

**ATTACHMENT B**

**STAFF'S ARGUMENT**

## STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Maria Santillan-Beas (Respondent) was elected as a city council member for the City of Lynwood (Respondent City), commencing October 7, 2003. On October 14, 2003, Respondent submitted an Election of Optional Membership form, electing to become a city council member of CalPERS under Government Code section 20322.<sup>1</sup>

Respondent served as a city council member from 2003 through 2018. Respondent City paid Respondent for her city council service as follows: from 2003 to 2007, Respondent received \$803 or \$804 each month; and from 2008 through 2018, Respondent received \$975 each month.

As a requirement of sitting on the city council, Respondent also served on various city-related boards, commissions, and agencies, including the Lynwood Public Financing Authority, Lynwood Redevelopment Agency, Lynwood Information Inc., and the Lynwood Housing Authority (referred to collectively as the Authorities). The Authorities were created by city ordinance or resolution, and all were engaged in city business. None of the Authorities contract with, or have ever contracted with, CalPERS. All of the Authorities are legally separate entities.

Respondent was required to attend several meetings each month for the Authorities, as were the other city council members. The meetings for the Authorities were held concurrently with city council meetings, though their agendas were different than the city council's agenda. Respondent was compensated for each meeting she attended for each Authority, and the rate of compensation was different for each Authority.

Respondent earned a total of \$34,948 in 2004, which includes \$25,300 in stipends received for attending Authorities meetings. The number of meetings Respondent attended dwindled over the years, and she only received \$1,500 from the Authorities in 2017.

On November 8, 2018, Respondent signed an application for service retirement. She retired for service effective December 5, 2018, and has been receiving a monthly retirement allowance since then. CalPERS calculated Respondent's monthly retirement benefit using her highest base pay earned as a city council member from December 2017 through November 2018. Her monthly base pay earned was \$975 per month, for a total annual salary of \$11,700. Respondent's compensation for attending city council meetings was paid pursuant to Respondent City's pay schedules.

CalPERS reviewed the additional compensation received by Respondent for attending Authorities meetings. Because section 20322(d) expressly excludes an elected officer's

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<sup>1</sup> All future statutory references will be to the Government Code unless otherwise noted.

service on boards and authorities from CalPERS membership, CalPERS determined that Respondent's service and compensation from the Authorities could not be considered when calculating her final compensation. In addition, CalPERS determined that the stipends paid for attending Authorities meetings did not meet the definition of special compensation proscribed by section 20636.

On June 10, 2019, CalPERS notified Respondent of its determination, and informed her of her appeal rights. On July 9, 2019, Respondent and Respondent City appealed this determination and exercised their right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A hearing was held on July 13, 2021. Respondents appeared at the hearing and were both represented by the same counsel.

CalPERS Staff testified in support of its determination, explaining that Respondent elected optional CalPERS membership under section 20322(a). Her compensation for attending Authorities meetings could not be considered as compensation earnable because section 20322(c) expressly excludes an elected official's service on boards and authorities from CalPERS membership. Further, Respondent City's resolutions and ordinances establishing the Authorities shows that the Authorities were separate from the city council. Finally, the Authorities never contracted with CalPERS for benefits.

CalPERS also clarified that Respondent City's publicly available pay schedules delineate compensation for attending city council meetings, but none of them include pay for attending any Authority meeting. To qualify as compensation earnable and final compensation, compensation must meet the definition of either payrate or special compensation. (Section 20636.) Payrate must be included on a publicly available pay schedule to qualify as compensation earnable for retirement purposes. (Section 20636(b).) Because no compensation for attending Authorities meetings was included in Respondent City's publicly available pay schedules, that pay does not qualify as payrate.

Staff explained that pay for attending Authorities meetings did not qualify as special compensation either. It was not contained in the exclusive list of special compensation items in California Code of Regulations, Title 2, (CCR) section 571(a), and did not comply with nine requirements listed in CCR section 571(b).

Respondent City's former Human Resources Director (HR Director) testified on behalf of Respondents at the hearing. The HR Director claimed that Respondent City's former payroll clerk failed to report the compensation to CalPERS. The HR Director conceded that the compensation did not qualify as special compensation. However, she contended that the compensation should qualify as payrate because Respondent was required to serve on the Authorities in order to be paid. The HR Director also contended that the pay schedule requirement from section 20636 did not exist when Respondent began serving on the Authorities in 2003.

After considering all the evidence and arguments at hearing, the ALJ denied Respondents' appeal. Although Respondents argued that section 20636's pay schedule requirements did not apply to Respondent from 2003 through 2006, the ALJ disagreed. Citing to binding case law interpreting payrate requirements, the ALJ found that pay schedules were always a requirement under section 20636. (*Prentice v. Public Employees' Retirement System* (2007) 229 Cal.App.3d 983, 990, footnote 4.) Since the pay for attending the Authorities' meetings is not on Respondent City's pay schedules, it cannot count as payrate.

The ALJ further explained why pay received for attending Authorities meetings did not qualify as payrate. Section 20636 defines payrate as a member's regular monthly rate of pay. Because Respondent already received a regular base pay for her city council position, Respondents were arguing that she was entitled to two base pay amounts from one employer. Pay received in addition to base pay cannot also be base pay.

The ALJ found that the additional Authorities meeting pay could not be used to enhance Respondent's final compensation. The ALJ denied Respondents' appeal and concluded that CalPERS correctly excluded pay from the Authorities from Respondent's final compensation.

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

March 16, 2022

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