ATTACHMENT A

THE PROPOSED DECISION

Attachment A

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

In the Matter of Membership Reclassification of:

SUSAN P. GALLOWAY, Respondent

and

CITY OF SANTA MONICA, Respondent

Agency Case No. 2019-0513

OAH No. 2019060781

PROPOSED DECISION

Ji-Lan Zang, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter on October 23 to October 24, 2019, and January 2 to January 3, 2020, in Los Angeles, California.

Rory J. Coffey, Senior Attorney, represented California Public Employees' Retirement System (CalPERS).

Alex Y. Wong, Attorney at Law, represented the City of Santa Monica (respondent City).

PUBLIC EMPLOYEES RETIREMENT SYSTEM
FILED June 30 2020

Arnold P. Peter and Eyal Farahan, Attorneys at Law, represented Susan P. Galloway (respondent Galloway).

Oral and documentary evidence was received. The record was held open for closing briefs based on the following schedule: Respondent Galloway's closing brief was due on March 2, 2020; CalPERS's closing brief was due on March 23, 2020; respondent City's closing brief was due on March 30, 2020; and respondent Galloway's reply brief was due on April 13, 2020. Pursuant to Joint Stipulations to Continue Briefing Schedule dated February 28, April 1, and April 27, 2020, the ALJ extended the deadlines for the submission of closing briefs by respondent Galloway to April 8, 2020, by CalPERS to May 15, 2020, by respondent City to May 22, 2020, and by respondent Galloway (reply brief) to May 29, 2020. All briefs were timely filed and marked for identification as follows: respondent Galloway's opening brief marked as Exhibit 22; CalPERS' brief marked as Exhibit 23; respondent City's brief marked as Exhibit 24; and respondent Galloway's reply brief marked as Exhibit 25.

On April 9, 2020, respondent Galloway requested official notice of the current organizational chart of the City of Santa Monica Police Department (SMPD) and the description of SMPD's Patrol Operations, which were collectively marked as Exhibit 26. On May 15, 2015, CalPERS requested official notice of CalPERS's decision, *In the Matter of Petitioner Classification of Michael Holrath*, Agency Case number 1965, OAH No. L-1999010331 (2000), which was marked as Exhibit 27. Not having received any objections to these requests, the ALJ took official notice of Exhibits 26 and 27.

On May 5, 2020, the ALJ issued an Order Regarding Submission of Certain Documents and Lodging of Hearing Transcript. The order required the submission of the following documents by May 15, 2020: (1) a complete copy of Lieutenant Richard

Lichten's Expert Report, previously marked as Exhibit A[1]; (2) additional jurisdictional documents referenced in the Statement of Issues (SOI) by CalPERS; and (3) a copy of the hearing transcript and a Notice of Lodging by respondent Galloway. Parties were given the opportunity to raise objections, if any, to the admission of the jurisdictional documents for jurisdictional purposes only by May 22, 2020. All documents were timely filed, lodged, and marked for identification as follows: (1) complete copy of Lieutenant Lichten's Expert Report marked as Exhibit A; (2) additional jurisdictional documents marked collectively as Exhibit 28; and (3) notice of lodging of hearing transcript marked as Exhibit 29. Not having received any objections, the ALJ admitted Exhibit 28 for jurisdictional purposes only.

The record was closed and the case submitted for a proposed decision on May 29, 2020.

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[1] The ALJ requested a complete copy of Exhibit A because two pages were missing from her copy. Exhibit A was marked for identification only at the hearing because CalPERS moved to exclude it in a motion *in limine* before the commencement of the hearing. As discussed in Legal Conclusions 2 and 3, *infra,* Exhibit A was admitted into evidence after the case was submitted for a proposed decision and the motion *in limine* was denied.

FACTUAL FINDINGS

Jurisdictional Matters

1. Renee Ostrander, Chief of the Employer Account Management Division of CalPERS, filed the Statement of Issues while acting in her official capacity.

2. Respondent City is a local public agency that contracts with CalPERS for retirement benefits for its eligible employees. The provisions of respondent City's contract with CalPERS are contained in the California Public Employees' Retirement Law (PERL), which is set forth at Government Code[2] section 20000 et seq.

3. CalPERS is a defined benefit plan. Benefits for its members are funded by member and employer contributions and by interest and other earnings on those contributions. The amount of a member's contribution is determined by applying a fixed percentage to the member's compensation. A local public agency's contribution is determined by applying a rate to the member compensation as reported by the agency. 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."

4. An employee of a contracting public agency becomes a CalPERS member upon entry into employment. (§ 20370.) Members are classified either as "local miscellaneous" (§ 20383) or "local safety" (§ 20420), depending on the nature of the principal tasks and duties of the employee's position. Employees with local safety member classification enjoy an enhanced retirement benefit package. Employers also

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[2] All further references are to the Government Code, unless otherwise specified.

contribute more to PERS for safety member employees than for miscellaneous members.

5. From January 2, 1985, until October 1, 2000, respondent Galloway was employed with respondent City as an Airport Security Guard (ASG). By virtue of her employment as an ASG, respondent Galloway was classified as a local miscellaneous member of CalPERS.

6. On October 25, 2000, respondent City submitted to CalPERS an application for disability retirement on behalf of respondent Galloway, with a requested retirement date of October 1, 2000.

7. Respondent Galloway retired for disability retirement effective October 1, 2000. Since June 1, 2001, she has received her retirement allowance from CalPERS.

8. In a letter dated May 14, 2015, respondent Galloway requested CalPERS to reclassify her employment status as an ASG from a local miscellaneous member to a local safety member.

9. In a letter dated April 19, 2016, CalPERS informed respondent Galloway that her service with respondent City as an ASG did not qualify for local safety member status because she was not employed in a police department, her services did not constitute active law enforcement, and she was not a patrol officer.

10. On March 19, 2019, respondent Galloway, through her counsel, appealed CalPERS' determination.

11. The issue on appeal is whether respondent Galloway's employment as an ASG with respondent City should be reclassified as local safety membership with CalPERS.

Background – ASGs

12. From 1977 to 1979, respondent Galloway was employed with respondent City as a Police Cadet on a part-time basis. From 1979 to 1981, respondent Galloway became a full-time telephone operator with the SMPD. After separating from employment with respondent City after 1981, respondent Galloway returned to work for respondent City in 1983 or 1984 as a parking checker, responsible for issuing parking tickets. As described above, from January 2,1985, until October 1, 2000, respondent Galloway was employed as an ASG at respondent City's airport (Airport).

