

ATTACHMENT A

RESPONDENT'S PETITION FOR RECONSIDERATION

FAX

3/24/2022 5:00 PM (PDT)

SENDER

From: Kendra L. Carney Mehr

Contacts: (949) 629-4676

MESSAGE

Please see attached Petition for Reconsideration submitted on behalf of Respondent Maria Santillan-Beas and the City of Lynwood. Thank you.



CARNEY MEHR
A law firm

Kendra L. Carney Mehr
(619) 890-0259
klcm@carneymehr.com

March 24, 2022

CalPERS Board of Administration
CalPERS Executive Office
Cheree Swedensky
Assistant to the Board
P.O. Box 942701
Sacramento, CA 94229-2701
Fax: (916) 795-3972

Via U.S. Mail and Fax

Re: Maria T. Santillan-Beas and City of Lynwood, Respondents
CalPERS Case No. 2019-0782, OAH Case No. 2020110582

PETITION FOR RECONSIDERATION

Members of the Board of Administration:

This letter shall serve as Respondents Maria Santillan-Beas and the City of Lynwood's Petition for Reconsideration of the Board of Administration of the California Public Employees' Retirement System's March 16, 2022 Decision ("Decision"). The primary issue in this matter remains the unequitable and disparate application of CalPERS' Decision to exclude reportable compensation in the calculation of compensation earnable as it relates to retired Lynwood City Councilmember Maria T. Santillan-Beas. As more fully set forth in Respondents' attached Argument Against Decision, the Decision improperly relies on the retroactive application of regulations and case law established after Respondent Councilmember's highest year of compensable earnings.

This letter is timely submitted on March 24, 2022, in response to correspondence from CalPERS dated March 17, 2022, which provided the Board's Decision and provided Respondents the opportunity to submit a Petition for Reconsideration.

Respondents' Petition

The Decision rests upon an improper determination to retroactively apply regulations and case law adopted more than ten years after Respondent Councilmember's highest year of compensable earning. The Decision's determination that the City's pensionable compensation provided to council members for their required service on City Authority boards is not compensable earning does not follow the relevant statutes or regulations available at the time the compensation was earned. In other words, Ms. Santillan-Beas' **reduced benefit was retroactively calculated based upon regulations which did not exist at the time her benefit was earned – and would not be codified for many years thereafter.**

Although the City adopted salaries by City Council resolutions, properly agendized and considered at public meetings, the City did not utilize a form of "publicly available pay schedule" that would meet the current regulations until, reasonably, the adoption and application of the current regulations in 2012. The Decision imposes rules adopted years later and opens a legal quagmire which threatens years of pensions earned by City of Lynwood employees. Quite simply, since the Decision denies the pension benefit earned by Respondent prior to the City's adoption of the correct "publicly available pay schedule" – how can any other City employee's pension earned during the same time be upheld? And, again, why is CalPERS suddenly departing from past practice to treat one beneficiary different from all other City of Lynwood retirees?

Primary Issues for Reconsideration

1. The Decision Has Serious Implications for Hundreds of City of Lynwood Employees, Current and Retired

Although the City of Lynwood publicly reviewed and adopted salaries, it did not adopt the type of pay schedule the Decision is primarily based on until regulations requiring the City were codified in 2012. The City, like many public agencies, further modified the format of its pay schedule in 2017, following the Court's published decision in *Tanner v. Public Employees' Retirement System*, 248 Cal.App.4th 743, in 2016. There are potentially severe, negative financial consequences to the City as well as financial and quality of life consequences to its employees, officials, and retirees as a result of the Decision's new interpretation of the City's compensation schedules.

2. The Decision Inappropriately Applies Regulations and Case Law Retroactively

In 2004, Government Code section 20636(b)(1) defined "payrate" as "the normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours."

From at least 2004 through 2006, the time period of Respondent Councilmember's highest annual compensable earnings, the City publicly adopted salaries for every group or class of employee only by resolution – never by a “pay schedule” in a list format as is now required.

Principles of equity require the Board honor the good faith expectations that the Council members have regarding final compensation, of public employees, including disregarding the improper, retroactive application of regulations and case law to benefits earned based on salaries publicly approved by resolution well before the adoption of later rules and clarifications.

Clearly the definition of “payrate” and “publicly available pay schedule” provided by Government Code section 20636 lacked clarity because it was further explained by CalPERS proposed regulations adopted as California Code of Regulations section 570.5 in 2011, and still later, further expounded upon by the court in *Tanner v. Public Employees' Retirement System*, 248 Cal.App.4th 743, in 2016. It is not appropriate for the Board to expect the City to have anticipated regulations and case law that would come down more than 10 years after Ms. Santillan-Beas' highest year of earning, and it is legally improper to retroactively apply such requirements.

As a result, the service of the Councilmember meets the definition of “payrate” contained in the version of Government Code section 20636(b)(1) in place in 2004, and Ms. Santillan-Beas is entitled to the benefit she earned. **To find otherwise places the pension benefit earned by every other City employee during that time period in jeopardy.**

3. Respondent Santillan-Beas' Highest Year of Earning was 2004

Ms. Santillan-Beas served as a City Council member consistently from 2004 through 2018. During that time, in her capacity as a City Council member and as required by City Resolutions, Ms. Santillan-Beas sat on various City Authorities' boards for which she earned contributory income. The earnings payable to the Council members for appointment to these Authorities comprised compensation that the Council members earned as part of their mandatory Council member duties. As a result, these earnings are contributory to CalPERS. In 2004, Respondent Santillan-Beas earned \$34,948. Her retirement benefit should be calculated based on her highest earnings in 2004.

Conclusion

CalPERS' core duty is to discharge its duties solely in the interest of, and for the exclusive purposes of providing benefits to, participants and their beneficiaries. Principles of equity require CalPERS honor the good faith expectations that Ms. Santillan-Beas and all City of Lynwood employees have regarding their final compensation and the pension benefit they have worked diligently to earn.

CalPERS Board of Administration
Respondents' Petition for Reconsideration
March 24, 2022
Page 4

The difference in the pension benefit Ms. Santillan-Beas receives is substantial to her and minimal to CalPERS. However, the potential impact to hundreds of City of Lynwood employees may be devastating if the Board does not reconsider its Decision.

For numerous reasons, including good public policy, the CalPERS Board of Retirement should reconsider the Decision.

Best Regards,



Kendra L. Carney Mehr

cc: Matthew G. Jacobs, General Counsel, by facsimile only