent Michael Watkins (Respondent Watkins) for performing supervisory duties of a higher classification for the period between July 2015 and August 2018, be included in the calculation of his final compensation for calculation of retirement benefits.

Respondent Watkins became a member of CalPERS on September 1, 1992. On May 7, 2018, he applied for service retirement with a position title of “Transportation Coordinator.” He retired for service effective September 1, 2018 with 26.967 years of service credit and has been receiving his service retirement allowance from that date.

CalPERS reviewed the final compensation reported by Sutter Union High School District (the District) on Respondent Watkins’ behalf. The District provided information regarding Respondent’s employment, including Employee Contracts and salary schedules. Respondent’s contract with the District states that his employment classification was “Bus Driver/Custodian/Grounds person.” The District’s salary schedules do not contain the classification “Transportation Coordinator.”

In e-mails, the District explained that Respondent Watkins was paid $500 a month as “upgrade pay/supervisory pay” for performing additional duties of “Transportation Supervisor.” At various times, the District has also referred to this pay as “temporary upgrade pay,” “lead worker pay” and “shift differential.” At all times, the District reported the $500 a month as special compensation, not payrate.

On May 9, 2019, Respondent Watkins and the District were notified that the special compensation reported on behalf of Respondent Watkins was not reportable and would not be included in the calculation of his final compensation.

Thereafter, on May 29, 2019, Respondent Watkins 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 February 3, 2020. Respondent Watkins was present at hearing and represented himself. The District did not appear. The case was final, and the record closed on February 3, 2020.

Prior to the hearing, CalPERS explained the hearing process to Respondent Watkins and the need to support his case with witnesses and documents. CalPERS provided him with a copy of the administrative hearing process pamphlet. CalPERS answered Respondent Watkins’ questions and clarified how to obtain further information on the process.
At the hearing, CalPERS argued the special compensation was not reportable because:

1. it did not meet the requirements of special compensation found in Code of Regulations, title II, section 571(b);
2. it did not meet the definitions of Temporary Upgrade Pay, Lead Worker/Supervisor Premium, and/or Shift Differential as defined in Code of Regulations, title II, section 571(a);
3. it was not for the normally required duties of his regular position;
4. it was not paid pursuant to a written labor policy or agreement;
5. it was not duly approved and adopted by the governing body;
6. it was not available to all members in the group/class; and
7. it did not meet the requirements of special compensation as provided in Government Code section 20636.1.

Respondent Watkins testified that his additional duties included overseeing the school bus yard and inspecting school buses. He did not provide any evidence that the $500 paid each month was paid pursuant to a written labor policy or agreement.

The ALJ found that Respondent Watkins bore the burden of proof to establish he has a right to the entitlement. The ALJ found that “compensation earnable” for purposes of calculating a retirement allowance is composed of: (1) payrate and (2) special compensation. (Gov. Code section 20636.1(a)). The $500 a month paid to Respondent Watkins was not “payrate,” which 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” (Gov Code section 20636.1(b)(1)). The ALJ further found that the $500 a month did not qualify 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 Respondent’s normally required duties; or (4) historically consistent with prior payments for Respondent’s employment classification (Gov. Code section 20636.1(c)(2) and (6); CCR section 571 (b)(1)(F)). If the special compensation is out of compliance with any of the requirements as reported for an individual, then it shall not be used to calculate final compensation for that individual. (CCR section 571(d)).

The ALJ found that Respondent did not meet his burden to establish that the reported compensation of $500 a month should have been included as compensation earnable for purposes of calculating his retirement benefits. Based on the facts and the law, CalPERS correctly determined that the $500 monthly amount cannot be included as either payrate or special compensation.
For all the above reasons, staff argues that the Proposed Decision be adopted by the Board.

April 22, 2020

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