13. When respondent Galloway was first employed as an ASG in 1985, ASGs reported to the Airport Operations Manager under the Airport Department. In 1992, the ASG position was reorganized such that it fell under the authority of SMPD, and ASGs worked under the "administrative supervision of a Police Sergeant." (Ex. C, p. 8.) Sometime after December 2000, on a date not established by the record, ASGs were renamed as Airport Services Officers (ASOs), even though their primary job duties did not change significantly. In 2014 or 2015, a second reorganization merged the ASOs with respondent City park rangers and downtown services officers. The officers of this merged unit are known as Public Service Officers (PSOs). Currently, three PSOs are permanently assigned to the Airport.

Background – Local Safety Membership Under the PERL

14. Under the PERL, some local safety member classifications are mandatory while others are optional. For example, contracting agencies are required to classify certain employees, such as local police officers and local fire fighters, as local safety members. (§§ 20425, 20433.) Other employees, such as park rangers, airport patrol officers, airport law enforcement officers, and airport police officers may be conferred

safety member status only if the contracting agency elects to do so. (§§ 20423.5, 20423.3.). Throughout respondent City's history, it has not elected to include ASGs, ASOs, or PSOs as optional local safety members under the PERL. (Ex. O.)

15. Nevertheless, respondent Galloway contends she should have been classified as a local safety member under Government Code section 20425, because ASGs were local police officers whose principal duties "clearly" fell within the scope of "active law enforcement service." (§ 20425.) Because respondent Galloway's appeal pertains to only her employment as an ASG, the findings that follow focus on whether the job duties of ASGs "clearly" fell within the scope of "active law enforcement service," without regard to the job duties of ASOs and PSOs.

Job Descriptions of ASGs and Police Officers

16. A. Essential job duties of ASGs, as set forth in three written job descriptions dated June 1985, January 1991, and December 2000, included:

- Patrolling the airport in a marked vehicle;
- Performing facility inspections of runways, taxiways, ramps, lighting, and other structures;
- Issuing citations to drivers and pedestrians for municipal code violations;
- Monitoring and responding to police, air, ground, and airport staff radio calls;
- Making calls to other emergency personnel and securing area during emergency situations;

- Monitoring outgoing airplanes by entering airplane data and departure times onto a log and into a computer; and

- Collecting tie-down fees.

(Ex. C, pp. 3-8.)

B. All three job descriptions required an ASG job candidate to possess a valid driver's license, but no other licenses or certificates. The job descriptions also did not list any training requirement for ASGs. In 1985 and 1991, desirable training and experience for ASG applicants consisted of graduation from high school and one year's experience as a security guard. (*Id.* at pp. 3-4.) By 2000, "coursework in administration of justice, security procedures or a related field" became an additional desirable training and experience for ASG applicants. (*Id.* at p.8.)

17. A. The job description in effect from 1985 to 2002 for police officers of respondent City provided that the essential job duties of a police officer included:

- Patrolling an assigned area of the city by car, foot, or three-wheel motorcycle;

- Investigating unusual or suspicious conditions;

- Directing traffic at congested areas and investigating traffic accidents;

- Making arrests, issuing citations, investigating vice conditions, and serving subpoenas and warrants;

- Analyzing facts, clues, and evidence to determine the identity and whereabouts of violators;

- Providing information and assistance to the public;
- Questioning suspects and guarding prisoners;
- Noting and reporting hazardous conditions;
- Searching for stolen property and lost persons; and
- Writing reports, preparing evidence, and appearing in court.

(Ex. C, p. 18.)

B. According to this job description, all police officer applicants were required to complete a Basic Training Course certified by the California Commission on Peace Officer Standards and Training (POST). (*Ibid.*) The POST Basic Training Course, the training standard for police officers in California, is a 16-week, eight-hour per day course that includes topics such as patrol tactics, search and seizure, arrest procedure, and use of force. Possession of a valid driver's license is also required of all police officer job candidates, while graduation from high school is listed as a desirable training and experience. (*Ibid.*)

Job Duties and Activities of ASGs

THE WITNESSES

18. A. The job duties and activities of ASGs were established by the testimony of three witnesses who appeared at the hearing: respondent Galloway, PSO Leonardo Iniguez (Iniguez), and Lead PSO John Grammatico (Grammatico).

B. Iniguez testified at the hearing as a witness on behalf of respondent Galloway. From 1993 or 1994 until 2000, he worked for respondent City as an ASG.

Sometime in 2000, Iniguez's job title was changed from ASG to ASO. Since 2014 or 2015, when respondent City merged ASOs with park rangers and downtown service officers, Iniguez has been employed as a PSO who continues to work on occasion at the Airport.

C. Grammatico testified at the hearing as a witness on behalf of respondent City. Grammatico was employed by respondent City as a temporary ASG in August 1997, and his position became permanent in January 1998. He continued to work as an ASG until 2000, when his job title changed to ASO. After the merger of ASGs with park rangers and downtown service officers in 2014 or 2015, Grammatico became a PSO. He is currently a Lead PSO, an entry-level supervisor of other PSOs.

19. A fourth witness, PSO Supervisor Edward Cardona (Cardona), also testified at the hearing regarding the job duties and activities of PSOs at the Airport. Respondent City had employed Cardona as a park ranger in 2008, and he became a PSO in 2014 or 2015. As a PSO, Cardona worked at the Airport for approximately one year. He is currently a PSO Supervisor to three Lead PSOs and 27 PSOs. Because Cardona was not employed by respondent City during the period of respondent Galloway's employment at issue (i.e., 1985 to 2000), he has no personal knowledge of respondent Galloway's job duties and activities as an ASG. Therefore, Cardona's testimony was accorded with little weight.

ASG TRAINING

20. Respondent Galloway submitted evidence showing that in 1993, she completed a 24-hour POST-certified Aviation Security Course designed to meet the

training requirements under Penal Code section 832.1.[3] (Ex. P, p. 2.) In 1996, respondent Galloway completed an additional POST-certified course which included the use of National Crime Information Center (NCIC), a computerized index of criminal justice information, and California Law Enforcement Telecommunications System (CLETS), a computer network of criminal histories, driver records, and other databases. Additionally, respondent Galloway received some firearms training with the SMPD's range master, although the extent of this firearms training, such as which weapons respondent Galloway was qualified to use, was not established by the record.

21. On cross-examination, respondent Galloway admitted she never attended any POST-certified Basic Training Course or obtained any California POST Basic Certificate. Moreover, respondent Galloway admitted she is not trained to perform certain duties including service of a search warrant, service of an arrest warrant, proper physical transport of a suspect, "code 3 driving,"[4] use of an AR-15 rifle or a shotgun, and response to an active shooter situation.

