

**ATTACHMENT B**

**STAFF'S ARGUMENT**

## **STAFF'S ARGUMENT TO DENY THE PETITION FOR RECONSIDERATION**

Britt W. Wilson (Respondent) petitions the Board of Administration to reconsider its adoption of the Administrative Law Judge's (ALJ) Proposed Decision dated August 10, 2021. For reasons discussed below, staff argues the Board deny the Petition and uphold its decision.

On February 28, 2019, Respondent City of Rancho Mirage (Respondent City) and Respondent entered into a Retirement Agreement and a Comprehensive Release of Claims (Agreement). Prior to the execution of the Agreement, Respondent's hourly payrate as a Management Analyst was \$45.48. After execution of the Agreement, Respondent's hourly payrate was raised to \$50.65, and this raise was paid retroactive to June 18, 2018. The Agreement also placed Respondent on administrative leave from February 28, 2019 through June 22, 2019. Under the terms of the Agreement, Respondent agreed to retire on June 23, 2019.

CalPERS reviewed the Agreement after Respondent retired, and determined that the retroactive pay raise had to be excluded from Respondent's final compensation because it was paid in anticipation of Respondent's retirement. Any item of compensation paid in anticipation of separation from service must be excluded from a member's final compensation as final settlement pay. Respondent appealed CalPERS determination.

After considering all of the testimony and evidence introduced at the hearing, the ALJ denied Respondent's appeal. Under Government Code section 20160, CalPERS was seeking to correct a mistake within the system, so CalPERS had the burden at hearing. The ALJ found that CalPERS met its burden.

The ALJ held that the Agreement's retroactive raise was final settlement pay because it was specifically given to Respondent in anticipation of his retirement. Government Code section 20636 and Title 2, California Code of Regulations section 570 (Regulation 570) expressly exclude final settlement payments made in contemplation of separation from employment, and from reportable compensation. Respondent's testimony and the Agreement both confirmed that the increase from \$45.48 to \$50.65 was given in anticipation of Respondent's retirement. The evidence also showed that Respondent never even performed services at the payrate of \$50.65 but was instead placed on administrative leave at the time the raise was awarded. The Decision was correct in holding that the Agreement's retroactive raise was impermissible final settlement pay.

Respondent's Petition contends that the Agreement's pay raise was compliant with Respondent City's publicly available pay schedule, and he attached a copy of the 2019 pay schedule in support of his contention. Respondent is incorrect. His pay raise to \$50.65 was retroactive to 2018. In 2018, the maximum salary for a Senior Management Analyst according to the 2018 pay schedule was \$49.40. The

Agreement's retroactive promotion and raise to \$50.65 was in excess of that allowable amount, and shows that Respondent's raise should be excluded from Respondent's final compensation.

Respondent's Petition also contends that the retroactive raise and Respondent's retirement were separate events, which should make the retroactive raise reportable to CalPERS. Respondent testified at hearing about the meeting in February 2019 where he discussed his upcoming retirement in conjunction with his retroactive raise. Part of Respondent's evidence at hearing was a statement of facts which confirmed that his retroactive raise and retirement were part of the same discussions. Respondent's evidence at hearing contradicts his statements in his current Petition.

Nothing in the Petition changes or alters the analysis of the Decision. Respondent's testimony and the Agreement both confirmed that the increase from \$45.48 to \$50.65 was given in anticipation of Respondent's retirement. The evidence also showed that Respondent never performed services at the payrate of \$50.65. Plus, the payrate of \$50.65 exceeded the maximum allowable payrate on Respondent City's pay schedule. Accordingly, the ALJ was correct in finding that the Agreement's retroactive pay raise should be excluded as final settlement pay because it was given to Respondent in anticipation of his retirement.

No new evidence has been presented by Respondent that would alter the analysis of the ALJ. The Proposed Decision that was adopted by the Board at the November 17, 2021, meeting was well reasoned and based on the credible evidence presented at hearing.

January 18, 2022

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