

**ATTACHMENT B**

**STAFF'S ARGUMENT**

## **STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION**

Tracey Frances Pirie (Respondent) became a miscellaneous member of CalPERS by virtue of her employment with the City of Oxnard beginning February 5, 1979, and she continued as a member of CalPERS until 2008.

In 2002, Respondent began working for the County of Ventura (County) and established membership with Ventura County Employees' Retirement Association (VCERA). VCERA has a reciprocity agreement with CalPERS and Respondent established reciprocity between CalPERS and VCERA effective May 2, 2008.

Respondent retired for service from CalPERS effective September 1, 2020 and has been receiving her retirement allowance since that time. As a result of the reciprocity agreement between CalPERS and VCERA, CalPERS utilized the highest final compensation for purposes of calculating retirement benefits.

Respondent's final compensation was earned while she was a member of VCERA. The County reported certain special compensation to VCERA to be used in calculating Respondent's final compensation for retirement benefits from VCERA. When the same information was provided to CalPERS for purposes of calculating Respondent's CalPERS retirement benefit, CalPERS determined that certain items of special compensation allowed by VCERA should be excluded under the PERL. Thus, CalPERS used a lower final compensation than VCERA did when calculating Respondent's retirement benefit.

CalPERS determined that the "FCM-Flex Credit MGMT F/T;" "FCX-Flex Credit Tier II Full Time;" "Y10-Tier 1 Retirement Offset 10 (Y-10 Payment);" "Vab-Vacation Buyback (Grossup);" and "EEP-EE Assist Donation (Grossup)" could not be included in Respondent's final compensation because the payments did not meet the definition of compensation earnable and special compensation under Government Code section 20636 and Title 2, California Code of Regulations (CCR) section 571.

Respondent appealed this determination and exercised her right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A hearing was held on August 10, 2021. Respondent represented herself at 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.

At the hearing, Respondent conceded that all disputed items of special compensation were barred under Government Code section 20636 except for the Y-10 Payment.

Respondent argued that the Y-10 Payment was part of her payrate, not an item of special compensation. Thus, the hearing only concerned the Y-10 Payment and whether it was part of Respondent's payrate/base pay.

Respondent testified on her own behalf. Respondent testified that she oversaw the County Sheriff's Human Resources Department and that the Y-10 Payment was paid as part of her payrate.

CalPERS staff testified that the Y-10 Payment was an item of special compensation, not part of Respondent's payrate because the amount was not listed in the County's monthly pay schedule. While the highest monthly payrate on the pay schedule was \$15,300, Respondent's monthly compensation was \$19,653.36. The additional \$4,300 of her monthly compensation was not part of the payrate. Rather, the \$4,300 was comprised of special compensation items, which included the Y-10 payment. Also, VCERA reported the Y-10 Payment to CalPERS as an item of special compensation, separate from her base pay.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that the Y-10 Payment was not part of Respondent's payrate. It was paid and reported as special compensation.

In the Proposed Decision, the ALJ concluded that the Y-10 Payment was an item of special compensation and was not reportable to CalPERS because it was not compensation earnable and failed to meet the definitions of special compensation listed under Title 2, CCR section 571.

For all the above reasons, staff argues that the Proposed Decision be adopted by the Board.

November 17, 2021

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