22. Iniguez and Grammatico's testimony confirmed respondent City did not require ASGs to complete a POST Basic Training Course. Iniguez reported that he

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[3] Penal Code section 832.1 states in relevant part, "[a]ny airport security officer, airport policeman, or airport special officer, regularly employed and paid by a city, county, city and county, or district who is a peace officer shall have completed a course of training relative to airport security approved by the Commission on Peace Officers Standards and Training. . . . "

[4] "Code 3 driving" is driving to emergency scenes with warning sirens and flashing lights.

completed a 40-hour course relating to airport security, which covered topics including recognizing illegal drugs, smuggling, and terrorism. In addition, he received training in the use of CLETS. Grammatico also testified that when he was employed as an ASG, he was only required to complete a POST-certified course relating to aviation security designed to meet the training requirements of Penal Code section 832.1.

23. According to Iniguez and Grammatico, ASGs were also not trained to physically engage with criminal suspects. Iniguez stated he was trained to call for a police officer when confronting a criminal suspect. Grammatico testified he was only trained in defensive tactics designed for the civilian population of the police department.

ASG SWORN STATUS; CODE OF ETHICS; AND JOB PROTECTIONS UNDER THE PEACE OFFICER BILL OF RIGHTS;

24. At the hearing, respondent Galloway claimed that as an ASG, she was a sworn law enforcement officer. However, the document identified by respondent Galloway as the oath administered to her and sworn to by her on November 1, 1984, is the Oath of Allegiance for Public Officers and Employees. (Ex. J, p.1.) It is the same oath required by the California Constitution to be signed by all state employees. (Cal. Const., art. XX, § 3.) Little other evidence was presented to show that ASGs underwent a process to become a sworn peace officer similar to that of a police officer.

25. The testimony of respondent Galloway and Iniguez did establish that upon their employment, ASGs signed a Law Enforcement Officer Code of Ethics. However, respondent Galloway also claimed that as an ASG, she was entitled to the

protections of the Peace Officer Bill of Rights.[5] This claim was not corroborated by either Iniguez or Grammatico. Iniguez testified that he did not know whether he was subject to the terms of the Peace Officer Bill of Rights, and Grammatico did not offer any testimony on this subject at the hearing. Therefore, respondent Galloway's assertion regarding ASGs' entitlement to protections offered by the Peace Officer Bill of Rights is deemed as not credible.

ASG UNIFORMS, VEHICLES, UTILITY BELT, AND DUTY WEAPONS

26. Although ASG uniforms changed over the years, during respondent Galloway's tenure, ASGs wore blue and tan uniforms similar to those worn by SMPD officers or Los Angeles County sheriffs. ASGs' badges stated "Santa Monica Police," and they were virtually identical to SMPD's officer badges. ASGs patrolled the Airport in vehicles marked as "Santa Monica Police." These vehicles were equipped with blue and red emergency lights and a dispatch radio. However, ASG patrol vehicles were not partitioned or equipped with cages, and therefore were not suitable for the transportation of suspects.

27. ASGs were assigned utility belts with pouches for mace, handcuffs, and keys. However, ASGs were not issued any firearms, batons, or Tasers. According to both Iniguez and Grammatico, ASGs were only issued pepper spray for use while on duty. However, ASGs were not allowed to deploy pepper spray in an offensive manner, and its use was limited to self-defense purposes only. Although Iniguez and

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[5] The Peace Officer Bill of Rights, formally known as Public Safety Officers Procedural Bill of Rights Act (Gov. Code, §3300 et seq.) provides certain job and privacy protections to peace officers.

Grammatico carried handcuffs that they purchased on their own, they never used handcuffs during the course of their duties as ASGs.

28. ASGs also did not have regular access to any firearms, except that for two to three years following the September 11, 2001 terrorist attacks, ASGs were assigned new trucks that contained mounted shotguns. However, none of the ASGs received training on how to use the shotguns. During all other times, ASGs did not have guns in their regular patrol vehicles, nor did they have firearms in their office in the administration building. On rare occasions, when the ASGs' patrol vehicles were being serviced or repaired, the SMPD motor pool loaned a vehicle to the ASGs containing mounted shotguns. However, there was little evidence to show that the ASGs were authorized to use these shotguns in the loaner vehicles.

ASG Job Duties Relating to Airport Operations

29. The testimony of respondent Galloway, Iniguez, and Grammatico established that some of an ASG's job duties were related to Airport operations. For example, ASGs logged aircraft arrivals and departures by noting the type of aircraft, the tail number of the aircraft, the time of the arrival or departure of the aircraft, and the runway used. Because the Airport was subject to noise abatement requirements, ASGs provided noise readings of aircraft to pilots and addressed violations when noise limits were exceeded. Most aircraft at the Airport are not stored in hangers. ASGs conducted audits to ensure that aircraft were properly parked and tied down, and they collected tie-down fees and rent from airport tenants. Before the City installed automatic security gates in the late 1990's, ASGs also opened and closed the airport gates. Another important ASG job duty relating to airport operations was the observation and retrieval of foreign objects and debris (FOD). Grammatico estimated that 30 to 45 minutes of an ASG's day was focused on looking for FOD.

ASG Job Duties Relating to Airport Security

Issuance of Citations

30. ASGs' primary job duty relating to airport security was patrolling the airport for the prevention of crimes. If violations were observed, ASGs had the authority to issue citations. The most common citation issued by ASGs were for runway incursions, a Municipal Code violation. According to respondent Galloway, the Airport did not have any perimeter fencing before 1994, and runway incursion occurred daily. Iniguez testified that sometime after 1993 or 1994, runway incursions were reduced to two incidents per month. He estimated that during this time, the Airport employed five ASGs, and each ASG issued five or six citations per year for runway incursions.

31. ASGs' enforcement authority, however, was limited mostly to citations for Municipal Code violations that occurred inside the boundaries of the Airport. Iniguez testified that he did not ever issue citations for violations based on the Penal Code, the Public Utility Code, or the Vehicle Code. Grammatico confirmed that ASGs only enforced Municipal Code violations occurring on Airport premises and the only Vehicle Code citations he wrote were for parking violations. Respondent Galloway, however, reported that she had once cited a man for indecent exposure in violation of the Penal Code. She also recalled encountering a man with an unleashed dog who refused to provide his identification, thereby violating a provision of the Public Utility Code. But respondent Galloway later admitted that she never cited the man with the unleashed dog, or anyone else, for a violation based on the Public Utility Code. Additionally, none of the witnesses testified that they had ever cited anyone for violations outside the boundaries of the Airport.

