

ATTACHMENT C

RESPONDENT(S) ARGUMENT(S)

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CALPERS Board Unit

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August 18, 2020

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Subject: Respondents' Argument
Los Alamitos Joint Forces Training Base Fire Department
Case No. 2019-0891

Members of the Board:

The legal conclusions of the Administrative Law Judge (ALJ) are not supported by either the findings or the evidence. The seventeen respondent firefighters urge you to reject the proposed decision and decide the case from the record.

FACTUAL FINDINGS

The ALJ correctly makes his factual findings.

In particular to this Argument, he finds all Respondents are firefighters who are or were employed by the California Military Department and assigned to Los Alamitos Joint Forces Training Base (Proposed Decision, Factual Finding No. 6, page 5); they are State active duty members, who are not civil service, but who are classified as CalPERS Miscellaneous (Proposed Decision, Factual Finding No. 7, page 5); and they perform substantially the same firefighting duties, wear similar attire, and operate similar equipment as firefighters at Camp Roberts, the California Department of Forestry and Fire Protection, and the Orange County Fire Authority, all of whom other firefighters are classified as Peace Officer/Firefighter (POFF) (*Proposed Decision*, Factual Findings Nos. 15 and 16, page 8.)

Respondents stipulated (Stipulation #3) that Respondents were classified as state miscellaneous members, not that this was the correct classification. Their appeal seeks reclassification as POFF.

MISAPPLICATION OF FACTS

The ALJ's principal error is that he wrongly defines and limits "conditions" for POFF. In particular, he limits "conditions" only to those stated in Government Code sections 20391 through 20397.

The "conditions" under which "other state employees" qualify as POFF members are outlined in Government Code sections 20391 through 20397 . . . (*Proposed Decision, Analysis*, paragraph 20, page 10.)

While those may be the criteria by which some state employees become POFF members, they are not the exclusive criteria.

Another criterion to become a POFF member, particular to Respondents, is provided by Government Code section 20282:

All officers, warrant officers, and enlisted persons who after October 1, 1961, are placed on full-time active duty with the office of the Adjutant General, pursuant to Sections 142, 321, 340 and 551, or former Section 167 of the Military and Veterans Code, shall become members in the manner and under the same conditions as under this article apply to other state employees. The retirement benefit provisions of the Military and Veterans Code shall not apply to those persons. This section shall not apply to the Adjutant General or the Assistant Adjutant General. *Government Code § 20282.* (Underlining and highlighting added.)

The exact same term, "same conditions", is used in other sections of the Government Code on public retirement laws. Those other uses of "same conditions" specifically identify the particular sections of the Government Code which constitute the "same conditions".

A member of the Judges' Retirement System, the Judges' Retirement System II, the Legislators' Retirement System, the State Teachers' Retirement Plan, the University of California Retirement Plan, or a county retirement system, who has

withdrawn accumulated contributions from this system shall have the right to redeposit those contributions, subject to the same conditions as imposed for redeposits of accumulated contributions by Section 20750, including the rights that he or she would have had under Section 20638 had he or she not withdrawn his or her contributions. *Government Code § 20752(a)*. (Underlining and highlighting added.)

Any person who elects to become a safety member who was a former member of a retirement system established pursuant to Chapter 3 or Chapter 5 shall have his contributions to the retirement association for membership service prior to January 1, 1952, calculated by the same rates and under the same conditions as those applicable to a member of the retirement system established pursuant to Chapter 4. [*Chapter 4 consists of sections 31900 through 32063.*] *Government Code § 31664.4*. (Underlining and highlighting added.)

Section 20282 is different. It is much broader and does not limit “same conditions” to specifically stated sections of the Government Code. Instead, the “same conditions” in section 20282 are those which “apply to other state employees”. Rather than look to stated statutes (as sections 20752(a) and 31664.4 require), section 20282 requires looking at other state employees. When that is done (looking at other state employees), Factual Findings 15 and 16 provide the basis to reclassify Respondents as POFF.

To read section 20282 differently, as the ALJ did, would render everything in the first sentence after “shall become members” superfluous. This must not be done. In interpreting a statute, our Supreme Court has required all of its words to be considered:

Pursuant to established principles, our first task in construing a statute is to ascertain the intent of the Legislature so as to effectuate the purpose of the law. In determining such intent, a court must look first to the words of the statute themselves, giving to the language its usual, ordinary import and according significance, if possible, to every word, phrase and sentence in pursuance of the legislative purpose. A construction making some words surplusage is to be avoided. *Dyna-Med, Inc. v. Fair Employment & Housing Commission* (1987) 43 Cal.3d 1379, 1386-87.

The ALJ ignores this requirement, treating the language in the first sentence of section 20282 after “shall become members” superfluous. Sections 20391 through 20397 already exist and are not referenced by section 20282. If the statutory intent of section 20282 were to limit POFF status to sections 20391 through 20397, there would have been no reason to add the reference to “other state employees”. Simply stating “All . .

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.enlisted . . . on full-time active duty . . . shall become members [of CalPERS]" would have been sufficient.

Furthermore, our Supreme Court has held that "[a]ny ambiguity or uncertainty in the meaning of pension legislation must be resolved in favor of the pensioner." *Ventura County Deputy Sheriffs' Assn. v. Board of Retirement* (1997) 16 Cal.4th 483, 490.

The ALJ acknowledges the correctness of *City of Oakland v. Public Employees' Retirement System* (2002) 95 Cal.App.4th 29, 56, that a local entity designed to act like and acting like a fire department is a fire department, and its members performing firefighter duties should be reclassified as POFF. He merely says it is not applicable to Respondents, because they don't meet the more narrow conditions of POFF, which he wrongly defines as only sections 20391 through 20397. (*Proposed Decision, Analysis*, paragraphs 21 through 24, pages 10-11.)

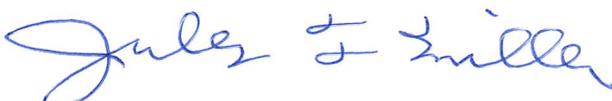
However, upon determination that Respondents are not limited to sections 20391 through 20397, and determination that consideration of section 20282 in its entirety is necessary, then *City of Oakland, supra.*, requires reclassification of Respondents as POFF.

CONCLUSION

Section 20282 requires Respondents' CalPERS membership to be under the "same conditions" that apply to other state employees. Unlike other statutes pertaining to Government Code retirement laws which use that same term and specify the code sections that define it, section 20282 does not limit the definition to particular code sections.

Other state employees classified as POFF perform substantially the same firefighting duties, wear similar attire, and operate similar equipment as Respondents. Since Respondents' CalPERS membership is statutorily required to be under the "same conditions" as these other firefighters classified as POFF, Respondents must be reclassified as POFF.

Very truly yours,



Jules F. Miller
Attorney for Respondent Firefighters