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Authority to Arrest and to Suspects into Custody

32. Although the witnesses agreed that a citation is technically a form of arrest where the suspect is released on his or her own recognizance, their testimony diverged when questioned about ASGs' authority to physically arrest and take a suspect into custody. Both Iniguez and Grammatico stated that when confronted with a combative suspect who refused to sign a citation, ASGs were not expected to physically arrest and take the suspect into custody. In such a situation, both Iniguez and Grammatico testified the proper procedure was for the ASG to call SMPD and to wait for the police officers to arrive on the scene. Neither Iniguez nor Grammatico could recall an instance in which they handcuffed and detained a suspect on their own, not in the presence or without the order of their police sergeant supervisor.

33. According to Iniguez and Grammatico, other circumstances under which ASGs were not expected to engage a suspect included investigating a driving under influence incident, giving chase to a fleeing suspect, either on foot or by car, and confronting an armed suspect. ASGs were also not expected to arrest any suspects for crimes not committed in their presence. Even when observing a crime in progress, such as burglary or vandalism, ASGs were not expected to physically engage with or arrest suspects. In all these situations, ASGs were expected to call the SMPD and wait for police officers to render assistance.

34. Respondent Galloway also admitted at the hearing that she was never physically assaulted by a suspect and never had to use physical force on a suspect during her 15-year career as an ASG. Nevertheless, respondent Galloway claimed that she had authority to arrest and take suspects into custody both inside and outside the Airport. Respondent Galloway asserted this authority derived from the following sources: (1) statements made to her by Al Valez (Valez), Airport Supervisor, when she

was first employed as an ASG in 1985; (2) statements made to her by Bill Kemp (Kemp), the police sergeant who became her supervisor in 1992; (3) statements made by Marsha Moutrie (Moutrie), respondent City's district attorney, during a two-hour training respondent Galloway received in 1996; and (4) Santa Monica Municipal Code section 3.36.090, which grants certain city employees the power to make arrests.

35. Respondent Galloway's contention that she had the authority to arrest and to take a suspect into custody is not credible for several reasons. First, as described above, her testimony is not corroborated by either Iniguez or Grammatico. Second, the purported statements made by Valez, Kemp, and Moutrie are inadmissible hearsay and cannot by themselves be used to support any factual findings. Third, the version of the Santa Monica Municipal Code section 3.36.090[6] in effect while

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[6] The version of Santa Monica Municipal Code section 3.36.090 in effect while respondent Galloway was employed as an ASG states in relevant part:

> (a) Pursuant to Penal Code Section 836.5, City officers and employees occupying the job classifications set forth in subsection (b) may arrest a person whenever he or she has reasonable cause to believe that the person to be arrested has committed a misdemeanor or infraction in his or her presence which is a violation of the City Charter, this Code, or any ordinance or statute and which the officer or employee has the duty to enforce. In any case in which a person is arrested pursuant to this Section and the person arrested does not demand to be taken before a magistrate, a written notice to appear shall be prepared and the person

respondent Galloway was employed as an ASG granted a number of city employees, including ASGs and animal control officers, the authority to issue citations (i.e., to arrest the suspect, to issue a notice to appear, and to release the suspect on his or her own recognizance), but not the authority to arrest and take a suspect into custody. Fourth, it seems implausible that ASGs would be expected to arrest and to take suspects into custody, considering ASGs were not issued any handcuffs, did not carry

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> shall be released on his or her promise to appear as provided for in Section 3.36.070 of this Code and Penal Code Section 853.6.
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> (b) Any City officer or employee occupying one of the following job classifications may make arrests and issue written notices to appear pursuant to this Section:
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> (1) Airport Security Guard.
>
> (2) Animal Control Officer.
>
> (3) Building Inspector.
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> [¶] . . . . [¶]
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> (21) Park Ranger, solely for purposes of enforcement of Chapter 4.04 of the Santa Monica Municipal Code.

(Ex. 20.)

any on-duty weapons other than pepper spray, and drove vehicles that lacked partitioning and cages for the transportation of suspects.

36. Furthermore, when asked to provide examples of incidents during which she physically arrested and took suspects into custody, respondent Galloway testified about an incident in which she approached a man and a woman due to suspected drug activity and a second incident when she approached a suspect in a truck in response to a call from the airport tower that the man had stolen some airplane parts. However, for both incidents, police officers, either from the SMPD or from the Santa Monica College (SMC) Police, arrived on the scene and effected the arrest. Under cross-examination, when asked if she had ever physically arrested anyone, respondent Galloway could only state that she had "assisted with arrests" (her words). By her own admission, respondent Galloway was never listed as an arresting officer on any arrest report.

37. Therefore, the evidence did not establish that ASGs had the authority to arrest and take suspects into custody.

Authority to Conduct Criminal Investigations and Other Related Powers

38. Respondent Galloway testified that the risks inherent in her job as an ASG were equivalent to, if not greater than, the risks of performing the job duties of a police officer. She insisted that as an ASG, her job duties encompassed more than observing and reporting suspicious activities and included conducting criminal investigations. Respondent Galloway provided two examples of criminal investigations in which she was purportedly involved. In the first instance, Kemp, respondent Galloway's police sergeant supervisor, asked her to speak to the owner of a Cessna

plane with extended fuel tanks, as these types of fuel tanks were often indicative of smuggling activity. Respondent Galloway chatted with the Cessna owner to gain permission to enter the plane. Inside the airplane, she observed that some seats were removed, another indication of smuggling activity. Respondent Galloway then verbally reported the incident to Kemp, but no criminal prosecution resulted from her report. The second instance that respondent Galloway recounted involved the call from the airport tower regarding a man suspected of stealing airplane parts. Respondent Galloway approached the man, but the suspect was eventually arrested by the SMC Police.

39. Contrary to respondent Galloway's assertion, both incidents demonstrate that the extent of respondent Galloway's involvement in these criminal investigations was limited to observing a suspicious activity and then reporting it either to her police sergeant supervisor or to police dispatch. Unlike what a police officer would do, as described in the police officer job description set forth above, respondent Galloway did not analyze facts, clues, or evidence. She did not question suspects. She did not conduct any searches of persons or vehicles, and she did not prepare any evidence for the prosecution of any crime.

40. Respondent Galloway's contention that an ASG's job duties included conducting criminal investigations is cast further into doubt by the following evidence:

1) Respondent Galloway's admission that she has never identified, preserved, documented, transported, or processed evidence consistent with chain-of-custody rules;

2) Respondent Galloway's admission that she did not receive any training on search or arrest warrants, and she had never actually served any warrants while employed as an ASG;

3) Respondent Galloway's admission that she did not receive any training on the transportation of prisoners and has never performed this function;

4) Respondent Galloway's admission that she has never testified as a witness in a criminal case as a result of an investigation that she conducted;

5) Iniguez and Grammatico's credible testimony that ASGs were not authorized to conduct searches of persons, nor were they authorized to conduct searches of vehicles, except for inventorying a vehicle prior to the vehicle being impounded; and

6) Grammatico's credible testimony that ASGs were not authorized to seize property.

41. Therefore, the evidence did not establish that ASGs conducted criminal investigations as a part of their job duties.

ASG First Responder Duties

42. Respondent Galloway testified at the hearing that she considered herself a first responder the moment she checked into her work as an ASG because she was at the Airport ready to protect and serve the public. However, she presented no evidence that she was required to be a first responder to any scenes of crime. Although Iniguez, Grammatico, and respondent Galloway testified about ASGs' duty to monitor their radio for police dispatches, none of them testified that they were ever dispatched by

the police to respond to a crime. These three witnesses' testimonies showed that when ASGs were involved in incidents of potentially criminal conduct, the protocol was to call the police for assistance. Therefore, there was little evidence that ASGs served as first responders to crime scenes.

43. Respondent Galloway also maintained that as an ASG, she was required to be a first responder in the event of an airplane crash. She described a 1989 and a 1994 airplane crash in which she rendered such assistance. At the 1989 crash, when respondent Galloway arrived at the scene, she found the pilot and his wife sitting on the ground, and she spoke to them and comforted them until the Santa Monica Fire Department and the SMPD arrived. At the 1994 crash, respondent Galloway pulled a pilot out of a burning airplane and spoke to him to keep him conscious until the Santa Monica Fire Department arrived. Respondent Galloway maintained that she had entered the burning plane as a part of her mandated job duties as an ASG. Respondent Galloway claimed that Kemp had told her she would be dismissed from her position if she did not risk her life to save life and property in the event of an airplane crash.

44. While it is commendable that respondent Galloway placed her life at risk to save others, her testimony that she was required to do so as a part of her job duties was not credible. To begin with, respondent Galloway once again relied on the hearsay statements of Kemp, which cannot be used to support by themselves any factual findings. Additionally, Iniguez and Grammatico did not corroborate her testimony. Both Iniguez and Grammatico stated that an ASG's duties in the event of an airplane crash was to secure the scene and to call for other emergency personnel, including SMPD, the Santa Monica Fire Department, and the National Transportation Safety Board (NTSB). Iniguez and Grammatico's testimony is deemed to be more credible as

it is also consistent with the written ASG job descriptions, which state that ASGs' job duties were to make calls to other emergency personnel and secure area of emergency situations. (Ex. C, pp. 3-5.)

45. Like respondent Galloway, Iniguez testified about similar incidents during which he risked his life to save others involved in airplanes. However, when asked whether he considered it part of his job to do so, Iniguez hesitated before answering that he could not be sure. Grammatico had also encountered airplane crashes during his employment as an ASG. However, Grammatico testified that while he was willing to help others in his personal capacity, there was no expectation that he should place his safety at risk to save life or property, and he was never disciplined or marked down for failing to respond to an airplane crash.

46. Therefore, the evidence did not establish that ASGs were required to be first responders and place their lives at risk either at crime scenes or at the scene of an airplane crash.

Expert Testimony

47. At the hearing, Retired Lieutenant Richard Lichten, testified as an expert witness on behalf of respondent Galloway.[7] Lieutenant Lichten graduated from the POST basic training academy for police officers in 1978. Upon his graduation, Lieutenant Lichten joined the Los Angeles County Sheriff's Department and was

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[7] CalPERS filed a motion *in limine* to exclude Lieutenant Lichten's expert testimony and report. For reasons that are set forth in Legal Conclusions 2 and 3, *infra,* the motion *in limine* is denied, and Lieutenant Lichten's testimony and expert report (Exhibit A) are admitted into evidence.

assigned to the men's central jail. Throughout his career, Lieutenant Lichten worked as a sheriff's deputy at various watch stations, including those in Carson, Santa Clarita, and Lancaster. He rose through the ranks and retired as lieutenant in 2008. After his retirement, Lieutenant Lichten became licensed as an armed security guard with the Bureau of Security and Investigative Services. He has provided expert testimony on several topics relating to security guards and police officers in both civil and criminal cases.

48. To render his opinion, Lieutenant Lichten reviewed the pleadings in this case and respondent Galloway's POST training records. He also conducted a telephonic interview of respondent Galloway in the presence of her attorney on July 30, 2019. After this interview, Lieutenant Lichten wrote a report of his findings and opinions, dated the same date, which was submitted into the evidence as Exhibit A.

49. Based on his review, Lieutenant Lichten opined that "many of [respondent] Galloway's day to day duties coupled with her police training were consistent with a sworn active law enforcement police officer and not a civilian security officer." (Ex. A, p. 4.) Lieutenant Lichten reached this conclusion after taking into consideration the following factors: (1) respondent Galloway's completion of POST training consistent with that of a police officer; (2) respondent Galloway's badge and shoulder patch that stated "Police"; (3) respondent Galloway's patrol vehicle that had blue and red lights similar to a police vehicle; (4) the protection of the Peace Officer Bill of Rights that was afforded to respondent Galloway; (5) the requirement for respondent Galloway to sign a Code of Ethics, similar to a police officer; (6) respondent Galloway's authority to issue citations; and (7) respondent Galloway's sworn status. (*Id.*, pp. 5-9.)

50. Although Lieutenant Lichten had the requisite knowledge and experience to render an opinion on the nature of respondent Galloway's job duties as an ASG, he based his opinion on assumptions that are not supported by the evidence in this case. For example, Lieutenant Lichten wrote that "all of the POST certified training Officer Galloway received is consistent with the training that a sworn active law enforcement police officer would receive." (*Id.* at p. 7.) Nevertheless, Lieutenant Lichten testified that the POST basic academy that police officers attend is eight hours per day, for 16 weeks, and includes courses on topics such as patrol tactics, search and seizure, arrest procedures, and use of force. As described above, respondent Galloway presented evidence showing that she only completed a 24-hour POST-certified Aviation Security Course and an additional POST-certified course on the use of NCIC and CLETS. Respondent Galloway also admitted that as an ASG, she was not trained on topics such as use of force, service of search and arrest warrants, proper physical transport of a suspect, and adequate grounds for a warrantless entry. Thus, the training that respondent Galloway received as an ASG was far less than that required of a police officer.

51. Moreover, while there was little evidence presented to establish that ASGs were protected under the Peace Officer Bill of Rights, Lieutenant Lichten admitted under cross-examination that certain municipalities require both police officers and civilian officers to sign a Code of Ethics. Additionally, under cross-examination, it became evident that Lieutenant Lichten assumed respondent Galloway to be a sworn peace officer without knowing which oath she had taken. As set forth above, there is no evidence showing that respondent Galloway was sworn in a manner similar to that of a police officer. Rather, upon her employment as an ASG, she signed an oath that all state employees are required to sign.

52. Lieutenant Lichten's opinion was also inconsistent with the evidence in the case. For example, although the job descriptions for police officers and ASGs used the term "patrol," Lieutenant Lichten acknowledged that ASGs' patrol duties were very different from those of a police officer. Lieutenant Lichten described how a police officer on patrol would be "chasing the radio" going from "hot call to hot call" and that "the intensity of those calls" included "terrible stuff," such as domestic violence incidents (his terms). Lieutenant Lichten conceded that ASGs' patrol duties included only monitoring of police calls, and they were not expected to "chase the radio" or to respond to domestic violence incidents like a police officer. Furthermore, according to Lieutenant Lichen, a police officer had the jurisdiction to enforce a variety of criminal laws across the entire state, whereas the evidence in this case show that ASGs had limited enforcement powers to issue citations, mostly for Municipal Code violations, within the boundaries of the Airport.

53. Most significantly, Lieutenant Lichten testified about the distinction between police officers and security guards, and he opined that the job duties of ASGs were more similar to those of police officers than security guards. According to Lieutenant Lichten, while police officers have the power to arrest for crimes that were not committed in their presence, security guards, like any other layperson, only have the ability to effect a "citizen's arrest" for crimes that are committed in their presence. Lieutenant Lichten also repeatedly stated at the hearing that the distinction between a police officer and a security guard is that a security guard "observes and reports" while a police officer "has a duty to act upon what they see and take positive action" (his words). When questioned about what he meant by "positive action," Lieutenant Lichten specified that he would expect a security guard to immediately call the police upon observing suspicious activities. However, he would expect a police officer to confront the suspect, investigate the incident, and if appropriate, arrest the suspect.

Given these distinctions, the job duties of an ASG are more consistent with that of security guard than a police officer, as the evidence show that ASGs did not physically engage with suspects, did not conduct criminal investigations, did not have the authority to arrest for crimes that were not committed in their presence, and did not have the authority to take suspects into custody.

54. An expert's opinion is only as good as the facts and the reason upon which that opinion is based. (*Kennemur v. State of California* (1982) 133 Cal.App.3d 907, 924.) Because he relied on facts and assumptions that were not supported by the record, Lieutenant Lichten's opinion that respondent Galloway's job duties were consistent with a sworn active law enforcement police officer and not a civilian security officer is accorded little weight.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. In an administrative hearing concerning retirement benefits, the party asserting the claim has the burden of proof, including the both the initial burden of going forward and the burden of persuasion, by a preponderance of the evidence. (*McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051, note 5.) In challenging CalPERS' determination that ASGs were properly classified as local miscellaneous members, respondent Galloway bears the burden of proof by a preponderance of the evidence that she was entitled to local safety member status. As set forth in Factual Findings 1 through 54, and Legal Conclusions 2 through 21, that burden was not met.

The Motion *in limine* to Exclude Lieutenant Lichten's Expert Testimony and Report

2. Prior to the commencement of the hearing, in a motion *in limine* dated September 26, 2019, CalPERS moved to exclude the expert report and testimony of Lieutenant Lichten. In support of its motion, CalPERS contended that Lieutenant Lichten's report and testimony constitute expert testimony on ultimate issues of law that is the province of the court to decide. (*Summers v. A.L. Gilbert Co.* (1999) 69 Cal.App.4th 1155; *Carter v. City of Los Angeles* (1945) 67 Cal.App.2d 524, 528.) On the first day of the hearing on October 23, 2019, the ALJ heard argument on the motion and took the matter under submission. Lieutenant Lichten was allowed to testify at the hearing, and his expert report was marked for identification only as Exhibit A. Ruling on the admissibility of Lieutenant Lichten's testimony and his expert report was deferred until the submission of the case for a proposed decision.

3. CalPERS' motion *in limine* to exclude the expert report and testimony of Lieutenant Lichten is denied. The ultimate issue in this case is whether respondent Galloway's principal job duties as an ASG "clearly" fell within the scope of "active law enforcement service" under section 20425. At the hearing and in his expert report, Lieutenant Lichten opined that "many of [respondent] Galloway's day to day duties coupled with her police training were consistent with a sworn active law enforcement police officer and not a civilian security officer." (Ex. A, p. 4.) Having certain duties that may be consistent with those of a police officer may be an incidental, rather than the principal, function of the job. Therefore, Lieutenant Lichten's opinion does not go to the ultimate issue of law, and his testimony, as well as his report (Exhibit A), are admitted into evidence.

Local Safety Membership Classification

4. For a position to qualify for local safety member classification with CalPERS, its duties must fall within the parameters of one of the sections of retirement law defining local safety member classification (currently sections 20420-20445). Local safety member classifications can be mandatory or optional. Under a mandatory safety classification, if a member's job duties fall within the definition of that section, he or she must be classified as a safety member. Under an optional safety classification, a member may be placed in that safety classification only if he or she is placed there by a contract between the member's employer and CalPERS. (See, e.g., *Charles v. Board of Administration* (1991) 232 Cal.App.3d 1410, 1414.)

Optional Safety Member Classification – Contractual Provision for Inclusion

5. Section 20423.31 provides that a local safety member includes any airport patrol officer, airport law enforcement officer, or airport police officer employed by a contracting agency, if the contracting agency has elected to confer safety status onto such officers. In this case, the parties do not dispute that section 20423.31 does not apply because respondent City has not amended its contract with CalPERS to confer safety status to ASGs under the provisions of this statute.

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Mandatory Safety Member Classification – Active Law Enforcement

6. Section 20420 provides that a local safety member includes all local police officers employed by a local contracting agency. "Local police officers" are defined by section 20425 (formerly section 20020), which provides:

> "Local police officer" means any officer or employee of a police department of a contracting agency which is a city, except one whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise and whose functions do not clearly fall within the scope of active law enforcement service even though the employee is subject to occasional call. or is occasionally called upon. to perform duties within the scope of active law enforcement service, but not excepting persons employed and qualifying as patrolmen or equal or higher rank irrespective of the duties to which they are assigned.

7. Respondent Galloway contends that she is entitled to local safety member classification because ASGs are local police officers as defined by section 20425. Thus, the central issue in this case is the meaning of "active law enforcement" as that term is used in the statute.

The Meaning of "Active Law Enforcement"

8. Although the PERL does not define "active law enforcement," courts have repeatedly interpreted the phrase. The seminal case of *Crumpler v. Board of Administration* (1973) 32 Cal.App.3d 567 (*Crumpler*), involved animal control officers, police department employees who sought safety member status. The employees'

principal duties entailed the enforcement of state and local laws related to the licensing, control, and maintenance of animals. (*Id.* at p. 572.) In performing these duties, the employees sometimes used marked police vehicles equipped with police radios and occasionally served as backup at crime scenes. (*Ibid.*) The employees were sworn in as police officers, held identification cards and badges, wore police officer's uniforms, and were required to carry and be trained in the use of firearms. (*Ibid.*) In reaching the conclusion that these animal control officers did not engage in active law enforcement, the court observed:

> The provision of a special category of retirement membership for policemen relates to the hazardous nature of their occupation. [Citations.] The phrase "active law enforcement service" as used in section 20020 [currently section 20425] was no doubt intended to mean law enforcement services normally performed by policemen. As the Attorney General has suggested, it means the active law enforcement and suppression of crimes and the arrest and detention of criminals. [Citations.] In a loose sense, animal control officers are engaged in active law enforcement but so are a myriad of other public employees such as building inspectors, health officers, welfare fraud investigators and the like but their duties can hardly be said to constitute "active law enforcement service" as contemplated by the statute.

(*Id.* at pp. 578 – 579.)

9. In *Neeley v. Board of Retirement* (1974) 36 Cal.App.3d 815 (*Neeley*), two identification technicians employed by the Fresno County Sheriff's Office applied for classification as safety members under the PERL. Both men had been initially employed as deputy sheriffs, and they remained sworn peace officers despite the change in their civil service classification. They wore uniforms and carried badges. (*Id.* at p. 818.) They were subject to the same physical examinations as safety members and they were required to qualify with various weapons each year. (*Id.* at p. 819.) They were subject to emergency call, and they had in fact been called out in emergencies. (*Ibid.*) Their primary responsibilities involved office work, and it was not necessary for them to go outside to gather the evidence. (*Id.* at p. 818.) Their job description did not require them to have personal contact with the prisoners, and they rarely did. (*Id.* at p. 819.) Citing to *Crumpler*, the *Neeley* court concluded that while the identification technicians' activities were related and essential to law enforcement, they did not involve "active law enforcement" because "active law enforcement implies hazardous activity." (*Id.* at p. 820.) Their duties did not expose them to hazards from prisoner conduct or the risks of injury from such sources or the necessity of being physically able to cope with potential dangers inherent in the arrest, detention, and handling of prisoners. (*Id.* at p. 822.)

10. In the more recent case of *Riverside Sheriffs' Assn. v. Board of Administration* (2010) 184 Cal.App.4th 1 (*Riverside Sheriffs' Assn.*), the county sheriffs' association sought to overturn a decision by CalPERS refusing to change the status of the deputy coroners from local miscellaneous to local safety members. To be appointed as a deputy coroner, an applicant must have completed a 64–hour arrest and firearms training course and an 80–hour death investigation course, whereas county deputy sheriffs must undergo a 664–hour POST training course. (*Id.* at p. 6.) Deputy coroners carry badges and wear uniforms that are indistinguishable from those

of deputy sheriffs. While on duty, they are armed with handguns, batons, pepper sprays, and safety vests. (*Ibid.*) Deputy coroners conduct investigations into the causes of death, as opposed to investigating crimes, but they are occasionally exposed to hazardous and emotionally charged situations. (*Id.* at p. 7.) The evidence disclosed one report of a deputy coroner being shot at while conducting an investigation at an Indian reservation. (*Ibid.*) Most coroners could recall at least one instance in which they drew a weapon while notifying next of kin of a death (*Ibid.*) Given these facts, the court held that "while the duties of deputy coroners sometimes overlap with those of active law enforcement officers, their principal functions do not 'clearly' fall within the category of active law enforcement." (*Id.* at p. 13.)

Principal Duties and Functions of ASGs Do Not Clearly Fall Within "Active Law Enforcement"

11. Applying the holdings in *Crumpler*, *Neeley*, and *Riverside Sheriffs' Assn.* to the present case, ASGs' possession of indicia of authority, such as uniforms, insignia, and vehicle markings virtual identical to those of police officers, is not dispositive. For ASGs to be considered as having engaged in active law enforcement service, they must be involved in the suppression of crimes and the arrest and detention of criminals, services normally performed by police officers. In performing these services, they must also implicitly be exposed to a similar level of hazard as police officers. (See also, *Glover v. Board of Retirement* (1989) 214 Cal.App.3d 1327, 1333 (*Glover*) ["The common thread running through the foregoing cases is the concept that the classification of a 'safety member' engaged in active law enforcement is largely controlled by the extent to which the category exposes its holders to potentially hazardous activity"].)

12. In this case, respondent Galloway was not a police officer. Like an animal control officer or a building inspector, respondent Galloway occasionally may have engaged in "law enforcement" activities, such as issuing citations, but her primary duties involved patrolling the Airport for the observation and reporting of crimes, which do not constitute "active law enforcement service." Respondent Galloway's job duties differed from the "active law enforcement service" of police officers in that: (1) she did not and was not required to completed the POST basic academy training; (2) she was not required to qualify for the use of any firearms; (3) she was not authorized to carry a weapon, other than pepper spray; (4) she was not required to engage in physical confrontations with suspects; (5) she did not respond to police dispatches or to crime scenes; (6) she did not make any arrests where she took the suspect into custody; (7) she did not transport suspects to jail; (8) she did not guard suspects; (9) she did not engage in pursuits of suspects by foot or car, (10) she did not serve any search or arrest warrants; (11) she did not enforce criminal laws outside the premises of the Airport; and (12) she did not conduct any criminal investigations. (Factual Findings 16 to 54.)

13. Respondent Galloway asserted at the hearing that as an ASG, she was exposed to a similar level of hazard as that of a police officer. (Factual Finding 38.) However, as the testimony of Iniguez and Grammatico demonstrates, while ASGs were allowed to issue citations for some Municipal Code and Penal Code violations, they were not authorized to take into custody a cited individual who refused to sign the agreement to appear, but were rather required to call a police officer to do so. (Factual Finding 32.) By her own admission, respondent Galloway was never physically assaulted by a suspect, and she never had to use physical force on a suspect during her 15-year career as an ASG. (Factual Finding 34.) Respondent Galloway also could only recall two incidents during which she "assisted with arrests," and in each of those

instances, police officers effected the actual arrests. (Factual Finding 36.) Additionally, as described above, respondent Galloway did not perform other hazardous duties of police officers such as service of warrants, transportation and guarding of suspects, and pursuits of suspects by foot or car. (Factual Findings 36 and 40.)

14. Respondent did recount two incidents during which she rendered aid to victims of plane crashes. (Factual Finding 43.) Those actions are certainly commendable. However, while ASGs were expected to arrive on the scene of an airplane crash and call the Santa Monica Fire Department, SMPD, and NTSB for assistance, there was little evidence on this record to suggest that ASGs were required, as a part of their job duties, to put their lives at risk to be first responders at airplane crashes. (Factual Findings 44 to 46.) Furthermore, *Crumpler*, holds that to qualify for local safety classification under section 20020 (currently section 20425), the hazardous nature of the employment must be related to that of being a police officer. (*Crumpler supra,* 32 Cal.App.3d at 578-579.) Responding to airplane crashes does not involve exposure to dangers inherent in the job duties of a police officer, that is, the suppression of crimes and the arrest and detention of criminals.

Respondent Galloway's Other Contentions

15. Respondent Galloway contends that based on the ruling in *Boxx v. Board of Administration* (1980) 114 Cal.App.3d 79 (*Boxx*), her employment as an ASG also qualified her as a "patrolmen or equal or higher rank" under section 20425. (Ex. 25, pp. 11-13.) This contention is not persuasive.

16. *Boxx* involved the classification of a municipal housing authority patrolman as a miscellaneous member rather than a safety member under the PERL. The patrolman's duties included the preservation of peace within housing

developments and the protection of life and property from criminals and inadvertent offenders. (*Id.* at p. 86.) The patrolman was uniformed, armed with a revolver, carried handcuffs, and possessed a two-way radio in a marked patrol car. (*Id.* at p. 87.) The patrolman also conducted a pat-down search of a suspect's clothing, drew his gun when the suspect resisted, arrested and handcuffed suspect on finding contraband, and held him in custody in the patrol car until assistance arrived. (*Id.* at pp. 87-88.) Given these facts, the court found that the patrolman's primary job duties involved the active investigation and suppression of crime and the arrest and detention of criminals. (*Id.* at p. 87.)

17. The application of the ruling in *Boxx* to the facts of this case is inapposite. Here, even though ASGs possessed the indicia of authority with their police-like uniforms, badges, and patrol vehicles, there was little evidence to suggest that they actually wielded any police-like authority. Unlike the patrolman in *Boxx*, ASGs did not carry guns, perform searches of persons or vehicles, physically confront suspects, or arrest and hold any suspects in custody. (Factual Findings 27 to 28 and 32 to 40.) Additionally, as Lieutenant Lichten explained in his testimony, while a police officer's patrol duties included "chasing the radio" and responding to dispatch calls to scenes of crime, these police patrol duties were not a part of respondent Galloway's job as an ASG. (Factual Finding 52.)

18. Citing to *City of Oakland v. Public Employees' Retirement System* (2002) 95 Cal.App.4th 29 (*City of Oakland*), respondent Galloway also contends that the frequency of her involvement in active crime suppression activities as an ASG is immaterial so long as she was in a state of readiness to perform such duties. (Ex. 25, pp. 9-10.) This argument is also unconvincing.

19. *City of Oakland* involved airport firefighters who applied for safety membership under the PERL. The city denied they were engaged in "active firefighting" because they did not have frequent or regular contact with the hazards of firefighting. (*City of Oakland, supra,* 95 Cal.App.4th at p. 62.) The court reasoned that despite the infrequent need for their services, the firefighters' "principal" duties required them to be first responders to emergency situations arising at the airport, which included aircraft fires, hijackings, bombings, power failures, etc. (*Id.* at pp. 59–60.) The court wrote: "Whether fueling an aircraft, inspecting a runway for debris, or polishing his boots, the [airport firefighter], while on duty, had one overriding raison d'être: If a fire emergency arose, he was to drop other tasks and respond." (*Id.* at p. 61.) Consequently, the court found that the airport firefighters met the statutory definition of "local firefighter" under section 20433.[8] (*Id.* at pp. 63-64.)

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[8] Section 20433 provides:

> "Local firefighter" means any officer or employee of a fire department of a contracting agency, except one whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise and whose functions do not clearly fall within the scope of active firefighting, or active firefighting and prevention service, active firefighting and fire training, active firefighting and hazardous materials, active firefighting and fire or arson investigation, or active firefighting and emergency medical services, even though that employee is subject to occasional call, or is occasionally called upon, to perform duties within the scope of active firefighting, or active

20. Unlike the firefighters in *City of Oakland*, the raison d'être of ASGs was not to respond to emergencies and place themselves at risk. Nor were their duties akin to the police; their function was not to respond to crime scenes or to investigate crimes. Instead, the principal function of an ASG was to observe and report suspicious activities at the Airport to their police sergeant supervisor or to the SMPD. Any involvement ASGs may have had with the perils of active crime fighting was purely incidental to their job.

Disposition

21. ASGs performed a valuable public service on behalf of respondent City, and they were sometimes exposed to very real dangers. However, respondent Galloway's reclassification request is not supported by the evidence of her duties as an ASG and the definition of "local police officer" as defined by section 20425. A preponderance of the evidence in this case supports CalPERS's determination that respondent Galloway was properly classified as a local miscellaneous member under the PERL.

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firefighting and prevention service, active firefighting and fire training, active firefighting and hazardous materials, active firefighting and fire or arson investigation, or active firefighting and emergency medical services, but not excepting persons employed and qualifying as firefighters or equal or higher rank, irrespective of the duties to which they are assigned.

ORDER

Respondent Susan P. Galloway's appeal is denied. CalPERS correctly determined that respondent Galloway's employment as an Airport Security Guard with the respondent City of Santa Monica should be classified as local miscellaneous member.

DATE: June 26, 2020

DocuSigned by:
Ji-Lan Zang
JI-LAN ZANG

Administrative Law Judge

Office of Administrative Hearings